Financial Services Commission

Insurance Guidance Note No. 2A

Insurance Companies Ordinance 1987

Guidance Notes On The Preparation Of Annual Returns For General Business Insurers and Reinsurers

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Introduction

1. Following the recent introduction of the Insurance Companies (Accounts and Statements) Regulation 1998 (“the Regulations”), the Commissioner of Insurance (“the Commissioner”) has decided to issue new Guidance Notes on the Preparation of Annual Returns.

2. This Guidance Note deals with the requirements for general business insurers and reinsurers. A separate guidance note is being prepared for life business. It also gives guidance for Gibraltar insurers preparing statements of their insurance business in EEA States under the European single market for deposit with the Commissioner under section 119A of the Insurance Companies Ordinance (“the Ordinance”).

3. The document gives an overview of the requirements of those Regulations and, in particular, presents the Commissioner’s interpretation of them. It also describes the statutory background and explains the relationship between the Regulations and the other Regulations relevant to the preparation of the “Annual Returns”.

4. This document is intended to be read in conjunction with the Regulations which alone have the force of law and which must, in the case of apparent conflict, prevail.

5. This document is included in the Commissioner’s list of published guidance to which he expects companies to certify compliance under the provisions of paragraph 5 of Schedule 6 to the Regulations.

The Statutory Requirement To Prepare Returns

The basic requirement

6. Annual Returns must be prepared by all insurance companies licensed under the Ordinance to carry on insurance business in Gibraltar.

The statutory basis of the return

7. The outline content of the Annual Returns is laid down by two sections of the Ordinance -

   - Section 50 provides for a “profit and loss account”, “revenue account” and “balance sheet” together with “notes, statements and reports” and “certificates annexed thereto”.
   - Section 48 provides for an “auditors report”.

8. These sections provide for regulations to be made to prescribe the detailed content of the documents to be prepared. They form the statutory basis for the current Regulations, which repeal and replace the Insurance Companies (Accounts and Statements) Regulations 1996 ("the 1996 Regulations").

Deposit of Returns

9. Section 52(1) of the Ordinance requires that every document prepared under sections 48 or 50 be printed and two copies deposited with the Supervisor within six months of the end of the period to which the documents relate. The Commissioner requests that one of the copies [not the signed one] is left unbound held together with a treasury tag in the top left-hand corner.

10. Section 52(3) requires that one copy of every document (other than the auditor's report) be signed by such persons as may be prescribed. Section 52(4)

requires that one copy of the auditors report be signed. Further details on the signature of returns is given in paragraphs 30 and 31.

11. The Supervisor has power under section 54 to extend the period for deposit by up to three months, in appropriate circumstances. Applications for such an extension should be made in good time since an extension cannot be granted where application is not made within the six month period. The application should identify the "circumstances" being relied upon as justifying the extension. Only in very exceptional circumstances will an application for an extension be granted where it is not made before the end of the six month period. Similarly, if it becomes necessary to seek a further extension beyond the one already granted (but within the overall limit of three months), application should be made before the expiry of the extension in operation.

Inaccurate or incomplete returns

12. Section 52(5) requires the Commissioner to consider the documents deposited under section 52(1) and, if any such document appears to him to be inaccurate or incomplete, to communicate with the insurer with a view to the correction of any such inaccuracies and the supply of deficiencies.

13. A letter from the Commissioner under section 52(5) may draw attention to an apparent inaccuracy or incompleteness and ask for an explanation, or it may also ask for the inaccurate or missing documents to be (re)submitted. In either case, the insurer should consider the points raised in the letter and respond promptly either explaining why there is not in fact any inaccuracy or incompleteness, or (re)submitting the inaccurate or missing documents.

14. The validation of returns by the Commissioner takes place at two levels. Firstly, certain "absolute" relationships are expected always to be present between data items in the return (and between those items and the data items in the previous return). Secondly, the "reasonableness" of the data items is reviewed. This includes comparing data with other published sources such as the statutory accounts to test its consistency and completeness.

Other documents to be deposited with the returns

15. Section 52(1)(e) requires that an insurer deposit with its return "every report, if any, on the affairs of the insurer submitted to the shareholders or policyholders". In addition, under section 52(1)(d), every published annual account and balance sheet and the report thereon by the auditor must be submitted.

16. Although the section only requires one copy of any report, the Commissioner would find it helpful if general business companies would deposit two copies.

Disclosure of the returns and other documents deposited with the Commissioner

17. The returns and the documents deposited with the Commissioner are publicised in two ways.

- Firstly, under section 56(1), an insurer must send a copy to any shareholder or policyholder who applies for one, and
- Secondly under section 56A, the Commissioner must deposit with the Registrar of Companies the returns and other documents deposited with him. The documents deposited with the Registrar of Companies are available for public inspection.

18. Under section 56(2), the Commissioner may exempt an insurer from the above disclosures but only in respect of the documents prepared under section 50(1), and only, if in the opinion of the Commissioner, disclosure would be harmful to the business of the insurer or any of its subsidiaries. This dispensation will only be given in exceptional circumstances and may be given for all or part of the return.

Section 51, 71 and 113 Orders

19. These sections of the Ordinance empower the Commissioner, in relation to a particular insurer, (at the request of, or with the consent of, that insurer) -

- to modify or disapply certain provisions of the Ordinance; [a section 113 Order];
- to direct that, for certain specified purposes under the Ordinance, long term business be treated as general business, or vice versa; [a section 71 Order];
- to extend or shorten, for the purposes of the Ordinance, the insurer's financial year; [a section 51 Order].

The purposes, under the Ordinance for which these Orders may be used include, but are not confined to, the preparation of Annual Returns.

20. An insurer which wishes to apply for an order should do so in writing to the Commissioner. The application should identify the circumstances which the insurer considers justify the granting of an Order. It is important that an application is made as early as possible, preferably as soon as the relevant circumstances are known to have arisen.

21. Section 113 Orders previously issued to insurers which refer to provisions in the 1996 Regulations will not necessarily remain valid now that those Regulations have been repealed and replaced by these new Regulations. The Commissioner intends to review all such orders and, where appropriate, replace them with orders referring to the new Regulations. This does not affect section 113 orders previously issued for other purposes, e.g. concessions to the asset valuation rules under the Insurance Companies (Valuation of Assets and Liabilities) Regulations 1996 (“the Asset Valuation Regulations”). They remain valid.

The Types Of Return

An overview

22. There are three basic types of Annual Return-

- a "global return" which reports the entire world wide business of the insurer,
- a "Gibraltar branch return" which reports only the business carried on through a branch in Gibraltar, and
- an “EEA branches return” which reports the entire business carried on through all branches in the EEA (including Gibraltar).

The detailed requirements

23. The following table summarises the types of return which insurance companies are required to prepare.

Type of insurer	Location of Head Office			
	Gibraltar	An EEA State	Switzerland(1)	Rest of the World
Pure reinsurer	Global return	Global return	Global return	Global return
Gibraltar Deposit Insurer				Global return and EEA branches return
EEA deposit Insurer				Gibraltar branch Return
All other insurers	Global return	Exempt	Gibraltar branch return	Global return and Gibraltar branch return.

[(1) Special rules apply for Switzerland. A Swiss general insurance company reports as for a company with its head office in the EEA. Other Swiss companies report as for companies with their head office in the "rest of the world".]

24. The above table summarises the requirements of regulation 3(3) and 3(4). "Gibraltar deposit insurer", "EEA deposit insurer" and "pure reinsurer" are defined in regulation 3(1).

Interpretation Of The Regulations

Definitions

25. Regulation 3(1) includes a list of defined words and expressions. In addition to these specific definitions, regulation 3(2) lays down two general rules of interpretation. Unless the context otherwise requires, words and expressions in any Form (including the instructions to any Form), or in any regulation (regulations 19 to 21, 23, 24 and 26) requiring a statement to be annexed to the Forms, are to have the same meaning as applies in-

- the Asset Valuation Regulations and the Insurance Companies (Solvency Margins and Guarantee Funds) Regulations 2004 ("the Solvency Margin Regulations") which lay down the rules for valuing assets and liabilities and calculating the solvency margin, or
- the rules which lay down the form and content of accounts prepared under the Insurance Companies (Accounts Directive) Regulations 1997 ("the Accounts Directive Regulations").

Valuation of assets and liabilities

26. Regulation 4 requires that, unless otherwise more specifically provided, assets and liabilities included in any document in the return should be valued using the valuation rules in the Asset Valuation Regulations.

Requirement to fairly state information

27. Regulation 5 requires that every revenue account, profit and loss account, balance sheet, note, statement, report and certificate required to be prepared under sections 50, 52 and 53 of the Ordinance be prepared in the manner specified and "fairly state the information provided on the basis of the Regulations". This is a closely analogous requirement to the "true and fair"

concept for accounts prepared under the Accounts Directive Regulations. As with that concept, it includes the concept of materiality where properly applied. [NB. Materiality is not an acceptable excuse for basic arithmetical or cross-referencing errors in, or between, Forms. Nor is it an acceptable excuse for misstatement or omission of information required to be disclosed by the Regulations. Nor does it justify a lack of proper care to the preparation of such information.]

Conventions For The Completion Of All Forms

Scope

28 The accounting rules and conventions described in paragraphs 30 to 54 below apply (other than where the contrary is explicitly stated) to all documents in the return other than the Forms, notes, statements and certificates required under Schedules 5 and 6.

29. The accounting rules and many of the conventions for preparing the return which are presented in paragraphs 30 to 54 derive from Paragraphs 1 to 6 of Schedule 1. The other conventions, although not directly arising from the Regulations, are merely cosmetic and are requested to facilitate the Commissioner's processing of the returns.

Completion of Forms

Signature of forms

30. The first Form in the return (normally Form INS 1 or INS 2) should be signed. If the return consists of more than one bound volume, then the front Form of each volume should be signed.

31. A global return should be signed by at least two directors. However, in the rare cases, where there is only one director, he should sign alone. A Gibraltar branch return or EEA branches return should be signed by the Principal Gibraltar representative and the Principal Gibraltar employee. See Regulation 27(2).

Use of own forms

32. Insurers may either submit their return on Forms supplied by the Commissioner or print their own Forms. However, in the latter case, the forms should be laid out exactly as provided in the relevant Schedules to the Regulations. Insurers wishing to print their own Forms are requested to contact either the Insurance Supervisor or the Assistant Insurance Supervisor and send specimen blank Forms to them well before they intend to use them.

Headings

33. After the heading "Name of insurer", the full registered name of the insurer should be given without abbreviation.

34. In the heading "Global business/Gibraltar branch business/EEA branch business", all except one of the three alternatives should be deleted according to whether the Form is part of a global return, Gibraltar branch return or EEA branches return.

35. The heading "Financial year ended" should be followed by the date of the last day of the financial year written in the style “dd-month-yy”, e.g. "31 December 1998".

Other text

36. No text or figures should be included in any box in a Form or anywhere else on the face of the Form other than as required by the Regulations. In particular, no entries should be made -

- in any unused line or column on Forms INS 26 to INS 29, INS 31, INS 32 and INS 34 after the last accident year or underwriting year required to be reported,
- in any column headed "Source", and
- in any shaded box.

Currency

37. All forms (other than some of the Forms INS 26 to INS 29 and INS 31, INS 32 and INS 34) are to be completed in sterling with¬ -

- assets and liabilities converted at the financial year end exchange rate, and
- income and expenditure converted using "such bases of conversion as are in accordance with generally accepted accounting practice".

If the insurer wishes to complete returns in any other currency, the Commissioner will consider a request for a dispensation under Section 113 of the Ordinance.

38. Accounting practice allows several alternative accounting bases for the translation of income and expenditure. The Commissioner expects insurers to choose the same basis as it uses in its statutory accounts. Where the statutory accounts are drawn up in a currency other than sterling (and no dispensation has been requested as regards the Annual Returns), it is acceptable for the insurer also to maintain the underlying records upon which the Annual Returns are based, in that currency and to translate those currency amounts into sterling at the rate ruling at the year end.

39. The above conversion rules do not apply to certain entries on Forms INS 23, INS 26, INS 27, INS 31, INS 32 and INS 34. The rules for these Forms are explained later in the section dealing with the general business technical account.

Presentation of amounts

40. Negative amounts should be shown between round brackets. A minus sign or "DR" should not be used.

41. All sterling amounts in the forms should be shown in units of £1,000 rounded to the nearest £1,000. This is required even if particular figures are so large or small that under normal accounting conventions it would be inappropriate. If the entry in any box to be rounded is less than £500 that box should be left blank.

42. Amounts required to be shown denominated in foreign currency in a Form should be shown in units of 1,000 (of the principal monetary unit of that currency) rounded to the nearest 1,000.

43. Figures which are totals of other figures (whether or not on the same Form) should be rounded after totalling the unrounded detail figures.

Comparative amounts and brought forward figures

44. Columns are included on Forms INS 1 to INS 9 and INS 20 for the disclosure of comparative amounts for the previous financial year. These amounts should be

reported as stated in the previous return (after any correction under s52(5)), but without restatement for any prior year adjustment even where such restatement is permitted under generally accepted accounting practice. In the first return submitted under the Regulations, the comparatives should be based upon the amounts stated in the last return submitted under the 1996 Regulations, but should be restated and reclassified as necessary to fit the format of the new Forms. The Commissioner recognises that for Form INS 5 this may prove burdensome for some companies. Such companies may wish to apply for a section 113 order exempting them from the comparatives disclosure in that Form for the first return prepared under the Regulations.

45. Other than to reflect exchange rate reconversion, brought forward figures on the detailed general business Forms (INS 21 to INS 39) should not, as a general rule, be restated. However the Commissioner recognises that in exceptional cases, e.g. the correction of a fundamental error, restatement for other reasons may be desirable. The Commissioner requests insurers which wish to restate amounts (other than to reflect exchange rate reconversion), to discuss the proposed restatement with either the Insurance Supervisor or the Assistant Insurance Supervisor prior to submitting their return.

46. Where any brought forward amount is restated (other than to reflect exchange rate reconversion), the reason for the restatement must be given in a supplementary note to the Form upon which the brought forward amount appears - see paragraph 6 of Schedule 1. (The Commissioner does not consider this applies where amounts brought forward from a return prepared under the 1996 Regulations are restated as a direct result of the transition from the 1996 Regulations to the Regulations.)

Supplementary notes

47. Supplementary notes should not be shown on the face of a Form but should be shown on a separate sheet or sheets of paper. It would be helpful if the notes for all Forms are bound together toward the end of the return (but before the certificates) and not interleaved with the Forms to which they relate.

48. The requirements to prepare supplementary notes are variously located in the actual text of the Regulations, in the text of the Schedules to the Regulations and in the instructions to the Forms. However, in each case the requirement to prepare the note identifies the Form to which it is to relate.

49. In the following chapters for each Form (under Schedules 1 and 2) a complete list of the required supplementary notes is provided. Each note in the list is given a unique reference code. The first two digits of the code are the number of the Form and the final two digits the number of the note. For example, the 5th note in the list for Form INS 5 is coded "0505".

50. Each supplementary note included in the return should be given a title which identifies the Form or Forms to which it relates. The Commissioner requests that (in respect of Forms prepared under Schedules 1 and 2) this be done by including the code as the first element in the title. For example, the title for note 0801 might be –

<u>0801 Basis of conversion of foreign currency</u>

If there is more than one Form of the same number (e.g. Forms INS 24 for several accounting classes) only one title of the above type need be used to cover all such Forms.

51. Where an insurer wishes to include an extra note (beyond those required by the Regulations to be included), it should identify the Form to which it relates and give the note the next unused sequential code number for that Form. For

example, the Regulations specify thirteen coded notes for Form INS 5 which are respectively coded 0501 to 0513. If an extra note is to be added, it should be coded 0514. The code 0514 should be used even if for the particular insurer there is no note 0513 (because the circumstances in which that note is required do not arise for that insurer).

52. Where the Regulations require a Form to be submitted but all entries (including comparatives) would be blank, that Form may be omitted provided that a note coded FF00 (where FF is the Form number) is included stating that this is why the Form has been omitted.

53. Two or more supplementary notes should not be combined as a single text with a single title except where this avoids unnecessary repetition or leads to a clearer explanation. Where two or more supplementary notes are combined, the codes of all the notes should be listed at the beginning of the combined title.

54. Some supplementary notes are always required whenever the form to which the note refers is required. Others are only required on an exception reporting basis. The detailed guidance, which follows, on each supplementary note brings out this distinction.

Forms INS 1 To INS 9: Statement Of Solvency, Balance Sheet And Non-Technical Account

Statement of Solvency (Form INS 1)

Completion of the form

55. Form INS 1 is to be prepared by every insurer other than a Swiss general insurance company or an EEA deposit insurer (see Regulation 6(2)) and shows, for general business -

- the required minimum margin of solvency,
- the available assets, and
- any contingent liabilities.

56. The entries on Form INS 1 derive from other forms within the return.

- The general business required margin of solvency derives from Forms INS 3 and INS 4,
- The available assets derive from Form INS 2,
- The contingent liabilities for general business derive from supplementary notes to Form INS 7.

57. The Annual Return is generally signed at the foot of Form INS 1 by the required signatories.

Supplementary notes

58. Where a section 113 Order has been issued disapplying or modifying any of the provisions of the Regulations, a note to Form INS 1 explaining the effect of the order must be provided. The requirement for such a note is specified in the order itself. [Code 0101].

Statement of Net Assets (Form INS 2)

Completion of the form

59. Form INS 2 is to be prepared by all insurers (see Regulation 6(3)) and summarises information from Forms INS 5 and INS 7. It also provides a reconciliation in the movement of net assets for calculating the solvency from the prior year to the current year return.

60. Only the lines from 21 onwards need to be completed. Lines 24 and 25 show two types of asset which may not be taken into account in determining the net admissible assets but which, provided that net admissible assets are not negative, may (to a limited extent) be added to net admissible assets for the purpose of determining whether the insurer meets its required margin of solvency. Similarly, lines 26 and 27 show two types of liability which are taken into account in net admissible assets but which, provided that net admissible assets are not negative, may (to a limited extent) be added back for the purpose of determining whether the company meets its required margin of solvency. Thus where line 23 is negative no amounts may be included at lines 24 to 27. [See Regulation 4 of the Solvency Margin Regulations for the detailed rules applicable to these types of assets and liabilities.] Line 51 should include the share premium account. Finally, line 56 is to be completed with the balancing figure so as to ensure that line 59 equals line 29.

Reconciliation of balance of net assets brought forward and carried forward

61. Line 61 to 69 reconcile the balance of net assets, (line 56), brought forward and carried forward. For these purposes, the brought forward amount shown at line 61 should not be restated for any reason. [In the first year returns are prepared under the Regulations, the brought forward amount should equal line 56 in the Form INS 2 prepared under the 1996 Regulations less the allowable amount of any subordinated loans].

62. The three most frequent reasons for a movement in the net assets are listed respectively at lines 62 to 64. They are-

    - the retained profit or loss for the financial year - sourced from Form INS 8,
    - movements in the difference between the value of assets under the Asset Valuation Regulations and under the generally accepted accounting practice (“GAAP”) valuation rules - sourced from Form INS 5, and
    - a decrease or increase in the provision for adverse changes (which is a provision made for the purposes of regulation 19 of the Asset Valuation Regulations but which does not arise under GAAP) - sourced from Form INS 7.

63. Movements in the net assets which are not attributable to the three reasons given above should be included at line 65 and explained by way of supplementary note to the Form. [Code 0202].

64. The retained profit or loss (line 62) is sourced from Form INS 8 and is determined in accordance with the same GAAP as apply in statutory accounts.

65. Annex 1 gives an example of this reconciliation.

Reconciliation of net assets to the accounts

66. In addition to the above reconciliation which appears on the face of Form INS 2, a further reconciliation is required by way of supplementary note to the Form. This takes net assets as per the Annual Return and reconciles them to net assets as they appear in the statutory accounts.

67. For the purposes of this reconciliation, net assets as per the Annual Return should be taken not from Form INS 2 but by netting assets taken from line 99 of Form INS 5 and liabilities from line 59 of Form INS 7. The net assets as per the statutory accounts should be the amount shown under balance sheet item A "capital and reserves".

68. The reason for taking assets and liabilities from these sources within the Annual Return is to eliminate from the reconciliation differences due to the dissimilar asset and liability valuation rules as between the Annual Return and the statutory accounts. [Lines 91 to 99 of Form INS 5 reconcile the valuation of assets as per the Annual Return rules and as per the statutory accounts rules. Line 99 shows the value after that reconciliation, i.e. the value as per the statutory accounts rules. Similarly, line 59 of Form INS 7 shows liabilities sub-totalled excluding items which do not appear as liabilities in the statutory accounts, e.g. the provisions for adverse charges etc.]

69. As a result, this reconciliation only needs to deal with differences which arise for other reasons. Such differences would include the amount of any subordinated loan capital. This is not deducted as a liability in the net assets as sourced, inter alia, from line 59 of Form INS 7, but is deducted as a liability in the net assets as sourced from the statutory accounts (item A “capital and reserves”).

70. Other than as noted above, insurers should only rarely have any differences to report under this reconciliation; e.g. where there is a material adjusting post-balance event which occurs after the date of sign-off of the statutory accounts but before the date of sign-off of the Annual Returns.

71. Where, for any reason, an insurer either does not prepare, or has not yet prepared, its statutory accounts a statement that this is the case should be included in the supplementary note instead of the above reconciliation. The Commissioner would also find it helpful if the reason why accounts have not been prepared is also stated.

72. Annex 1 gives an example of this reconciliation.

Supplementary notes

73. Three supplementary notes are specified -

(i) the supplementary note described in paragraphs 66 to 71 above - see paragraph 13 of Schedule 1; [Code 0201];

(ii) particulars of any "other movements" shown at line 65; [Code 0202]; and

(iii) particulars of any section 113 Order allowing subordinated loan capital not to be treated as a liability for the purposes of determining whether the insurer holds net assets which match its required margin of solvency - the requirement for this note will be specified in the section 113 Order itself; [Code 0203].

Calculation of required margin of solvency (Forms INS 3 and INS 4)

The margins of solvency

74. Forms INS 3 and INS 4 are to be completed by every insurer which carries on general business, other than a Swiss general insurance company or an EEA deposit insurer - see Regulation 6(4). For the purpose of this Guidance Note, we shall restrict our comments to Gibraltar insurers and pure reinsurers.

75. All licensed insurers are required to maintain a required margin of solvency throughout the financial year. Forms INS 3 and INS 4 in the Global return show the calculation of this required margin of solvency in respect of general business.

75A. For an insurer (other than a pure reinsurer) with its head office outside Gibraltar this required margin of solvency relates to its entire worldwide business. Such an insurer (unless a Gibraltar deposit insurer) must also maintain a Gibraltar required margin of solvency in respect of its business carried on in Gibraltar. Forms INS 3 and INS 4 in the Gibraltar branch return show the calculation of the Gibraltar required margin of solvency in respect of general business.

76. The text on the face of the Forms presents in outline the method of calculation of the general business margins of solvency. The detailed rules for the calculation are to be found in Schedules 1 and 2 to the Solvency Margin Regulations, to which insurers preparing these Forms should refer. The Forms should be interpreted in the light of these rules.

77. The Solvency Margin Regulations lay down that the required margins of solvency are to be calculated as the highest result from the application of four alternative methods. These are the premium basis, the brought forward amount, the claims basis and the minimum guarantee fund. The first two methods are shown on Form INS 3 and the latter two methods together with the comparison of all methods are shown on Form INS 4.

Form INS 3: the first method (i.e. the premium basis)

78. Lines 11 and 22: determine the gross premiums receivable and gross premiums earned in the financial year.

(a) “Gross premium” is defined as "premiums after deduction of discounts, refunds and rebates of premium, but before deduction of premiums for reinsurance ceded and of commission payable”. It includes premiums receivable from reinsurance contracts accepted by the insurer. This has the same meaning (subject to one important exception described in sub-paragraph (c) below) as "gross premiums written" as it occurs in the other Forms in the Annual Return. The amount of "gross premium" to be taken is limited by the words “receivable” and means “recorded in the company's books as due to the company in respect of risks incepted in the financial year”. Policies transferred to an insurer under a Schedule 10 transfer (or a transfer under the equivalent law of an EEA State) should be considered to be incepted on the date of transfer.

(b) In effect, therefore (subject to the exception described in (c)), "gross premiums receivable" may be treated as being the same as that portion of "gross premiums written" which is in respect of risks incepted in the financial year. This may be derived from the other Forms in the return as follows: take the sum of the entries in columns 1 and 2 for lines 13 to 15 on all Forms INS 21 and of the entry at line 11 for the current underwriting on all Forms INS 24.

(c) The exception referred to above occurs where premiums receivable are excluded from gross premiums written as shown in Forms INS 21 and INS 24 by virtue of the rule in paragraph 25 of Schedule 2 to the Regulations. This says that "amounts in respect of inwards and outwards contracts of insurance shall be classified for inclusion in Forms INS 20 to INS 39 according to their economic substance in accordance with generally accepted accounting practice". This, in effect, means that the accounting treatment for so-called financial reinsurances is to be the same in these Annual Return Forms as in the statutory accounts. This is explained more fully in paragraph 146 below. The point to note here is that even where, under this rule, the consideration receivable under a contract of insurance is not classified as "gross premiums written" for the purposes of those Forms, it must be included as "premiums receivable" on Form INS 3. The Form INS 3 "premiums receivable" should include all consideration receivable in respect of contracts which constitute carrying on insurance business under the Ordinance.

79. Lines 12 and 23: deduct premium taxes and levies, but only to the extent that: (i) in the case of taxes they are included in premiums and (ii) in respect of levies they are related to premiums and are "recorded in the company's books as payable in the appropriate financial year or years in respect of general business". Under generally accepted accounting practice, IPT is excluded from the amount shown for premiums and should not be deducted at line 12 on the Form. The Financial Services Compensation Scheme levy in respect of business written or earned during the year may be deducted but only to the extent that a provision for that anticipated liability has been established.

79A. Lines 14 and 15: statistical methods may be used to allocate the premiums in respect of classes 11, 12 and 13.

80. Lines 16 and 27: adjust the sub-total derived from the above to an annual figure if the financial year runs for more or less than 12 months.

81. Lines 17 to 20 and 28 to 31: (i) analyse the amount arrived at in lines 16 and 27 between "other" and "health insurance based on actuarial principles"; (ii) in the case of each amount, if appropriate, divide into two portions of 50 million Euro and the excess over 50 million and (iii) apply the appropriate percentages (18, 16, 6 or 51/3, as the case may be) to the totals arrived at and add together the resultant sums to determine Sub-total B. The Commissioner will advise, if requested, whether business carried on under a particular policy falls within the definition of "health insurance based on actuarial principles". The £/Euro rate of exchange to be used is that prevailing at the previous 31 October and is advised to insurers each year.

82. Lines 41 to 46: Determine (i) gross claims paid in the relevant period of 3 financial years; (ii) gross claims outstanding carried forward; and (iii) gross claims outstanding brought forward. Determine the gross claims incurred, Sub-total C, as (i) plus (ii) less (iii).

(a) "Claims paid" and "claims outstanding" are defined in detail in the Solvency Margin Regulations. In essence, they refer to the amounts recorded in the company's books as -

- "paid in full or partial settlement of" or "set aside as likely to be sufficient to meet" claims under contracts of insurance; or as

- expenses "incurred" or "set aside" as likely to be incurred which are "directly attributable to the settlement of individual claims"; less
- related salvage recoveries, recoveries from third parties and recoveries from other insurers (but not reinsurance recoveries).

(b) The definition of "claims outstanding" includes the provision for claims incurred but not reported.

(c) In effect, although the Solvency Margin Regulations do not express themselves in these terms, the above definitions of "claims paid" and "claims outstanding" are equivalent (subject to one important exception described in (f)) to the corresponding amounts included in Forms INS 22 and INS 25, but excluding the “claims management costs”.

(d) For “claims paid”, the equivalent amount is the sum of the amounts at lines 11 and 15 in column 2 in all Forms INS 22 and of the amounts at line 21 of the total column in all Forms INS 24.

(e) For “claims outstanding” the equivalent amount is the sum of the amounts at lines 11 and 15 in column 3 in all Forms INS 22 and of the amounts at lines 11 and 13 of the total column in all Forms INS 25. For an insurer which discounts its claims outstanding, this requires that the undiscounted provision be taken. If necessary the brought forward amount (here and on Form INS 4) should be restated as undiscounted.

(f) The exception referred to above arises for the same reason as described in paragraph 78(c) above. Amounts are classified for inclusion in Forms INS 22, INS 24 and INS 25 according to their economic substance in accordance with generally accepted accounting practice. However, in Forms INS 3 and INS 4, “claims paid” and “claims outstanding” should include all amounts "paid" or "set aside" for claims under contracts which constitute carrying on insurance business under the Ordinance, even where such amounts are not classified as "claims paid" under generally accepted accounting practice.

83. Lines 47 and 48: determine the net claims incurred, Sub-total D, by deducting from the gross claims incurred, Sub-total C, the total sum recoverable in respect of that amount under reinsurance contracts ceded. Line 47 should only include amounts classified for inclusion as reinsurance in Forms INS 22, INS 24 and INS 25 according to their economic substance in accordance with generally accepted accounting practice (except that where gross premium has been included in line 11 only by virtue of paragraph 82(f), all reinsurance of that gross premium (whatever its economic substance) may be included in sub-total C).

84. Line 49: determine the First result by multiplying Sub-total J by the ratio of Sub-total D to Sub-total C. (or if that fraction is less than one half, by one half; or if the fraction is more than one, by one).

Form INS 3: (the brought forward amount)

84A. The provision for claims outstanding shown in line 50 are to be net of reinsurance. The guidance in paragraphs 82 and 83 apply, except that despite 82(e), claims that are discounted will not need to be restated as undiscounted if they are in respect of class 1 or 2 business or for annuities or if the insurer is a pure reinsurer that does not have permission to effect contracts of insurance. The brought forward amount in line 51 is then the lower of the required margin of solvency that applied during the financial year in question and that amount multiplied by the ratio of claims outstanding at the end of that financial year to the claims outstanding at the beginning of that financial year.

Form INS 4: the second method (i.e. the claims basis)

85. Determine the reference period. If an insurer has not been in existence long enough to acquire a reference period, this should be indicated by entering a zero at the box in line 11 and lines 21 to 41 ignored. For the majority of insurers, the reference period will be the last three financial years.

86. Establish the amount of "claims incurred" in a similar way to that explained in paragraph 82 above. For example, where the reference period is the last 3 financial years, the claims incurred should be derived (from the formula described in para 82) from the amounts reported in the Returns for those last 3 years. However, it is acceptable to restate amounts of “claims incurred” for currency movements. Claims, provisions and recoveries in respect of classes 11, 12 and 13 must be increased by 50%. Statistical methods may be used to allocate the claims, provision and recoveries in respect of these classes.

87. Reduce the sum derived to an annual figure by multiplying by 12 and dividing by the number of months in the reference period.

88. Lines 32 to 39 (i) analyse Sub-total F between “other” and “health insurance based on actuarial principles”; (ii) in the case of each amount, if the amount is more than 35 million Euro, divide into two portions of 35 million Euro and the excess over 35 million Euro and (iii) apply the appropriate percentages (26, 23, 82/3 72/3, as the case may be) to the totals arrived at and add together the resultant sums to determine Sub-total G. The definition of "health business" and the £/Euro rate are the same as apply in paragraph 81 above.

89. Line 41 determine the second result by multiplying Sub-total G by the ratio of Sub-total D to Sub-total C, (or if that fraction is less than one half, by one half; or if the fraction is more than one, by one).

The Minimum Guarantee Fund

90. The amount of the minimum guarantee fund (line 44 on Form INS 4) is calculated by reference to the classes of business for which the company is authorised. See Schedule 4 to the Solvency Margin Regulations.

Supplementary notes

91. Two supplementary notes are specified.

(i) If any of the brought forward amounts differs from the corresponding carried forward, amounts in the previous return the reason should be stated - see Paragraph 6 of Schedule 1. [Codes 0301 and 0401].

(ii) If any of the amounts included in either Form INS 3 or INS 4 differ from the corresponding amounts in Forms INS 21 to INS 25, the amount of difference and the reason for it should be stated - see paragraph 9 of Schedule 1. The expected correspondence between amounts in Forms INS 3 & INS 4 and in Forms INS 21 to INS 25 and the reasons why they might differ are explained in paragraphs 78 and 82 above. [Codes 0302 and 0402]

Analysis of admissible assets (Form INS 5)

Valuation and Admissibility of Assets

91A. A summary of the valuation rules for assets to be included at each line of Form INS 5, and a note of any admissibility restrictions is set out below. References in the table to legislation relates to the “Asset Valuation Regulations”.

Line No	Description	Valuation	Permitted asset exposure
11	Land and buildings	The value will 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 (regulation 4). The valuation must be made by a qualified valuer. A qualified valuer is generally a person who has a prescribed professional qualification and who has knowledge or experience in valuing the type of land in question; specific details of the qualifications required are set out in regulation 2(1). The valuation should be based on the consideration received on the open market free of any encumbrance, mortgage or charge, after deduction of expenses of sale. The valuation of buildings should be based on vacant possession and consequently the company may need to consider relocation costs if the building is self-occupied. If there has been no valuation in the last three years the valuation is reported on the form as nil (regulation 4). The "not greater than" rule applies where there have been adverse changes since the previous valuation.	5% of general business amount ("GBA") for any single piece of land. Note that, where there is an aggregate valuation, individual parcels of land must be looked at in total and not as individual pieces of land. (Schedule 1, Part II, para 1).
21-26	Investments in dependants – shares, debt securities issued by and loans to dependants	Normally a surplus assets basis (regulations 12 and 13).	None directly, (regulation 15(5)(f), although the dependant's exposure to an asset or to a counterparty will be aggregated with the insurers for the purpose of comparing the business amount.

Line No	Description	Valuation	Permitted asset exposure
27	Other group undertakings and participating interests – shares	Normally a surplus asset basis (regulation 12).	As per rules for non-group shares (lines 41 & 42). A group company that is not a dependant is treated no differently from an unconnected company.
28	Other group undertakings and participating interests – debt securities issued by and loans to, group undertakings	Amount expected to be recovered, taking into account only the assets identified under regulation 12(2)(a) and any security held in respect of the debt (regulation 13).	As per the rules for non-group securities and loans.
29	Other group undertakings and participating interests – participating interests	Normally a surplus asset basis (regulation 12).	As for line 27.
30	Other group undertakings and participating interests-debt securities issued by, and loans to, undertakings in which the insurer has a participating interest	Amount expected to be recovered, taking into account only the assets identified under regulation 12(2)(a) and any security held in respect of the debt (regulation 13).	As for line 28.
41	Equity shares	Valued at the middle market quotation for readily realisable shares (see regulation 6(4)), otherwise at assignment value. Special rules apply where the securities are not transferable.	Listed securities: Individual security together with connected companies limited to 2½% of GBA. 5% restriction in total of listed shares and all other securities in any one company and any of its connected companies (other than for approved counterparties). Unlisted securities: 1% of GBA for unlisted shares and all investments (other than secured debt securities or listed investments which are readily realisable) issued by any one company and any of its connected companies. Aggregate

Line No	Description	Valuation	Permitted asset exposure
			limits of 10% of GBA for all such unlisted investments.
42	Other shares and variable yield securities	As for line 41.	As for line 41.
43	Holdings in collective investment schemes (e.g. unit trusts)	Regulation 10 sets out the characteristics of those collective investment schemes which can be ascribed a value: • where the issuer can be required to purchase the units or shares, valued at the price that the issuer would have purchased the units or shares (bid price) (regulation 10(2)(a)), and • where the issuer cannot be required to purchase the units or shares, valued as for line 41 above (regulation 10(2)(b)).	No restriction where the unit trust falls within the scope of the EC UCITs directive (regulation 15(5)(g)); 5% of GBA for other authorised/recognised schemes; 1% of GBA for unauthorised schemes falling within regulation 10(1)(c).
44	Rights under derivative contracts. Note that any insurer which uses derivative contracts during the year is required to submit additional information on Form INS 9.	Derivative contracts and those which, whilst they do not take the same legal form, have the effect of operation in the same manner as a derivative contract ("quasi-derivatives") are treated the same for valuation purposes. However, quasi-derivatives are not disclosed on Form INS 5 or INS 9. The valuation rules for derivatives are set out in regulation 14. Only those which fall under the definition of an "approved derivative contract" will be ascribed any value. In addition, regulation 14A includes rules which require aggregate exposure for admissibility purposes to be adjusted to reflect economic effects of	There is no limit for individual derivative contracts. However, rights under derivative contracts are included within the overall counterparty exposure limits of 5% and 10% of GBA. In addition, the aggregate exposure to individual investments (such as investment in any single equity) should include the economic impact of derivative contracts.

Line No	Description	Valuation	Permitted asset exposure
		derivative contracts. Listed derivatives are valued at "market value" as defined by regulation 2(1). Unlisted derivatives are valued at the amount which would reasonably be paid for closing out the contract. Both shall be reduced for any amounts already received under the contract. (e.g. variation margins). In contrast, liabilities arising from holding derivatives will be included on the basis of GAAP, plus potentially an extra provision – the provision for adverse changes.	
45&47	Approved debt securities and approved other fixed income securities 45: Fixed interest 47: Variable interest	These are principally securities, issued by, or guaranteed by, any Zone A government or public authority (regulation 2(1)), and are valued at the middle market quotation in the case of listed securities, at redemption value if not transferable, and in other cases generally immediate transfer value. (regulation 6).	No restriction. Exempt under regulation 15(5)(a).
46&48	Other debt securities and other fixed income securities 46: Fixed interest 48: Variable interest Line 46 excludes	If listed, valued at the middle market quotation (regulation 6), but note the definition of listed in regulation 2(1): "there has been granted and not withdrawn a listing in respect of that investment on any stock exchange in an EEA State … or facilities for dealing in that investment have been granted on a regulated market." Unlisted debt and other fixed income securities should, where transferable and readily realisable, be	Listed securities: 5% of GBA. In determining the admissible amount, the aggregate counterparty exposure limit of 5% or 10% must be considered. If the investments are secured, then they follow the admissibility rules for secured debts, i.e. 5% or 10% of GBA being part of the overall counterparty

Line No	Description	Valuation	Permitted asset exposure
	Preference Shares but includes Certificate of Deposit and Commercial Paper. Line 48 includes Preference Shares.	valued at market value. Investments which are transferable and not readily realisable are valued at the lower of market value and immediate transfer value, and those which are not transferable are valued at either redemption value or immediate transfer value. (regulation 6(3) and (4)). Note that if the variable interest is linked to a formula, then the securities may have the characteristics of an inadmissible derivative contract. Where this is the case, then regulation 7(11) requires that only the element which represents an unconditional right to a specified amount can be taken into account.	exposure limit. If unsecured, then the limit will vary from 1% to 5% to 10% depending upon the status of the issuer. If the debt is subordinated, then there is a limit of 1% of GBA for unlisted shares and unlisted subordinated debt due from any one company and any of its connected companies. There is also an aggregate limit of 10% of GBA for unlisted shares and unlisted subordinated debt due from any one company and any of its connected companies.
49	Participation in investment pools	This comprises shares held by the company in joint investments constituted by several undertakings or pension funds. Valuation is by reference to the individual rules for the underlying investments. (regulation 6).	Depends on the underlying investments; refer to rules for relevant types of investment.
50	Loans secured by mortgages Note: "secured" in this context has the same meaning as in the Accounts Directive Regulations i.e. the common parlance meaning, which is different from that in the Regulations. Therefore, the assets reported at this line will consist of secured	The valuation rules are broadly the same for both secured and unsecured debt, although for secured debts the valuation rules allow due account to be taken of the nature and quality of the security. Both secured and unsecured debts are valued at the amount which can reasonably be expected to be recovered if due within 12 months, otherwise immediate assignment value. (regulation 7).	For secured loans, for each individual 1% of GBA if it is that individual's main residence, otherwise ¼%; for companies 5% of the GBA (in conjunction with all other debts except debt securities). The overall counterparty exposure limits of 5% and 10% of the GBA apply. For unsecured loans, admissibility is considered depending on status of issuer (see Note below).

Line No	Description	Valuation	Permitted asset exposure
	and unsecured loans.		
51	Loans to public or local authorities and nationalised industries or undertakings.	Amounts generally valued at immediate transfer value. (regulation 7).	No restriction. Exempt under regulation 15(5)(a), assuming Zone A government.
53	Other loans - other	Investments in limited partnerships may include loans under regulation 6. If this is the case apply the valuation rules for unlisted investments except where non transferable when valued at redemption or surrender value. Other loans, which are not investments, should be valued as debts at immediate transfer value. (regulation 7).	¼% if debt, 1% if investment for each individual amount. 1% for each unincorporated body or company and overall aggregate of 5% for all unsecured debts from individuals and non regulated counterparties.
54/55	Deposits with approved credit institutions and approved financial institutions 54: short term deposits 55: non short term deposits	Amounts generally valued at immediate transfer value (regulation 7). Deposits with approved credit institutions include building society deposits. To differentiate amounts to be shown at line 54 from those to be shown at line 55, time restriction is to be measured relative to the date of the end of the financial year and not, if different, the date on which the deposits were originally made.	No restriction for deposits with approved financial institutions (regulation 15(5)(a)). Deposits with approved credit institutions restricted to 20% of GBA when combined with all other counterparty exposure to that credit institution and any of its connected companies. There is a more restrictive limit of 10% of GBA applying to all debts other than short term deposits i.e. those in line 55.
56	Other	Dependent on the nature of the asset.	Dependent on the nature of the asset.
57	Deposits with ceding undertakings	The amount which can reasonably be expected to be recovered (regulation 7(5)).	No restriction. Exempt under regulation 15(5)(c).
60-63	Reinsurers' share of technical provisions	Valued in accordance with generally accepted accounting principles. (regulation 7).	No restriction. Exempt under regulation 15(5)(c).
71/72	Debtors arising out of direct insurance	The amount which can reasonably be recovered. As for other debtors, the	No restriction. Exempt under regulation 15(5)(c).

Line No	Description	Valuation	Permitted asset exposure
	operations - policyholders - intermediaries	normal valuation rules and principles relating to debts apply. (regulation 7(7), but see timing restriction below.) Any prepaid commission to an intermediary is to be valued at nil. (regulation 7(6)). Any premium debts which are recorded in the accounting records as due and payable and which have been outstanding for more than three months are inadmissible. This applies to all premium debts, including debts due in relation to reinsurance business accepted. It does not apply to debts due in relation to reinsurance contracts ceded. The timing for the three months test is important: for instalment premiums this will start from the date each particular instalment is due.	
73	Salvage and subrogation recoveries	The value of any salvage or subrogation rights shall be the amount which can reasonably be expected to be recovered if the right(s) is(are) exercised. (regulation 7(8)&(9)).	No restriction. Exempt under regulation 15(5)(c).
74	Debtors arising out of reinsurance operations, due from ceding insurers and intermediaries under reinsurance business accepted	Same as for 71/72 above.	Same as for 71/72 above.
75	Debtors arising out of reinsurance operations, due from reinsurers and intermediaries under reinsurance contracts ceded.	The amount which can reasonably be expected to be recovered. (regulation 7(5)).	No restriction. Exempt under regulation 15(5)(c).

Line No	Description	Valuation	Permitted asset exposure
76/77	Other debtors – due from dependants	Dependant rules apply – "look through" to the underlying asset. (regulation 12 and 13 and regulation 6).	No restriction. Exempt under regulation 15(5)(f).
78/79	Other debtors – other	The valuation rules are broadly the same for both secured and unsecured debt. (For secured debts, the valuation rule allows due account to be taken of the nature and quality of the security). Both secured and unsecured debts are valued at the amount which can reasonably be expected to be recovered if due within 12 months, and if due in more than 12 months at immediate assignment value, i.e. will reflect time value of money for period of the debt. (regulation 7(1) and (4)). Any unpaid share capital and subordinated debt due from a holding company of the insurer are to be valued at nil. (regulation 7(6)).	For secured debts, the overall counterparty exposure limits of 5% and 10% of the GBA apply. For unsecured debts, admissibility is graded depending on status of issuer (see Note below).
80	Tangible assets	All equipment (excl. computer software) is valued as below. <u>Computer equipment</u> (a) in the financial year of purchase the amount is limited to 75% of the cost. (b) in the next financial year the amount is limited to 50% of the cost. (c) in the third financial year the amount is limited to 25% of the cost. (d) in subsequent years the computer is	5% of GBA.

Line No	Description	Valuation	Permitted asset exposure
		valued at nil. (regulation 8(1).) The "not greater than" rule applies. <u>Other equipment</u> In the financial year of purchase the amount is limited to 50% of cost, but nil in the years after the year of purchase. (regulation 8(2).) The "not greater than" rules applies.	2½% of GBA.
81	Cash and bank: Deposits not subject to time restriction on withdrawal, with approved credit institutions and approved financial institutions and local authorities	As 54 above.	If deposits with approved credit institutions; as 54 above. If banks are not approved credit institutions then admissibility is restricted to 1% of GBA. If deposits with approved financial institutions or with local authorities (assuming they are within Zone A), no restrictions. (regulation 15(5)(a).)
82	Cash in hand	Face value. (Note: this refers to actual cash, not deposits which must be valued as referred to above.)	3% of GBA (Schedule 1 Part II, para 18)
83	Other assets	Value will depend upon the asset in question. In view of the requirements of regulation 3(3) to leave out of account assets for the valuation of which no specific provision is made, it will be rare to have entries at this line and a supplementary note is required to give particulars.	Admissibility will depend upon the asset in question.
84	Accrued interest and rent	Debts (regulation 7).	None for interest on approved securities (regulation 15(5)(a)). Otherwise as for debts (see lines 76 to 79).

Line No	Description	Valuation	Permitted asset exposure
85	Deferred acquisition costs	Valued in accordance with generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurers.	None. Regulation 15(5)(h).
86	Other prepayments and accrued income	Debts (regulation 7), if an amount could be collected, otherwise inadmissible.	Debts (see lines 76 to 79). ¼% of GBA due from an individual, 1% from a corporate bdoy and subject to aggregate limit of 5%. (Schedule 1, Part II).
87	Deductions (under regulation 15(2)(b) and 15(3) of the Regulations) from the aggregate value of assets	This item relates to the deduction from total admissible assets which may be necessary where the company does not have sufficient assets of that description to eliminate the excess of the permitted asset exposure limit for such assets. It may also be used where the insurer has entered into derivative contracts which have the effect of increasing an insurers' aggregate exposure to a certain asset beyond the maximum admissible. It is not intended that this line is used for specific inadmissible assets. This situation is catered for by including only the admissible element in the appropriate line with the inadmissible element in line 92. (regulation 15.)	N/a

Note: For unsecured debts, admissibility will depend upon who the debt is from. These are as follows–

- Approved counterparties – part of the overall counterparty exposure limits of 10% of GBA;
- Regulated institutions - 2½% of GBA for any one institution (and connected companies);
- Other corporate bodies – 1% of GBA for a single debt and 5% in aggregate for all unsecured debts due from such bodies and debts due from individuals; and
- Individuals - ¼% of GBA for any single debts and 5% in aggregate.

Where an asset has to be left out of account because it is not specifically referred to in the Regulations, the Commissioner is generally prepared to discuss the matter with the company and its advisers, and may (but will not create a precedent by so doing) issue a Section 113 concession order allowing the company to bring the asset into account on an agreed basis of valuation.

Different types of Form INS 5

92. Form INS 5 is to be prepared by every insurer which carries on general business - see Regulation 6(5). This guidance is restricted to Gibraltar insurers and pure reinsurers only.

93. "Category of assets" should read "Total other than long term business assets".

Completion of the Form

94. Form INS 5 consists of three parts.

- Lines 11 to 89 provide a "line by line" analysis of the assets valued in accordance with Regulation 4. The classification used follows the balance sheet headings used for the statutory accounts. In many cases, however, a single item in the statutory account format is subdivided.
- Lines 91 to 99 provide a reconciliation of the total assets as valued in accordance with Regulation 4 and as valued in accordance with the Accounts Directive Regulations.
- Line 100 discloses the value of the debts due from related companies, other than those under contracts of insurance or reinsurance.

95. Regulation 4 provides that assets are to be valued in accordance with Part II of the Asset Valuation Regulations.

96. Lines 11 to 86 show asset values after deductions for excess over permitted asset exposure limits - see regulation 15 of the Asset Valuation Regulations. Where such a deduction relates to assets included at more than one line of Form INS 5, it should be apportioned pro-rata. Negative amounts should not be shown at lines 11 to 86. If a deduction is more than the value of the assets to which it relates the 'excess' element of the deduction should be shown at line 87, as also should deductions for excesses over permitted counterparty limits and for excess concentrations over a number of counterparties.

97. Where the value of any asset is denominated in a currency other than sterling it is to be converted into sterling using the year end closing middle rate - see Paragraph 3 of Schedule 1.

98. The amount of any asset in Form INS 5 should be shown gross of any set-off against any corresponding liability (which liability should be shown on Form INS 7). The only exception to this is where-

- amounts are owed from and to the same person, and
- such netting is permitted under generally accepted accounting principles. [See in particular Financial Reporting Standard 5.]

"Person" refers not only to individuals but also to corporate bodies and unincorporated associations.

99. The above rule usually prevents the set-off of amounts due from and to the same broker/intermediary unless they relate to the same client of the broker. This is because, typically, such amounts are, in law, owed from and to the client and not the broker/intermediary. The broker/intermediary merely acts as a collecting agent.

100. Lines 54 and 55 "Deposits with approved credit institutions and approved financial institutions" should only show relevant deposits subject to a time restriction on withdrawal. Deposits not subject to such a time restriction should be shown at line 81. In the analysis between lines 54 and 55, "withdrawal subject to a time restriction of one month or less" and "withdrawal subject to a time restriction of more than one month", the time restriction is to be measured relative to the date of the end of the financial year and not, if different, the date on which the deposits were originally made.

100A. The amount at line 61 will need to be adjusted to remove any discount to take account of investment income where this adjustment has been made to the gross provision (see instruction 13 to Form INS 5 and paragraph 113).

101. Line 73 "salvage and subrogation recoveries" should only be used for such recoveries which fall to be classified as "debtors arising from insurance operations". Occasionally, some salvage or subrogation recoveries may be classified under other headings in the statutory accounts in which case the same heading should be used in Form INS 5, but a supplementary note [code 0503] is required. If salvage and subrogation recoveries are shown in the statutory accounts as a deduction from liabilities rather than as an asset, the same treatment should be adopted in the Annual Returns. i.e. line 73 should be left blank and the amount of liabilities shown on Form INS 7 shown net of the salvage and subrogation recoveries.

102. Line 80 should include leased tangible assets where such are held under a finance lease and are brought into account as an asset in the statutory accounts in accordance with Statement of Standard Accounting Practice 21.

103. Line 83 "Other assets" refers to the balance sheet heading in the statutory accounts of "Other Assets – other" (item Fv in the balance sheet format in Schedule 1 to the Accounts Directive Regulations). It should not be used for any other type of asset and, even where used for an asset falling under the statutory account Fv heading, it should show only the admissible value, if any.

104. Lines 91 to 99 reconcile the admissible assets to the total assets determined in accordance with the statutory accounts rules. For guidance on the distinction between the different types of reconciling items (lines 92 to 95) see Annex 1. This reconciliation must be completed. A particular problem is caused by those assets which the Accounts Directive Regulations permit to be shown either as assets or as a deduction from liabilities. The main classes of such assets are-

- the reinsurers' share of technical provisions, and
- the deferred acquisition costs.

105. For general business these assets, to the extent admissible, should always be shown at lines 60 to 63 and 85 respectively. Further, the total shown at line 99 ("assets determined in accordance with the Accounts Directive Regulations") should always include such assets even where they are actually shown as a deduction from liabilities in the statutory accounts.

106. Apart from the above, the Commissioner does not believe that there is any other reason why an item should not be classified as an asset or a deduction from liabilities on Form INS 5 (line 99) and Form INS 7 in the same way as in the statutory accounts. The same applies for the classification of an item as a liability or a deduction from assets. Different methods of 'grossing up' should be avoided.

107. The statutory accounts rules allow for some investments to be valued either at current value or at amortised cost. An insurer should choose the same method for line 99 on Form INS 5 as it chooses for its statutory accounts.

108. Asset valuation differences arising in respect of shares in, or debts due or to become due from, dependants should be included:

(i) at line 92, in so far as they arise from the application of admissibility limits to the assets of that dependant;

(ii) at line 93, in so far as they arise from a solvency margin deduction made either because that dependant is itself an insurer or because it (directly or indirectly) has invested in another dependant which is an insurer; and

(iii) at line 94, in respect of any other causes of differences.

Line 95 should not be used for differences arising in respect of shares in, or debts due or to become due from, dependants. Such shares or debts are not themselves "assets of a type not valued", and this is still true even if the dependants themselves invest in assets of a type not valued.

Supplementary notes

109. There are nine specified supplementary notes. The notes are coded 0501 to 0507, 0514 and 0515.

(i) The aggregate value of (i) unlisted investments, (ii) certain listed investments, (iii) units or beneficial interests in certain collective investment schemes and (iv) reversionary interests or remainders in property other than land or buildings, together with a description of the assets in question - see instruction 5 to the form; [Code 0501];

(ii) The aggregate value of hybrid securities - see instruction 6 to the Form; [Code 0502];

(iii) the amounts of any non-debtor salvage or subrogation recoveries - see instruction 7 to the Form; [Code 0503];

(iv) a statement that amounts have been set off to the extent permitted by generally accepted accounting principles (if this option has been exercised) - see paragraph 7 of Schedule 1; [Code 0504];

(v) the maximum counterparty limit permitted by the company's investment guidelines (and any separate limit for counterparties other than "approved counterparties") together with an account of any breaches during the year of those limits - see paragraph 10(1) of Schedule 1; [Code 0505];

(vi) the amount and nature of the exposure at the year end to large counterparties (i.e. greater than 5% of the general business amount) - see paragraph 10(2) of Schedule 1; [Code 0506];

(vii) the aggregate value of certain fully secured rights - see paragraph 10(3) of Schedule 1; [Code 0507];

(viii) the amount of any tangible leased assets included at line 80 – not required by the Regulations but disclosure requested by the Commissioner; [Code 0514]; and

(ix) particulars of any 'Other assets' included at line 83 – see the face of the form; [Code 0515].

Example

Note 1

A single figure with a simple description will suffice. For example: The company held £xm in unlisted securities and £ym in unregulated collective investment schemes, almost all of which were of the latter type. The assets covered by this note are those which count towards the 10% permitted asset exposure limit at paragraph 13 of Part II of Schedule II to the Asset Valuation Regulations. For detailed definitions of the type of assets to be included, see Part II of those Regulations.

Note 2

For a definition of hybrid securities, see Schedule 1 to the Asset Valuation Regulations.

Note 3

A single aggregate figure is sufficient disclosure. This should include only salvage and subrogation rights (other than shown at line 73) brought into account under the valuation rule in Regulation 7(9) of the Asset Valuation Regulations. The exercise of salvage rights which have resulted in the insurer acquiring an asset which is admissible in its own right need not be included.

Note 4

The amounts set off do not need to be disclosed in this note.

Note 5

The precise content of this "account" of any breach is not specified in the Regulations. However, the Commissioner expects it typically at least to include an estimate of the amount of the excess and the reasons why it was permitted to arise. [The requirement to give an account of any breaches during the year should not be read as implying that real-time monitoring of the exposures is necessary. Rather, the frequency of the monitoring should be appropriate to the make-up of the investment portfolio].

For the purposes of making the disclosures required by supplementary notes 0505 and 0506, "counterparty" has the same meaning as in paragraph 1 of Part I of Schedule 1 to the Asset Valuation Regulations. Also, the amount of any counterparty exposure should be calculated using the rules laid down in paragraphs 13 to 15 of Part II of the Schedule, except that asset values should not be limited to the amounts of any permitted asset limits. The amount of any counterparty exposure should be stated before deduction of any excess counterparty exposure or excess concentration with a number of counterparties.

Assets excluded from the scope of the counterparty exposure rules may also be disregarded for the purposes of these supplementary notes disclosure. This excludes assets of the type listed in Regulation 15(5). [For a list of such asset types see paragraph 131 of the Guidance Note No. 4 on the Valuation of Assets.]

Note 6

The limit of 5% of the general business amount should be used for all counterparty exposures. The second and third paragraphs of Note 5 also apply to this note.

Note 7

This disclosure covers those secured assets which are exempted from counting towards the appropriate permitted counterparty exposure limit by virtue of paragraph 14 of Part I of Schedule 1 to the Asset Valuation Regulations. (NB. By no means are all secured assets so exempted.) Secured assets which are exempted from the limit by virtue of some other provision, (e.g. Regulation 11 in relation to stock-lending collateral), should not be included. A single aggregate figure is sufficient disclosure.

Note 8

See paragraph 102.

Note 9

See paragraph 103.

Liabilities - other than long term business (Form INS 7)

Completion of the Form

110. Form INS 7 should be completed by all insurers carrying on general insurance business - see Regulation 6(7). The Form consists of three parts.

- Lines 11 to 59 provide a "line by line" analysis of the liabilities (other than share capital and reserves) corresponding to the balance sheet headings used in the statutory accounts. In a few cases, however, a single item in that format is subdivided in Form INS 7.
- Lines 61 to 63 list three further items of liability - (i) the provision for adverse changes, (ii) cumulative preference share capital and (iii) subordinated loan capital.
- Line 71 discloses the value (as included in the above items) of the liabilities to related companies, other than those under contracts of insurance or reinsurance.

Determination of liabilities

Lines 11 to 59

111. The liabilities at lines 11 to 59 should be valued in accordance with Part III of the Asset Valuation Regulations, the main provision of which is Regulation 18 which provides that -

"(1)... the amount of liabilities of an insurer shall be determined in accordance with generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurers".

"(2)In determining under sub-regulation (1) the amount of liabilities of an insurer, 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."

112. Sub-regulation (2) above does not require that the "amount" of every prospective and contingent liability be set equal to the full extent of its nominal value regardless of the remoteness of the contingency it represents. The requirement is merely that all prospective and contingent liabilities "be taken into account", i.e. considered. The amount of every liability whether present, prospective or contingent should be set as required by sub-regulation (1) in accordance with generally accepted accounting concepts etc.

113. The sub-regulation (1) requirement that generally accepted accounting concepts etc. be used means, in effect, that the liabilities at lines 11 to 59 are to be valued for the Annual Returns in the same way as for the statutory accounts, except in relation to the technical provisions for claims outstanding. For technical provisions, this is indeed explicitly stated by Regulation 19A of the Asset Valuation Regulations which refers to the rules in Section D of Chapter II of Schedule 1 to the Accounts Directive Regulations. Regulation 4(7) of the Solvency Margin Regulations, however, requires that (with certain exceptions) the margin of solvency be reduced by the difference between the discounted (to take account of investment income) and undiscounted technical provisions for claims outstanding. Instruction 3 to the form (and instruction 13 to Form INS 5) therefore requires the amounts at line 12 of Form INS 7 and line

61 of Form INS 5 to be increased to show amounts that are undiscounted. The adjustment is not required for pure reinsurers which do not have authorisation to effect contracts of insurance, nor is it required in relation to annuities or Class 1 or 2 business.

114. However, the above does not mean that the value shown for such liabilities in the Annual Return will always necessarily be the same as that shown in the statutory accounts. Exceptionally, differences may occur if the Annual Return and statutory accounts are either¬

- drawn up to different balance sheet dates, or
- even if drawn up to the same balance sheet date, signed off at different dates.

115. In the latter case, it is possible that a material adjusting post-balance sheet event may have occurred between the date of the sign off of the statutory accounts and the date of the sign off of the Annual Return (or vice versa).

116. The technical provision for "claims outstanding" (line 12) should be shown before or after reduction for anticipated salvage and subrogation recoveries according to the treatment adopted in preparing Form INS 5. (See paragraph 101).

Lines 61 to 63

117. The provision for adverse changes (line 61) is an extra provision which arises when an investment (or transaction associated with an investment) will, or may, give rise to a liability in future and the company does not have the appropriate assets to cover that liability. (Most commonly, but not exclusively, this issue arises in respect of derivative contracts.) The provision is in addition to any liability which would be required to be provided in accordance with generally accepted accounting practice. It is required to be determined in accordance with Regulation 19 of the Asset Valuation Regulations.

118. Share capital is not normally to be considered a liability for the purposes of completing the Annual Return - see Regulation 18(2) of the Asset Valuation Regulations. The only exception (see Regulation 4(2)(e) of the Solvency Margin Regulations) is cumulative preference share capital, but this exception is, in turn, subject to a partial exception as explained below.

119. In determining whether an insurer has assets in excess of its liabilities, the full nominal value (plus any premium on redemption, if redeemable) of all cumulative preference share capital is to be counted as a liability. If the assets exceed liabilities, then part (sometimes all) of the liability from the preference share capital may be disregarded in determining whether the net assets exceed the required margin of solvency.

120. In line 62, the full value of cumulative preference share capital is to be shown, i.e. the value to be used in determining whether the insurer has assets in excess of liabilities. This full value then forms part of the total liabilities which are taken from Form INS 7 to Form INS 2 where they are compared with the total assets taken from Form INS 5. If assets exceed liabilities, the part of the liability for preference share capital which may be disregarded in determining whether the net assets exceed the required margin of solvency, is added back as an adjustment to net assets on Form INS 2. No adjustment is to be made on Form INS 7. See paragraph 61 above on Form INS 2 for further guidance.

121. Subordinated loan capital is to be valued according to the basic rule in Regulation 18 quoted above, i.e. in accordance with generally accepted accounting concepts etc.. Where an insurer has been granted a section 113 Order permitting it to disregard all or part of the liability for its subordinated

loan capital in determining whether its net assets exceed its required minimum margin, the adjustment for the amount to be disregarded is to be made solely on Form INS 2 and not on Form INS 7. (The reason for this treatment of the add-back is the same as that described above for the add-back in respect of preference share capital).

Supplementary notes

122. Five supplementary note are specified.

(i) The methods and assumptions used to determine the amount of any provision for adverse changes (as shown at line 61 of the Form), or if there is no such provision, the methods and assumptions used to determine that no provision is required, should be stated - see Paragraph 11 of Schedule 1. [Code 0701]

(ii) Specified details should be stated of (a) any charges over assets, (b) potential capital gains tax liability, (c) contingent liabilities, (d) guarantees, indemnities or other contractual commitments, effected other than in the ordinary course of insurance business, in respect of related companies, and (e) any other fundamental uncertainty - see paragraph 12(1) of Schedule 1. Guidance is given below on each of the items (a) to (e) to be included in this note [Code 0702].

(iii) The aggregate amount of any accrued dividend on any cumulative preference share capital issued by the insurer should be stated – see instruction 2 to Form INS 7 [Code 0703].

(iv) The amount of each provision made under regulation 19B of the Insurance Companies (Valuation of Assets and Liabilities) Regulations 1996 in respect of a deficit in a related undertaking which is an insurance undertaking or insurance holding company and the identity of the undertaking should be stated [code 0704]. Such provision should be included in line 22 of Form INS 7.

(v) Where technical provision for claims outstanding have to be increased in accordance with instruction 3 to Form INS 7 to remove discounting, the amount of the increase, together with the corresponding increase in the reinsurer's share shown in line 61 of Form INS 5 must be shown [Code 0705].

Guidance on Note 0702

123. Where for any of the items (a) to (e) there is no charge, potential capital gains tax liability, contingent liability, guarantee etc, or fundamental uncertainty to report, this should be stated.

<u>Item (a)</u>

The details to be disclosed of any charge over assets are¬

- the nature of the charge, including a brief description of the terms relevant to securing the prior claim of any person to assets subject to the charge;
- for each line in Form INS 5, the amount included in respect of assets which are subject to the charge; and
- for each line in Form INS 7, the amount included in respect of liabilities which are secured by the charge.

"Charge" is given a wide definition - see paragraph 12(5) of Schedule 1. It includes not merely formal charges over assets which are registered under the Companies Ordinance but also "any arrangement whatsoever, whether contractual or otherwise, which operates to secure the prior claim of any person over the general creditors to any assets on a winding up of the company". Thus, amongst other items, it includes¬

- arrangements whereby assets of the insurer are placed in trust for the prior benefit of only some creditors;
- assets held as collateral by creditors, or by issuers of letters of credit;
- fixed and floating charges, and
- equivalent arrangements under the laws of other countries.

In principle, it also applies to set-offs, i.e. where a person owed amounts by the insurer may, in a winding up, set off amounts owed by it to the insurer. However, in practice, where the insurer has accounted for set offs in accordance with generally accepted accounting principles, the assets shown in Form INS 5 will already be net of such set offs and so no disclosure under this note will be needed. The amounts of preferential creditors need not be disclosed.

A charge should be disclosed even where it only serves to secure the prior claim of a contingent or potential creditor which has not resulted in any provision for liability in Form INS 7 .

The sub-paragraph requiring the note refers to any charge, thus in principle requiring separate disclosure of each arrangement which falls within the definition of "charge". However, where clarity or brevity require, it is acceptable to disclose in aggregate charges which arise from the same related series of transactions or charges which are of the same "nature" and have substantially the same "relevant terms".

The disclosure of charges is subject to a de minimis exemption. One or more charges need not be disclosed, provided that the aggregate value (as shown on Form INS 5) of all assets subject to the non-disclosed charges does not exceed 2.5% of the general business amount.

Item (b)

The total potential capital gains tax liability should he calculated on the basis of a hypothetical disposal of all assets immediately after the year end. It should include liability to foreign taxes on capital gains.

Item (c)

Financial Reporting Standard 12 (FRS 12) defines a "contingency" as "a condition which exists at the balance sheet date where the outcome will be confirmed only on the occurrence, or non-occurrence, of one or more uncertain future events". A contingent liability is a loss dependent on a contingency. FRS 12 distinguishes between contingent liabilities which are probable or remote. A remote contingent liability need not be disclosed in this note.

"Inward" in the expression "inward contracts of insurance and reinsurance" is intended to exclude from the exemption contracts of reinsurance where the reporting insurer is the reinsured.

The disclosure of contingent liabilities is subject to a de minimis exemption. One or more contingent liabilities need not be disclosed provided that the aggregate value of the non-disclosed contingent liability does not exceed 2.5% of the general business amount.

Item (d)

"Related company" is defined in Regulation 2 of the Asset Valuation Regulations as¬

- a dependant of the insurer,
- a company of which the insurer is a dependant, or
- a dependant of a company of which the insurer is a dependant

where "dependant" means "subsidiary undertaking" as defined in section 2(32) to (35) of the Ordinance.

In the Commissioner's view, a guarantee, indemnity or other contractual commitment should not be considered as "given other than in the ordinary course of [an insurer's] business" where guarantees, indemnities or other contractual commitments on substantially the same terms and conditions are not regularly given to non-related entities in similar circumstances. An example of a contractual commitment which need not be disclosed might be where a motor insurer insures the motor car fleet of a related company using the same underwriting principles as it uses for its other fleet business.

The sub-paragraph requiring the note refers to (i) "maximum liability... specified in such guarantee, indemnity or contractual commitment", (ii) "amount of provision" and (iii) "amount reported under (c)", (i.e. reported as a contingent liability). The distinction between these three items may be illustrated by an example.

> An insurance company guarantees the bank overdraft of its two fellow subsidiaries up to an aggregate of £100,000. At the year end -
>
> fellow subsidiary A is insolvent and has an overdraft of £5,000, and
>
> fellow subsidiary B is believed (on the balance of probabilities) to be solvent and has an overdraft of £10,000.
>
> A provision of £5,000 (in respect of A) would be made in Form INS 7 and a contingent liability of £10,000 (in respect of B) would be included in the disclosure under (c).
>
> The disclosure under sub-paragraph (d) would then be¬ -
>
> (i) maximum liability specified in the guarantee = £100,000,
>
> (ii) provision = £5,000 and
>
> (iii) contingent liability = £10,000
>
> together, of course, with a brief description of the terms and circumstances of the guarantee, including the identity of the person to whom the guarantee is given and of the persons in respect of whom it was given and of the relationship with the latter (and, if applicable, with the former).

Item (e)

This sub-paragraph is intended to cause to be disclosed the circumstances of any uncertainty which is of a fundamental nature. Note that this sub-paragraph, unlike sub-paragraph (c), does not exempt uncertainties arising from inward contracts of insurance or reinsurance.

Profit and loss account (non-technical account) (Form INS 8)

Completion of the form

124. Form INS 8 should be completed by all insurers carrying on general business - see Regulation 7. The headings used on Form INS 8 are based on those used in the "Profit and Loss Account - Non Technical Account" format in the statutory accounts and, except where referenced to other Forms, the amounts included under those headings should be determined using the same rules as apply for the statutory accounts.

125. Unrealised gains and losses on investments should be included in their entirety at lines 15 and 18, even if different accounting treatment is adopted in the statutory accounts. Unrealised gains and losses should be measured by reference to the value included for the investment at line 99 on Form INS 5. An insurer which includes investments at amortised cost at line 99 on Form INS 5 (see paragraph 107) should show the unrealised gain and loss relative to that amortised cost, not to current market value.

Supplementary notes

126. Four supplementary notes are specified.

(i) The bases of conversion adopted in respect of foreign currency for income and expenditure should be stated – see paragraph 4(2) of Schedule 1. [Code 0801].

(ii) In addition to the above, the Commissioner requests that where any brought forward amounts on any Form are restated due to currency reconversion, this fact be briefly stated in a supplementary note to Form INS 8. A simple statement of this fact is all that is needed, e.g. "Some of the brought forward amounts shown in the Forms [xx to xx] have been restated from the corresponding carried forward amounts included in the previous years' return due to the reconversion of foreign currency amounts at a different rate of exchange." No further details need be given. [Code 0802].

(iii) Particulars of any amounts included at line 21 on Form INS 8 should be stated – see the face of Form INS 8. [Code 0803].

(iv) Particulars of any amounts included at line 41 on Form INS 8 should be stated – see the face of Form INS 8. [Code 0804].

Analysis of derivative contracts (Form INS 9)

127. Form INS 9 should be completed for the "other than long term assets" - see Regulation 6(5) and instruction 1 to the Form. As not many insurers are currently involved in derivative contracts, we will not go into details here. However, if further information is required, you should contact either the Head of Insurance Supervision or the Manager, Insurance Supervision.

128. If no entries are required for "this financial year" or "the previous year", this Form can be omitted.

The Regulation 23 Statement: Derivatives

Scope of the statement

129. Every insurer is required to make a Regulation 23 statement, whether or not it used derivatives in the year in question. For this purpose, "derivatives" is defined by Regulation 23 to include not only contracts which have the legal form of a derivative contract but also the quasi-derivatives defined in

Regulation 14A of the Asset Valuation Regulations. The latter category includes a number of instruments which are in common use and which have certain characteristics of a derivative, such as partly-paid shares and convertible bonds.

130. For those insurers whose policy and practice is to use neither derivatives nor quasi-derivatives, a short statement to this effect is all that is necessary.

131. In view of the fact that not many insurers are currently involved in derivative contracts, we will not go into detail here. However, if further information is required, you should contact either the Head of Insurance Supervision or the Manager, Insurance Supervision.

The Regulation 24 Statement: Shareholder Controllers

132. The Regulation 24 statement is only required for an insurer which falls within the definition in section 2(2) of the Ordinance of “Gibraltar insurer” which is defined as an insurance company -

- which is incorporated in, has its head office in, and is licensed in Gibraltar; and
- whose business is not restricted to reinsurance.

133. Regulation 24 requires a list of all persons who were, to the insurer's knowledge, at any time during the financial year shareholder controllers of the insurer together with their percentage share holding and voting power at the end of the financial year in the insurer (or in another company of which the insurer is a subsidiary undertaking).

134. The duty to list shareholder controllers under Regulation 24 is separate and distinct from the requirement to notify those persons under sections 41 to 44 of the Ordinance. Including such a person in the Regulation 24 list does not relieve him/her of the duty to make notifications under those sections, or vice versa.

135. A shareholder controller is defined by section 2(16) of the Ordinance as any person who either alone, or with any associate or associates -

- holds 10 per cent. or more of the shares in the insurer, or another company of which it is a subsidiary undertaking;
- is entitled to exercise, or control the exercise of, 10 per cent. or more of the voting power at any general meeting of the insurer or another company of which it is a subsidiary undertaking; or
- is able to exercise a significant influence over the management of the insurer or another company of which it is such an undertaking by virtue of -
  - (i) a holding of shares in; or
  - (ii) an entitlement to exercise, or to control the exercise of, the voting power at any general meeting of,

  the insurer or, as the case may be, that other company.

In the statement for an insurer that is part of a group with more than one intermediate holding company, there may be several levels of shareholder controllers to list, since each intermediate holding company has to be reported.

136. For the above, an "associate" of a person is -

- the wife or husband or minor son or daughter of that person;

- the trustees of any settlement under which that person has a life interest in possession;
- any company of which that person is a director;
- any person who is an employee or partner of that person;
- if that person is a company -
  - (i) any director of that company;
  - (ii) any subsidiary undertaking of that company;
  - (iii) any director or employee of any such subsidiary undertaking; and
- any other person with whom that person has made an agreement or arrangement -
  - (i) with respect to the acquisition, holding or disposal of shares or other interests in the company concerned or another company of which it is a subsidiary undertaking; or
  - (ii) under which they undertake to act together in exercising their voting power in relation to the company concerned or another company of which it is such an undertaking.

137. Further guidance on the definition of shareholder controller is given in Insurance Guidance Note No. 3.

138. The percentage shareholder and voting rights to be disclosed in the Regulation 24 statement should include the holding/rights of associates.

139. Where there are no shareholder controllers to report, the Regulation 24 statement should state this.

140. A suggested proforma is at Annex 2, but it is not necessary to use it.

Accident Year And Underwriting Year Accounting

The basic rule

141. The basic rule is that an insurer may choose whether to account for its business on an accident year basis or an underwriting year basis. This choice may be made separately for each accounting class and, indeed, separately for any clearly definable part of an accounting class.

142. Where risks are accounted for on an accident year or underwriting year basis, the run-off of those risks must continue to be accounted for on the same basis. The insurer remains free, however, to account for the renewals of such business on either basis.

143. The run off of risks previously reported on the three-year forms (INS 24 to INS 26) or the deferred annual forms (INS 27 and INS 28) must now be reported on the underwriting year basis. The run off of risks previously reported on the annual accounting forms (INS 21 to INS 23) must now be reported on the accident year basis.

144. In paragraphs 158 to 160 below, it is explained that, under the new Regulations, there is no longer a direct link between the basis of reporting (i.e. underwriting year or accident year) and the method of profit recognition (i.e. annual or non-annual). As is explained more fully below, an insurer may change its basis of profit recognition, even for risks previously reported, from non-annual to annual. However, even where it makes such a change, it must continue to report the run-off of such risks on an underwriting year basis.

Accounting for premiums, claims and expenses

The accounting rules

145. The amounts shown in the Annual Return for -

- "gross premiums written", "reinsurers' share", "earned premiums" etc.;
- "claims outstanding", "claims incurred", "gross amount", "reinsurers' share" etc;
- "provision for unearned premiums", "provision for unexpired risks", "deferred acquisition costs"; and
- "net operating expenses", "acquisition costs", "administrative expenses" and "reinsurance commissions and profit participations"

should be determined -

- using the same rules as apply for the preparation of the statutory accounts (see Regulation 3(2)(b) which aligns definitions with those in "the Accounts Directive Regulations"; and
- in accordance with generally accepted accounting practice (see, for example, paragraph 25(1) of Schedule 2).

146. In particular, contracts of financial (re)insurance whether inward or outward should be classified for inclusion in the Forms in accordance with Financial Reporting Standard 5 "Reporting the substance of transactions" and the statement "FRAG 35/94: The Application of FRS 5 to Non-Life Insurance Transactions." Thus, where the consideration receivable and payable for transactions which have the legal form of contracts of insurance or reinsurance would not be accounted for as premiums and claims in the preparation of statutory accounts, they should not be included as premiums and claims in Forms INS 20 to INS 39. Instead, they should be accounted for in the Annual Return using the same principles as are applied in the preparation of statutory accounts. (But see paragraphs 78 and 82 above for the different treatment in Forms INS 3 and INS 4).

147. An exception to the rule in paragraph 141 above (i.e. the alignment of definitions with those in the Accounts Directive Regulations) is that claims amounts shown in the Forms should exclude -

- claims management costs, and
- adjustments for discounting.

Some Forms exclude these items altogether, and other Forms provide for their separate disclosure. [See paragraph 14 to Schedule 2 and the instructions to the Forms themselves.]

148. Another exception is that the rules for the statutory accounts analyse "net operating expenses" into (i) "acquisition costs", (ii) "administrative expenses" and (iii) "reinsurers" commissions and profit participations" whereas the Forms sub-analyse the first item into "commissions" and "other acquisition expenses".

149. Claims management costs are basically those overhead costs of the claims department (or of the out-sourced provider of the claims management function) which are required to be included in the amount for incurred claims shown in the statutory accounts. (See Regulation 3 for the exact definition.)

150. In Forms INS 20 to INS 36, (as in the technical account in the statutory accounts), claims incurred include any reduction for salvage and subrogation

recoveries (cf the different treatment in the balance sheet – see paragraph 116).

151. Paragraphs 8 to 13 of Schedule 2 lay down rules as to how premiums and claims are to be allocated to accident years and underwriting years. These paragraphs are explained in the section on “Accounting Classes, Business Categories and Risk Groups” and “Forms INS 20 to INS 36” below, but it needs to be noted here that the paragraphs do not as such define premiums and claims. They assume the definition given elsewhere in the Regulations (see paragraph 145 above) and merely address the question of allocation.

Accident year accounting

152. For accident year accounting, premium is allocated to accident years on the basis of when it is earned, and claims are allocated on the basis of when the incident which gives rise to the claim occurred. Special rules apply for (i) claims-made policies and (ii) the reinsurance (or a Schedule 10 transfer) of policies covering incidents which had already occurred at the time of the reinsurance (or transfer). These are explained below.

153. An incident giving rise to a loss under a claim-made policy is deemed to occur on the earlier of date of notification or the last date of the period for which cover is provided. The latter of the two alternative dates would usually only be relevant if the claims-made policy is not renewed and if, upon non-renewal, the policy allows a "sunset" period, (i.e. a period during which claims relating to events which took place prior to the end of the cover period may still be notified).

154. Where an insurer reinsures, (or receives by way of a Schedule 10 transfer), policies covering incidents which had already occurred prior to the date of the contract of reinsurance (or of the transfer), all such incidents are deemed to occur at the date of the reinsurance contract (or of the transfer).

155. Net operating expenses should be allocated to accident years so as to match them to the related premium earned and claims incurred. Usually, this will result in the bulk of administrative expenses being allocated to the youngest accident year. [Note that administrative expenses do not include the overhead expenses of running the claims department. These are included in claims management costs.]

Underwriting year accounting

156. For underwriting year accounting, premiums and claims are allocated to underwriting years on the basis of when policies incept. For these purposes-

- a policy providing continuous cover is deemed to incept on each anniversary of the policy; and
- policies received by way of Schedule 10 transfer (or equivalent transfer under the law of an EEA State) are deemed to incept on the date of the transfer.

157. Net operating expenses should be allocated to underwriting years so as to match them to the related premium earned and claims incurred. Usually this will result in the administrative expenses being allocated to the youngest underwriting year except to the extent that it represents the adjustment for under- or over-provisions of such expenses in the prior years. [Note that administrative expenses do not include the overhead expenses of running the claims department. These are included in claims management costs.]

The annual and non-annual methods

158. The annual and non-annual methods refer to the way in which profit is recognised. Under the annual method, the profit (and losses) on business written during the financial year is recognised at the end of that financial year by setting up provisions for outstanding claims, unearned premiums and unexpired risk reserves and by deferring an appropriate portion of acquisition costs.

159. Under the non-annual method (i.e. fund accounting) the recognition of profits (but not losses) is deferred for one, two or three years after the end of the financial year in which business incepts. During the period of the deferral, the technical provision for such business is the excess of premiums written over claims and expenses (increased where necessary to the extent of any losses expected to arise on such business). At the end of the deferral period, this technical provision is replaced by a technical provision determined under the same rules as apply for the annual method, (i.e. a technical provision which consists of provisions for outstanding claims, unearned premiums and unexpired risk reserves), and by the deferral of an appropriate portion of acquisition costs. The choice of the deferral period should usually be consistent from year to year, but may differ from one type of business to another.

160. The detailed rules for the non-annual method are to be found in Paragraphs 51 and 52 of Schedule 1 to the Accounts Directive Regulations. [Note: Schedule 1, as such, strictly only applies to the preparation of statutory accounts. However regulation 19A of the Asset Valuation Regulations requires that the Schedule 1 rules on the valuation of general business liabilities also be followed for our solvency purposes.] Also of relevance is the ABI SORP (in draft at the time of writing) in so far as it is a statement of "generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurers". [See Regulation 18 of the Asset Valuation Regulations which requires such generally accepted concepts etc. to be followed for our solvency purposes.] It is recommended that insurers obtain a copy of the ABI SORP.

The relationship between the reporting basis and method of profit recognition

161. In the Returns prepared under the 1996 Regulations, there was a strict relationship between the reporting basis (i.e. accident year or underwriting year) and the method of profit recognition (i.e. annual method or non-annual method). This is no longer the case under the new Regulations.

162. An insurer which wishes to apply the annual method may report that business on either the accident year Forms or the underwriting year Forms. However, if it wishes to apply the non-annual method it must report such business on the underwriting year Forms. This relationship is summarised by the table below:

Reporting basis	Profit recognition method
Underwriting year basis	Annual method, or Non-annual method
Accident year basis	Annual method

The non-annual method - "closed" and "open" years

163. Business to which the non-annual method of profit recognition is applied is classified into "open" and "closed" underwriting years.

164. As already described above under the non-annual basis, a technical provision is originally set up as the excess of premiums written over claims paid and expenses (increased where necessary to the extent of any losses expected to arise on such business). At the end of the deferral period, this technical provision is replaced by one determined on the same basis as applies under the annual method. An underwriting year is termed "closed" with respect to any business if the replacement of the technical provision has been made in respect of that business, otherwise it is termed "open".

165. Significantly less disclosure is required on the underwriting year Forms for "open" years than for "closed" years. [See, e.g., instruction 2 to Form INS 25.] Business reported on the underwriting year Forms but to which the annual method has been applied are subject to the same level of disclosure on those Forms as applies for "closed" years business.

166. The technical provision for an open year for an accounting class is the fund represented by -

+ premiums written (net)

- claims paid (net)

- expenses incurred

167. Any excess, over the fund, of present and future liabilities from business incepting in that year falling in that accounting class is termed a "deficit". Any excess of the fund, for the present and future liabilities from business incepting in that year falling in that accounting class, is termed a "surplus".

168. A deficit on any open year for any accounting class must be dealt with by either-

- offsetting the deficit against surpluses (in the same year) arising on business falling in other accounting classes which is "managed together" with the business giving rise to the deficit; and/or
- increasing the technical provision.

169. Business may only be regarded as "managed together" if it -

- is accounted for on an underwriting year basis;
- incepts in the same accounting year; and
- may be regarded as "managed together" under generally accepted accounting practice.

[This definition of "managed together" is given in paragraph 24 of Schedule 2.]

Conversion from the non-annual to the annual method

170. An insurer which has previously reported business on a non-annual basis and wishes to convert to an annual basis may do so in one of two ways. It may either -

- continue to report that business (including new business and renewals) on the underwriting year Forms but close all underwriting years including the youngest year; or

- report new business and renewals on the accident year Forms, but continue to report old business (i.e. risks incepting prior to the current year) on the underwriting year Forms and close all underwriting years on those Forms.

171. An insurer may not transfer business previously reported on underwriting year Forms (INS 24) to the accident year Forms (INS 21). The basic rule is that, when any risks are reported on either underwriting year or accident year Forms, the run-off of those risks must continue to be reported on the same Forms. However, renewals may be reported on either of the forms.

Supplementary note disclosure

172. Paragraph 23 of Schedule 2 requires that the following be stated by way of supplementary note, [code 2402], to Form INS 24 in respect of each accounting class which (in whole or in part) is reported on the underwriting year Forms -

- the reason for accounting for such business on an underwriting year basis;
- the basis for distinguishing such business and any other business falling within the same accounting class accounted for on an accident year basis; and
- the accounting policy adopted for determining the provision for claims outstanding (i.e. the annual method or the non-annual method).

173. The above information need only be given in respect of risks incepted during the financial year. However, if the information differs from that which applies for risks of a similar description incepting in the previous financial year, the difference should be described and the reason for it given.

174. If the non-annual method is disclosed as the accounting policy adopted, the following should also be stated in the supplementary note [code 2402] -

- the reason for using the non-annual method;
- the basis for distinguishing between such business and other business in the same accounting class reported on the underwriting year Forms;
- the normal period for which an underwriting year is left open, or if that period differs for different types of business within an accounting class -
  - (i) the basis of distinguishing between different types of business, and
  - (ii) the normal period for each type; and
- where an underwriting year is left open for longer than the normal period, the reason for not closing the year.

Accounting Classes, Business Categories And Risk Groups

An overview of the Forms

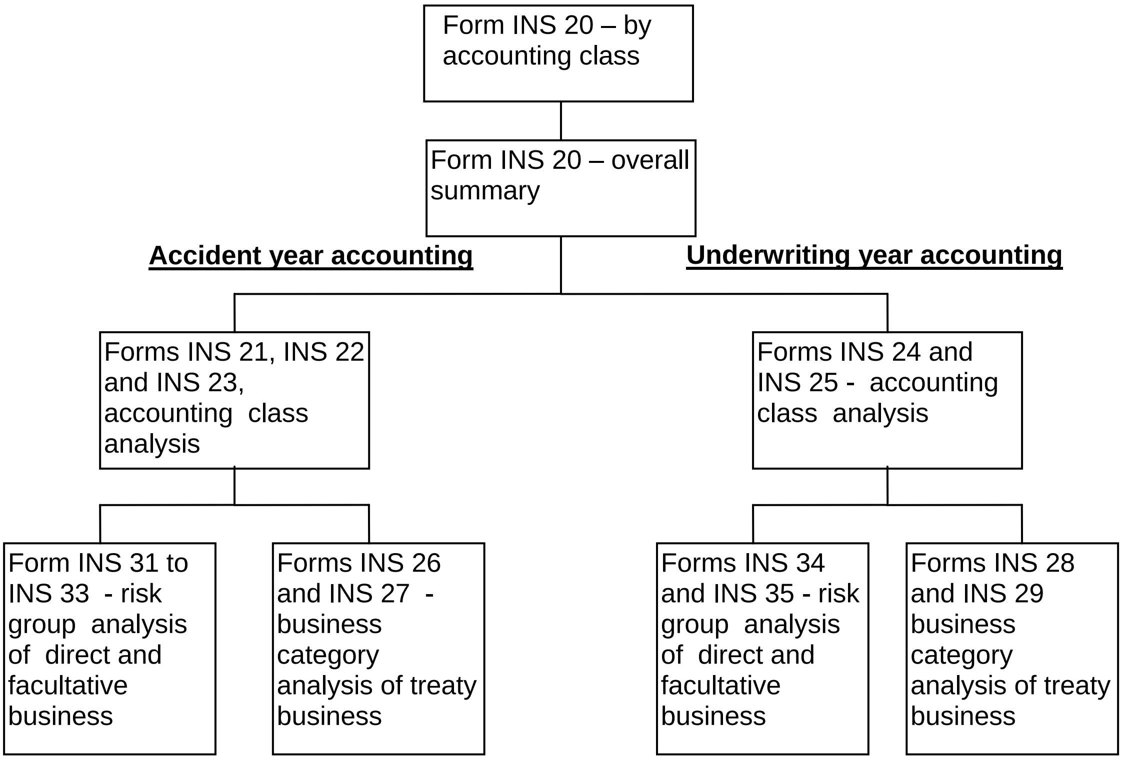
175. Reporting of general business in the Annual Return Forms takes place separately for business accounted for on an accident year basis and on an underwriting year, and for each, at three levels of detail;

- a summary level,
- an accounting class level, and

a sub-accounting class level.

176. The sub-accounting class divisions of business are referred to as "risk groups" for direct business and facultative reinsurance business and as "business categories" for treaty business.

177. The reporting of business within the Annual Return is summarised by the following diagram.



[For simplicity, the credit insurance Forms (INS 38 and INS 39), the discounting Form (INS 30) and the currency rates Form (INS 36) have been omitted].

Accounting classes

178. As already noted above, the division of general business in the Annual Returns takes place in two stages. First, business is divided into accounting classes and, then, each accounting class is further sub-divided into either risk groups (in respect of direct insurance and facultative reinsurance) or business categories (in respect of treaty reinsurance business).

179. There are eight direct and facultative accounting classes and three treaty classes. These are defined by Regulation 3 and paragraph 6 of Schedule 2. The following table summarises the definition.

Accounting classes for direct insurance and facultative reinsurance	1	accident and health
	2	Motor
	3	aviation
	4	Marine
	5	transport
	6	property
	7	third party liability

	8	miscellaneous and pecuniary loss
Accounting classes for treaty reinsurance	9	non-proportional treaty
	10	proportional treaty
	11	marine, aviation and transport (MAT) treaty

180. The accounting classes (other than the special case of accounting class "11" which is explained below) correspond closely to those used in the "1996 Regulations". The only differences are that-

- death or injury to passengers may now be included in either accounting class 1 or split across accounting classes 2, 3 and 4 (see below); and
- inwards proportional retrocessions of non-proportional treaty reinsurance should be included in accounting class 9.

181. Brought forward amounts should, where necessary, be restated in the first return submitted under the new Regulations to reflect these changes in definitions.

182. There is some flexibility to include the following items in a different accounting class from that which would be required by the above table -

- hovercraft business,
- liability for loss of, or damage to, goods in transit,
- death or injury to passengers.

183. Refer to paragraph 6 of Schedule 2 for the detailed rules. A supplementary note to Form INS 20 is required if this option is used. It should state the nature of the business included in a different accounting class and the reason for such inclusion. The nature of business included in a different accounting class should be consistent from year to year.

184. Accounting class 11 calls for special comment. The basic rule is that all treaty business should be included as either proportional in accounting class 10, or non-proportional in accounting class 9. No business is thus included in accounting class 11. However, as the Regulations allow an alternative to the basic rule, an insurer may choose to include (some or all) of its MAT treaty business in accounting class 11. If it does so, it must state in a supplementary note the nature of the business so included and the reason for the inclusion. The nature of business included in accounting class 11 should be consistent from year to year.

Business categories

185. Regulation 10 requires an insurer to allocate the business within each treaty accounting class (i.e. "9", "10" and "11") into business categories. The following table gives the eight standard business categories.

Standard business categories

(a) accident and health

(b) motor

(c) aviation

(d) marine

(e) transport

(f) property

(g) third party liability

(h) miscellaneous and pecuniary loss

Category (e) may be omitted and transport treaty business allocated instead to categories (c) and (d), in which case these categories are renamed respectively "aviation and transport" and "marine and transport".

186. An insurer may adopt the standard business categories or its own bespoke categories. However, if it adopts its own bespoke categories these must be sub-divisions of the standard categories and each must be given a name which identifies the general nature of the business included within it and distinguishes it from any other categories used.

187. The standard business categories described above are stricter than those which applied under the 1996 Regulations. In consequence, brought forward amounts for treaty business may need to be restated in the first return submitted under the new Regulations.

188. As already stated, the allocation to business categories takes place separately for each accounting class. However, it should be noted that it is not possible for accounting class "11", if used, to include any business other than that which falls within business categories (c), (d) and (e).

189. Special rules apply for treaty reinsurances accepted which fall within more than one business category. Amounts (i.e. premiums, claims etc.) in respect of such a treaty should be either-

- apportioned between business categories; or
- allocated to the business category within which the greater part of the business to which the treaty relates falls;

and an explanation must be given (in a supplementary note to Forms INS 26 to INS 29)

- where apportioned, the method used in any such apportionment; and
- where allocated, the (nature) of the business allocated other than to the business categories to which it strictly relates.

190. Once the apportionment or allocation referred to above has been made for a particular reinsurance treaty, future amounts should be reported in the Returns of subsequent periods in the same manner unless an explanation for a different treatment is given (in a supplementary note to Forms INS 26 to INS 29).

191. Further where a later treaty reinsurance is accepted which relates to risks which are of a similar description to those to which the earlier treaty related, the method of apportionment or allocation for the latter treaty should be the same as for the earlier treaty unless an explanation for a different treatment is given (in a supplementary note to Forms INS 26 to INS 29).

192. The supplementary notes referred to in paragraphs 190 and 191 above are not required in the first year that returns are prepared under the new Regulations.

Risk groups

Overview

193. Regulation 12 requires an insurer to classify its direct and facultative business into risk groups. This must be done separately for each country in which business is carried on with respect to each accounting class (i.e. classes "1" to

"8"). The classification of business into risk groups thus takes place in three stages as follows.

i) First, business is classified by country.

ii) Then, the business for each country is classified in the accounting classes.

iii) Finally, each accounting class within each country is classified into risk groups.

Each of these stages is subject to de minimis limits which are described below.

194. The classification of business into risk groups takes place every year with respect to business on-risk/incepted in that financial year and, once classified, the risk groups remain fixed for that financial year for reporting in all subsequent Annual Returns. Risk groups classified under the 1996 Regulations for financial years ended before 31 December 1998 should continue to be used for reporting business in those financial years.

195. Business classified into risk groups is reported (by country by accounting class by risk group) on Forms INS 31 & INS 32 and Form INS 34 (respectively for accident year and underwriting year accounting).

Classification by country

Carrying on insurance business

196. Business is classified by country according to where it is carried on. The country where business is carried on thus depends upon where this activity takes place and not necessarily upon the location of the risks covered by the insurance, (but see the comments below on "home" and “home foreign” business). An insurer, therefore, only usually carries on business in a country if it has a branch, agency or other establishment located in that country. Provision of services by a Gibraltar insurer in an EEA State is regarded as carrying on insurance business in Gibraltar (see paragraph 197 below).

197. For the purposes of classifying risk groups "home" and "home foreign" are treated as two separate countries. "Home foreign business" is defined by Regulation 3 as "business written in Gibraltar primarily relating to risks situated outside Gibraltar, but excluding business in accounting classes 3, 4 and 5 [i.e. the MAT classes] and business where the risk commences in Gibraltar". Subject to these exclusions, home foreign business includes business written on a services basis into EEA States.

The country-level de minimis limit

198. If gross premiums written for direct and facultative business carried on in a country are less than £100,000 or 1% of the worldwide gross premiums written for all business risk groups (i.e. direct and facultative and treaty) then there is no need to provide country analysis for that business. [For the first Annual Return submitted under the new Regulations, this limit is 2.5%.]

199. The aggregate for all countries of such “small country” business is reported on Forms INS 33 and INS 35 (respectively for accident year and underwriting year accounting).

Classification by accounting class within each country

200. The accounting classes have already been described above. However, it should be noted that only the accounting classes "1" to "8" are relevant. Accounting classes "9" to "11" relate exclusively to treaty business.

The accounting class within a country de minimis limit

201. If the gross premium written for any accounting class within any country is less than £500,000 or 5% of the worldwide gross premiums written for all business (i.e. direct and facultative and treaty), then the insurer may classify all of that business as a single risk group (given the name "Total").

Classification into risk groups by accounting class within each country

202. These rules consist of two parts: a basic rule and a list of supplementary requirements. The supplementary requirements (but not the basic rule) are subject to a de minimis limit.

The basic rule

203. The basic rule is that each risk group should comprise risks which-

"in the opinion of the directors, are not significantly dissimilar, either-

- by reference to the nature of the objects exposed to such risks or
- by reference to the nature of the cover given against such risks...".

204. The Commissioner recognises that directors would have regard to the size and relative size of business involved when considering any division into risk groups. He looks to directors to provide a sufficient but sensible breakdown which allows the ordinary reader to understand the nature of, and the analyst to review the details of, the insurer's business.

The supplementary requirements

205. The supplementary requirements are as follows.

(a) Risks may not be included in the same risk group where "having regard to the patterns of risk, claims incurrence and settlement patterns, it is necessary to group them separately for the purposes of applying statistical methods ... in calculating the provision for claims outstanding in accordance with generally accepted accounting practice". In effect, this means that where two or more types of risk are sufficiently dissimilar to require the data for each type to be separately identified for the purposes of calculating the provision for claims outstanding, each type should be classified in a separate risk group.

(b) Claims-made policies may not be included in the same risk group as non claims-made policies. A "claims-made policy" is defined (by Regulation 3) basically as a liability insurance which requires a loss incident to be notified either during the policy period or up to three years thereafter.

(c) Policies for (i) credit and suretyship, (ii) legal expenses, (iii) assistance and (iv) miscellaneous should not be included in the same risk group. These four categories make up accounting class "8" - see the definition in Regulation 3.

(d) Private motor car risks should not be included in the same risk group as other motor risks.

(e) Comprehensive private motor car risks should not be included in the same risk group as non-comprehensive private motor car risks.

(f) Policies transferred to the insurer (under Schedule 10 to the Ordinance, or equivalent legislation of an EEA State) should not be included in the same risk group as other policies.

The de minimis limit for the supplementary requirements

206. Two or more sets of risks/policies which would be required by any of the above supplementary requirements to be classified as separate risk groups may be combined provided that either -

(i) the gross premium written for all business (i.e. direct, facultative and treaty) from the resulting risk group is less than 2.5% of total worldwide gross premiums written or £500,000; or

(ii) the gross premium written for all business (i.e. direct, facultative and treaty) from each of the sets being combined (other than the largest) is less than 0.5% of total worldwide gross premiums written or than £100,000.

207. It should be noted that the above de minimis limit only applies to exempt insurers from compliance with the supplementary rules (a) to (f) and not the basic rule. They cannot be used, therefore, to create a large “miscellaneous” risk group - see the comments in paragraphs 195 to 197 above.

Forms INS 20 To INS 36: The General Business Technical Account

Form INS 20

Completion of the Form

208. Form INS 20 should be prepared separately for each accounting class (where any business falling in that accounting class has been carried on) and also in summary. This Form presents the "General business: technical account and consists of four parts -

- a technical account for this accident year (lines 11 to 19);
- a technical account for prior accident years (lines 21 to 29);
- the balance from underwriting year accounting (line 31 to 39); and
- the investment return allocated to the technical account (line 51).

209. The two accident year technical accounts relate only to business accounted for on an accident year basis. Form INS 24 presents the technical account for underwriting year business and it is from this that the balance at line 31 derives.

210. The items in the two accident year technical accounts derive from Form INS 21 (earned premiums) and Form INS 22 (claims, expenses etc.). The only item which does not derive from other Forms is "Other technical income or charges" (lines 16 and 25). If any amount is entered in these lines particulars must be stated in a supplementary note [code 2005].

211. Line 32 is to accommodate other technical income and charges arising from business accounted for on an underwriting year basis. [Such other income and charges should not be included on Form INS 24]. A supplementary note [Code 2006] is needed.

212. The allocated investment income (line 51) is linked to line 20 of Form INS 8. The allocation, if any, should be the same as in the statutory accounts.

Supplementary notes

213. Seven notes are specified.

(i) Where an insurer exercises any of the options (described in paragraphs 182 and 183 above) to report business in a different accounting class, it should state (a) the nature of the business it has included in that different accounting class and (b) the reason for such inclusion - see paragraph 7 of Schedule 2. [Code 2001].

(ii) For each accounting class, an insurer should state separately, for business accounted for on an accident year basis and on an underwriting basis, the split of (a) total gross premium written and (b) reinsurers' share of gross premium written between business attributable to Gibraltar and to non-Gibraltar business - see paragraph 15 of Schedule 2. For these purposes, direct and facultative business is Gibraltar business if the contract was made in Gibraltar and treaty reinsurance is Gibraltar busines if the cedant has its head office in Gibraltar. [Code 2002].

(iii) If an insurer has effected no new contracts of insurance of any one or more authorisation classes during the financial year, it should state the date on which the last new contract of each such class was effected - see paragraph 20 of Schedule 2. A "new contract" is any contract other than one effected in fulfilment of an obligation under an already existing contract of insurance. [Code 2003].

(iv) Where “contracts of insurance”, both inwards and outwards, have been excluded from Schedule 2 as a result of following FRS5 and FRAG 35/94, i.e. they are financial insurance/reinsurance, extensive disclosure is required. See paragraph 25 of Schedule 2 for details of the disclosure to be given. [Code 2004].

(v) Particulars should be stated of any amounts included at lines 16 or 25 ("accident year accounting - other technical income or charges") - see the text on those lines of the Form. [Code 2005]

(vi) Particulars should be stated of any amounts included in line 32 (“underwriting year accounting – other technical income or charges”) – see the text of that line of the Form [Code 2006].

(vii) Details of any material connected-party transactions as required under regulation 18A should be stated [Code 2007] – see Annex 5.

Form INS 21

Completion of the Form

214. Form INS 21 should be prepared separately for each accounting class (where any business falling in that accounting class has been carried on). The Form presents an analysis of premiums for business accounted for on an accident year basis. Premiums should be shown before commission payable.

215. In lines 11 and 12, premiums notified in the current year which relate to previous years’ business should be entered in line 11 if it is fully earned in the previous year, or in line 12 if it is part earned/unearned in the current year.

216. Lines 13 to 15 should include premiums actually received prior to the financial year but relating to risks incepted in the financial year and exclude premiums

received during the financial year but relating to risks incepting after the end of the financial year. In Form INS 5 and INS 7, the accounting treatment adopted for premiums received in respect of risks incepting in future financial years should be the same as that adopted in the statutory accounts or, if this results in different amounts for the provision for unearned premium (either gross or the reinsurer's share) being shown in Form INS 5 or INS 7 as compared to Form INS 21, the Commissioner requests that the difference be identified and explained in a supplementary note, [Code 2103].

217. Line 16 shows premiums receivable in previous financial years not earned in those years and brought forward to the current financial year (i.e. unearned premium provision brought forward.)

Supplementary notes

218. Three notes are specified.

(i) The reason should be stated for any difference in the unearned premiums brought forward and the corresponding amount carried forward from the previous year (i.e. if INS 2l.16.l + INS 21.16.2 does not equal INS 21.19.2 in the previous return or INS 21.16.3 + INS 21.16.4 does not equal INS 21.19.4 in the previous return) - see Paragraph 6 of Schedule 1. [Code 2101].

(ii) The basis upon which the provision for unearned premium is calculated and the reason for adopting that basis should be stated - see paragraph 17 of Schedule 2. The Commissioner expects the "reason" stated to include an explanation of any change in the basis from previous financial years. [Code 2102].

(iii) The supplementary note referred to in paragraph 216 above [Code 2103].

Form INS 22

Completion of the Form

219. Form INS 22 should be prepared separately for each accounting class (where any business falling in that accounting class has been carried on). The Form presents an analysis of claims, expenses and technical provisions for business accounted for on an accident year basis.

220. The rules for the allocation of premiums, claims and expenses to accident years are explained in the section on "Accounting Classes, Business Categories and Risk Groups" (paragraphs 175 to 207). Business which is shown as reconciliation business on Form INS 23, [See paragraph 228 below], should also be split between the "prior financial years" and "this financial year" headings in this Form. However, where such amounts are not material it is acceptable to include them in their entirety under the "this financial year" heading.

221. The amount included for the provision for unexpired risks (at line 19), for any accounting class, should be determined without taking into account any surplus expected to arise on the unexpired risks falling within other accounting classes.

222. However, in determining the total provision for unexpired risks (which is disclosed in Form INS 7 at line 13 and in Form INS 5 at line 62), deficits and surpluses in different accounting classes may be offset (to the extent permitted by generally accepted accounting practice). Any surplus for an accounting class thus offset against deficits in other accounting classes, to the extent it relates to business accounted for on an accident year basis, should be shown as a negative provision at line 19 for that accounting class.

223. Lines 41 and 42 show the split of operating expenses between prior financial years and this financial year. Special care should be taken when completing column 1 – amount brought forward from previous financial years. The entry at column 1 for line 42 should equal the sum of the entries at column 3 in the previous years' Return for lines 41 and 42. The entry at column 1 for line 41 should ordinarily be nil, i.e. it should be left blank. This is because the split at lines 41 and 42, column 4, is used (on Form INS 20) to match expenses against earned premiums.

Supplementary notes

224. Six notes are specified.

(i) If any amounts brought forward from previous years do not equal those carried forward in last year's Return, the reason should be stated - see Paragraph 6 of Schedule 1. [Code 2201].

(ii) The basis for determining the claims management costs payable and carried forward should be stated - see paragraph 21(1) of Schedule 2. The "payable" part of the disclosure should include an explanation as to how overheads are allocated as between "claim management expenses" and "net operating expenses". If claims outstanding are carried forward without a corresponding figure for claims management costs, the reason for this should be stated - see paragraph 21(2) of Schedule 2. If the insurer has ceased to write a certain class of business, the basis for calculating any additional costs, or the reason for believing there should not be any, should be stated - see paragraph 21(3) of Schedule 2. [Code 2202].

(iii) Where investment income has been taken into account in determining the claims management costs carried forward, the insurer should state for each accounting class (i) the rates of interest used, and (ii) the average interval to the date at which the carried forward costs are expected to be expended - see paragraph 21(4) of Schedule 2. [Code 2203].

(iv) The basis for determining acquisition expenses (other than commission) payable and carried forward should be stated - see paragraph 22 of Schedule 2. The "payable" part of the disclosure should include an explanation as to how overheads are allocated between "other acquisition expenses and the other components of "net operating expenses" especially "administrative expenses". The "carried forward" part of the disclosure should include an explanation of how the appropriate proportion of acquisition expenses (other than commission) to match the unearned premium carried forward was determined. [Code 2204].

(v) Where the provision for unexpired risks has been determined after taking investment income into account, an insurer should state for each accounting class (i) the provision before taking investment income into account, (ii) the rates of interest used, and (iii) the average interval to the date at which claims are expected to be settled in cash - see paragraph 19 of Schedule 2. This note should be present even if as a result of taking investment income into account, the provision for unexpired risks is nil. [Code 2205].

(vi) If the amounts to be recovered from reinsurers are not expected to be recovered for more than 12 months after the settlement of the gross claims, there should be stated for that accounting class (i) the amount of such recoveries, and (ii) the accounting treatment which has been adopted in respect of discounting such recoveries - see paragraph 27 of Schedule 2. [Code 2206].

Form INS 23

Completion of the Form

225. Form INS 23 should be prepared separately for each accounting class (where any business falling in that accounting class has been carried on). The Form presents an analysis, by accident year, of the run-off of net claims and premiums. It consists of three parts-

- the last ten accident years (lines 11 to 20);
- the reconciliation business (line 22); and
- the prior accident years (line 21).

226. Two transitional rules provide for some of the new disclosure to be phased in. Firstly, instruction 8 to the Form provides that for the first time the new Form is submitted, only the last nine accident years need be disclosed. Line 20 may be left blank and the figures for the tenth accident year included in the "prior accident years" line. Secondly, instruction 9 provides that the three new columns 1, 11 and 13 need not be completed for accident years ended before 31 December 1996.

227. The amount of earned premium shown at column 11 for each accident year should be updated each financial year to take account of over-or under-estimates of premium for that accident year.

228. Reconciliation business is any business which falls below the country de minimis limit in the classification of risk groups (see paragraph 199 above) and any business which was reported as reconciliation business under the 1996 Regulations. The reconciliation business should be reported at line 22, net of the reinsurers' share.

229. Special rules apply to the reconversion of the premiums and claims amounts in columns 1, 2, 3 and 11 of Form INS 23. All amounts denominated in a major currency should be reconverted into sterling using the exchange rate ruling at the end of the current financial year. Amounts denominated in a non-major currency need not be re¬converted. Where a claim or premium amount is not reconverted, it should be reported at the exchange rate which ruled at the end of the financial year in which it first arose.

230. A major currency is -

- for business carried on in any foreign country (i.e. by a branch, agency or other establishment in that country), the currency of that country; and
- for all other business, US dollars, Canadian dollars and any other currency the insurer wishes to treat as a major currency.

Supplementary notes

231. Two notes are specified.

(i) If any of the brought forward amounts differ from the corresponding carried forward amounts in the previous return, the reason should be stated - see Paragraph 6 of Schedule 1. [Code 2301].

(ii) If during the financial year, business is transferred (under Schedule 10 of the Ordinance or under equivalent legislation of an EEA State) to the insurer certain specified details of that business must be stated - see paragraph 16 of Schedule 2. [Code 2302].

Form INS 24

Completion of the Form

232. Form INS 24, is only relevant for business accounted for on an underwriting year basis and, should be prepared separately for each accounting class (where any business falling in that accounting class has been carried on). The Form reconciles the technical provisions brought forward to that carried forward, with premiums, claims, expenses and profits/losses as the reconciling items.

233. The column headings (between columns "29-29" and "99-99") should be completed respectively from right to left with the dates of the end of this financial year and of each of the nine preceding financial years.

234. A transitional concession applies for all accounting classes except "9" and "11". Amounts for underwriting years ended before 31 December 1995 may be included in the "prior years" column. (If this is done, the end-date for such years should not be entered in the column headings.) Insurers should only take advantage of this concession to the extent that full completion of the Form is impracticable, (e.g. full completion of Form INS 24 for class "10" would not be impracticable where business of that class was previously reported under the 1996 Regulations in Form INS 29).

235. Business reported as reconciliation business on Form INS 35 should be reported on this Form (net of the reinsurers' share) analysed by underwriting year.

236. Under the 1996 Regulations, the option existed of showing premium amounts on the form net of commission. This is no longer permitted for the new Form INS 24. All premium amounts at lines 11 and 12 should be shown gross of commission.

237. Net operating expenses (lines 41 to 49) should not include the increase or decrease in deferred acquisition costs, ("DAC"). Instead, the DAC brought forward and carried forward should be included respectively at lines 51/52 and 53/54. [DAC is part of the fund – see line 24 on Form INS 25].

238. For an open underwriting year, line 54, ("Technical provisions – carried forward – adjustment for discounting") should show the extent to which future investment return has been taken into account in deciding whether and, if so, by how much to increase the "fund" (i.e. premiums written less claims and expenses) to make it sufficient to meet all present and future obligations attributable to the underwriting year, [i.e. the amount shown at line 53 ("Technical provisions – carried forward – undiscounted") should be the "fund" augmented by the full amount needed to make it sufficient to meet all such obligations without taking future investment return into account].

239. The amount shown at line 54 for an open year should be included as one of the component items included in the balance shown at line 20 on Form INS 25, even if that results in a negative amount at that line. [Lines 16 to 18 on this Form should not include amounts for open underwriting years.]

Supplementary notes

240. Six notes are specified.

(i) If any of the brought forward amounts differ from the corresponding carried forward amounts in the previous return, the reason should be stated - see Paragraph 6 of Schedule 1. [Code240l].

(ii) Certain specified details of the reporting basis and basis of profit recognition should be stated - see Paragraph 23 of Schedule 2. Guidance is given in paragraphs 172 to 174 above. [Code 2402].

(iii) If, during the financial year, business is transferred (under Schedule 10 of the Ordinance or under equivalent legislation of an EEA State) to the insurer, certain specified details of that business must be stated - see paragraph 16 of Schedule 2. [Code 2403].

(iv) The basis for determining the claims management costs payable and carried forward should be stated - see paragraph 21 of Schedule 2. The "payable" part of the disclosure should include an explanation as to how overheads are allocated between "claims management cost" and "net operating expenses". If claims outstanding are carried forward without a corresponding figure for claims management costs, the reason for this should be stated. If the insurer has ceased to write a certain class of business, the basis for calculating any additional costs, or the reason for believing there should not be any, should be stated. [Code 2404].

(v) Where investment income has been taken into account in determining the claims management costs carried forward, the insurer should state for each accounting class (i) the rates of interest used, and (ii) the average interval to the date at which the carried forward costs are expected to be expended - see paragraph 21(4) of Schedule 2. [Code 2405].

(vi) The basis for determining acquisition expenses (other than commission) payable and carried forward should be stated - see paragraph 22 of Schedule 2. The "payable" part of the disclosure should include an explanation as to how overheads are allocated between "other acquisition expenses" and the other components of "net operating expenses" especially "administrative expenses". The "carried forward" part of the disclosure should include an explanation of how the appropriate proportion of acquisition expenses (other than commission) to match the unearned premium carried forward was determined. [Code 2406].

Form INS 25

Completion of the Form

241. Form INS 25 is only relevant for business accounted for on an underwriting year basis and should be prepared separately for each accounting class (where any business falling in that accounting class has been carried on). The Form analyses the technical provisions carried forward.

242. The guidance given above for the completion of Form 24 also applies for this Form.

243. The extent to which the Form is to be completed differs for "open" and "closed" years - see instruction 2 to the Form. [For this purpose business accounted for under the annual method should be regarded as "closed year" business]. Claims outstanding and IBNR, plus management costs, should be shown for "open" and "closed" business. See also paragraphs 163 to 169 above for further guidance.

244. The offset of surplus and deficits on open years for business managed together should be shown at line 19 with a surplus on the underwriting year, which is to be offset against deficits arising elsewhere, shown as a positive amount and a deficit, which is to be offset against surpluses arising elsewhere, shown as a

negative amount. The balance of the fund should be shown at line 20. For open years there will be no entries in line 22 to 25. Line 21 should equal line 29, which should equal line 53 less line 54 on Form INS 24. The balancing figure required to achieve this should be entered at line 20.

245. Further disclosure needs to be given in relation to closed years, in particular, the adjustment for discounting (lines 16 to 18) and lines 22 to 25. The amount included for the provision for unexpired risks (line 23), for any accounting class, should be determined without taking into account any surplus expected to arise on the unexpired risks falling within other accounting classes.

246. In determining the total provision for unexpired risks (which is disclosed in Form INS 7 at line 13 and in Form INS 5 at line 62), deficits and surpluses in different accounting classes may be offset (to the extent permitted by generally accepted accounting practice). Any surplus for an accounting class thus offset against deficits in other accounting classes, to the extent it relates to business accounted for on an underwriting year basis, should be shown as a negative provision at line 23 on Form INS 25 for that accounting class.

247. Lines 13 and 14 refers to both open and closed years to “claims incurred but not reported”. For closed years, this does not include provisions for claims not incurred, i.e. claims expected to be incurred after the end of the financial year. For closed years, such yet-to-be-incurred expected claims are provided against by the provision for unearned premiums and unexpired risks, (lines 22 and 23). For open years, such yet-to-be-incurred expected claims may either be included at lines 13 and 14 or included as one of the elements represented by the balance of the fund, (line 20). For both open and closed years, lines 13 and 14 require the analysis of “claims incurred but not reported” between the “gross amount” and “reinsurers’ share”. Where this analysis is not provided, e.g. by reporting the net amount as if it were the gross amount, the Form has not been properly prepared in accordance with the Regulations.

248. A summary of the lines which require completion in respect of open and closed years is as follows:

Lines	Open	Closed or annual basis
11 to 14	✓	✓
15		✓
16 to 18		✓
19 to 20	✓	
21	✓	✓
22 to 25		✓
26	✓	✓

Supplementary notes

249. Five notes are specified.

(i) The basis upon which the provision for unearned premium is calculated and the reason for adopting that basis should be stated - see paragraph 17 of Schedule 2. The "reason" stated must include an explanation of any change in the basis from previous financial years. [Code 2501].

(ii) Where investment income has been taken into account in determining the provision for unexpired risks, the insurer must state for each class of business (i) the provision before taking investment income into account, (ii) the rates of interest used, and (iii) the average interval to the date at which claims are expected to be settled in cash. The note should be present even if, as a result of taking investment income into account, the provision for unexpired risks is nil – see paragraph 19 of Schedule 2 [Code 2502].

(iii) If the amounts to be recovered from reinsurers are not expected to be recovered for more than 12 months after the settlement of the gross claim, the note should state for each accounting class (i) the amount of such recoveries, and (ii) the accounting treatment adopted in respect of discounting such recoveries - see paragraph 27 of Schedule 2. [Code 2503].

(iv) Where a surplus for offset is shown at line 19, the following should be stated -

- a description of the business in respect of which the anticipated surplus, and of the business in respect of which the anticipated deficit to be offset, arise; and
- the reason for treating the business as managed together.

See paragraph 24(2) of Schedule 2. [Code 2504].

(v) Particulars of any amounts included at lines 25 on Form INS 25 should be stated – see the face of Form INS 25 [Code 2505].

Forms INS 26 & INS 27

Completion of the Forms

250. Forms INS 26 and INS 27 present an analysis by business category of the business reported on Form INS 23 for the treaty accounting classes "9" to "11" (i.e. all treaty business reported on an accident year basis). The format of Forms INS 26 and INS 27 are identical, except that Form INS 26 is net of the reinsurers' share whereas Form INS 27 is completed gross. The format of Form INS 26 and INS 27 is identical to the format of INS 23 except for

- the inclusion in the heading of a line for "business category" and "currency", and
- the use of a continuation sheet which analysis prior accident years (line 21).

The guidance given above on the completion of Form INS 23 also applies to these Forms - see paragraphs 225 to 230 above.

251. Forms INS 26 and INS 27 should be completed separately for each business category of each treaty accounting class (where any business is carried on in that business category for that accounting class). The entries in any box on all Form INS 26 for any accounting class should, in aggregate (converted into sterling where necessary), equal the corresponding entry on Form INS 23 for that accounting class.

252. The insurer may prepare a single Form INS 26 and INS 27 for business carried on in all currencies (with all amounts converted into sterling). Alternatively, it may prepare separate Forms in any one or more of -

- sterling
- US dollars;
- Canadian dollars;
- a weighted average of European currencies; or

- any other currency where the gross premiums or claims incurred for the business carried on in that currency exceeds 10% of the total for all treaty business.

253. Business transacted in a currency for which no separate Form is prepared should be included in the sterling Form (converted into sterling) unless the insurer considers it more appropriate to include it in the Form for another currency (converted into that currency). The reporting of treaties on separate currency Forms should be consistent from year to year. See paragraph 5 of Schedule 2.

254. The amount of earned premium shown at column 11 for each accident year should be updated each financial year end to take account of over-or under-estimates of premium for that accident year.

255. The category names to be used in the title lines to the Form are described in paragraph 185. A bespoke category should be given a name which -

- describes the general nature of the business included; and
- distinguishes it from other business categories.

Supplementary notes

256. Five notes are specified.

(i) If any of the brought forward amounts differ from the corresponding carried forward amounts in the previous return, the reason should be stated - see Paragraph 6 of Schedule 1. [Code 2601].

(ii) The basis of allocating or apportioning reinsurance treaties accepted which fall within more than one business category should be stated - see Regulation 11(2). Further guidance is given in paragraph 189 above. [Code 2602].

(iii) Where the allocation or apportionment to business categories of any reinsurance treaties accepted which have previously been reported differs from that adopted previously, an explanation of the nature of the change and the reasons for it should be given - see Regulation 11(3)(a). Further guidance is given in paragraphs 190 and 191 above. [Code 2603]. (This note will not apply in the first year that returns are completed under the new Regulations).

(iv) Where the allocation or apportionment to business categories of any reinsurance treaties accepted differs from that adopted previously for reinsurance treaties relating to similar risks, an explanation of the nature of the change and the reasons for it should be given - see Regulation 11(3)(a). Further guidance is given in paragraphs 190 and 191 above. [Code 2604]. (This note will not apply in the first year that returns are completed under the new Regulations).

(v) An explanation of any average rate of European currencies used in preparing the Form should be given - see Paragraph 5(2) of Schedule 2. Further guidance is given in paragraph 252 above. [Code 2605].

Forms INS 28 & INS 29

Completion of the Forms

257. Forms INS 28 and INS 29 present an analysis by business category of the business reported on Forms INS 24 and INS 25 for the treaty accounting classes "9" to “11” (i.e. all treaty business reported on an underwriting year basis).

The formats of Forms INS 28 and INS 29 are identical respectively to the formats of Forms INS 24 and INS 25 except for -

- the inclusion in the heading of a line for "business category" and "currency", and
- the use of a continuation sheet, which analyses business beyond the 10 year cut-off used for Forms INS 24 and INS 25,

and the guidance given above on the completion of the headings of those Forms also applies to these Forms - see paragraph 233.

258. Forms INS 28 and INS 29 should be completed separately for each business category of each treaty accounting class (where any business is carried on in that business category for that accounting class). The entries in any box on all Forms INS 28 and INS 29 for any accounting class should in aggregate (converted into sterling where necessary) equal the corresponding entry on Forms INS 24 and INS 25 for that accounting class.

259. The guidance given in paragraphs 252 to 255 above on the completion of Forms INS 26 and INS 27 also applies to these Forms.

260. A transitional concession applies for proportional treaty business (accounting class "10") which was not previously reported on Form INS 29 of the 1996 Regulations, either because it did not fall in the MAT business category, or because it was not the subject of a section 113 concession. Amounts for underwriting years ended before 31 December 1995 may be included in the "prior years" column and need not be analysed on the continuation sheet. (If this is done, only post-1995 year-end dates should be entered in the column headings.)

261. Under the 1996 Regulations, the option existed of showing premium amounts on Form INS 29, net of commission. This is no longer permitted for the new Form INS 29. All premium amounts at lines 11 and 12 should be shown gross of commissions.

262. For an open underwriting year, line 54 of Form INS 28 ("Technical provisions – carried forward – adjustment for discounting") should show the extent to which future investment return has been taken into account in deciding whether and, if so, by how much to increase the "fund" (i.e. premiums written less claims and expenses) to make it sufficient to meet all present and future obligations attributable to the underwriting year, [i.e. the amount shown at line 53 ("Technical provisions – carried forward – undiscounted") should be the "fund" augmented by the full amount needed to make it sufficient to meet all such obligations without taking future investment return into account].

263. The amount shown at line 54 for an open year should be included as one of the component items included in the balance shown at line 20 on Form INS 29, even if that results in a negative amount at that line. [Lines 16 to 18 of this Form should not include amounts for open underwriting years].

Supplementary notes

264. Six notes are specified.

(i) The first five are the same as described above (paragraph 256) for Forms INS 26 and INS 27, but are in respect of treaty business accounted for on an underwriting basis. [Codes 2801 to 2805]. (Notes 2803 and 2804 will not apply in the first year that returns are completed under the new Regulations).

(ii) Where a surplus for offset is shown at line 19 of Form INS 29, the following should be stated -

- a description of the business in respect of which the anticipated surplus and of the business in respect of which the anticipated deficit to be offset arise; and
- the reason for treating the business as managed together.

See paragraph 24(2) of Schedule 2. [Code 2901].

Form INS 30

Completion of the Form

265. Form INS 30 consists of two sheets. Sheet 1 calls for an analysis of assets and liabilities by major currency, while sheet 2 gives a more detailed analysis of the types of asset. The Form should be completed whenever an amount for "adjustment for discounting" is included in any Forms INS 22 or INS 25 - see Regulation 9 and also paragraph 26 of Schedule 2. However, de minimis rules (explained below) apply for the completion of sheet 2 and parts of sheet 1. Only one Form INS 30 should be prepared in respect of all the discounted provisions.

266. A major currency is any currency in respect of which the provision for claims outstanding (before deduction for discounting) is not less than 10 per cent. of the total provision for all claims outstanding (before deduction for discounting). In terms of the Form, each major currency line should have a column 6 entry which is not less than 10 per cent. of the column 6 total.

267. In sheet 1 of Form INS 30, assets and liabilities should be allocated to particular currencies using, basically, the same rules as apply for the purpose of the matching and localisation requirements. However, for the purpose of completing Form INS 30, the rules should be applied to all the assets and liabilities of the insurer, (including assets and liabilities in respect of business to which the obligation to match and localise assets does not apply). Regulations 33(5) and 35(2) to (5) of the Asset Valuation Regulations are the rules which should be applied.

268. Instructions 1 to 4 (and 6 & 10) respectively explain the entries to be made in columns 1 to 4 of sheets 1 and 2. Three points will be noted here.

- The admissible assets shown in column 1 are the total admissible assets but excluding the reinsurers' share of technical provisions and deferred acquisition costs.
- The reference in column 2 to "hypothecated assets" should not be read as imposing any requirement on insurers to hypothecate particular assets to particular liabilities. It merely allows insurers who have chosen so to hypothecate to report this on the Form. Insurers which do not hypothecate should include all assets in column 2, (i.e. column 2 will equal column 1).
- The expected income and yield to be shown at columns 3 and 4 are to relate only to those assets included in column 2.

269. In sheet 1 -

- column 5 should show all technical provisions, i.e. including the provisions for unearned premiums and unexpired risks;
- columns 5 to 7 are to be completed net of reinsurance. Column 5 should include all technical provisions. Columns 6 and 7 ("Provision for outstanding claims being discounted") should include any provisions for claims management expenses which are being discounted;

- column 8 should show the "unwind of the discount in the next financial year" calculated in accordance with instruction 8; and
- column 11 should show the "average rate" calculated in accordance with instruction 11.

270. Sheet 2 analyses assets and expected yield by asset type. It need only be completed if the provision for claims outstanding being discounted (before deduction for discounting) exceeds 25% of the total provision for claims outstanding (before deduction for discounting).

271. If no sheet 2 needs to be prepared, then lines 21 and 29 of sheet 1 need not be completed and lines 11 and 20 need only be completed in respect of those currencies for which the provision for claims outstanding being discounted (before deduction for discounting) exceeds 25% of the total provision for claims outstanding (before deduction for discounting).

272. An example of the calculation of the "unwind of the discount in the next financial year" is given below -

An insurer has claims outstanding (including IBNR) of £250k at the end of 1998 which it estimates it will pay as follows-

31.12.99 £150k

31.12.00 £100k

Its discount rate of interest is 5% and so, in the 1998 return, it presents the following amounts in columns 6 and 7 of Form INS 30 -

Claims outstanding -

before deduction for discounting £250k

deduction for discounting £16k

where the latter figure is calculated as -

$£16k = £250k – (£150k/(1.05) + £100k/(1.05)^2)$

The "unwind of the discount in the next financial year" is then calculated as follows -

(a) estimate the expected claims outstanding at the 1999 year end (using the same assumptions as are used to estimate the actual claims outstanding at the 1998 year end) but only in respect of accident/underwriting years 1998 and prior.

Expected claims outstanding at 1999 in respect of accident years 1998 and prior = £100k

(b) estimate the deduction for discounting at the 1999 year end (using the same assumptions as are used to estimate the actual deduction for discounting at the 1998 year end) but only in respect of accident/underwriting years 1998 and prior

Expected deduction for discounting at 1999 in respect of accident years 1998 and prior = £100k - £100k/(1.05)

= £5.0k

(c) then subtract the expected deduction for discounting at 1999 (as calculated in (b) above) from the actual deduction for discounting at 1998 as follows

"Unwind of discount in the next financial year" = £16k - £5k = £11k

Supplementary note

273. Three supplementary notes are specified.

(i) The methods and assumptions used in determining the yield in accordance with instruction 4 to the Form should be stated - see instruction 5. [Code 3001].

(ii) The treatment of expected income payment (in arriving at the amounts shown at columns 3 and 4) from any asset where such payment is in default should be stated - see instruction 7. [Code 3002].

(iii) A note should state the risk groups and business categories where an adjustment for discounting has been made and for each such risk group or business category

- the method used in calculating the deduction for discounting;
- the rate of interest used;
- the expected average interval between the date of settlement for claims being discounted and the end of the financial year; and
- the criteria adopted for estimating the period that will elapse before claims are settled.

See Paragraph 26(5) of Schedule 2. [Code 3003].

Forms INS 31, INS 32 and INS 34

Completion of the Forms

274. Forms INS 31, INS 32 and INS 34 provide the risk group analysis of the gross claims and gross premiums information for the business (the diagram in paragraph 177 refers). Forms INS 31 and INS 32 are used for accident year business, whilst Form INS 34 is used for underwriting year business.

275. Form INS 31 should be prepared separately for each risk group in each country for all direct and facultative accounting classes (other than the direct and facultative motor class "2"). Form INS 32 should be prepared separately for each risk group in each country for all direct and facultative business falling within accounting class "2". Form INS 34 should be prepared separately for each risk group in each country for all direct and facultative accounting classes. [See Regulation 13.]

276. The classification of business into risk groups is explained in the section on Accounting Classes, Business Categories and Risk Groups.

277. The three Forms are similar in format. Form INS 32 only differs from Form INS 31 by the inclusion of a column 12 (vehicle years) and column 13 (claims frequency). Form INS 31 only differs from Form INS 34 by the inclusion of columns 1 and 2 (claims numbers). However, instruction 7 to Form INS 31 provides that claims numbers need not be reported for marine, aviation and transport business reported on that Form.

278. The claims numbers on Forms INS 31 and INS 32 relate only to reported claims outstanding. Estimates of claims numbers for IBNR are not required. Column 1 of Forms INS 31 and INS 32 show the cumulative numbers only for “claims settled at some cost” and column 2 the claims numbers of “reported claims outstanding”. Where a claim was previously reported as closed at some cost but is subsequently reopened, it remains one claim. If necessary, it should be transferred from column 1 and included in the claim number in column 2.

279. The amounts shown for gross premium for each accident/accounting year in column 10 on Forms INS 31 and INS 32 and in column 8 on Form INS 34 should be updated each financial year end to take account of over- or under-estimates of premiums for that year.

280. The instructions to the Forms also provide that -

- all figures are to be shown gross of reinsurers' share, before any deduction for discounting and exclusive of any claims management costs;
- all percentages are to be expressed to one place of decimals.

281. Instruction 6 to Form INS 32 explains how "vehicle years" are to be calculated The percentages shown in that Form for the claims frequency, (column 13), should be calculated as the ratio of {column 1 + column 2} to {1000 x column 12}.

282. On all Forms, the accident/underwriting year end dates inserted at lines 11 to 20 should be the year end dates of the current financial year and the 9 previous financial years.

283. Forms INS 31 and INS 34 have continuation sheets. These are only to be used for risk groups falling into accounting class "7" (third-party liability). The continuation sheets analyse the amounts shown at line 21 (prior accident/underwriting years) and should be prepared where any amount is shown at this line.

284. On all Forms INS 31, INS 32 and INS 34, the risk group name shown (in the titles lines to the Forms) should include a description of the risks within the accounting class included in that risk group - see paragraph 28(1) of Schedule 2. The description should be sufficient to distinguish the risk group from other risk groups for the same country falling in the same accounting class.

Supplementary notes

285. Two supplementary notes are specified.

(i) If any of the brought forward amounts differ from the corresponding carried forward amounts in the previous return the reason should be stated - see Paragraph 6 of Schedule 1. [Code 3101,3201 or 3401].

(ii) If, for any risk group, the name given to it (see paragraph 282 above) is not sufficient to identify for the business included in that risk group "the nature of the objects exposed to risks and the nature of the cover provided against such risk", this information should be stated in a supplementary note - see paragraph 28(2) of Schedule 2. [Code 3102,3202 or 3402].

Forms INS 33 and INS 35

Completion of the Forms

286. Forms INS 33 and INS 35 are reconciliation returns which sweep up any business not reported on the risk group Forms INS 31, INS 32 and INS 34 (i.e. items within the de minimis limits). Form INS 33 should be completed in respect of accident years and Form INS 35 in respect of underwriting years - see Regulation 14.

287. Reconciliation business is any direct and facultative business not classified into risk groups and so not reported on Forms INS 31, INS 32 and INS 34. It arises from two sources -

- "small country" business - see paragraphs 198 and 199 above; and

- business which was reported on "reconciliation Forms" under the 1996 Regulations.

288. Only one Form INS 33 and one Form INS 35 is to be prepared covering all accounting classes.

289. The instructions to the Forms also provide that all figures are to be shown gross of reinsurers' share, before any deduction for discounting and exclusive of any claims management costs.

Supplementary notes

290. Only one supplementary note is specified. If any of the brought forward amounts differ from the corresponding carried forward amounts in the previous return, the reason should be stated - see Paragraph 6 of Schedule 1. [Code 3301 or 3501].

Form INS 36

291. Form INS 36 should be prepared whenever any of the business category Forms (INS 26 to INS 29) or the risk group Forms (INS 31 to INS 35) is prepared in a foreign currency. Form INS 36 reports the rates of exchange used for the conversion of amounts reported on those Forms in foreign currency for inclusion in other Forms in sterling. Where a different rate is used for premiums and claims incurred/paid/ earned during the year than for claims outstanding at the year end, the former rate should be stated. Where more than one such rate is used during the year, the average rate should be stated.

292. There are no supplementary notes specified to this Form.

Forms INS 38 and INS 39: Credit Insurance

293. Regulation 16 requires additional information on direct credit insurance accepted. Insurers which carry on credit insurance business are required to prepare Form INS 38 (or Form INS 39 where the business is accounted for on an underwriting year basis). For Gibraltar insurers, this will relate to their entire business, to which the Regulations apply. For external insurers, only credit business carried on in Gibraltar needs to be reported on Forms INS 38 and INS 39. The forms are not audited.

294. Form INS 38 gives an analysis, net of reinsurance, of underwriting income and expenditure. The information is given for the financial year and for the previous financial year. An amount can be included for investment income receivable but, where insurers do not take account of investment income in determining their underwriting result, no amount should be included. The form shows the result for the financial year, and the amount of the transfer to or from the equalisation reserve. The form is not dissimilar to the revenue account Form INS 20.

295. Form INS 39 is in respect of credit business accounted for on an underwriting basis. Again, the analysis is net of insurance, and is by underwriting year. An analysis of premiums receivable, claims paid and expenses incurred is given, together with the movement on the fund. Investment income is treated as for Form INS 38. The balance on each underwriting year is given, as is the transfer to or from the equalisation reserve.

The Regulation 19, 20 and 21 Statements: Major Treaty Reinsurers, Major Facultative Reinsurers And Major Cedants

General

296. Regulations 19, 20 and 21 require the submission of additional information with regards to major treaty reinsurers, major facultative reinsurers of and major reinsurance cedants, respectively. These statements are intended to give information on the insurer's exposure to particular treaty and facultative reinsurers where they are material, and also on the major sources of the insurer's inward treaty reinsurance business. All of the statements are subject to audit.

297. All three statements require the following information:

- full name and address of the reinsurer/cedant;
- whether (and, if so, how) the reinsurer/cedant was connected with the insurer during the year;
- reinsurance premiums payable/gross premiums receivable from the reinsurer/cedant during the year; and
- the amounts of any debts/deposits received, and recoveries anticipated, which are included in the return as follows.

  (i) Regulation 19/20

  Debts due: Form INS 5 line 75.

  Deposit received: Form INS 7 line 31.

  Recoveries included in reinsurers share of technical provision: Form INS 5 line 61

  (ii) Regulation 21

  Deposit made: Form INS 5 line 57

  Debt Due: Form INS 5 line 74.

298. If the insurer has no disclosable major treaty reinsurers, major facultative reinsurers or major cedants, the Regulation 19, 20 or 21 statement should state that this is the case.

Major treaty reinsurers

299. Regulation 19 requires every insurer which carries on general business to prepare a statement of its major treaty reinsurers. The items to be included in that statement are listed in Regulation 19(1). The statement is intended to inform the reader of the returns of the insurer's exposure to particular treaty reinsurers where they are material.

300. Regulation 19(2) lays down two tests for identifying major treaty reinsurers -

- a premium ceded limit; and
- a debt plus anticipated recoveries limit.

301. A major treaty reinsurer is any reinsurer which either exceeds the "premium ceded" limit in the current or any of the five immediately preceding financial years or exceeds the "debt plus anticipated recoveries" limit at the current year end. The limits are applied in aggregate, (i.e. to the sum of all amounts from all treaties ceded to that reinsurer), except that the premium ceded limit is

applied separately for, and differs in respect of, proportional and non-proportional treaty aggregates.

302. The "premium ceded" limits are -

- for proportional treaty reinsurance, 2% of total gross premium written of the insurer;
- for non-proportional treaty reinsurance, 5% of the total premium payable in respect of all non -proportional reinsurance.

303. The "debt plus anticipated recoveries" limit is 5% of the insurer's general business amount. (See Guidance Note No. 4 on the Valuation of Assets which explains how the general business amount is calculated.) The "debt plus anticipated recoveries" which are compared with this limit should include the amount of any debt due or reinsurance recovery anticipated from the reinsurance in respect of treaty reinsurance ceded, but only to the extent that they are taken into account in Form INS 5 (lines 61 and 75), i.e. net of any specific bad or doubtful debt provision. Further, the anticipated recoveries need only be included to the extent they arise from the reinsurer's share of the gross provision for notified outstanding claims, and IBNR claims arising from specific occurrences (e.g. hurricane, earthquake) to which provisions have been allocated.

304. If two or more reinsurers are connected to each other, the "premium ceded" and "debt plus anticipated recoveries" limits should be compared to their total business. If either limit is exceeded, all the connected reinsurers should be considered major treaty reinsurers and the items referred to in Regulation 19(1) listed separately for each.

Major facultative reinsurers

305. Regulation 20 requires every insurer which carries on general business to prepare a statement of its major facultative reinsurers. The items to be included in that statement are listed in Regulation 20(1). The statement is intended to inform the reader of the returns to the insurer’s exposure to particular facultative reinsurers where they are material.

306. The definition of major facultative reinsurer and the items to be included in the statement are similar to that for the major treaty reinsurers. The differences are explained below.

307. The “premium ceded” and "debt plus anticipated recoveries" limits are applied separately for each facultative reinsurance contract. The items to be stated for the major facultative reinsurer need only be in respect of the major facultative reinsurance contract (and, if there is more than one major facultative reinsurance contract for that reinsurer, should be stated separately for each). Other (smaller) facultative reinsurances of the same reinsurer may be ignored.

308. The "premium ceded" limit is ½% of total gross premiums written. The "debt plus anticipated recoveries" limit is 1% of the general business amount. A major facultative reinsurance is a facultative reinsurance which exceeds either limit in the current financial year. [Note: unlike for treaty reinsurance, there is no reference back to the five preceding financial years in applying the "premium ceded" limit. Nor are connected reinsurers aggregated in applying either limit.]

Major cedants

309 Regulation 21 requires every insurer which carries on general business to prepare a statement of its major cedants. The items to be included in that statement are listed in Regulation 21(1). The statement is intended to inform

the reader of the returns of the major sources of the insurer's inward treaty reinsurance business.

310. A major cedant is any insurer from which the gross premiums written in respect of the total business accepted under treaty reinsurances exceeds the greater of -

- 5% of total gross premiums written under all treaty reinsurances accepted; or
- 2% of gross premium written from all sources,

for the current or any of the three immediately preceding financial years.

311. If two or more cedants are connected, the above limits should be compared to their total business. If either limit is exceeded, all the connected cedants should be considered major cedants and the items referred to in paragraph 309 above separately listed for each.

Connected companies

312. Regulation 22 defines when companies should be regarded as connected for the purposes of Regulations 19 to 21. The need to define "connected" arises in two contexts

- firstly, as explained above, in identifying major treaty reinsurers and major cedants, reinsurers connected to each other and cedants connected to each other are respectively grouped.
- secondly, one of the items to be disclosed in respect of each major treaty reinsurer, major facultative reinsurer and major cedant is whether (and, if so, how) it is connected to the insurer;

313. The test of "connection" differs somewhat for these two uses. In both uses, a person (i.e. individual or body corporate) and a body corporate are considered connected if the person is -

- a subsidiary undertaking of the body corporate;
- a parent undertaking of the body corporate; or
- a subsidiary undertaking of a parent undertaking of the body corporate.

314. In the second use, a person and body corporate would also be considered connected if one of them is controlled by the other; or if they are both controlled by the same person. For these purposes, a special definition of control applies - see sub-regulations (2) and (3) of Regulation 22 which define control for these purposes.

315. Both the above definitions of "connected" are subject to the exception that a person and body corporate are not to be considered connected if the reporting insurer -

- does not know, and
- could not upon reasonable enquiry be expected to find out,

that the connection exists.

316. Other than in exceptional circumstances, the reporting insurer should know of any connections between its reinsurers (or cedants) and itself or companies with which it is connected. However, the insurer making the return may not in all cases be aware of connections between its reinsurers (or cedants) where they are not in turn connected to the insurer. In order to comply with the requirement to make "reasonable enquiry", it will suffice for the insurer

making the return to refer to the latest available published accounts etc. (provided that, in all cases, the source to which reference is made has been published within twelve months of the end of the financial year to which the return relates). Alternatively, the insurer may request any or all of its reinsurers (or cedants) to provide details of their connected companies. If no information is available from acceptable published material, or obtained in response to a specific approach to a reinsurer (or cedant), the Commissioner takes the view that, in the usual case, the obligation to make a "reasonable enquiry" will have been satisfied, and, should the information be found to be inaccurate or incomplete, no offence will have been committed under the Ordinance by the insurer making the return. (However, possible breaches of the Regulations will need to be considered case by case. The foregoing is, therefore, only a general guide to the Commissioner's likely attitude).

317. The above rules do not apply in respect of reinsurers who are members of Lloyd's. For the purposes of preparing the Regulation 19, 20 and 21 statements, all members of Lloyd's are taken as a whole.

Nil returns

317A Where there are no disclosable major treaty reinsurers, major facultative reinsurances or major cedants, the statements should state that this is the case.

The Regulation 26/Schedule 5 Statement: Business Ceded

Overview

318. The Schedule 5 statement should be prepared by all insurers which carry on general business. It is not subject to audit, however. The statement is intended to give an overview of the insurer's outward non-facultative reinsurance protections. Its minimum contents are prescribed in paragraph 1 to 5 of Schedule 5 which provide as follows.

Paragraphs 1 & 2

319. Paragraph 1 requires a description to be given for each outward non-facultative reinsurance contract entered into, or modified, during the financial year. The description includes -

- type of business covered by reference to risk groups or business categories;
- type of cover;
- policy limits, including number of reinstatements and aggregate limits; and
- period of cover.

You should refer to the text of paragraph 1 for a fuller description of the disclosure required.

320 A contract is "modified" (see paragraph 2(1) of Schedule 5) when the terms of the original contract are altered by mutual agreement of the parties. If one party exercises an option (e.g. to extend cover) which is contained in the original policy, this does not constitute a "modification". The existence of the option should be disclosed in the "type of cover" description given at the time when the policy was originally disclosed.

321. Information on contracts modified during the financial year need only be given if the modification renders the information originally disclosed either

inaccurate or materially incomplete. Modifications of contracts originally entered into prior to the first financial year covered by the new returns need not be reported.

322. The lay-out and presentation of the information required by this paragraph is at the discretion of the insurer provided that is "fairly presented" (see Regulation 5), legible and complete. In particular, the information may be presented, wholly or in part, in the form of a table or chart. However, information on reinsurances which cover the same type of business for similar periods of cover is laid out together.

Paragraph 3(a)

323. This sub-paragraph requires extra disclosure for outward reinsurance contracts which are subject to no, or a finite number of, reinstatements. Where it is anticipated that claims arising from incidents which occurred during or prior to the financial year will fully exhaust the reinsurance (including all reinstatements) this should be disclosed.

324. The disclosure is required for any reinsurance reported under paragraph 323 above whether in the present or previous returns, but not reinsurances only reported on Form INS 30 of the 1996 Regulations. The disclosure need only be given once, i.e. if a particular reinsurance is reported under paragraph 3(a), it need not be so reported under the paragraph in subsequent returns.

Paragraph 3(b) & (c)

325. These sub-paragraphs require extra disclosure where reinsurers representing a 10% or more participation in any reinsurance have “ceased to pay claims to their reinsureds in full”. This refers to where a reinsurer ceases to pay claims in full, as they fall due, to all or substantially all of its reinsureds. It does not require that the reinsurer should have actually refused to pay (in full) the particular insurer preparing the return. Nor does it include situations where the reinsurer is refusing to pay that particular insurer (e.g. due to a dispute) but is continuing to pay the general body of its reinsureds.

326. The cessation of claims payment in full referred to would typically arise where the reinsurer is in liquidation, provisional liquidation, or is paying less than 100% of claims under the provisions of a scheme of arrangement (or is subject to similar insolvency processes under the laws of other countries). However, it would also include situations where the reinsurer was operating a claims-moratorium outside the protection of a formal insolvency legal process.

327. The disclosure under these sub-paragraphs is required for any reinsurance reported under paragraph 325 above, whether in the present or previous returns, but not reinsurances only reported on Form INS 30 of the 1996 Regulations.

328. The disclosure should identify the reinsurance contract and state the participation in that reinsurance represented by reinsurers which have ceased to pay claims in full. [But it is not necessary to name those reinsurers.] Once this disclosure has been made for a particular reinsurance contract, it need not be repeated in subsequent returns unless, due to further reinsurers ceasing to pay claims in full, the percentage has increased by more than 10%.

329. The percentage to be disclosed is the full percentage participation for a reinsurer even if that reinsurer is still making partial payments on claims. For example, if ABC Reinsurance Co. has a 10% line on a reinsurance policy and ABC is now paying claims at 60 pence in the pound, the full 10% should be disclosed. The fact that 60 pence on the pound on that 10% participation, is still being paid may also be disclosed, but there is no requirement to do so.

Paragraph 4

330. This paragraph requires disclosure of the insurer's maximum probable loss (net of reinsurance) (MPL) from -

- any one contract; and
- all contracts taken together.

331. The disclosure is required separately for each risk group or business category, or part thereof, in respect of which separate non-facultative reinsurance cover has been obtained. The disclosure is required for a risk group or business category, even if no reinsurance has been obtained for that risk group or business category.

332. A separate MPL for every non-facultative reinsurance policy is not required. Only one MPL on each of the bases “any one contract effected by the insurer” and “all contracts taken together”, should be disclosed for each group, business category, or part thereof, as described in the above paragraph. The MPL should be net of all reinsurance protecting the risk group, business category, or part thereof.

333. The MPL should not be confused with the deductible or retention on the insurer’s lowest level of reinsurance protection. It may only equal that amount where (i) the maximum probable gross loss is not expected to exceed the reinsurance protection; (ii) the reinsurance protection is fully placed, i.e. no co-reinsurance; and (iii) recovery from the reinsurance protection does not result in liability for additional premiums.

334. Sub-paragraph (2) defines maximum probable net loss. It, amongst other things, refers to "any one incident or series of incidents arising from the same originating cause". This wording is intended to require the aggregation of losses from a single incident, or series of incidents, where the MPL’s would have to be aggregated for the purpose of making recoveries on the insurer's (higher layers) reinsurance. It is self-evident that this “all contracts taken together” MPL cannot be less than the “any one contract” MPL.

Paragraph 5

335. This paragraph requires that the split of reinsurance premiums (as shown on Forms INS 21 and INS 24) for each accounting class between facultative and non¬-facultative reinsurance be disclosed.

Certificates By Directors And Report Of Auditors

Certificate by the directors etc.

336. Part I of Schedule 6 to the Regulations specifies the statements to be included in the directors' certificate. These vary according to the type of company and the types of business which it writes.

337. Where, in the opinion of those signing the certificate, the circumstances are such that any of the statements required by paragraphs 1 to 6 of the Schedule cannot truthfully be made, the relevant statements shall be omitted, (see paragraph 7(1) of the Schedule). Where any statements have been omitted, this fact shall be stated in a note, (see paragraph 7(2) of the Schedule) and reasons given.

338. Paragraph 5 of Part I of Schedule 6 covers directors' certificates in respect of two types of published guidance - "systems of control" and "preparation of returns" guidance. The Commissioner will circulate from time to time a list of the published guidance which he considers relevant for this purpose.

339. In order to certify compliance with “systems of control” guidance, it is necessary for the directors to be satisfied that the control system was in place at the end of the financial year in question, and that it was reasonable to believe that the systems continued to be in place after that date and will continue to be in place for the foreseeable future. In this instance, the beliefs which the directors hold at the time of signature of the returns are the relevant ones. For example, if the system was believed to be in place at the end of the financial year in question, had clearly - but unexpectedly - failed shortly afterwards and was once again believed to be in place at the time of signature of the returns, the certificate could not properly be given.

340. As to the standard of compliance required, the Commissioner recognises that absolute assurance is most unlikely to be achieved. By way of illustration, an isolated human error would not of itself be considered a failure of the system provided that the system is capable of recognising and rectifying the error swiftly. Frequent or repeated errors would however cast doubts on the integrity of the system.

341. A list of the guidance complied with is sufficient. Where only part of a published guidance note is complied with, it is acceptable to claim compliance with that part. Where directors do not know, or cannot satisfy themselves, whether guidance has been complied with, such guidance should be omitted from the list. It is not necessary to state which guidance has not been complied with, except in rare cases when no published guidance has been complied with (in which case the negative disclosure referred to in paragraph 337 above comes into play).

342. An example certificate is attached as Annex 3.

The auditors' report

343. Regulation 29 specifies the scope of the audit. The contents of the auditors' report are set out in Part III of Schedule 6. Section 47 of the Ordinance specifies the qualifications of an auditor.

344. The Auditing Practice Board in the UK issues separate guidance notes specifically for auditors of insurance companies and it is recommended that auditors should refer to them.

345. The parts of the return which are subject to audit -

- Forms INS 1 to INS 5, INS 7 to INS 9 and INS 20 to INS 36; and
- the statements furnished under Regulations 19,20, 21 and 23.

346. The unaudited parts of the return are -

- the statements furnished under regulations 24 and 26; and
- Forms INS 38 and INS 39.

347. The auditors report must state whether the Director’s certificate (except to the extent it refers to the unaudited parts of the returns) has been properly prepared in accordance with the Regulations, and whether or not it was unreasonable for the persons giving that certificate to have made the statements contained in it. Paragraph 11 provides that, to the extent that the information and explanations the auditors have received do not allow them to express this opinion, they should add to their report "such qualification, amplification or explanation as may be appropriate".

348. The Commissioner considers that it is appropriate for compliance with most, but not necessarily all, relevant published guidance to be subject to the audit opinion described above. When, periodically, a list of relevant published

guidance is circulated (as mentioned in paragraph 338 above), the Commissioner will make clear whether or not he would normally expect an audit opinion in respect of compliance with that guidance. Where audit of compliance with a guidance note is inappropriate (or has not been carried out for some reason), the auditor would be expected to invoke paragraph 11 of Schedule 6 to record the fact.

349. Paragraph 12 of Schedule 6 provides that where the auditors refer in their report, or in any note attached thereto, to any uncertainty, the report shall also state whether, in the auditor's opinion, that uncertainty is material to determining whether the insurer has available assets over the appropriate solvency margin. This paragraph should not be read as requiring the auditors to refer to an uncertainty. It merely provides that, if they do so, an additional opinion is required. The Commissioner expects an uncertainty to be treated as material for these purposes if, upon the crystallisation of so much of the uncertainty as is not remote, the required level of available assets would not be met.

350. An example report is attached as Annex 4. It is also recommended that auditors should become familiar with APB Bulletin 1998/3 on “Auditors’ Reports on Regulatory Returns made under the Insurance Companies Act 1982”.

Statistical Returns

Background

351. Forms 1 and 2 of Schedule 4 to the Insurance Companies (Forms) Regulations 1996 (“the Forms Regulations”) do not form part of the Annual Returns but constitute a separate return which must be deposited with the Commissioner, (the "statistical return").

352. The statistical return reports insurance business transacted by a Gibraltar insurer in EEA States, either through a branch in that country or on a services basis into that country from an establishment in Gibraltar or an EEA State.

The statutory requirement to deposit Forms 1 and 2

353. The requirement to prepare and deposit Forms 1 and 2 is set out in Part XIIA of the Ordinance (section 119A). The format of these Forms is laid out in Regulation 5 of, and Schedule 4 to, the Forms Regulations.

354. A Gibraltar insurer which in any calendar year -

- carries on general business in an EEA State through a branch in that State should prepare Form 1;
- provides general insurance in an EEA State through an establishment in Gibraltar or in an EEA State should prepare Form 2;

355. The Forms should be prepared separately in respect of each EEA State in which the company carries on business, or provides insurance.

356. The Forms relate to calendar years not necessarily financial years and each Form (where required) should be deposited with the Commissioner within nine months of the end of each calendar year. They should be signed by a director, chief executive or secretary of the insurer.

357. Where the insurer has made a notification of its intention to establish a branch in an EEA State, or to provide insurance in an EEA State, but does not in any calendar year carry on insurance business or provide insurance in that EEA

State, it should send notification of that fact to the Commissioner within nine months of the end of each calendar year signed by a director, chief executive or secretary of the insurer.

358. The forms are not subject to audit.

359. No section 113 concession may be granted modifying, or exempting insurers from, the requirement to deposit Forms 1 and 2.

Inaccurate or incomplete returns

360. Section 119A(8) of the Ordinance requires the Commissioner to consider the forms or notification deposited and, if any such document appears to him to be inaccurate or incomplete, to communicate with the insurer with a view to the correction of any such inaccuracies and the supply of deficiencies.

Conventions for completing the Forms

361. The conventions described in paragraphs 30 to 54 for the Annual Return Forms should also be applied to the preparation of these Forms, (other than in respect of signature of the returns for which see paragraph 356 above).

Accounting rules

362. The Forms variously call for amounts in respect of premiums, claims, commissions etc. in respect of the branch or services business in the EEA State to which they relate. These amounts should be determined using the same accounting rules as are applied in the preparation of Annual Returns.

Annex 1: Examples Of The Completion Of The Reconciliations At The Foot Of Forms INS 2 And INS 5.

Example one: the reconciliation on Form INS 5

In this example, an insurer shows the following assets in its statutory accounts.

Assets	1998	1997
Shares in Gibraltar insurance subsidiary	1000	1000
Cash at bank	2000	1500
Gold	100	-
	3100	2500

In preparing Form INS 5 of its Annual Return, the insurer must revalue its assets using the valuation rules in the Asset Valuations Regulations. Let us say the revised values are as follows.

Balance sheet: Assets	1998	1997
Investment in insurance dependant		
Basic "look through" value	900	800
Disallowed under admissibility rules	(100)	(100)
Solvency margin deduction	(200)	(200)
	600	500
Cash at bank		
Valuation	2000	1500
Disallowed under admissibility rules	(200)	(100)
	1800	1400
Gold	Nil	Nil

Form INS 5 should be prepared with the following entries

Form INS 5		1998	1997
Gibraltar insurance dependants – shares	21	600	500
Cash at bank – deposits	82	1800	1400
Grand total of admissible assets	89	2400	1900

Form INS 5 (continued)
Reconciliation

Total - as per line 89 above	91	2400	1900
Total assets in excess of admissibility limits(1)	92	300	200
Solvency margin deduction(2)	93	200	200
Other differences(4)	94	100	200
Assets of a type not valued above(3)	95	100	-
Total assets determined in accordance with the Accounts Directive Regulations	99	3100	2500

Explanations of the above

(1) 300 = 100 + 200; being the amounts shown above as disallowable under the admissibility limits respectively for the investment in dependant (100) and the cash at bank (200).

(2) This the solvency margin deduction for the insurance dependant.

(3) This is the value of the gold as per the statutory accounts. There is no valuation rule, and hence nil value, for gold under the Asset Valuation Regulations.

(4) This the total of all other valuation differences not dealt with at lines 92, 93 or 95. In this example, there is only one such difference: that is the difference between the statutory accounts value of the insurance dependant (£1,000) and the basic "look through" value (£900).

Example two: the reconciliation on Form INS 2

In this example, an insurer has the same assets as in Example one above and shows the following amounts for liabilities in its statutory accounts.

Balance sheet: liabilities	1998	1997
Share capital	1000	1000
Profit and loss account	1000	700
	2000	1700
Technical provisions	1000	700
Creditors	100	100
	3100	2500

The insurer's Form INS 5 is as in Example one above and its Form INS 2 as follows.

Form INS 2(1)		1998	1997
Other than LTB - admissible assets(2)	21	2400	1900
Other than LTB - liabilities(3)	22	1,000	800
Available assets	29	1300	1100
Represented by			
Paid up share capital	51	1000	1000
Balance of net assets(4)	56	300	100
Total - equal to line 29 above	59	1300	1100
Movement of balance of net assets			
Balance brought forward	61	100	50(6)
Retained profit	62	300	50(6)
Movement in asset valuation difference(5)	63	(100)	
	64	300	100

Explanations of the above

(1) Blank lines have been omitted.

(2) This is taken from line 89 in Form INS 5 - see example one above.

(3) This is technical provisions (1000) plus creditors (100).

(4) This is the balancing figure.

(5) This is the difference for lines 92 to 95 on Form INS 5 between the comparative amounts. (200 + 200 + 200) and the present year amounts (300 + 200 + 100 + 100) - see example one above.

(6) The comparative amounts at tines 61 and 62 are illustrative only. They cannot be derived from the other data given in this example.

Annex 2: Statement Of Shareholder Controllers

Returns for the year ended (Date)

Statement in accordance with regulation 24 of the Insurance Companies (Accounts and Statements) Regulations 1998

Additional information on shareholder controllers

We confirm the following is a list of:

(a) Persons who, to the knowledge of the company, have been, at any time during the year ended (Date), a shareholder controller of the company; and

(b) In the case of each person who was a shareholder controller of the company at (Date):

(i) the percentage of shares he held at that time in the company, or in another company of which the company was a subsidiary undertaking; and

(ii) the percentage of the voting power which he was entitled at that time to exercise, or control the exercise of, at any general meeting of the company, or another company of which it was a subsidiary undertaking;

in each case, either alone or with any associate or associates.

	In the case of each person who was a shareholder controller of the company at (Date):	
Persons who, to the knowledge of the company, have been, at any time during the year ended (Date), a shareholder controller of the company. (Please show date ceased to be a shareholder controller, if applicable).	The percentage of shares he held at that time in the company, or in another company of which the company was a subsidiary undertaking, either alone or (shown separately) with any associate or associates.	The percentage of the voting power which he was entitled at that time to exercise, or control the exercise of, at any general meeting of the company, or another company of which it was a subsidiary undertaking, either alone or (shown separately) with any associate or associates.

Annex 3: Example Certificate By Directors

We certify:

1. (a) that in relation to the part of the return comprising forms INS 1 to INS 9, INS 20 to INS 39 (including the supplementary notes thereto) and the statements required by regulations 19 to 21, 23, 24 and 26 of the Insurance Companies (Accounts and Statements) Regulations 1998 ("the Regulations"):-

   (i) the return has been prepared in accordance with the Regulations;

   (ii) proper accounting records have been maintained and adequate information has been obtained by the insurer; and

   (iii) an appropriate system of control has been established and maintained by the insurer over its transactions and records;

   (b) that reasonable enquiries have been made by the insurer for the purpose of determining whether any person and any body corporate are connected for the purposes of regulations 19, 20 and 21 of the Regulations; and

   (c) that in respect of the company's business which is not excluded by regulation 38 of the Insurance Companies (Valuation of Assets and Liabilities) Regulations 1996, the assets held throughout the financial year enabled the company to comply with regulations 33 to 37 (matching and localisation) of those Regulations.

2. that the margin of solvency required by section 59 of the Insurance Companies Ordinance 1987 has been maintained throughout the financial year.

3. (a) that the systems of control established and maintained by the insurer in respect of its business complied at the end of the financial year with the following published guidance:

   (i) Insurance Guidance Note No. 5 – Systems of control over investments (and counterparty exposure) including the use of derivatives; and

   (ii) Insurance Guidance Note No. 6 – Systems of control over general business claims provisions;

   and it is reasonable to believe that systems continued to so comply subsequently and will continue to do so in future.

   (b) that the return has been prepared in accordance with the following published guidance:

   (i) Insurance Guidance Note No.2A – The preparation of Annual Returns for general business insurers and reinsurers; and

   (ii) Insurance Guidance Note No. 4 – Valuation of Assets.

Address and date Signatures

Annex 4: Example Report Of The Auditors

Report of the Auditors to the Directors pursuant to regulation 29 of the Insurance Companies (Accounts and Statements) Regulations 1998.

XYZ Insurance Company Limited

Financial year ended ………………..

We have examined the following documents prepared by the company pursuant to section 50 of the Insurance Companies Ordinance 1987 ("the Ordinance") and the Insurance Companies (Accounts and Statements) Regulations 1998 ("the Regulations"):

- Forms INS 1 to INS 5, INS 7 to INS 9 and INS 20 to INS 36 (including the supplementary notes thereto) ("the Forms");
- the statements required by regulations 19, 20, 21 and 23 on pages [ ] to [ ] ("the statements"); and
- the certificate signed in accordance with regulation 28(a) on pages [ ] and [ ] ("the certificate").

In the case of the certificate, our examination did not extend to paragraph [ ] in relation to the statements required by regulations 24 and 26, concerning shareholder controllers and general business ceded.

Respective responsibilities of the company and its auditors.

The company is responsible for the preparation of an annual return (including the Forms, statements and certificate) under the provisions of the Ordinance and the Regulations. [The requirements of the Regulations have been modified by [an] Order[s] issued under section 113 of the Ordinance by the Commissioner of Insurance on ………. [and……..]]. Under regulation 5, the Forms and statements are required to be prepared in the manner specified by the Regulations and to state fairly the information provided on the basis required by the Regulations. It is our responsibility to form an independent opinion as to whether the Forms and statements meet these requirements and, in the case of the certificate, whether it was or was not unreasonable for the persons giving the certificate to have made the statements therein, and to report our opinion to you.

Bases of opinions

We conducted our audit in accordance with Auditing Standards issued by the Auditing Practices Board in the United Kingdom, as adopted by the Gibraltar Society of Chartered and Certified Accountancy Bodies. Our work included examination, on a test basis, of evidence relevant to the amounts and disclosures in the Forms and statements. The evidence includes that previously obtained by us relating to the audit of the financial statements of the company for the financial year on which we reported on [ ]. It also includes an assessment of the significant estimates and judgements made by the company in the preparation of the Forms and statements.

We planned and performed our work so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the Forms and statements are free from material misstatement, whether caused by fraud or other irregularity or error, and comply with regulation 6.

In the case of the certificate, the work performed involved a review of the procedures undertaken by the signatories to enable them to make the statements therein, and does not extend to an evaluation of the effectiveness of the company's internal control systems.

Opinions

In our opinion:-

(a) the Forms and statements fairly state the information provided on the basis required by the Regulations [as modified] and have been properly prepared in accordance with the provisions of those Regulations; and

(b) according to the information and explanations received by us:

  (i) the certificate has been properly prepared in accordance with the provisions of the Regulations; and

  (ii) it was not unreasonable for the persons giving the certificate to have made the statements therein.

Auditors
Date
Address

Annex 5: Intra-Group Transactions

Supplementary note to Form INS 20

1. Regulation 18A requires an insurer that has agreed to, or carried out, a material connected-party transaction to provide a supplementary note describing it to Form INS 20 (for a transaction relating to general insurance business). The reference code should be 2007.

2. The Commissioner expects insurers to inform him about transactions with other group members who are significant for regulatory purposes even if they do not strictly fall within the reporting requirement under regulation 18A.

Connected-party transactions

3. The scope of the phrase "connected party" is wider than that of the insurance group to which the parent undertaking solvency calculation applies. A connected party includes:

   - the related undertakings of the insurer;
   - the immediate, intermediate and ultimate parent and participating undertakings of or in the insurer; and
   - the related undertaking of participating undertakings in the insurer.

   A connected party may also be a natural person who holds a participation in any of the undertakings noted above.

4. A connected-party transaction is defined as "the transfer of assets or liabilities or the performance of services by, or to a connected person irrespective of whether or not a price is charged". As such it includes (but is not limited to):

   - loans and similar advances to or from a connected person, including inter-company balances and other such operating arrangements,
   - investments in the securities or shares of the connected person purchased by the insurer,
   - investments in the securities or shares of the insurer purchased by the connected person,
   - guarantees issued to the connected person by the insurer (and other similar off-balance sheet transactions), or vice versa,
   - reinsurance cessions to and acceptances from the connected person,
   - agreements to share the costs of the connected person, or to share the costs of the connected person with a third party,
   - payment of commission (including profit-commission and commission on reinsurance premiums) and other acquisition costs to the connected person,
   - transfer of property to or from the connected person, including investments, land, equipment and debts, and
   - transfer of liabilities to or from the connected person, including transfers of business under Part IX of the Ordinance.

5. Dividends payable are not intended to be covered by the disclosure requirement unless they are part of a wider transaction (because they are already disclosed in the return).

6. A series of transactions that may include intermediate stages with third parties, but are in substance a transaction involving a connected-party transaction, are likely to be a connected-party transaction.

Materiality

7. The materiality of transactions is determined by reference to the general business amount (GBA) for transactions relating to general insurance business. The price or consideration paid or received is not necessarily determinative of value for the purposes of assessing whether the transaction is a material connected-party transaction, since the real value of an inter-group transaction may be greater (see definition of material connected-party transaction).

8. Similar transactions, taken together, are material (for the purposes of regulation 18A if when combines they exceed 5% (in terms of price or value) of the GBA. For this purpose the measurement should be done at the time or times the transactions take place. Rather than make a precise measurement, an estimate may be used that is likely to be an underestimate of the business amount to avoid the risk of not reporting transactions that should be reported. In general similar transactions will include those of the same type with the same or another connected party. Transactions would normally be considered to be of the same type if they were combined in the same heading in the profit and loss account, balance sheet or note to the financial statements of the insurer, or form part of a connected series of transactions. However, other groups of transactions may be considered as similar even if they do not meet the above criteria.

Aggregation of disclosure

9. Regulation 18A(3) allows (but does not require) transactions with the same connected person to be disclosed on an aggregated basis unless separate disclosure is needed for a proper understanding of the effects of the transactions upon the financial position or profitability of the insurer.

10. Similar transactions (as described in 8 above) with the same connected person may be aggregated, for instance all reinsurance premiums paid to a connected person may be aggregated. However, different types of transaction may not be appropriate for aggregation. For instance it would not in general be appropriate to aggregate loans to a connected person with equipment sold to that connected person.

11. Transactions with different connected persons of the same type should not be aggregated. For instance, commissions paid to two or more connected persons should not be aggregated, even if they need to be taken together to establish materiality, since separate disclosure will normally be necessary for a proper understanding (regulation 18A(3)).

12. Regulation 18A does not allow an exemption from disclosure similar to that offered under Financial Reporting Standard No 8 ‘Related Party Disclosures’ where the results of the insurer and connected person are reported in consolidated financial statements. Insurance groups may have an order under section 113 of the Ordinance allowing preparation of a consolidated Form INS 20. Insurers will nevertheless still need to disclose material connected-party transactions separately for each insurer member of the group. As this is a requirement of Article 8 of the Insurance Groups Directive, it is unlikely that the Commissioner would be able to waive the requirement of individual disclosure.

Disclosure

13. The information to be disclosed is set out in regulation 18A(2). The disclosure should be adequate to allow the reader of the returns to understand the nature of the relationship of the insurer with the connected person, and the nature of the transaction and its effect upon the financial position and the performance of the insurer.

14. Disclosure should include the transactions during the period and any amounts unpaid or outstanding in respect of those transactions at the end of the period.

15. Consistent descriptions of transactions should be used in subsequent returns.

16. The name of each connected person should be stated in full.

17. Where disclosures under this regulation would merely duplicate disclosures reported under other supplementary notes (e.g. large counterparty exposures) a cross-reference to the other supplementary notes should fulfil the requirement.