Financial Services
Commission

Insurance Guidance Note No. 2B

Insurance Companies Ordinance 1987

Guidance Notes On The Preparation Of Annual Returns For Long Term Business Insurers And Reinsurers

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Introduction

1. Following the recent introduction of the Insurance Companies (Accounts and Statements) Regulations 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 long term business insurers and reinsurers. A separate guidance note is being prepared for general 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 the 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 three 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 78 provides for an "abstract" of the annual investigation by the actuary appointed under section 76(1).
   - 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, 50 or 78 be printed and two copies deposited with the Supervisor within six months of the end of the period to which the documents relate. Because of the need to get actuarial advice on the returns submitted by life companies, the Commissioner requests that three copies should be provided. It

is also helpful if 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 auditor's report be signed. Further details on the signature of returns is given in paragraphs 31 and 32.

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 shareholders or policyholders". In addition, under section 52(1)(a), 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 life companies would deposit three 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), (i.e. not the abstract of the report of the actuary), 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 company'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 worldwide 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 States (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	Rest of the World
Pure reinsurer	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	Global return and Gibraltar branch return.

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 23 and 24) 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 1996 ("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 (other than linked assets) and liabilities included in any document in the return should be valued using the valuation rules in the Asset Valuation Regulations.

27. Linked assets (defined by Regulation 3(1) as long term business assets identified in the records of the insurer as being assets by reference to which property linked benefits are to be determined to the extent that they are held to match liabilities in respect of property linked benefits) should be valued in accordance with "generally accepted accounting concepts. bases and policies or other generally accepted methods appropriate for insurers".

Requirement to fairly state information

28. 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 of the preparation of such information.]

Conventions For The Completion Of All Forms

Scope

29. The accounting rules and conventions described in paragraphs 31 to 53 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 4 and 6.

30. The accounting rules and many of the conventions for preparing the return which are presented in paragraphs 31 to 53 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

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

32. 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

33. 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

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

35. 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.

36. 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

37. 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 column headed "Source", and

- in any shaded box.

Currency

38. All forms 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.

39. 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.

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 40 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. 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

46. 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.

47. 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.

48. In the following chapters for each Form (under Schedules 1 and 3), 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".

49. 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 3) this is done by including the code as the first element in the title. For example, the title for note 0801 might be -

    0801 Basis of conversion of foreign currency

    If there is more than one Form of the same number, only one title of the above type need be used to cover all such Forms.

50. 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 seventeen coded notes for Form INS 5 which are respectively coded 0501 to 0517. If an extra note is to be added, it should be coded 0518. The code 0518 should be used even if for the particular insurer there is no note 0517 (because the circumstances in which that note is required do not arise for that insurer).

51. 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.

52. 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.

53. 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

54. Form INS 1 is to be prepared by every insurer other than an EEA deposit insurer (see Regulation 6(2)) and shows, for long term business-

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

55. The entries on Form INS 1, other than for implicit items, derive from other forms within the return.

- The long term business required margin of solvency from Form INS 60,
- The available assets derive from Form INS 2.
- The long term business liabilities derive from Form INS 6.
- The contingent liabilities for long term business and other than long term business derive from supplementary notes to Forms INS 6 and INS 7.

56. Implicit items are certain special types of "assets", e.g. future profits, zillmerising and hidden reserves, specified in the Solvency Margin Regulations. They may be counted against an insurer's required minimum margin of solvency but only if, and to the extent, specifically allowed by an order issued to it by the Commissioner under section 113 of the Ordinance. An insurer wishing to count such items against its solvency requirement should apply to the Commissioner for the appropriate order.

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

Supplementary notes

58. Two supplementary notes may be required to this Form: -

(i) 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 would be specified in the order itself. [Code 0101].

(ii) Where a section 113 Order has been issued to an insurer permitting it to take into account implicit items on long term business, that order may specify that a note is to be included in the Annual Return explaining such items. That note should be included as a note to Form INS 1. [Code 0102].

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, INS 6 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. Lines 11 and 12 derive from Forms INS 5 and INS 6. An insurer carrying on long term business is required by section 75 of the Ordinance to maintain a separate fund for that business. Line 11 shows the value of the admissible assets in that fund. Lines 11 and 12 should equal each other except where the value of the assets in the section 75 fund are not sufficient to cover the long term business liabilities.

61. All other lines on Form INS 2 are to be completed by every insurer, other than a mutual without share capital which only carries on long term business. Line 23 shows the net admissible assets, i.e. admissible assets less liabilities. 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 insurer 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

62. 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].

63. 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 (other than long term) 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.

64. 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].

65. The retained profit or loss (line 62) is sourced from Form INS 8 and, for long term business the retained profit departs from GAAP in that it is based on the "statutory" method of reporting, not the "modified statutory" method.

66. Annex 1 gives an example of this reconciliation.

Reconciliation of net assets to the accounts

67. 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 Returns and reconciles them to net assets as they appear in the statutory accounts.

68. 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 (for the other than long term business assets) 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".

69. 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 changes etc.].

70. As a result, this reconciliation only needs to deal with differences which arise for other reasons. Such differences would include the following:

- The value of net assets within the long term business fund. This is included in the net assets taken from the statutory accounts (item A "capital and reserves") but is not included in net assets as sourced from Form INS 5 (other than long term business assets) and Form INS 7.
- 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”).

71. 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.

72. 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.

73. Annex 1 gives an example of this reconciliation.

Supplementary notes

74. 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].

Analysis of admissible assets (Form INS 5)

74A. 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	5% of general business amount or long term business amount ("GBA" or "LTBA") 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).

Line No	Description	Valuation	Permitted asset exposure
		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.	
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.
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

Line No	Description	Valuation	Permitted asset exposure
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 and LTBA. 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 and LTBA 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 limits of 10% of GBA and LTBA for all such unlisted investments.
42	Other shares and variable yield securities	As for line 41.	As for line 41.
43	Holdings in collective	Regulation 10 sets out the	No restriction where the unit trust falls within the

Line No	Description	Valuation	Permitted asset exposure
	investment schemes (e.g. unit trusts)	characteristics of those collective investment schemes which can be ascribed a value:	scope of the EC UCITs directive (regulation 15(5)(g));
		• 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	5% of GBA and LTBA for other authorised/recognised schemes; 1% of GBA and LTBA for unauthorised schemes falling within regulation 10(1)(c).
		where the issuer cannot be required to purchase the units or shares, valued as for line 41 above (regulation 10(2)(b)).	
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	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 and LTBA. 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
		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 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	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	No restriction. Exempt under regulation 15(5)(a).

Line No	Description	Valuation	Permitted asset exposure
	interest	quotation in the case of listed securities, at redemption value if not transferable, and in other cases generally immediate transfer value. (regulation 6).	
46&48	Other debt securities and other fixed income securities 46: Fixed interest 48:Variable interest Line 46 excludes Preference Shares but includes Certificate of Deposit and Commercial Paper. Line 48 includes Preference Shares.	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 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	Listed securities: 5% of GBA and LTBA. 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 and LTBA being part of the overall counterparty 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 and LTBA 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 and

Line No	Description	Valuation	Permitted asset exposure
		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.	LTBA 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	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.	For secured loans, for each individual 1% of GBA and LTBA if it is that individual's main residence, otherwise ¼%; for companies 5% of the GBA and LTBA (in conjunction with all other debts except debt securities). The overall counterparty exposure limits of 5% and 10% of

Line No	Description	Valuation	Permitted asset exposure
	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 and unsecured loans.	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).	the GBA and LTBA apply. For unsecured loans, admissibility is considered depending on status of issuer (see Note below).
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.
52	Loans secured by policies of insurance issued by the company	The amount of the debt provided the amount payable is covered by the surrender value of the policy at the relevant date (regulation 7(3)).	Long term business debts – no restriction.
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	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.

Line No	Description	Valuation	Permitted asset exposure
		transfer value. (regulation 7).	
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 and LTBA 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 and LTBA 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).
58/59	Assets held to match linked liabilities.	Property linked assets are excluded from the Asset Valuation Regulations (regulation 3(2)). They should be valued in accordance with generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurance companies (e.g. actuarial methods). "Permitted links",	Property linked – n/a Index linked – counterparty exposure limits apply, although asset diversification rules do not.

Line No	Description	Valuation	Permitted asset exposure
		i.e. assets by reference to which property linked benefits can be determined, are set out in Schedule 3. Index linked assets are treated as non-linked assets and valued under the asset valuation rules, although they are exempt from some of the admissibility rules (Regulation 15 (6)).	
60-63	Reinsurers' share of technical provisions	General business only. 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 operations - policyholders - intermediaries	The amount which can reasonably be recovered. As for other debtors, the 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	No restriction. Exempt under regulation 15(5)(c).

Line No	Description	Valuation	Permitted asset exposure
		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	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
	under reinsurance contracts ceded.		
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 from 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 and LTBA 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	

Line No	Description	Valuation	Permitted asset exposure
		as below.	
		<u>Computer equipment</u>	
		(a) in the financial year of purchase the amount is limited to 75% of the cost.	5% of GBA and LTBA.
		(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 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 and LTBA.
81	Cash and bank: Deposits not subject to time restriction on withdrawal, with approved credit institutions and approved financial	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 and LTBA. If deposits with approved financial institutions or with local authorities (assuming they are within Zone A), no restrictions.

Line No	Description	Valuation	Permitted asset exposure
	institutions and local authorities		(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 and LTBA (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).
85	Deferred acquistion costs	Indamissible for long term business. For general business, 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 accured 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 body and subject to aggregate limit

Line No	Description	Valuation	Permitted asset exposure
			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 and LTBA;
- Regulated institutions - 2½% of GBA and LTBA for any one institution (and connected companies);

- Other corporate bodies – 1% of GBA and LTBA 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

75. A separate Form INS 5 is required for long term business assets and for other than long term business assets and for each separate long term fund or group of funds (see regulation 6(5)). This guidance is restricted to Gibraltar insurers and pure reinsurers only.

76. The "long term business assets" are the assets required by section 75 of the Ordinance to be maintained in the separate fund for long term business. Where separate assets within the section 75 fund are appropriated for separate long term funds or groups of funds, (other than internal linked funds), additional Forms INS 5 are to be completed in respect of each such fund or group of funds.

Completion of the Form

77. 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 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.

78. Regulation 4 provides that-

- assets are to be valued in accordance with Part II of the Asset Valuation Regulations, and
- assets matching property linked benefits are to be valued in accordance with generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurance companies. [See paragraph 83 below.]

79. 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.

80. 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.

81. 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 Forms INS 6 or INS 7, as appropriate). 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.

82. 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.

83. 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 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.

84. Lines 58 and 59 together show the “assets held to match linked liabilities”. This expression has the same meaning as in the statutory accounts and the items to be classified for inclusion under these lines should be the same as those included under the heading of the same name in the statutory accounts. However, the valuation of the items to be included is not necessarily the same. The valuation rules in Part II of the Asset Valuation Regulations apply to all items included at these lines other than those exempted by Regulation 3(2) of those Regulations. This only exempts "linked assets" (to the extent they are held in compliance with Section 64B of the Ordinance) which match liabilities in respect of property linked benefits.

85. The Commissioner doubts whether either the heading in the statutory accounts or at lines 58 and 59 on Form INS 5 is apt to include assets backing surplus units in internal linked funds. However, where such assets are included under this heading in the statutory accounts, they should also be included at lines 58 and 59 on Form INS 5. [NB. As such surplus assets are not exempted by Regulation 3(2), they must be valued in accordance with Part II of the Asset Valuation Regulations). See also paragraph 194 below. The Commissioner is also aware that companies adopt different treatments in their statutory accounts for index-linked liabilities backed by a derivative. Some include the derivative, any margining loan back (as a deduction) and the investments arising from the margining loan in “assets covering linked liabilities”. Others only include some of these items under that heading and, perhaps, include the margining loan back as a liability. He doubts whether all of these treatments necessarily always conform to Generally Accepted Accounting Practice, e.g. showing assets net of the margining loan is not permissible where there is no legal right of set-off. However, where an insurer has adopted a treatment in its statutory accounts (and so implicitly come to the view the treatment accords with GAAP), it should adopt the same treatment in the Annual Returns.

86. 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.

87. 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.

88. Lines 91 to 99 reconcile the admissible assets to the total assets determined in accordance with the statutory accounts rules. For guidance in 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.

89. For long term business, these assets should never be shown at lines 60 to 63 and 85 and never included in the total at line 99, even where they are shown as an asset in the statutory accounts.

90. Apart from the above, the Commissioner does not believe that there is any 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 6 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.

91. 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.

92. 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

93. There are eight specified supplementary notes. Each note should be given separately for long term business and other than long term business. The notes are coded 0501, 0502, 0504 to 0507, 0514 and 0515 for other than long term business and 0508 to 0513, 0516 and 0517 for long term business.

(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; [Codes 0501 and 0508];

(ii) The aggregate value of hybrid securities - see instruction 6 to the Form; [Codes 0502 and 0509];

(iii) 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 and 0510];

(iv) 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 and 0511];

(v) the amount and nature of the exposure at the year end to large counterparties (i.e. greater than 5% of the general business or long term business amounts) - see Paragraph 10(2) of Schedule 1; [Code 0506 and 0512];

(vi) The aggregate value of certain fully secured rights - see paragraph 10(3) of Schedule 1; [Code 0507 and 0513].

(vii) 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 0516]; and

(viii) particulars of any 'Other assets' included at line 83 – see the face of the form; [Code 0515 and 0517].

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 Valuations 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 Valuations Regulations.

Note 3

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

Note 4

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 purpose of making the disclosures required by supplementary notes 0505, 0506, 1511 and 0512, "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:-

- linked assets held to match property linked liabilities; and
- assets of the type listed in Regulation 15(5) [For a list of such asset types see paragraph 131 of Guidance Note No 4 on the Valuation of Assets]

Note 5

The limit of 5% of the long term business amount should be used for counterparty exposures which arise from the long term business assets and such other than long term business assets as are allocated toward the long term business required minimum margin (see line 22 of Form INS 1). The second and third paragraphs of Note 4 also apply to this note.

Note 6

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 I 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 7

See paragraph 86.

Note 8

See paragraph 87.

Long term business liabilities and margins (Form INS 6)

Completion of the Form

94. Form INS 6 should be completed by every insurer which carries on long term business in respect of:-

    (i) its total long term business liabilities and margins; and

    (ii) the long term business liabilities and margins for each separate long term business fund or group of funds for which separate assets have been appropriated;

    - see Regulation 6(6).

    The effect of item (ii) above is that a separate Form INS 6 is required for each fund or group of funds whenever a separate Form INS 5 is required for that fund or group of funds – see paragraph 76 above.

95. Form INS 6 shows the liabilities and margins in respect of long term business. It is helpful to consider these under four separate headings -

    - the liabilities; (lines 11, 12 and 15 to 49);
    - the “margins”, (lines 13 and 51); and
    - the footnote to the Form, (lines 61 to 63).

Liabilities

96. There are three basic types of liability which fall to be disclosed:

- long term business liabilities not yet fallen due, (lines 11, 12 and 23);
- 'accounting' liabilities including long term business liabilities which had fallen due, (lines 15 to 22 and 31 to 39); and
- the provision for adverse changes, (line 41)

Different rules apply for determining the amount of each of these types of liability. Long term business liabilities (other than liabilities which had fallen due for payment before the valuation date) are determined on actuarial principles and the 'accounting' liabilities are determined using generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurance companies – see Part III of the Asset Valuation Regulations. In effect 'accounting' liabilities are to be determined for inclusion in Form INS 6, (lines 15 to 22 and 31 to 39), in the same ways as for the statutory accounts. However, if the statutory accounts are signed off earlier or later than the Annual Returns, differences may still arise despite the application of the same rules. This might be due to, say, the occurrence of an adjusting post-balance sheet event in the intervening period. It is important to identify whether a liability falls to be determined under the 'actuarial' or 'accounting' rules as they may produce very different results.

97. Long term business liabilities are liabilities arising under or in connection with contracts for long term business, including liabilities arising from deposit back arrangements. Liabilities from deposit back arrangements (line 23) should be determined on actuarial principles in accordance with Regulations 21 to 32 of Part III of the Asset Valuation Regulations. They include the amount of the deposit (as disclosed under paragraph 12(2)(f) in the Abstract of Valuation Report prepared by the Appointed Actuary – Schedule 4) together with any additional provision which the Appointed Actuary considers to be required in accordance with actuarial principles. Mathematical reserves are defined so as to include all long term liabilities (other than those fallen due) with the exception of liabilities arising from deposit back arrangements. They are shown, other than for cash bonuses, at line 11 and, for cash bonuses, at line 12. The amounts shown are taken from the appointed actuary's valuation as recorded in Form INS 58 – see instructions 2 and 3 to Form INS 6 – and include any increases resulting from the allocation of bonuses to policyholders as a result of the valuation. Subject to one exception, the 'accounting liabilities' (lines 15 to 22 and 31 to 39) should not include any amounts in respect of technical provisions and the fund for future appropriations which appear in the statutory accounts as these are already, to the extent necessary, taken into account in setting the mathematical reserves. The exception is claims outstanding which had fallen due for payment at or prior to the financial year end – see lines 15 to 17 on Form INS 6.

98. The Commissioner interprets "liabilities arising under or in connection with contracts for long term business" to include liabilities arising under reinsurances of those contracts for long term business. This includes liabilities under financial reinsurances and, by extension, even liabilities under non-reinsurance financing arrangements, provided the liability under the financing arrangement is closely linked to the performance of contracts for long term business. Therefore, liabilities under financial reinsurances and such analogous financing arrangements – subject to the exception of liabilities which had fallen due – are to be determined under actuarial principles. This is important as the crystallisation of such liabilities is often – although not invariably – linked to the emergence of future profits. Future profits are not in themselves an asset admissible to match liabilities and may not be included on Form INS 5, (lines 11 to 89). However, provided the reinsurance or financing liability is repayable – as a matter of legal form and economic substance – only upon the emergence

of the future profit, actuarial principles may sometimes allow the future profit to be taken into account in determining the amount of the liability. 'Accounting' rules do not permit this treatment. They prohibit the offset of an asset against a liability except where they are amounts due to and from the same person and also impose other conditions – see Financial Reporting Standard 5.

99. The provision for adverse changes is an extra provision in addition to that which would be required under either actuarial or accounting principles. It arises when an investment (or transaction associated with an investment) will, or may, give rise to a liability in future and the insurer 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 to be determined in accordance with regulation 19 of the Asset Valuation Regulations.

Margins

100. The "margins" are the amounts by which the "net admissible value" of the long term business fund(s) exceed the mathematical reserves and cash bonuses for that fund(s). The "margins" are to be calculated in two stages, as follows.

(i) First, the amount of the long term business fund(s) as per Form INS 40 is be compared with the mathematical reserves including cash bonuses (lines 11 and 12) on Form INS 6. The amounts of any excess / (deficit) is to be shown at line 13.

(ii) Secondly, the "net admissible asset" value of the long term fund(s) – being the assets as per line 89 on Form INS 5 less the liabilities per line 49 on Form INS 6 - is to be compared with the value of the long term fund as per Form INS 40. The amount of any excess is to be shown at line 51. An excess may only arise in those cases where the insurer has chosen to report its long term business funds on Form INS 40 at a value other than the value of net admissible assets, e.g. using book costs for asset values. It is not permissible to report the fund at a value on Form INS 40 which is higher than the value of net admissible assets. Therefore, a deficit should never need to be shown at line 51.

The footnote to the Form

101. Lines 61 and 62 to the Form show respectively the amounts included in the total liabilities and margins which is attributable to -

- liabilities to related companies, other than those under contracts of insurance; and
- liabilities in respect of property linked benefits.

102. The scope (but not the value) of the line 62 disclosure corresponds to technical provisions in the statutory accounts (i.e. headings C and D in the balance sheet format in Chapter I of Schedule 1 to the Accounts Directive Regulations), but only in so far as they relate to property linked benefits. Line 62 shows the amounts of those liability items shown at heading C and D in the statutory accounts, but evaluates them using the Form INS 6 valuation rules and not (where different) the statutory accounts rules. The Form INS 6 valuation rules are discussed at paragraphs 96 to 99 above.

103. Line 63 requires an insurer to disclose whether any part of the amount shown at line 51 represents an amount taken into account by the actuary to support the mathematical reserves (as shown in Form INS 58) in giving his certificate. This issue arises because the assets shown on Form INS 1, which are sourced

from Form INS 5, are shown at their admissible value even where the long term business fund is maintained and brought into account in the Schedule 4 report on the basis of lower book values. In such circumstances, the mathematical reserves shown in Form INS 58 may not always constitute an appropriate assessment of the liabilities for the purposes of comparison with the assets stated at admissible value. For this reason, in certifying the long term liabilities as required under Part II of Schedule 6, the actuary may find it necessary in some circumstances to make an addition to the mathematical reserves on the Schedule 4 basis shown at line 11 of Form INS 6.

Supplementary notes

104. Three supplementary notes are specified.

(i) The methods and assumptions used to determine the amount of any provision for adverse changes (as shown at line 41 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 12 of Schedule 1. [Code 0601]

(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 and in respect of related companies, and (e) any other fundamental uncertainty - see paragraph 12(1) of Schedule 1. [Code 0602]. This note is to be given in respect of long term business assets and liabilities. A similar note (code 0702) is to be given in respect of other than long term business assets and liabilities. The guidance given below for that note (see paragraphs 115 and 116) also applies here.

(iii) 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 0603]. Such provision should be included in line 22 of Form INS 6.

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

Completion of the Form

105. Form INS 7 should be completed by all insurers carrying on long term business - see Regulation 6(7) - and shows all liabilities of the insurance company other than long term business liabilities which are shown instead on Form INS 6. 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 and exclusively long term business items) 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

106. 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."

107. 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.

108. 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. 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.

109. 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.

110. 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).

Lines 61 to 63

111. 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.

112. 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.

113. 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.

114. 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 60 above on Form INS 2 for further guidance.

115. 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

116. Four 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.

Guidance on Note 0702

117. 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.

Item (a)

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 6 or 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 either Forms INS 6 or 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 in Form INS 5) of all assets subject to the non-disclosed charges does not exceed 2.5% of the long term 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 long term 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 the section 2(32) 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.

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 sub-paragraph (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

118. Form INS 8 should be completed by all insurers carrying on long term business (except mutuals) - 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.

119. One such exception occurs at line 13 (Transfer from the long term business revenue account) which is referenced to Form INS 40. As a result, for long term business, Form INS 8 presents a profit for the financial year determined on the "statutory basis" and not the "modified statutory basis".

120. Unrealised gains and losses on investments (other than for investments in the long term fund) 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 investment at amortised cost at line 99 on Form INS 5 (see paragraph 90) should show the unrealised gain and loss relative to that amortised cost, not to current market value.

Supplementary notes

121. 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)

122. Form INS 9 should be submitted for each category of assets for which a Form INS 5 is submitted - 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.

123. 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

124. 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.

125. 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.

126. 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

127. 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.

128. 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).

129. 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.

130. 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 of 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.

131. 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.

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

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

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

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

Schedule 3: Forms INS 40 To INS 45: The Long Term Business Revenue Account

136. Schedule 3 is the long term business revenue account and additional information. It gives the information prescribed by Regulation 8(b) of the Asset Valuation Regulations which requires submission by the insurer of a separate account in Form INS 40 in respect of each long term business fund maintained by it, and a summary Form INS 40 where there is more than one fund, together with the additional information in respect of long term business required by Regulation 17 of the same Regulations.

General points on form preparation

137. There are a number of general points that are worth drawing out in relation to the preparation of these forms, as follows:

(i) All forms are to be prepared for long term insurance business.

(ii) All amounts are to be shown in sterling. Amounts on all forms are to be shown to the nearest £1,000. For conversion of foreign currency amounts to sterling, the closing middle rate at the year end is to be used. Other bases of conversion may be used, provided that a note is included in the Return stating the basis used.

(iii) Certain of the forms require analysis between Gibraltar and non-Gibraltar contracts. The usual basis (i.e. in accordance with paragraph 3 of Schedule 3 to the Regulations) applies when distinguishing one from the other. Allocation is made on the basis of where the contract was made or, in the case of treaty business, where the ceding company has its head office.

(iv) There are a number of practical points to be considered in completing the forms:

- various of the forms are completed for an individual fund;
- the leading at the top of the form "Name and number of fund/Summary" is to be completed by the inclusion of a number to identify each fund or, where the form relates to a part of the fund, the fund of which it is a part;

Form INS 40

Different types of Form INS 40

138. Form INS 40 presents a revenue account for long term business. It should be prepared separately for each long term business fund maintained by the company. If there is more than one such fund, a summary Form INS 40 should be prepared. See regulation 8(b). Different funds should be distinguished in the heading.

139. Paragraph 13 of Schedule 4 requires that, where this information is not provided elsewhere, the Appointed Actuary include in his/her valuation report -

- a revenue account for each such sub-fund in the format of Form INS 40; and
- a description of "the principles and methods applied in apportioning the investment income, increase or decrease in value of assets brought into account, expenses and taxation between each part".

Relationships with other Forms and between different Forms INS 40

140. The amounts included in Form INS 40 for earned premiums, claims incurred and expenses payable are to be derived from Forms INS 41 and INS 42 in accordance with instruction 1 to the Form.

141. Where a company decides to allocate to its long term business the whole or any part of investment income and/or net capital gains arising from assets not attributable to its long term business, both the income and any associated investment management charges must first be included in the non-technical account (Form INS 8), with the amount to be allocated to the long term business shown as a transfer at line 13 of Form INS 8, line 26 of Form INS 40 and in Form INS 58. See instruction 3.

142. The amount shown for transfers to the non-technical account (line 26) should agree with the equivalent amount disclosed at line 47 on Form INS 58 - see instruction 4. However, if there is a net transfer into the fund, the entry at line

26 will be negative, and by virtue of instruction 3 to Form INS 58 there will be a positive entry in Line 34 of Form INS 58 (lines 15 and 47 remaining blank)

143. The amount of any transfer to and from other funds should be included in the Form INS 40 of the transferee and transferor funds respectively at line 15 and line 25 - see instruction 4.

Completion of the Form

144. The instructions to the Form specify the rules for its completion. These rules differ in several respects from those which are used in the preparation of the statutory accounts. The long term business revenue account in the Annual Returns is prepared under the statutory solvency basis rather than the modified statutory solvency basis used in the statutory accounts. The following table identifies, for each line in the Form, the most closely corresponding items from the long term business technical account specified in the statutory accounts and describes some major differences between the accounting rules for those items and for Form INS 40.

Line in Form INS 40	Item(s) in the technical Account	Major points of difference in Accounting treatment
Line 11 - "Earned premiums"	II.1 "Earned premiums"	In preparing the technical account the insurer may choose whether or not to include the change in the provision for unearned premiums under this item. In Form INS 40, the change in unearned premiums must be excluded. [This is also by far the more commonly used of the two permitted treatments in the technical account.]
Line 12 - "Investment income receivable before deduction of tax"	II.2 "Investment income", (but excluding items II.2.(c) and (d) – see below).	The items II.2.(c) and (d) under the heading "Investment Income" in the technical account refer to value re-adjustments and realised gains on investments. In Form INS 40, no amounts for gains or loss on investments should be included in investment income.
Line 13 - "Increase (decrease) in the value of non-linked assets, brought into account" Line 14 - "increase (decrease in the value of linked assets"	II.2.(c) "Investment income – value readjustments on investments" II.2.(d) "Investment income - gains on realisation of investments" II.2 "Unrealised gains on investments" II.9.(b) "Investment expenses and charges - value readjustments on investments"	(1) The technical account includes all investment gains and losses (realised and unrealised). In Form INS 40 such gains and losses (other than in respect of linked assets) are only included to the extent that they are "brought into account". Form INS 40 includes all gains and losses in respect of linked assets. (2) In Form INS 40 the increase/ (decrease) in value shown includes the changes in the valuation differences shown at lines 92 to 95 of Form INS 5 (for long term business assets).

Line in Form INS 40	Item(s) in the technical Account	Major points of difference in Accounting treatment
	II.9.(c) "Investment expenses and charges - losses on realisation of investments" II.10 "Unrealised losses on investments"	
Line 15 - "Other income"	II.4 "Other technical income, net for reinsurance"	
Line 21 - "Claims incurred"	II.5 "Claims incurred, net of reinsurance" II.7 "Bonuses and rebates, net of reinsurance" but only to the extent that they are cash bonuses (which do not therefore increase technical reserves).	(1) In the technical account claims incurred includes claims management expenses. In Form INS 40 these are to be included under "expenses payable" not "claims incurred". (2) In the technical account claims incurred includes the change in the provision for claims outstanding. In Form INS 40, this change (except to the extent it relates that part of the Provision not included in mathematical reserves) is not to be included as it is already taken into account in the movement of the fund shown at line 39. [The mathematical reserves takes into account outstanding claims except where they have already fallen due at the valuation date.]
Line 22 - "Expenses payable"	Claims management expenses included in item II.5 above. II.8 Net operating expenses II.9.(a) "Investment expenses and charges - investment management expenses, including interest"	(1) In the technical account, net operating expenses are adjusted to take account of the change in the amount carried forward for deferred acquisition costs. In Form INS 40, all acquisition expenses incurred during the year should be included at line 22 and no amounts should be carried forward. (2) Any interest payable included in net operating expenses in the technical account should be included in Form INS 40 at line 23 not line 22.
Line 23 - "Interest payable before deduction of tax"	Interest included in item II.9.(a) above. Interest included in item II.8 above.	

Line in Form INS 40	Item(s) in the technical Account	Major points of difference in Accounting treatment
Line 24 - "Taxation"	II.12 "Tax attributable to long term business"	
Line 25 - "Other expenditure"	II.11 "Other technical charges, net of reinsurance"	
Line 26 - "Transfer to (from) non-technical account"	II.12 "Allocated investment return transferred to (from) the non-technical account" II.13 "Balance on the Technical account - long Term business"	The main reasons for differences Between the amounts transferred to the non-technical account and the technical account are typically - (1) the deferral in the technical account of acquisition expenses; (2) the transfer in the technical account of amounts to or from the fund for future appropriations; (3) valuation differences as between mathematical reserves in the Annual Return and the technical provisions in the technical account; and (4) investment gains not brought into account in Form INS 40.
Line 39 - "Increase in fund in financial year"	II.7 "Bonuses and rebates, net of reinsurance" but only to the extent that they Increase the technical Provisions II.6 "Change in other technical provisions, net of reinsurance, not shown under other headings" II.12a "Transfers to or from the fund for future appropriations"	These items are not directly comparable as different valuation rules apply in the Annual Returns and the statutory accounts.

Supplementary notes

145. Nine supplementary notes are specified to Form INS 40.

(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. [Code 4001].

(ii) Particulars of the amounts included at lines 15 and 25 for "other income" and "other expenditure" should be stated - see instruction 2 to the Form. [Code 4002]

(iii) Particulars of the amount of any investment income and/or net capital gains allocation included at line 26 in Form INS 40 should be stated - see instruction 3 to the Form. [Code 4003]

(iv) A specification of any transfer of reserves associated with a transfer of contracts from one fund to another should be stated - see instruction 4 to the Form. [Code 4004]

(v) Unless already stated in a note to Form INS 8, 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 4005]

(vi) Where an insurer maintains more than one long term business fund, it should state the principles and methods applied to apportioning the investment income, the increase or decrease in the value of assets brought into account, expenses and taxation between the different funds - see paragraph 4 of Schedule 3. [Code 4006]

(vii) The information required by paragraph 13(b) of Schedule 4 to be stated in the appointed actuary's report may instead be stated as a note to Form INS 40 - see paragraph 138 above. [Code 4007]

(viii) Where arrangements have been in force during the financial year for the provision either by or to the company of management services, this fact should be stated together with the name of the other party (to whom or from whom such services were provided or received) - see paragraph 5 of Schedule 3. This statement is only needed where a substantial part of the day-to-day administration of an insurer is undertaken by another company or vice versa. [Note that where the arrangement is between two insurers, the directors will need to consider very carefully the form of their certificate under paragraph 4(e) of Part I of Schedule 6.] [Code 4008]

(ix) Details of any material connected-party transaction as required under regulation 18A should be stated [Code 4009].

Forms INS 41 to INS 45

Completion of the Forms

146. Forms INS 41 to INS 45 should be prepared separately for each fund and sub-fund for which a Form INS 40 is prepared and also (except for Form INS 45) in summary where a summary Form INS 40 is prepared - see Regulation 17. These Forms supplement Forms INS 40. Form INS 41 provides an analysis of premiums and expenses, Form INS 42 of claims, Form INS 43 a summarised balance sheet for internal linked funds, Form INS 44 an aggregate revenue account for internal linked funds and Form INS 45 supplementary information on internal linked funds.

147. Instruction 2 to Form 41 provides for the reporting of repeated or recurrent single premium business as regular premium business. The purpose of this is to differentiate business which may be expected to produce an ongoing premium income for the insurer ("regular premium") from business which is "one-off" in nature ("single premium"). It is typical of "regular premium" business that the office will issue a renewal notice for the expected amount of premium, albeit that the policyholder may have a contractual right to pay a different amount, or nothing at all. Another characteristic might be that premium collection is by a direct debit or other payment order. [This differentiation between single and regular premiums used in Form INS 41 should also be used in Form INS 46 and Form INS 47, and the total single premiums on Form INS 41 should equal that for Form INS 47 - see paragraph 182 below.)

148. The instructions to the Forms provide, amongst other items, for -

- the reporting of derivative contracts (Form INS 43);

- the elimination of cross-investment between internal linked funds (Form INS 44);
- the separate disclosure of gross units created and gross units cancelled in internal linked funds (Form INS 44) so that turnover can be monitored. Each day's movements may be netted or recorded as two separate entries, one positive and one negative, as is administratively convenient; the total net positive and negative movements will be recorded on lines 11 or 21, as appropriate.
- the method of disclosure of the provision for capital gains tax on unrealised and realised capital gains in internal linked funds and of the valuation price of units in internal linked funds (Form INS 45).

149. In addition to the above, the following points should be noted.

- The differentiation between Gibraltar contracts and non-Gibraltar contracts (Forms INS 41 and INS 42) must be in accordance with paragraph 3 of Schedule 3.
- The expenses shown in Form INS 41 should be those which relate only to the insurer's long term business. Those relating to the insurer's other business cannot, by virtue of section 83(l)(a) of the Ordinance (subject to the exception in section 83(l)(b)), be paid out of the long term funds and must be shown, therefore, in the non-technical account (Form INS 8).
- In dividing management expenses between lines 43, 44 and 45 of Form INS 41:-

  (a) costs of a non-recurring nature, such as those incurred in developing new systems, new premises, or the cost of corporate restructuring should normally be reported in line 45;

  (b) the costs incurred in writing new business, (or in obtaining incremental, but not indexed, premiums on existing business) such as underwriting, policy issue, setting up (or amending) records and the maintenance and development of the sales and marketing organisation should be reported at line 43;

  (c) the balancing item will be expenses related to the ongoing costs throughout the year of maintaining the business in force (including any investment management costs) and should be reported in line 44.
- Commission payable to employees of the insurer whose job is to sell policies should be included under "management expenses" (lines 43 and 44 of Form INS 41). On the other hand, any commission payable to employees who sell policies on a casual basis should be included under "Commission" (lines 41 and 42) along with that paid to other intermediaries and to cedants.
- All assets held within internal linked funds must be included in Form INS 43, even if their value exceeds the amount at the unit liability. [Note: the Valuation of Asset Regulations apply in full to these excess assets (see Regulation 3(2) of the Asset Valuation Regulations) and Regulation 4(a) of these Regulations.]
- The figures shown in column 2 of Form INS 45 shall be those appropriate at the end of the financial year, net of any indexation allowances. Each percentage shown in column 3 shall be the

appropriate figure shown in column 5 of Form INS 43 expressed as a percentage of the appropriate figure in column 2 of Form INS 45.

- The figures shown in column 4 of Form INS 45 shall be the total deductions made from each fund for the financial year in respect of tax on realised capital gains (as included in line 24 of Form INS 44) expressed as a percentage of the taxable net realised capital gains arising in the period.

Supplementary notes

150. Three supplementary notes to Form INS 43 are specified.

(i) The basis on which assets have been valued should be stated - see instruction 1 [Code 4301]

(ii) The aggregate value of rights and liabilities, both gross and net of variation margin, under derivative contracts should be stated - see instruction 2. [Code 4302]

(iii) Certain specified details on the netting of the liability to repay “variation margin” on derivative contracts (and contracts having the effect of derivative contracts) should be stated - see instruction 3. [Code 4303]

151. Two supplementary notes to Form INS 44 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 4401].

(ii) Particulars of items reported as “other income” or "other expenditure" on Form INS 44 should be stated - see instruction 2. [Code 4402]

Schedule 4: Forms INS 46 To INS 60: The Abstract Of The Actuarial Valuation

Overview

152. Schedule 4 prescribes the format of the abstract of the report of the Appointed Actuary on his investigation into the financial condition of the long term business, required under section 78 of the Ordinance.

153. The preamble to the Schedule provides for certain provisions to be applied to the report from Schedule 1 and Schedule 3. These include the requirement that supplementary notes to forms shall be separate statements and not footnotes, the method for completing the forms, the treatment of currencies other than sterling, negative numbers within round brackets, dealing with differences between brought forward numbers and last year's return, and the definition of Gibraltar and non-Gibraltar contracts. More information on these can be found in the notes relating to the relevant Schedule. The Appointed Actuary should note that, throughout the Schedule and in these notes, references to “surrender” should be taken to include all similar expressions, including transfer as applied to pension contracts. The preamble also requires that the answers provided by the Appointed Actuary be numbered to accord with the numbers of the corresponding paragraph. This instruction also applies to the numbering of the sub-paragraphs.

154. Paragraph 3 refers to the requirement that the valuation is conducted so that the liabilities conform to regulation 21 of the Asset Valuation Regulations. Sufficient information should be provided within the report to enable the Commissioner to form a view about this, and in particular that the reserves

meet each of the minimum standards required under regulations 22 to 32 of those Regulations. It is not normally necessary to supply detailed supporting information, except where otherwise stated in these notes or in the Regulations.

155. The preamble also defines the report period in terms of the period since the last investigation under section 78. Paragraph 2 also requires the date of this last investigation to be given. This relates to any investigation under the section, which includes any interim valuation for publication or distribution of profits which has been fully dealt with under the requirements, but does not apply to any informal valuation, nor normally to one produced under section 82 of the Ordinance.

156. Certain paragraphs relate exclusively to non linked contracts (e.g. paragraph 4), some are related exclusively to linked contracts (e.g. paragraph 5), while others relate to both types of contract. The definition of a linked contract under the Regulations (regulation 3(1)) includes any contract under which linked benefits as defined in section 2(2) of the Ordinance are provided. This includes a number of types of contract not traditionally regarded as linked (e.g. RPI-linked annuities). Except where there are specific requirements to do otherwise, a contract with both linked and non linked benefits is to be treated as a linked contract.

Paragraph 4 - non-linked contracts

157. Paragraph 4 requires specific information to be given in respect of two types of non linked contract. The Regulations define (regulation 3(1)) accumulating with profits policies which are to be reported under sub-paragraph (1)(a). Broadly speaking, these are policies of the type sometimes known as unitised with-profits, but the definition is slightly broader. Firstly, it is not necessary that the benefits are in any way 'unitised' for the definition to apply. In particular, any with profits deposit administration contract would normally fall within this definition. Further, most recurrent single premium with profits contracts are also likely to fall within this definition. It is not considered that a traditional single premium with profits policy falls within this definition where the guaranteed benefit is fully expressed in terms of the amount payable at maturity if that sum is not explicitly related to the premiums, and more importantly to any additional premiums which may be allowed under the contract. That said, it is considered by the Commissioner that contracts where there is doubt should be reported under this heading.

158. Sub-paragraph 4(1)(a)(i) requires the description of all deductions from the current benefit used in determining values under the policy. This will include all charges fixed under the policy, as well as any discretionary charges permitted. In particular, where there is a provision for a 'market value adjustment' or a similar deduction, this should be disclosed in terms of when it might apply. This does not refer to when it is in practice being applied.

159. Sub-paragraph 4(1)(a)(ii) requires the description of how any discretionary adjustments such as are covered in (i) have been applied if the determination of the mathematical reserves (excluding any reserves under regulation 32 of the Asset Valuation Regulations, including a resilience reserve) has taken credit for these adjustments. Where there are powers to vary an adjustment which is laid down in the policy (as may be the case with initial or capital units), but the insurer has not exercised its discretion to vary these adjustments from the levels prescribed in the policy, this need not be considered as triggering this sub-paragraph. Where any discretion has been exercised in respect of a charge taken credit for in the valuation, or where the charge is provided for but no

level is specified in the policy, then it is necessary to describe all such discretionary charges levied in the report period.

160. Paragraph 4 also requires specific information in respect of a further class under sub-paragraph (1)(b) which is intended to include policies of the type known as deposit administration, unless they are with profits policies, which should be included under (a). Sub-paragraph (1)(c) covers any other types of non linked policy not covered under (a) or (b) which require amplification of the entry in Form INS 51. This will include any contracts which have any supplementary guarantees or options which the Appointed Actuary considers to be significant.

161. Paragraph 4 requires information to be supplied on any material options. Options should be interpreted widely, though it is for the Appointed Actuary to decide what is material. An option to surrender on guaranteed terms, or to convert on guaranteed terms to another form of benefit, or to increase benefits without evidence of health, should generally be considered material. Guarantees on interest rates include both fixed guarantees and guarantees which may be related to some external reference rate. Guaranteed surrender values may similarly be guaranteed by amount or by reference to some formula.

162. Sub-paragraph (2) provides an exemption from the disclosure requirements of sub-paragraph (1) but only where both of conditions (a) and (b) are satisfied.

Paragraph 5 - linked contracts

163. Paragraph 5 provides for information to be supplied on linked contracts. Similar considerations to those described in the preceding paragraphs, and in particular paragraph 160 in relation to paragraph 4 of the Schedule apply also to this paragraph. Paragraph 5(2) requires any with profits option to be reported as under 4(l)(a).

164. Paragraph 5(4) requires the disclosure of the methods used in creating and cancelling units and in their allocation to and de-allocation from policies. This requirement should include information on the basis of valuation of assets and how it is selected (for example, "offer" basis for net creations of units and "bid" basis for net cancellations), including the timing of the asset valuation used in respect of such operations in relation to the time at which both the operation is decided upon and effected. When at any one time different pricing bases may apply to different policies, then details of the circumstances which give rise to the difference should be provided. Where assets are units in collective investment schemes or similar assets, particular reference should be made to precisely what price is used, and the relationship between the last opportunity to deal at that price and the time of the valuation. In summary, the Commissioner should be provided with sufficient information to demonstrate that incoming, outgoing and continuing policyholders are treated equitably. It will be acceptable for reference to be made to compliance with published guidance to the extent that such guidance covers the above issues.

165. The information under paragraph 5(5) should include the treatment of any tax on notional realisations. In particular, reference should be made to whether the liability for such tax, when it falls due, is retained within an internal fund, or has been transferred out of that fund in exchange for a tax deduction. The rate of such tax deduction should be stated.

Paragraphs 6 to 12 - bases, principles, methods etc.

166. When providing the information on the general principles and methods adopted in the valuation under paragraph 6, the Appointed Actuary should provide sufficient explanation to enable the Commissioner to take a view, in

relation to the issues specifically referred to in paragraph 6(1), on the adequacy of the reserving basis in relation to regulations 21 to 32 of the Asset Valuation Regulations. Where the Appointed Actuary has not undertaken any specific tests implicit in the points raised in paragraph 6, as he considers the margins in his basis are already sufficiently large to meet each of the minimum requirements of regulations 22 to 32 and of regulation 21, he should indicate this either directly or indirectly. He may, however, be required to justify his basis if the Commissioner considers it is not self-evident that there are sufficient margins. The Appointed Actuary should include broad details of the type of investigations he has conducted to meet the requirements of professional guidance in respect of sub-paragraph (l)(b).

167. Regulation 32 of the Asset Valuation Regulations requires the Appointed Actuary to take into account the nature and term of the assets and the value at which these have been brought into account when determining the appropriate provision against the effects of possible future changes in the value of the assets on their adequacy to meet the liabilities. If the assets in Schedule 4 are brought in at book values below the values in accordance with the regulations relating to Form INS 5, and in determining the provision under this regulation, the Appointed Actuary has had regard to this fact, paragraph 6(2) requires a statement to this effect. This applies also when the basis of the provision made for any prospective liability for tax on unrealised capital gains is determined in the context of assets taken at their book value rather than their Form INS 5 value.

168. Paragraph 7(3) requires a general description of how the tables of mortality and morbidity assumed have regard to the State of the commitment. This is a reflection of the requirements of the 3rd Life Directive (regulation 27 of the Asset Valuation Regulations). This reference does not add to the duty on the Appointed Actuary under the Asset Valuation Regulations, and if the Appointed Actuary has determined that the degree of variation of mortality or morbidity between States does not give rise to a material effect in the valuation, it is sufficient for this to be stated.

169. Paragraph 7(4) requires details of any allowance made for future reductions in the rates of mortality in tables used in valuing annuities. Many such tables have a built-in allowance, and it is not necessary for the Appointed Actuary to give explicit details of this allowance if the table is in common usage in the United Kingdom. To the extent that the Appointed Actuary has determined to make additional allowance to that intrinsic to such a table, he should give details. This includes the making of an adjustment to the table which is intended to allow for future reductions, but does not include any adjustment made in respect of reductions already evidenced at the valuation date.

170. Paragraph 7(5) will include any allowance made for the effects of the Human Immuno-Deficiency Viruses, but is not necessarily limited to those viruses. It does not require the Appointed Actuary to make an allowance for any particular change, but to disclose any allowance he may have made. This paragraph does not signify any additional requirement to include any particular reserve not required by the Asset Valuation Regulations.

171. Paragraphs 7(6), (7) and (8) cover the requirements of regulation 32 of the Asset Valuation Regulations. Sub-paragraph (6) requires only a description of the various scenarios tested and identification of the most onerous of those scenarios. It does not require the results of such scenarios to be stated. It should be noted that currency variations are included in this requirement.

172. It is not always straightforward to divide the reserve under regulation 32(a) from that under 32(b). Reserves under 32(b) will often exceed those under

32(a), particularly where there is a significant volume of with-profits business, and in this case, if the conditions giving rise to the envisaged change in the value of assets embrace those tested under regulation 32(a), it is sufficient to state this in paragraph 7(7). However, it is not necessarily the case that the most onerous conditions under 32(b) allow for all the effects under regulation 32(a), and the response to 7(7) must make clear to what extent the reserve under 32(b) is taken into account.

173. The information required under paragraph 7(8) is only in respect of that scenario tested which gives rise to the greatest requirement, but it applies even if the reserve required is zero. If no scenario gives rise to an additional reserve, the most onerous scenario is that which allows the smallest reduction in reserves, whilst the basis remains consistent with the Asset Valuation Regulations. Sub-paragraph (8)(a) requires any changes in assumptions, excepting only the interest rate, to be described. This includes, for example, the introduction of a zillmer adjustment within that permitted in the Regulations; the application of any adjustment to accumulating with profits policies reserves to reflect discretionary charges on surrender; the reduction of bonuses allowed for in the valuation; or any other change in assumptions whether explicit or implicit. Sub-paragraph (b) requires a description of the method used in determining the requirement. This needs only to be sufficiently detailed to enable the Commissioner to understand the techniques employed; any changes in the hypothecation of assets to liabilities; assumed changes in the exercise of discretion; and other changes outside the valuation basis or otherwise.

174. The additional information to be provided in paragraph 8(d) (where the contracts do not fall within the circumstances of the proviso) must be sufficient to constitute the required demonstration. The information could take several different forms. For example, the requirement would usually be met if the results of a net premium valuation for each of the relevant main categories of contract in the format of Form INS 51 or INS 52 were given, specifying the valuation rates of interest and mortality used, the zillmer adjustment and any other relevant information. Where a full net premium valuation has not been made, the requirement could be met by a comparison of specimen reserves for each of the main categories of contracts for various ages and durations on the basis used by the Appointed Actuary in his report and on an appropriate net premium basis (specifying particulars of the basis as above) together with information about the distribution of the business in the form of appropriate weightings. In principle, a method of demonstration which involved sampling could also be acceptable.

175. The information to be supplied in paragraph 9 should normally include the expenses of administration per policy for each policy type; the rate of future inflation; and the rate of unit price growth (both gross and net of any relevant taxation, but before management charges) assumed in the valuation/test and the extent to which account has been taken of any increases in management charges, including those increasing with reference to a published index, which are allowed under the terms of the policy. Other parameters will normally include the mortality and morbidity rates and the rate of interest earned on sterling reserves assumed in the valuation/test.

176. Paragraph 10 is intended to identify the contribution towards future management expenses derived from the assumptions made by the Appointed Actuary in the valuation basis for meeting future expenses. It is a request for statements of the actual results of applying the valuation basis. Thus, sub-paragraph (1) requires a description of the rates of inflation assumed and how inflation is allowed for in the valuation. Sub-paragraph (2) calls for the aggregate amount of expense contributions over the first year, with a general

description of the sources, whether they be differences between net premiums and office premiums, or explicit allowances in the basis. Where with profits business valued on a net premium basis is concerned, it is not necessary to determine a precise split between the amount set aside for expenses and that for future bonuses. It is sufficient for the Appointed Actuary to describe the amount he considers appropriate to set aside for expenses on the basis of information readily available at the time. The Commissioner would normally expect there to be a correlation between the amount disclosed by the Appointed Actuary and the figure included in line 44 of Form INS 41.

177. Sub-paragraph 10(3) requires a description of the method and details of the basis used to calculate whether there is a need for a reserve in respect of continuing to write new business. This will require general statements as to the levels of business assumed for this purpose (perhaps in relation to that written the previous year), and broad assumptions as to costs (such as stating that he has assumed the continuation of the previous year's costs plus inflation, or by stating that he has used company budgets), product terms (such as stating that he has assumed the continuation of the products on offer at the valuation date, or that he has reflected changes made after the valuation date but before the date of the certificate) etc. It does not require identification of explicit items in monetary terms, nor details of the precise assumptions. This is similarly true of sub-paragraph (4), where for example the Appointed Actuary might disclose that redundancy costs have been taken into account, if such be the case, or the costs of terminating management agreements, but not the amount of such costs.

178. Paragraph 11 is a requirement to identify the extent of currency matching. The requirement is driven from the liabilities, and requires the liabilities included within the actuarial certificate (which includes liabilities in respect of deposits received from reinsurers), but excluding property-linked liabilities, to be analysed by currency. The assets reported as matching these liabilities, which should correspond with those reported for the same liabilities in other matching schedules within the Annual Returns, are similarly to be analysed by currency. The de minimis exemption for 2% of the liabilities is intended to avoid unnecessary detail for small exposures, but the degree of mismatching still needs to be given. This mismatching should be taken as the sum of all liabilities reported in the "other currencies" heading matched by assets in other currencies divided by the total liabilities under that heading. This figure should be given as a percentage, and to the nearest whole number.

179. The information on reinsurance required under paragraph 12 is largely self explanatory. It is acceptable for the Appointed Actuary to aggregate arrangements with a single reinsurer that are similar in nature. The requirements under paragraph 12(3) relate to both facultative and treaty reinsurance. The definition of a financing arrangement is intended to be wide and may include arrangements with non-insurance companies. It is likely that many original terms reinsurances with advanced commissions will constitute financing arrangements. Financing arrangements cease to be such once all elements of the financing have been repaid, earned or otherwise reduced to zero. The Appointed Actuary should exercise reasonable discretion in reporting under this heading, particularly in relation to facultative business. It is acceptable where the financing arises from facultative reinsurances under a common overall agreement as to the general terms, for a grouped figure to be provided for the agreement, rather than for each contract.

Paragraphs 13 to 16 - profit distribution

180. Where, in accordance with paragraph 13 of Schedule 4, a revenue account for a particular part of a long term business fund is included in the abstract of the

Appointed Actuary's report, analyses of premiums, expenses and claims in the format of Forms INS 41 and INS 42 are not required. The Appointed Actuary must provide information on the principles and methods applied in apportioning various items in any such revenue account included in Schedule 4, and in any revenue account of a with-profit sub-fund which is given in Schedule 3 where the principles and methods of apportionment are not disclosed in that Schedule.

181. Paragraph 14 is intended to supply sufficient information to enable the Commissioner to understand the criteria used in setting bonus rates. Sub-paragraph (1) is a widened version of the previous requirement. It is important the information which is derived from each of the sources is identified, and if the various sources differ in any respect, the information must be identified by source. In this context, "advertisement" has the wide meaning, and should include any sales and marketing literature. The references to policies issued by the insurer, and to advertisements, should be taken to mean any policy still in force, or any advertisement issued in a period from which with profits policies are still in force. It is not necessary to refer to policies which no longer exist. Sub-paragraphs (2) and (3) are intended to describe in broad terms how the bonus scales are arrived at. Although an answer that the distributions are based upon asset shares might be acceptable, it is necessary to indicate the approach to smoothing which it is intended to apply, the particular application to deaths and maturities, and the extent to which any 'charges' on asset shares are applied to maintain equity between classes or generations. The descriptions of the method should include any items excluded from or charged to any asset shares if that is the basic method.

Paragraphs 17 to 19 - Forms INS 46 to INS 49

182. In Forms INS 46 and INS 47, the term “annual premiums” refers to the total amount of premium payable, under the terms of the contract, each year. In Forms INS 46 and INS 47, any contract which consists of a combination of different types of insurance (as defined by instruction 5 to Form INS 47) is to be treated as a number of separate contracts each dealing with one of the different types of business so combined. The amounts by which the total number of contracts shown on each of the forms exceed the total number of contracts to which the forms relate should be stated by way of a supplementary note. In determining whether or not a contract consists of a combination of different types, the Appointed Actuary should exercise his discretion in interpreting differences in the same way as for Forms INS 51 to INS 54. Where the information given in Forms INS 51 to INS 54, together with any additional information required by Instruction 10 regarding the number of contracts, does not enable a reconciliation to be made with the information supplied in Form INS 46, an explanation should be given. The instruction in respect of hybrid linked contracts should be interpreted in accordance with the definition in regulation 3(1). In Form INS 47, any contract which falls within more than one of the categories described in instruction 6 shall be shown only once, in the most appropriate category.

183. Attention is drawn to the instructions to Forms INS 46 and INS 47 in respect of regular premium and recurrent single premium contracts, and in respect of increases to existing contracts. These instructions differ from those applicable to the forms under the 1996 Regulations which these forms replace. It is essential that consistent treatment of individual contracts is adopted between Forms INS 46 and INS 47, and that all new business is reported under some heading within Form INS 47. Additional single premiums paid in respect of existing individual contracts should be shown separately from new business in Form INS 47. In Form INS 47, a single premium contract where there is a

likelihood that there will be future premiums, but which do not meet the definition of regular premium contracts because their level of premiums is not defined, should be considered as not having an expectation of continuing premiums at regular intervals, and therefore be included within the single premium categories. (See also paragraph 147 above).

184. In Forms INS 48 and INS 49, the element of accrued interest or income in respect of any asset is required to be allocated to that asset class. Thus, any accrued income on a government stock shall be reported under approved securities, and not under other assets. The yields required shall be calculated with the value of the stock including this accrued interest or income element, but with full credit for the whole interest payment being taken in the expected receipts. Separate forms should be produced if, and only if, funds have assets separately appropriated. A supplementary note to the Forms is needed where for any asset the payment of interest is in arrears. It should state the treatment of expected income from any such asset and the amount of interest involved. See paragraph 6 to Form INS 48.

185. The required statements in respect of derivatives under paragraph 19 extend those applicable under the 1996 Regulations. It is not generally necessary to quantify the changes in yields on Form INS 48 which would arise. A broad description would normally suffice, unless the options concerned have the effect of locking in particular yields not immediately identifiable from the description. Where and to the extent that the information provided by the insurer under regulation 23 is sufficiently complete to answer this requirement, it is sufficient for the Appointed Actuary to refer to that information in the Annual Return.

Paragraph 20 - Forms INS 51 to INS 56

186. The aggregate of the amounts standing to the credit of policyholders' accounts should be shown in column 5 of Form INS 51 for non-linked non profit deposit administration schemes, and should be distinguished from any other measures of benefit shown in that column for such contracts.

187. In Forms INS 51 to INS 54, wherever different rates of interest are used, the results should be shown separately. In Forms INS 53 and INS 54, if discounting applies to any type of contract, then columns 11 and 12 must be completed for all contracts. Column 12 may be left blank only if there is no discounting at all for that valuation summary. In Form INS 53, details of units which are discounted at different rates of interest (e.g. capital and accumulation units) should be shown separately.

188. Where a linked contract includes non linked benefits, except where there are accumulating with profits benefits, these should be shown separately on whichever of Forms INS 53 or INS 54 includes the linked benefits. Where accumulating with profits benefits are included, the treatment should follow instruction 12, and other non linked benefits may be included with either the linked or accumulating with profits benefits, provided the treatment is disclosed in the note required under instruction 12.

189. Within Forms INS 51 to INS 54 under instruction 10, it is required to report separately combinations of different types of insurance. The Appointed Actuary is required to determine when such different types of insurance are present in one contract. If he considers that such separate reporting would be misleading, or would not materially alter the amounts reported under each type of insurance, due to the trivial nature of one or more types of insurance in a contract, this would be an indication that there may not be, in practice, more than one type of insurance present. This is not likely to be the case, however, where supplementary benefits of a different class of business under Schedule 2

to the Ordinance are concerned. For this purpose, it should be noted that non linked benefits under a linked contract still fall within class III.

190. Risk premium reinsurance may be aggregated separately for, and shown as a separate class in Forms INS 51, INS 52, INS 53 and INS 54, respectively. Where risk premium reinsurance applies to a contract which is split between forms, the risk premium reinsurance should be reported on the same form as the benefits to which it applies. Where it is not possible to do this, the reason shall be given in a supplementary note, and the treatment shall be described.

191. Note the proviso to instruction 6 of Forms INS 51 to INS 54 which allows duplicate data on reinsurance ceded to be aggregated. A similar easing of reporting requirements is provided by instruction 7 to Form INS 55 in respect of unit liabilities wholly reinsured. However, in this case, paragraph 20(3) requires a statement that section 64B has been complied with.

192. Valuation summaries for sub-funds for which surpluses are required to be determined under section 78 of the Ordinance, and valuation summaries for non-linked, accumulating with profits, property-linked and index-linked business should be treated as separate for the purpose of instruction 15 for the completion of Forms INS 51 to INS 54.

193. The relationships between Forms INS 55 and INS 56, and the related items in Schedules 1 and 3 are important. Considering first Form INS 55 (property linked), Form INS 5 line 59 which shows assets matching linked liabilities does not necessarily include the assets backing the surplus units in Form INS 55. [See paragraph 85 above.] Where the reconciliation between the amounts shown in Form INS 55 and line 59 of Form INS 5 is not readily apparent, it should be described in a supplementary note to Form INS 55. Also, Form INS 55 should, where appropriate, correspond with the assets in Form INS 43, which includes all assets in an internal fund, and reconciliation with that form should be readily apparent.

194. Similarly, for Form INS 56 (index-linked), the assets shown do not necessarily correspond with those shown in line 58 of Form INS 5. [See paragraph 85 above.] Where the reconciliation between the amounts shown in Form INS 56 and line 58 of Form INS 5 is not readily apparent it should be described in a supplementary note. Note, also, that Form INS 56 represents holdings of assets, not liabilities, and that the long-term liability represented by the mathematical reserve on Forms INS 54 should not be entered on the form. Form INS 56 recognises that index-linked liabilities will often be matched by derivative or quasi-derivative instruments, the nature of which may contain elements both of asset and of liability, and this is reflected in the heading to the form and in column 2.

195. For both Forms INS 55 and INS 56, it would be helpful if the actuary included a note of any circumstances which make the natural relationships break down (e.g. particular tax treatments).

196. Where unit liabilities are reassured and deposited back with the ceding company, the amounts deposited back are to be treated in accordance with paragraph 20(2) in all respects as though they are unit liabilities.

Paragraph 21 - Form INS 57

197. Paragraph 21 refers to Form INS 57,and requires the forms submitted to cover all long term liabilities except unit liabilities in respect of property and index-linked benefits, CGT reserves and unit liabilities deposited back for linked contracts. The intention of the form is to identify suitable blocks of assets which can notionally be allocated to cover each block of liabilities. Note that there is no provision that the form must include all of the non-linked assets in

Form INS 5. However, the assets covering any resilience or mis-matching reserve (regulation 32) should be included, generally on the "balance" from provided under instruction 6. For each form completed, the total assets for the valuation entered at line 29, column 1 should be equal to the liability entered at line 33, column 1.

198. An analysis of those same assets and liabilities is also required under the "most onerous" scenario identified by the actuary in sub-paragraph 6 of paragraph 7. Column 3 re-values the assets included in column 1 on the assumptions of the resilience scenario; column 4 shows the value of any assets notionally re-allocated to the block of liabilities in order that they are still covered under the resilience scenario; and columns 5 and 6 show the new re-allocation in total. For each form completed, the total assets for the valuation entered at line 29, column 5 should be equal to or greater than the liability entered at line 33, column 5. In most circumstances, one would expect the assets allocated to the resilience reserve and included on the "balance" form under the valuation to be re-allocated so that this liability and its matching assets disappear from the "balance" form under the resilience scenario.

199. The instructions to Form INS 57 require separate forms to be prepared among other reasons for each rate of interest used in the valuation. However, in respect of Instruction 5, where a contract or group of contracts is valued at a lower rate of interest to reflect an implicit margin for expenses described in the abstract, or to reflect an implicit provision for future bonuses, then they may be amalgamated with contracts valued at the higher rate without such implicit margins, and reported as if valued at the higher rate. Where this has been done, a supplementary note should record this. Instruction 5 also provides for contracts valued at a lower rate of interest to be grouped together with those at a higher rate, provided that the rationale for doing so is explained in a note. Note, however, that it is not acceptable to combine the separate forms required by instructions 2 and 3. Where more than one Form is provided for a particular rate of interest, a supplementary note should identify the contracts included in each form. The totals under the resilience scenario recorded in column 5 shall be those under the scenario which is most onerous and is the subject of paragraph 7(8) (see paragraph 169 above).

200. In relation to the risk adjustments disclosed in answering paragraph 21, it is not necessary to disclose these for individual assets, nor to provide any individual justification for the adjustment. The Appointed Actuary may be asked to supply such justification to the Commissioner if it is not clear the basis upon which the adjustment was determined.

Paragraph 22 - Form INS 58

201. When an insurer records a transfer to the non-technical account, or to another fund, or part of the fund in a revenue account (Form INS 40) for a particular period, the amount of which has been derived from a valuation completed at the end of that period, that transfer should be shown in INS 58.13 or INS 58.14 as appropriate so that the true surplus appears in INS 58.29.

202. Where an insurer decides to allocate to the long term business the whole or any part of the investment income and/or net capital gains arising from assets not attributable to its long term business, the allocation should be included in Form INS 58 as a transfer from the non-technical account (see paragraph 140 above). This transfer should be included in either lines 13 and 15, or 32 and 34, depending on whether there is an overall net transfer out of or into the fund (or part of the fund) respectively (see Instruction 3 for the completion of Form INS 58).

203. Where, under section 78(2)(b) of the Ordinance, a surplus is determined for a part of a fund where the rights of any policyholders to participate in profits relates to that sub-fund, paragraph 22 requires an insurer to provide a Form INS 58 both in respect of the sub-fund and the fund of which it is apart.

204. In general, line 61 of Form INS 58 corresponds to the proportion which has to satisfy the criteria laid down in section 86 of the Ordinance, but this will not always be so. For example, where the with-profits policyholders are entitled to, say, 90% of the profits from the with-profit business but are also eligible to share in the profits arising on the non-profit business on a discretionary basis, line 61 would be relevant for the purpose of section 86 (which relates to 'eligibility') only in the Form INS 58 for the long term fund as a whole, and not in the Form INS 58 for the sub-fund.

205. The surplus shown in Form INS 58, in keeping with the definition in the primary legislation, represents the excess of the amount of the fund over the liabilities, but the wording in lines 29 and 49 is intended to make it clear that the surplus is not to be regarded as synonymous with disposable profits. The solvency margin requirements introduced under the legislation implementing the First Life Directive make it imperative for a clear distinction to be drawn between the liabilities and the margins available to count towards an insurer's solvency margin. The surplus should not include any part of the mathematical reserves which the Appointed Actuary considers are required to constitute the "proper provision" envisaged by regulation 21 of the Asset Valuation Regulations (these should be included in Forms INS 51 to INS 54, as appropriate), but it may include contingency and other reserves held which count towards the solvency margin.

Paragraph 23 - Forms INS 60, INS 3 and INS 4

206. Form INS 60, together with Forms INS 3 and INS 4 if required, set out the calculation of the required minimum margin (i.e. the greater of the required margin of solvency and the minimum guarantee fund) for long term business. The legislation provides for a solvency margin in respect of an insurer's long term business as a whole and, where more than one long term business fund is maintained, the information in these forms will relate to all funds combined. Provision is made for the mathematical reserves and the calculation of the solvency margin to be shown separately for the main classes of long term business and, for the purposes of reconciliation, mathematical reserves where the solvency margin is related to are to be included. Class III includes contracts where the benefits are partially linked to investment funds or indices and any reserves for non-linked benefits under such contracts, including those relating to accumulating with profits benefits, should be included under Class III business in the appropriate column in Form INS 60. The presence of non-linked benefits, including accumulating with-profits benefits, does not generally alter the appropriate column for linked benefits.

207. Where supplementary accident and sickness insurance or Class IV business is written, they should be taken together for the purposes of Forms INS 3 and 4, and determining whether the de minimis limit in paragraph 23(1) is exceeded. It is recognised that accurate completion of Forms INS 3 and INS 4 may not be easy or possible because the accounting conventions for general business insurance should be followed. We therefore expect reasonable approximations to be used, if they are unlikely to result in an underestimate of the required margin of solvency.

208. Where cash bonuses have been allocated to policyholders and are due to be paid, they are a current liability. As such, they should not be included in the

amount of mathematical reserves included in Form INS 60. No factor need to be applied to cash bonuses in calculating the required margin of solvency.

The Regulation 30 Statement: Information On The Appointed Actuary

209. Regulation 30 calls for a statement of the information specified in sub-paragraphs (a) to (d) of regulation 30(1). The insurer is required to make a further statement that it has asked the actuary to provide it with the particulars set out in the sub-paragraphs and to identify in the statement the information which has been so provided. The insurer is required to supplement these particulars if there is further information of which it is aware additional to that provided by the actuary.

210. Paragraphs (1)(a) and (b) refer to “particulars" but this word is not defined in the Regulation. In the case of investments, the Commissioner would expect particulars to include at least a general description of the investments, the name of the holder of the investment, the nominal or principal amount outstanding and, where applicable, the rate of interest and terms of repayment. In the case of a life policy or policies, it will usually be sufficient to show total annual premiums. In the case of transactions of a minor character falling under sub-paragraph (b), a general description need only be given and full particulars are not required.

211. As a result of regulation 30(3)(a), the particulars which have to be given apply not only to the interests of, or amounts paid to, the actuary but also to other persons specified in that paragraph. It is worth noting, however, that regulation 30(4) provides for the reporting insurer and other companies within the same group to be treated as one for the purpose of regulation 30(3)(a). The effect of the words in parenthesis in regulation 30(3)(a)(iii) and (iv), taken with regulation 30(4), is that payments made to the reporting insurer, and to companies related to it, will be excluded from the disclosure requirement.

212. Regulation 30(3(b) and (c) set out the circumstances in which a person shall be deemed to have an interest or benefit for the purpose of the regulation. Regulation 30(5) describes the circumstances in which a person shall be taken to control a body corporate for the purpose of regulation 30(3).

213. The information required by regulation 30 should be given in respect of each person who was the appointed actuary at any time during the financial year. Also, it is good practice to give the information in respect of the person who prepared the Schedule 4 report for the financial year even if he or she was only appointed as actuary after the year end. It is also good practice to name each Appointed Actuary, especially if more than one is referred to in the regulation 30 disclosure.

Certificates By Directors And Actuary And Report Of Auditors

Certificate by the directors etc.

214. 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.

215. 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.

216. For companies which fall within the circumstances of the first half of paragraph 4(e) of Part I of Schedule 6, the directors will need to consider carefully whether the returns are distorted by any management services agreements - for example, where a parent insurance company subsidises its subsidiary in its infancy.

217. Paragraph 5 of Part 1 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.

218. 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.

219. 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.

220. 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 213 above comes into play).

221. An example certificate is attached as Annex 3.

The actuary's certificate

222. Part II of Schedule 6 to the Regulations sets out the statements to be included in the appointed actuary's certificate.

223. Section 76 of the Ordinance lays down that an actuary must be a Fellow of the Institute of Actuaries or the Faculty of Actuaries and aged at least 30 to be qualified for appointment under the Ordinance.

224. Where a company wishes to appoint an actuary with a non UK actuarial qualification, the Commissioner will consider whether it is apporpriate to issue an Order under Section 113 of the Ordinance permitting this.

225. If a company appoints a firm of consulting actuaries, each of the partners in the firm must possess the prescribed qualifications. Where an individual member of a firm is appointed, only that individual need be qualified.

226. An example certificate is attached as Annex 4.

The auditors' report

227. 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.

228. 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.

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

- Forms INS 1 to INS 9, and INS 40 to INS 45; and
- the statement furnished under regulation 23.

230. The unaudited parts of the return are -

- the statements furnished under regulations 24 and 30;
- the information provided in accordance with Schedule 4 (including Forms INS 46 to INS 61); and
- the certificate of the Appointed Actuary prepared under Part II of Schedule 6.

231. 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 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".

232. 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 215 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.

233. Paragraph 10(1)(c) of Schedule 6 provides for the auditors to state the extent to which, in giving their opinion, they have relied on the actuary's certificate with respect to the mathematical reserves and required minimum margins, and on an order by the Commissioner for the identity and value of any implicit items which are admitted.

234. 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 auditors' 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.

235. An example report is attached as Annex 5. 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

236. Forms 3 and 4 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").

237. 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 3 and 4

238. The requirement to prepare and deposit Forms 3 and 4 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.

239. A Gibraltar insurer which in any calendar year -

- carries on long term business in an EEA State through a branch in that State should prepare Form 3;
- provides long term insurance in an EEA State through an establishment in Gibraltar or in an EEA State should prepare Form 4.

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

241. The Forms relate to calendar years, not necessarily financial years and each Form (where required) should be deposited with 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.

242. 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.

243. The forms are not subject to audit.

244. No section 113 concession may be granted modifying, or exempting insurers from, the requirement to deposit Forms 3 and 4.

Inaccurate or incomplete returns

245. 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 completion the Forms

246. The conventions described in paragraphs 31 to 53 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 241 above).

Accounting rules

247. 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 the Annual Returns.

Annex 1: Example of the completion of the reconciliations at the foot of Forms INS 2 and INS 5

Example: the reconciliation on Form INS 2 for a long term business insurer

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

Assets	1998	1997
Investments	1000	1200
Cash	800	400
Deferred acquisition costs	40	20
	1840	1620
Share capital	100	100
Profit & loss account	350	220
Fund for future appropriations	700	600
Technical provisions	490	400
Creditors	200	300
	1840	1620

The profit and loss account for 1998 shows a transfer to the Fund for Future Appropriations of £100 and a retained profit of £130. In the Annual Return, the following items are shown on Forms INS 5 to INS 8.

Form INS 5		Long term business		Other than long term business	
		1998	1997	1998	1997
Equity shares	41	600	650	200	250
Cash at bank-deposits	81	700	300	100	105
Grand total of admissible assets	89	1300	950	300	355
Excess of admissibility limits	92	100	150	100	145
Total assets determined in accordance with the statutory accounts rules*	99	1400	1100	400	500

[* This amount should not include long term business deferred acquisition costs – see paragraph 88 above.]

Form INS 6 (part)		1998	1997
Mathematical reserve	11	507	404
Balance of long term funds	13	193	156
		700	560
Creditors etc.	49	150	100
Excess assets etc.	51	450	290
Total	59	1300	950

Form INS 7 (part)

		1998	1997
Total liabilities	59	50	200
Provision of adverse changes	61	18	12
Total	69	68	212

Form INS 8 (part)

	1998	1997
line 59 - retained profit	50	100

Form INS 2 should now be completed as follows:

Form INS 2

		1998	1997[5]
Long term business - assets	11	1300	950
Long term business - liabilities	12	1300	950
Other then LTB - assets	21	300	355
Other than LTB - liabilities	22	68	212
Available assets	29	232	143
Paid up share capital	51	100	100
Balance of net assets	56	132	43
	59	232	143
Balance of net assets - b/f	61	43	73
Retained profit[1]	62	50	100
Movement in asset valuation differences[2]	63	45	(90)
Increase in provision for adverse changes[3]	64	(6)	(40)
Other movements[4]	65	-	-
Balance of net assets - c/f	69	132	43

Supplementary notes to Form INS 2

0202 Reconciliation to statutory accounts	1998	1997
	£'000	£'000
Net assets as per Annual Return		
line 99 on Form INS 5 (OLTB)	400	500
line 59 on Form INS 7 1998	(50)	200
	350	300
Capital and reserves as per statutory accounts	450	320
Difference due to assets retained in the long term business fund in excess of the fund for future appropriations[6]	100	20

Explanations of the above

(1) This is the retained profit as per Form INS 8.

(2) This is the difference for lines 92 to 95 on Forms INS 5 between the comparative amounts, (145) and the present year amounts (100).

(3) This the increase in the provision for adverse changes as shown on Form INS 7 only.

(4) This is the balancing figure, i.e. the differences not shown at the other lines.

(5) The comparative amounts at lines 61 to 69 of Form INS 2 are illustrative only. They cannot be derived from the other data given in this example.

(6) This is taken from the statutory accounts as follows: value of assets in the long term business fund (1400 + 40) less long term business technical provisions (490) less long term business creditors (150) less fund for future appropriations (700).

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.

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).	In the case of each person who was a shareholder controller of the company at (Date):	
	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 40 to INS 45 (including the supplementary notes thereto) and the statements required by regulations 23 and 24 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 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; and

   (c) in relation to the statement required by regulation 30:

   (i) that for the purpose of preparing the statement, proper accounts and records have been maintained; and

   (ii) the information given has been ascertained in conformity with that Regulation.

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

3. (a) that the requirements of sections 73, 75 and 83 to 86 of the Ordinance have been fully complied with and in particular that, subject to the provisions of section 83 and 86 of the Ordinance, assets attributable to long term business, the income arising therefrom, the proceeds of any realisation of such assets and any other income or proceeds allocated to the long term business funds have not been applied otherwise than for the purpose of the long term business;

   (b) that any amount payable from or receivable by the long term business funds in respect of services rendered by or to any other business carried on by the insurer or by a person who, for the purposes of section 73 of the Ordinance, is connected with it or is a subordinate company of it has been determined and where appropriate apportioned on terms which are believed to be no less than fair to those funds, and any exchange of assets representing such funds for other assets of the insurer have been made at fair market value;

   (c) that all guarantees given by the insurer of the performance by a related company or a contract binding on the related company which would fall to be met by any long term business fund have been disclosed in the return, and that the fund on which each such guarantee would fall has been identified therein;

   (d) that in respect of each internal linked fund, the investment policy and practice of the insurer was during the financial year consistent with any representations made to policyholders or potential policyholders of the insurer;

   (e) that the returns in respect of long term business are not distorted by agreements with any other company carrying on insurance business with which the insurer has financial, commercial or administrative links between or by any arrangements which could affect the apportionment of expenses and income; and

(f) that the insurer has fully complied with the requirements of section 75A of the Ordinance.

4. (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) Money Laundering Guidance Notes;

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

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

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

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

Address and date Signatures

Annex 4: Certificate by the Appointed Actuary

The certificate of the Appointed Actuary must state (if he believes it to be the case) that:

(a) in his opinion proper records for the purpose of performing the valuation have been maintained;

(b) the mathematical reserves constitute proper provision for liabilities arising from long term insurance contracts;

(c) the assets and liabilities have been assessed according to the Insurance Companies (Valuation of Assets and Liabilities) Regulations 1996; and

(d) the premium rates for new contracts written during the financial year are sufficient to enable the insurer to meet its obligations under the contracts and establish adequate mathematical reserves.

The actuary is also required to state in the certificate:

(a) the professional guidance notes that have been complied with. In general, the actuary will need to comply with the guidance notes that are described below:

- Actuaries and long term insurance business (GN1); and
- Additional guidance for Appointed Actuary (GN8); and

(b) the required minimum margin in the certificate.

The Appointed Actuary shall add to his certificate any qualification, amplification or explanation that he/she believes to be necessary.

GN1: Actuaries and long term insurance business

The guidance note GN1 helps the Appointed Actuary to understand fully his/her responsibilities. GN1 addresses the areas described below:

(a) The duties and the statutory responsibility of the actuary are to:

- report on the financial condition of the office;
- make a valuation of liabilities and assets;
- certify that GN1 and GN8 have been complied with, and if not, the certificate will need to be qualified; and
- advise on the distribution of surplus.

(b) In respect of premium rates and policy conditions, the actuary should ensure that:

- premium rates are appropriate, taking into account other financial resources of the company, to meet emerging liabilities calculated using sound actuarial techniques; and
- the company can set up the necessary reserves and solvency margins.

(c) Investigations are to be conducted by the actuary so that the actuary may:

- be satisfied as to the correctness and completeness of the data;
- make appropriate provision for future expenses;
- decide the rates of interest to be used in the valuation of liabilities;
- consider the matching of assets and liabilities with respect to cashflows and duration;
- consider the adequacy and appropriateness of the reinsurance arrangement; and

- monitor the company's exposure to loss through the use of derivative contracts.

(d) The actuary must consider all factors that could lead to insolvency and take appropriate steps to ensure that the company has sufficient assets to cover its liabilities at all times.

(e) The actuary is required to report on the actuarial investigations carried out under Section 78 of the Ordinance. It is his/her professional duty to report firstly in writing to the directors on the results and implications of such investigations. The actuary must also justify his/her recommendations regarding any allocation of profits and consider their consequences for the conduct of the company's business.

GN8: Additional guidance for Appointed Actuary

GN8 provides guidance in respect of the actuarial profession's interpretation of the Regulations (21 to 32) in determining the value of the long term liabilities.

Annex 5: 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 31 December 1998

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 9 and INS 40 to INS 45 (including the supplementary notes thereto) ("the Forms");
- the statement required by regulation 23 on pages [ ] and [ ] ("the statement"); and
- the certificate signed in accordance with regulation 28(a) on pages [ ] and [ ] ("the certificate").

In the cases of the certificate, our examination did not extend to:

(a) paragraph [ ] in relation to the statements required by regulation 24 and 30 concerning shareholder controllers and the Appointed Actuary;

(b) paragraph [ ] concerning the investment policy and practice of internal linked funds, required by paragraph 4(1) of Schedule 6; and

(c) paragraph [ ] in so far as it relates to controls with respect to Money Laundering.

Respective responsibilities of the company and its auditors

The company is responsible for the preparation of an annual return (including the Forms, statement 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 statement 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 statement 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 opinions to you.

Bases of opinions

We conducted our work 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 includes 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 on which we reported on [date]. It also included 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 5.

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.

In giving our opinion we have relied on:

(a) the certificate of the actuary on page x with respect to the mathematical reserves and the required minimum margin; [and

(b) the identity and value of implicit items as they have been admitted in accordance with regulation 5 of the Insurance Companies (Solvency Margins and Guarantee Funds) Regulations 1996 by virtue of an Order issued under section 113 of the Ordinance on …..].

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

Note:

[ ] include/delete as appropriate

Annex 6: Intra-Group Transactions

Supplementary notes to Form INS 40

1. Regulation 18A requires an insurer that has agreed to, or carried out, a material connected-part transaction to provide a supplementary note describing it to Form INS 40 (for a transaction relating to long-term insurance business). The reference code should be 4009.

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 of 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.

Materiality

7. The materiality of transactions is determined by reference to the long-term business amount (LTBA) for transaction relating to long-term insurance business, and the general business amount (GBA) for all other transactions. 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 LTBA or GBA, as applicable. 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 from 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 transactions 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 opther supplementary notes should fulfil the requirement.