



STATUTORY INSTRUMENTS.

S.I. No. 352 of 2007



EUROPEAN COMMUNITIES (LIFE ASSURANCE) FRAMEWORK
(AMENDMENT) REGULATIONS 2007

(Prn. A7/1182)

EUROPEAN COMMUNITIES (LIFE ASSURANCE) FRAMEWORK
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I, BRIAN COWEN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), as amended by the European Communities (Amendment) Act 1993 (No. 25 of 1993), and for the purpose of giving effect to Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance, hereby make the following Regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Communities (Life Assurance) Framework (Amendment) Regulations 2007.

(2) These Regulations come into operation on 1 June 2007.

Interpretation

2. In these Regulations, “Principal Regulations” means the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994).

Amendment of Article 2 of Principal Regulations (Interpretation)

3. Article 2 of the Principal Regulations is amended—

(a) by inserting in sub-article (1) the following definition after the definition of “the Court”:

“‘Credit Institutions Directive’ means Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions;”;

(b) by substituting in sub-article (1) the following definition for the definitions of “‘reinsurance’ and ‘reinsurer’”:

“‘reinsurance’ has the same meaning as in the Reinsurance Regulations;”;

(c) by inserting in sub-article (1) the following definitions after the definition of “reinsurance” (as substituted by paragraph (b)):

“‘reinsurance business’ has the same meaning as in the Reinsurance Directive;

‘Reinsurance Directive’ means Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance;

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 29th June, 2007.*

‘Reinsurance Regulations’ means the European Communities (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006);

‘reinsurance undertaking’ means a reinsurance undertaking authorised by the Bank under the Reinsurance Regulations or by the competent authority of another Member State under a law of that other State corresponding to those Regulations;

‘reinsurer’ includes retrocessionaire;”;

- (d) by inserting in sub-article (1) the following definition after the definition of “the Second Directive”:

“‘special purpose reinsurance vehicle’ has the same meaning as in the Reinsurance Regulations;”;

- (e) by inserting in sub-article (1) the following definitions after the definition of “supervisory authority”:

“ ‘third country insurance undertaking’ means an undertaking that would require authorisation as an insurance undertaking if it had its registered office in a Member State;

‘third country reinsurance undertaking’ means an undertaking that would require authorisation as a reinsurance undertaking if it had its registered office in a Member State;”.

Amendment of Article 36A of the Principal Regulations (Insurance undertaking to provide plan for restoring its finances if required to do so by the Bank)

4. Article 36A of the Principal Regulations (as inserted by Regulation 3 of the European Communities (Life Assurance) Framework (Amendment No. 2) Regulations 2004 (S.I. No. 729 of 2004)) is amended by substituting the following sub-article for sub-article (6):

“(6) The Bank may reduce the reduction, based on reinsurance, to the required solvency margin as determined in respect of the undertaking in accordance with this Part if—

- (a) the nature or quality of the undertaking’s reinsurance contracts has changed significantly since the end of its last financial year, or
- (b) no risk, or only a limited risk transfer, arises under the undertaking’s reinsurance contracts.”.

Amendment of Article 40 of Principal Regulations (Interpretation: Part 4)

5. Article 40 of the Principal Regulations (as substituted by Regulation 4 of the European Communities (Life Assurance) Framework (Amendment No. 2) Regulations 2004 (S.I. No. 729 of 2004)) is amended in sub-article (1), by substituting the following definition for the definition of “prescribed entity”:

“‘prescribed entity’ means any of the following:

- (a) an insurance undertaking, a reinsurance undertaking, a credit institution or an investment firm authorised by a competent authority of another Member State;
- (b) the parent undertaking of such an undertaking, institution or firm;
- (c) a person (whether natural or legal) that controls such an undertaking, institution or firm;”.

Amendment of Part A of Annex II of Principal Regulations (Solvency Margins and Guarantee Funds)

6. Part A of Annex II to the Principal Regulations (as substituted by Regulation 5 of the European Communities (Life Assurance) Framework (Amendment No. 2) Regulations 2004 (S.I. No. 729 of 2004) is amended—

(a) by substituting the following sub-subparagraph for paragraph 4(2)(a):

“(a) participations that the insurance undertaking holds in—

- (i) an insurance undertaking, or
- (ii) a reinsurance undertaking, or
- (iii) a third country insurance undertaking, or
- (iv) a third country reinsurance undertaking, or
- (v) an insurance holding company, or
- (vi) a credit institution, or
- (vii) a financial institution, or
- (viii) an investment firm;”;

(b) by substituting the following subparagraph for paragraph 4(6):

“(6) In this paragraph—

‘credit institution’ means a credit institution within the meaning of Article 4(1) of the Credit Institutions Directive;

‘financial institution’ means a financial institution within the meaning of Article 4(5) of the Credit Institutions Directive;

‘insurance holding company’ has the same meaning as in Regulation 3(1) of the European Communities (Insurance and Reinsurance Groups Supplementary Supervision) Regulations 2007 (S.I. No. [] of 2007);

‘investment firm’ means an investment firm within the meaning of Article 4(1) of Directive 2004/39/EC¹;

‘participation’ has the same meaning as in Article 1(f) of Directive 98/78/EC;”;

(c) by substituting the following paragraph for paragraph 5:

“Solvency margin for insurance undertaking that issues insurance of a kind referred to in Article 2 (1) (a) and (b) of Directive 2002/83/EC²

5. (1) For insurance of a kind referred to in Article 2(1)(a) and (b) of Directive 2002/83/EC (other than insurance linked to an investment fund) and for an operation of a kind referred to in Article 2 (3) of Directive 2002/83/EC, the required solvency margin must be equal to an amount calculated as follows:

Step 1 (first result): Multiply 4 per cent of the mathematical reserves relating to direct business and reinsurance acceptances gross of reinsurance cessions by the ratio, for the last financial year of the undertaking, of the total mathematical reserves after deducting reinsurance cessions to the gross total mathematical reserves. The ratio may in no case be less than 85 per cent. Amounts recoverable from special purpose reinsurance vehicles can be deducted as reinsurance, but only on submission of supporting evidence to, and with the prior approval of, the Bank.

Step 2 (second result):

(a) For an insurance policy on which the capital at risk is not a negative figure, multiply 0.3 per cent of the capital at risk underwritten by the undertaking by the ratio, for the undertaking’s immediately preceding financial year, of the total of capital at risk retained as the undertaking’s liability (after making allowance for reinsurance cessions and retrocessions) to the total capital at risk, gross of reinsurance (which ratio must not be less than 50 per cent); amounts recoverable from special purpose reinsurance vehicles can be deducted as reinsurance, but only on provision of supporting evidence to, and with the prior approval of, the Bank.

¹ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC. OJ No. L 145, 30.4.2004, p. 1

² Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance. OJ No. L 345, 19/12/2002 p. 1.

- (b) For an insurance policy with a maximum term of 3 years providing temporary insurance on death, multiply 0.1 per cent of the capital at risk underwritten by the undertaking by the ratio, for the undertaking's last financial year, of the total capital at risk retained as the undertaking's liability (after making allowance for reinsurance cessions and retrocessions) to the total capital at risk, gross of reinsurance (which ratio must not be less than 50 per cent); amounts recoverable from special purpose reinsurance vehicles can be deducted as reinsurance, but only on submission of supporting evidence to, and with the prior approval of, the Bank.
- (c) For an insurance policy with a term of more than 3 years, but not more than 5 years, that provides temporary insurance on death, multiply 0.15 per cent of the capital at risk underwritten by the undertaking by the ratio, for the undertaking's last financial year, of the total capital at risk retained as the undertaking's liability after reinsurance cessions and retrocessions to the total capital at risk, gross of reinsurance (which ratio must not be less than 50 per cent); amounts recoverable from special purpose reinsurance vehicles can be deducted as reinsurance, but only on submission of supporting evidence to, and with the prior approval of, the Bank.

Step 3: Add together the first result and the second result.

(2) In calculating the amount of the required solvency margin, the amount of any reinsurance acceptance properly included in a solvency margin calculated in accordance with paragraph 2 of Part D of Annex II is to be excluded.”.

Further Amendment of Annex II to the Principal Regulations (Solvency margin and Guarantee Funds)

7. Annex II to the Principal Regulations is further amended by inserting the following Part after Part C:

“PART D
SOLVENCY MARGINS FOR INSURANCE UNDERTAKINGS
THAT CARRY ON REINSURANCE BUSINESS

Application of this Part

1. This Part applies to an authorised insurance undertaking that is established in the State and carries on reinsurance business, but only if—

- (a) the total reinsurance premiums that it collects in a year exceed 10 per cent of its total income from premiums collected by it during that year, or
- (b) the total reinsurance premiums that it collects in a year exceed €50,000,000, or
- (c) the technical reserve resulting from its reinsurance acceptances exceeds 10 per cent of its total technical reserves as at the end of a year.

Insurance undertaking to establish and maintain adequate solvency margin

2. An insurance undertaking to which this Part applies shall establish and maintain in respect of its reinsurance business an adequate solvency margin that complies with paragraph 9 of Schedule 1 to the Reinsurance Regulations.”.

Amendment of Annex V to the Principal Regulations (Valuation of Assets)

8. Annex V of the Principal Regulations is amended by the substitution in paragraph 2 of section 2 (Categories of Assets) of the following for item (f):

“(f) debts owed by reinsurance undertakings or by special purpose reinsurance vehicles;”.

Amendment of Annex VII of Principal Regulations (Reinsurance, Currency Matching, Localisation, Documents of Title)

9. Annex VII to the Principal Regulations is amended by inserting of the following subparagraphs after paragraph 2(4):

“(4A) As soon as practicable after the commencement of this sub-article, the Bank shall prescribe the conditions under which reinsurance cessions entered into with third country reinsurance undertakings may be deducted from the technical reserves of an insurance undertaking.

(4B) In paragraph (4A), ‘reinsurance cession’ has the same meaning as in the Reinsurance Regulations.”.

GIVEN under my Official Seal,
31 May 2007



BRIAN COWEN,
Minister for Finance.

EXPLANATORY NOTE

(This note is not a part of the Instrument and does not purport to be a legal interpretation)

These Regulations give effect to provisions in Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amends Directive 2002/83/EC of the European Parliament and of the Council which specifically applies to life assurance undertakings.

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