



STATUTORY INSTRUMENTS.

S.I. No. 485 of 2015



EUROPEAN UNION (INSURANCE AND REINSURANCE)
REGULATIONS 2015

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EUROPEAN UNION (INSURANCE AND REINSURANCE)
REGULATIONS 2015

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EUROPEAN UNION (INSURANCE AND REINSURANCE)
REGULATIONS 2015

I, MICHAEL NOONAN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009¹ as amended by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011², Directive 2012/23/EU of the European Parliament and of the Council of 12 September 2012³, Council Directive 2013/23/EU of 13 May 2013⁴, Directive 2013/58/EU of the European Parliament and of the Council of 11 December 2013⁵ and Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014⁶, hereby make the following Regulations:

Part 1

PRELIMINARY

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Insurance and Reinsurance) Regulations 2015.

(2) Subject to paragraph (3), these Regulations come into operation on 1 January 2016.

(3) So far as is necessary to secure compliance by the State with the obligations imposed by Article 308a of the Directive, and for the purposes of Regulation 4(7), these Regulations come into operation on the day after they are made.

Object of Regulations

2. The object of these Regulations is to give effect to the Directive.

Interpretation

3. In these Regulations, unless the context otherwise requires—

“Act of 1942” means the Central Bank Act 1942 (No. 22 of 1942);

“Act of 2010” means the Central Bank Reform Act 2010 (No. 23 of 2010);

¹OJ No. L335, 17.12.2009, p. 1

²OJ No. L326, 8.12.2011, p. 113

³OJ No. L249, 14.9.2012, p. 1

⁴OJ No. L158, 10.6.2013, p. 362

⁵OJ No. L341, 18.12.2013, p. 1

⁶OJ No. L153, 22.5.2014, p. 1

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 10th November, 2015.*

“Act of 2013” means the Central Bank (Supervision and Enforcement) Act 2013 (No. 26 of 2013);

“Act of 2014” means the Companies Act 2014 (No. 38 of 2014);

“annual quantitative templates” mean the annual templates referred to in Article 304(1)(d) of Commission Delegated Regulation (EU) 2015/35;

“annual summary of the regular supervisory report” means the summary report referred to in Article 312(3) of Commission Delegated Regulation (EU) 2015/35;

“authorisation” means an authorisation granted (or deemed to be granted) by the Bank under these Regulations or (but only where the context requires) an authorisation granted (or deemed to be granted) by a supervisory authority of a Member State other than the State in accordance with Article 14 of the Directive, and “authorised” shall be construed accordingly;

“Bank” means Central Bank of Ireland;

“board of directors” includes a committee of management or other directing body of a society registered under the Industrial and Provident Societies Acts 1893 to 2014 or the Friendly Societies Acts 1896 to 2014;

“branch” means an agency or a branch of an insurance undertaking or reinsurance undertaking which is located in the territory of a Member State other than its home Member State, and any permanent presence of an undertaking in a Member State other than its home Member State shall be treated in the same way as a branch, even where that presence does not take the form of a branch but consists merely of an office managed by the staff of the undertaking or by a person who is independent but has permanent authority to act for the undertaking as an agency would;

“captive insurance undertaking” means an insurance undertaking owned either by—

- (a) a financial undertaking other than an insurance undertaking or reinsurance undertaking or a group of insurance undertakings or reinsurance undertakings, or
- (b) an undertaking which is not a financial undertaking,

the purpose of which is to provide insurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member;

“captive reinsurance undertaking” means a reinsurance undertaking owned either by—

- (a) a financial undertaking other than an insurance undertaking or reinsurance undertaking or a group of insurance undertakings or reinsurance undertakings, or
- (b) an undertaking which is not a financial undertaking,

the purpose of which is to provide reinsurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member;

“close links” means a situation in which 2 or more natural or legal persons are linked by control or participation, or a situation in which 2 or more natural or legal persons are permanently linked to one and the same person by a control relationship;

“Commission” means European Commission;

“Commission Delegated Regulation (EU) 2015/35” means Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)⁷;

“concentration risk” means all risk exposures with a loss potential which is large enough to threaten the solvency or the financial position of insurance undertakings and reinsurance undertakings;

“control” means the relationship between a parent undertaking and a subsidiary undertaking, as set out in Article 1 of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking;

“Court” means High Court;

“credit institution” has the meaning given by Article 4(1) of Directive 2006/48/EC;

“credit risk” means the risk of loss or of adverse change in the financial situation, resulting from fluctuations in the credit standing of issuers of securities, counterparties and any debtors to which insurance undertakings or reinsurance undertakings are exposed, in the form of counterparty default risk, or spread risk, or market risk concentrations;

“the Directive” means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II) as amended by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011¹, Directive 2012/23/EU of the European Parliament and of the Council of 12 September 2012², Council Directive 2013/23/EU of 13 May 2013³, Directive 2013/58/EU of the European Parliament and of the Council of 11 December 2013⁴ and Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014⁵;

⁷OJ No. L12, 17.1.2015, p 1

“Directive 73/239/EEC” means the First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance⁸;

“Directive 78/660/EEC” means the Fourth Council Directive of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies⁹;

“Directive 83/349/EEC” means the Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts¹⁰;

“Directive 84/5/EEC” means the Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles¹¹;

“Directive 85/611/EEC” means Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)¹²;

“Directive 98/78/EC” means Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group¹³;

“Directive 2000/26/EC” means Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (Fourth motor insurance Directive)¹⁴;

“Directive 2002/13/EC” means Directive 2002/13/EC of the European Parliament and of the Council of 5 March 2002 amending Council Directive 73/239/EEC as regards the solvency margin requirements for non-life insurance undertakings¹⁵;

“Directive 2002/83/EC” means Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance¹⁶;

“Directive 2002/87/EC” means Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC,

⁸OJ No. L228, 16.8.1973, p.3

⁹OJ No. L222 14.8.78, p.11

¹⁰OJ No. L193, 18.7.1983, p. 1

¹¹OJ No. L8, 11.1.1984, p.17

¹²OJ No. L375, 31.12.1985, p.3

¹³OJ No. L330, 5.12.1998, p.1

¹⁴OJ No. L181, 20.7.2000, p. 65

¹⁵OJ No. L77, 20.3.2002, p.17

¹⁶OJ No. L345, 19.12.2002, p.1

92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council¹⁷;

“Directive 2004/39/EC” means 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/EEC¹⁸;

“Directive 2004/109/EC” means Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC¹⁹;

“Directive 2005/68/EC” means Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC²⁰;

“Directive 2006/48/EC” 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 institutions²¹;

“diversification effects” means the reduction in the risk exposure of insurance undertakings and reinsurance undertakings and groups related to the diversification of their business, resulting from the fact that the adverse outcome from one risk can be off-set by a more favourable outcome from another risk, where those risks are not fully correlated;

“EBA” means the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC²²;

“EIOPA” means the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010;

“ESRB” means the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board²³;

¹⁷OJ No. L35, 11.2.2003, p. 1

¹⁸OJ No. L145, 30.4.2004, p.1

¹⁹OJ No. L390, 31.12.2004, p. 38

²⁰OJ No. L323, 9.12.2005, p. 1

²¹OJ No. L177, 30.6.2006, p.1

²²OJ No. L331, 15.12.2010, p.12

²³OJ No. L331, 15.12.2010, p. 1

“establishment”, in relation to an insurance undertaking or a reinsurance undertaking, means its head office or any of its branches;

“external credit assessment institution” means a credit rating agency that is registered or certified in accordance with Regulation (EC) No 1060/2009 of the European Parliament and of the Council or a central bank issuing credit ratings which are exempt from that Regulation²⁴;

“financial services legislation” has the meaning assigned to it by section 3(1) of the Act of 2013;

“financial undertaking” means any of the following entities:

- (a) a credit institution, or a financial institution or an ancillary services undertaking within the meaning of Article 4(5) and (21) of Directive 2006/48/EC respectively;
- (b) an insurance undertaking or a reinsurance undertaking, or an insurance holding company within the meaning of Regulation 215(1);
- (c) an investment firm;
- (d) a mixed financial holding company within the meaning of Article 2(15) of Directive 2002/87/EC;

“financial year”, in relation to an undertaking, means the period in respect of which the accounts of the undertaking are made up, whether the period is a year or not;

“function”, within a system of governance, means an internal capacity to undertake practical tasks and includes the risk management function, the compliance function, the internal audit function and the actuarial function;

“group” has the meaning given by Regulation 215(1);

“home Member State” means—

- (a) for non-life insurance, the Member State in which the head office of the insurance undertaking covering the risk is situated;
- (b) for life insurance, the Member State in which the head office of the insurance undertaking covering the commitment is situated;
- (c) for reinsurance, the Member State in which the head office of the reinsurance undertaking is situated;

“host Member State” means the Member State, other than the home Member State, in which an insurance undertaking or reinsurance undertaking has a branch or provides services; and for this purpose, in relation to life and non-life insurance, the Member State in which an insurance undertaking “provides

²⁴OJ No. L302, 17.11.2009, p. 1

services” means, respectively, the Member State of the commitment or the Member State in which the risk is situated, where that commitment or risk is covered by the insurance undertaking, or a branch, situated in another Member State;

“industrial assurance business” has the meaning assigned to it by section 3 of the Insurance Act 1936 (No. 45 of 1936);

“the Insurance Acts” means the Insurance Acts 1909 to 2009, regulations made under those Acts and regulations relating to insurance made under the European Communities Act 1972 (No. 27 of 1972);

“insurance undertaking” means a person who has received authorisation to carry on non-life insurance or life insurance and references to “non-life insurance undertaking” and “life insurance undertaking” shall be construed accordingly;

“intra-group transaction” means any transaction by which an insurance undertaking or reinsurance undertaking relies either directly or indirectly on other undertakings within the same group or on any natural or legal person linked to the undertakings within that group by close links, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment;

“investment firm” has the meaning given by Article 4(1)(1) of Directive 2004/39/EC;

“large risks” means—

- (a) risks classified under classes 4, 5, 6, 7, 11 and 12 in Part 1 of Schedule 1;
- (b) risks classified under classes 14 and 15 in Part 1 of Schedule 1, where the policy holder is engaged professionally in an industrial or commercial activity or in one of the liberal professions, and the risks relate to such activity;
- (c) risks classified under classes 3, 8, 9, 10, 13 and 16 in Part 1 of Schedule 1 and risks insured for professional associations, joint ventures or temporary groupings in so far as the policy holder exceeds the limits of at least 2 of the following criteria:
 - (i) a balance-sheet total of €6.2 million in assets;
 - (ii) a net turnover, within the meaning of Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies²⁵, of €12.8 million;
 - (iii) an average number of 250 employees during the financial year;

and if the policy holder belongs to a group of undertakings for which consolidated accounts within the meaning of Directive 83/349/EEC

²⁵OJ No. L222, 14.8.1978, p. 11

are drawn up, the criteria set out in paragraph (c) shall be applied on the basis of the consolidated accounts;

“legal expenses insurance undertaking” shall be construed in accordance with Regulation 204;

“life insurance” means activities of the classes in Schedule 2;

“liquidity risk” means the risk that an insurance undertaking or reinsurance undertaking is unable to realise investments and other assets in order to settle its financial obligations when they fall due;

“market risk” means the risk of loss or of adverse change in the financial situation, resulting, directly or indirectly, from fluctuations in the level and in the volatility of market prices of assets, liabilities and financial instruments;

“Member State” means a Member State of the European Union and, where relevant, includes a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (as adjusted by the Protocol signed at Brussels on 17 March 1993), as amended;

“Member State in which the risk is situated” means any of the following:

- (a) the Member State in which the property is situated, where the insurance relates either to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy;
- (b) the Member State of registration, where the insurance relates to vehicles of any type;
- (c) the Member State where the policy holder took out the policy in the case of policies of a duration of 4 months or less covering travel or holiday risks, whatever the class concerned;
- (d) in all cases not explicitly covered by paragraph (a), (b) or (c), the Member State in which either of the following is situated:
 - (i) the habitual residence of the policy holder;
 - (ii) if the policy holder is a legal person, that policy holder’s establishment to which the contract relates;

“Member State of the commitment” means the Member State in which either of the following is situated:

- (a) the habitual residence of the policy holder;
- (b) if the policy holder is a legal person, that policy holder’s establishment, to which the contract relates;

“Minister” means Minister for Finance;

“national bureau” means a national insurers’ bureau as defined in Article 1(3) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability²⁶;

“national guarantee fund” means the body referred to in Article 1(4) of Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles²⁷;

“non-life insurance” means activities of the classes in Part 1 of Schedule 1;

“operational risk” means the risk of loss arising from inadequate or failed internal processes, or from personnel and systems, or from external events;

“outsourcing” means an arrangement of any form between an insurance undertaking or reinsurance undertaking and a service provider, whether a supervised entity or not, by which that service provider performs a process, a service or an activity, whether directly or by sub outsourcing, which would otherwise be performed by the insurance undertaking or reinsurance undertaking itself;

“own risk and solvency assessment report” means the report submitted in accordance with Regulation 47(9);

“parent undertaking” means a parent undertaking within the meaning of Article 1 of Directive 83/349/EEC;

“participation”, in relation to an undertaking, means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of the undertaking;

“probability distribution forecast” means a mathematical function that assigns to an exhaustive set of mutually exclusive future events a probability of realisation;

“qualifying holding”, in relation to an undertaking, means a direct or indirect holding in the undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the undertaking;

“quarterly quantitative templates” mean the quarterly templates referred to in Article 304(1)(d) of Commission Delegated Regulation (EU) 2015/35;

“regular supervisory report” means the report referred to in Article 304(1)(b) of Commission Delegated Regulation (EU) 2015/35;

“regulated market” means either of the following:

- (a) in the case of a market situated in a Member State, a regulated market /as defined in Article 4(1)(14) of Directive 2004/39/EC; or

²⁶OJ No. L103, 2.5.1972, p. 1

²⁷OJ No. L8, 11.1.1984, p. 17

- (b) in the case of a market situated in a third country, a financial market which fulfils the following conditions:
- (i) it is recognised by the home Member State of the insurance undertaking and meets requirements comparable to those under Directive 2004/39/EC;
 - (ii) the financial instruments dealt in on that market are of a quality comparable to that of the instruments dealt in on the regulated market or markets of the home Member State;

“Regulation (EC) No 593/2008” means Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)²⁸;

“Regulation (EU) No 1094/2010” means Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC²⁹;

“reinsurance” means—

- (a) the activity consisting in accepting risks ceded by an insurance undertaking or third-country insurance undertaking, or by another reinsurance undertaking or third-country reinsurance undertaking, or
- (b) in the case of the association of underwriters known as Lloyd’s, the activity consisting in accepting risks, ceded by any member of Lloyd’s, by an insurance undertaking or reinsurance undertaking other than the association of underwriters known as Lloyd’s;

“reinsurance undertaking” means a person who has received authorisation to carry on reinsurance only;

“risk measure” means a mathematical function which assigns a monetary amount to a given probability distribution forecast and increases monotonically with the level of risk exposure underlying that probability distribution forecast;

“risk-mitigation techniques” means all techniques which enable insurance undertakings and reinsurance undertakings to transfer part or all of their risks to another party;

“special purpose vehicle” means any undertaking, whether incorporated or not, other than an existing insurance undertaking or reinsurance undertaking, which assumes risks from insurance undertakings or reinsurance undertakings and which fully funds its exposure to such risks through the proceeds of a debt issuance or any other financing mechanism where the repayment rights of the

²⁸OJ No. L177, 4.7.2008, p. 6

²⁹OJ No. L331, 15.12.2010, p. 48

providers of such debt or financing mechanism are subordinated to the reinsurance obligations of such an undertaking;

“subsidiary undertaking” means any subsidiary undertaking within the meaning of Article 1 of Directive 83/349/EEC, including subsidiaries of such an undertaking;

“supervisory authority” means a national authority empowered by law to supervise insurance undertakings or reinsurance undertakings;

“supervisory review process” shall be construed in accordance with Regulation 38(7);

“third country” means a country that is not a Member State;

“third-country insurance undertaking” means an undertaking which has its head office in a third country but would require authorisation as an insurance undertaking in accordance with Article 14 of the Directive if it had its head office in a Member State;

“third-country reinsurance undertaking” means an undertaking which has its head office in a third country but would require authorisation as a reinsurance undertaking in accordance with Article 14 of the Directive if it had its head office in a Member State;

“underwriting risk” means the risk of loss or of adverse change in the value of insurance liabilities, due to inadequate pricing and provisioning assumptions.

Exclusion of small undertakings

4. (1) Without prejudice to Regulations 5 to 9 and subject to paragraphs (2), (3) and (5), these Regulations do not apply to an undertaking (other than an undertaking carrying on reinsurance only) which meets all of the following conditions:

- (a) the annual gross written premium income of the undertaking does not exceed €5 million;
- (b) the total of the undertaking’s technical provisions, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Regulation 83 does not exceed €25 million;
- (c) where the undertaking belongs to a group, the total of the technical provisions of the group, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, does not exceed €25 million;
- (d) the business of the undertaking does not include insurance or reinsurance activities covering liability, credit and suretyship insurance risks, other than any that constitute ancillary risks within the meaning of Regulation 16;

- (e) the business of the undertaking does not include reinsurance operations exceeding €0.5 million of its gross written premium income or €2.5 million of its technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, or more than 10% of its gross written premium income or more than 10% of its technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles.

(2) In the case of an undertaking to which, by virtue of paragraph (1), these Regulations do not apply—

- (a) if any of the amounts set out in paragraph (1) is exceeded for 3 consecutive years these Regulations apply to the undertaking from the beginning of the next year, and
- (b) if the condition set out in paragraph (1)(d) ceases to be met and for as long as it is not met, these Regulations apply.

(3) By way of derogation from paragraph (1), these Regulations apply to an undertaking seeking authorisation to pursue insurance or reinsurance activities in respect of which the annual gross written premium income or technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles are expected to exceed the amounts in paragraph (1) within the next 5 years.

(4) These Regulations cease to apply to an undertaking if the Bank verifies that—

- (a) the conditions set out in paragraph (1) have been met for the previous 3 consecutive years, and
- (b) those conditions are expected to be met for the next 5 years.

(5) Paragraph (1) does not apply to an undertaking which conducts business outside the State through a branch or pursuant to the freedom to provide services under Regulations 154 to 163.

(6) Paragraphs (1) to (5) do not prevent any undertaking from applying for authorisation or continuing to be authorised under these Regulations.

(7) The Bank may require an undertaking which expects to meet the conditions in this Regulation to notify the Bank accordingly in such manner, and at such time, as may be determined by the Bank and published on its website.

Exclusion of mutual undertakings

5. (1) These Regulations do not apply to a mutual undertaking (in this Regulation referred to as the “ceding undertaking”) which pursues non-life insurance activities and which has concluded with another mutual undertaking (in this Regulation referred to as the “accepting undertaking”) an agreement which provides for the full reinsurance of the insurance policies issued by the ceding

undertaking or under which the accepting undertaking is to meet the liabilities arising under such policies in the place of the ceding undertaking.

(2) These Regulations do apply to the accepting undertaking.

Exclusions: insurance forming part of social security system

6. These Regulations do not apply to insurance forming part of a statutory system of social security.

Exclusions: non-life operations

7. As far as non-life insurance is concerned, these Regulations do not apply to the following operations:

- (a) capital redemption operations;
- (b) operations of provident and mutual benefit institutions whose benefits vary according to the resources available and in which the contributions of the members are determined on a flat rate basis;
- (c) operations carried out by organisations not having a legal personality with the purpose of providing mutual cover for their members without there being any payment of premiums or constitution of technical reserves;
- (d) export credit insurance operations for the account of or guaranteed by the State, or where the State is the insurer.

Exclusions: assistance activity

8. These Regulations do not apply to an assistance activity which meets the conditions set out in Article 6 of the Directive.

Exclusions: life operations and organisations

9. As far as life insurance is concerned, these Regulations do not apply to the following operations and organisations:

- (a) operations of provident and mutual-benefit institutions whose benefits vary according to the resources available and which require each of their members to contribute at the appropriate flat rate;
- (b) operations carried out by organisations, other than insurance undertakings or reinsurance undertakings, whose object is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity, whether or not the commitments arising from such operations are fully covered at all times by mathematical provisions;
- (c) organisations which undertake to provide benefits solely in the event of death, where the amount of such benefits does not exceed the average funeral costs for a single death or where the benefits are provided in kind.

Exclusions: reinsurance

10. (1) As far as reinsurance is concerned, these Regulations do not apply to the activity of reinsurance conducted or fully guaranteed by the government of a Member State when that government is acting, for reasons of substantial public interest, in the capacity of reinsurer of last resort, including in circumstances where such a role is required by a situation in the market in which it is not feasible to obtain adequate commercial cover.

(2) These Regulations do not apply to reinsurance undertakings which by 10 December 2007 ceased to conduct new reinsurance contracts and exclusively administer their existing portfolio in order to terminate their activity.

Insurance and reinsurance undertakings closing their activity

11. (1) Without prejudice to Regulation 10(2), an insurance undertaking or reinsurance undertaking to which this paragraph applies and which before 1 January 2016 ceases to conduct new insurance or reinsurance contracts and exclusively administers its existing portfolio in order to terminate its activity shall not be subject to Regulations 12 and 14 to 268 until the date arrived at under paragraph (2) or (3) where either—

- (a) the undertaking has satisfied the Bank that it will terminate its activity before 1 January 2019, or
- (b) the undertaking is subject to reorganisation measures set out in Regulations 271 to 274 and an administrator has been appointed before 1 January 2016.

(2) An insurance undertaking or reinsurance undertaking which falls within paragraph (1)(a) shall be subject to Regulations 12 and 14 to 268 from 1 January 2019 or from an earlier date notified by the Bank if the Bank is not satisfied with the progress that has been made towards terminating the undertaking's activity.

(3) An insurance undertaking or reinsurance undertaking which falls within paragraph (1)(b) shall be subject to Regulations 12 and 14 to 268 from 1 January 2021 or from an earlier date notified by the Bank if the Bank is not satisfied with the progress that has been made towards terminating the undertaking's activity.

(4) Paragraph (1) applies to an insurance undertaking or reinsurance undertaking if—

- (a) it is not part of a group, or if it is, all undertakings that are part of the group cease to conduct new insurance or reinsurance contracts before 1 January 2016,
- (b) the undertaking provides the Bank with an annual report setting out what progress has been made in terminating its activity, and
- (c) the undertaking has notified the Bank that paragraph (1) applies to it.

(5) The Bank shall draw up a list of the insurance undertakings and reinsurance undertakings to which paragraph (1) applies and communicate that list to all the other Member States.

(6) This Regulation does not preclude any insurance undertaking or reinsurance undertaking from operating in accordance with Regulations 12 and 14 to 268.

Part 2

AUTHORISATION

Prohibition against carrying on insurance etc. without authorisation

12. (1) A person shall not—

- (a) carry on the business of insurance of any class, or any reinsurance activity, in the State unless the person holds an authorisation covering the class of insurance or the reinsurance activity, or
- (b) claim to be, or represent itself as, an insurance undertaking or reinsurance undertaking in the State unless the person holds an authorisation covering insurance or reinsurance.

(2) Paragraph (1) does not apply to persons, activities or operations excluded from the application of these Regulations.

(3) A person who contravenes paragraph (1) commits an offence.

Deemed authorisation for existing undertakings

13. (1) A person who, immediately before 1 January 2016, is authorised to carry on life insurance, non-life insurance or reinsurance shall be deemed on and after that date to hold an authorisation under these Regulations to carry on the same kind of insurance or reinsurance business that it had a right to carry on immediately before that date (but subject to the provisions of these Regulations).

(2) Paragraph (1) does not include a person excluded from the application of these Regulations.

Authorisation

14. (1) An application for authorisation may be made to the Bank by—

- (a) any undertaking which has established or is establishing its head office in the State, or
- (b) any insurance undertaking which is the holder of an authorisation relating to the whole or any part of a particular class or classes of insurance and which proposes to extend its business to the whole of the class or to other classes of insurance.

(2) An application for authorisation shall be in such form, and contain such particulars, as the Bank may from time to time determine.

Scope of authorisation

15. (1) An authorisation of an insurance undertaking or reinsurance undertaking under these Regulations shall be valid in all Member States and shall permit the undertaking to carry on business in all Member States, by way of establishment and by way of the provision of services.

(2) An authorisation of an insurance undertaking shall be granted for a particular class of insurance in Part 1 of Schedule 1 or in Schedule 2 and shall cover the entire class, unless the applicant wishes to cover only some of the risks pertaining to that class.

(3) The risks included in a class shall not be included in any other class except in the cases referred to in Regulation 16.

(4) Where appropriate the Bank may grant authorisation for 2 or more of the classes of insurance.

(5) An authorisation may be restricted to industrial assurance business and an insurance undertaking may not carry on industrial assurance business by virtue of an authorisation unless the authorisation expressly extends to such business.

(6) As far as non-life insurance is concerned, the Bank may grant authorisation for the groups of classes in Part 2 of Schedule 1; and the Bank may limit authorisation requested for one of the classes to the operations set out in the scheme of operations referred to in Regulation 21.

(7) Without prejudice to Regulation 16(1), an insurance undertaking may engage in the assistance activity referred to in Regulation 8 only if it has been granted authorisation for class 18 in Part 1 of Schedule 1 and, if it does so these Regulations shall apply to that activity.

(8) As far as reinsurance is concerned, authorisation may be granted for non-life reinsurance activity, life reinsurance activity or both and an application for authorisation as a reinsurance undertaking shall be considered in the light of the scheme of operations to be submitted pursuant to Regulation 17(4)(c).

Ancillary risks

16. (1) An insurance undertaking which has obtained an authorisation for a principal risk belonging to one class or a group of classes in Schedule 1 may also insure ancillary risks included in another class without the need to obtain authorisation in respect of such risks provided that the ancillary risks meet all of the following conditions:

- (a) they are connected with the principal risk;
- (b) they concern the object which is covered against the principal risk;
- (c) they are covered by the contract insuring the principal risk.

(2) The risks included in classes 14, 15 and 17 in Part 1 of Schedule 1 shall not be regarded as risks ancillary to other classes but legal expenses insurance as set out in class 17 may be regarded as a risk ancillary to class 18 in that Part of that Schedule, where all of the conditions in paragraph (1) and either of the following conditions is met:

- (a) the main risk relates solely to the assistance provided for persons who fall into difficulties while travelling, while away from their home or habitual residence;
- (b) the insurance concerns disputes or risks arising out of, or in connection with, the use of sea going vessels.

Conditions for authorisation

17. (1) An undertaking applying for authorisation shall comply with the following provisions:

- (a) it shall be a designated activity company, a public limited company, a company limited by guarantee, an unlimited company or a European Company (SE);
- (b) its head office and registered office shall be in the State.

(2) Despite paragraph (1)(a), an undertaking applying for authorisation in relation to life insurance may be a society registered under the Industrial and Provident Societies Acts 1893 to 2014 or the Friendly Societies Acts 1896 to 2014.

(3) An undertaking set up in any public law form may apply for an authorisation provided that it has as its object insurance or reinsurance operations, under conditions equivalent to those under which undertakings governed by private law operate.

(4) An undertaking applying for authorisation shall also comply with the following provisions:

- (a) where the application is for authorisation as an insurance undertaking, its objects shall be limited to the business of insurance and operations arising directly from insurance to the exclusion of all other commercial business;
- (b) where the application is for authorisation as a reinsurance undertaking, its objects shall be limited to the business of reinsurance and related operations (which may include a holding company function or activities with respect to financial sector activities within the meaning of Article 2(8) of Directive 2002/87/EC);
- (c) it shall submit to the Bank a scheme of operations in accordance with Regulation 21;

- (d) it shall hold the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement provided for in Regulation 140(2);
- (e) it shall submit to the Bank evidence that it will be, and will continue to be, in a position to hold eligible own funds to cover the Solvency Capital Requirement, as provided for in Regulation 113;
- (f) it shall submit to the Bank evidence that it will be, and will continue to be, in a position to hold eligible basic own funds to cover the Minimum Capital Requirement, as provided for in Regulation 139;
- (g) it shall submit to the Bank evidence that it will be in a position to comply with the system of governance referred to in Regulations 44 to 51;
- (h) it shall submit to the Bank a copy of the undertaking's memorandum and articles of association;
- (i) where the application is for authorisation as a non-life insurance undertaking and the risks to be covered are those included in class 10 in Part 1 of Schedule 1, other than carrier's liability, it shall communicate to the Bank the name and address of the claims representative appointed or to be appointed pursuant to Article 4 of Directive 2000/26/EC in each Member State other than the State.

(5) An insurance undertaking seeking authorisation to extend its business to other classes or to extend an authorisation covering only some of the risks pertaining to one class shall submit to the Bank—

- (a) a scheme of operations in accordance with Regulation 21; and
- (b) evidence that it possesses the eligible own funds to cover the Solvency Capital Requirement and Minimum Capital Requirement provided for in Regulations 113 and 139.

(6) An insurance undertaking shall not be authorised to pursue life and non-life insurance activities simultaneously except in the circumstances specified in Regulation 79.

(7) A life insurance undertaking seeking authorisation to extend its business to the risks included in class 1 or 2 in Part 1 of Schedule 1 as referred to in Regulation 79 shall demonstrate to the Bank that it—

- (a) possesses the eligible own funds to cover the absolute floor of the Minimum Capital Requirement for life insurance undertakings and the absolute floor of the Minimum Capital Requirement for non-life insurance undertakings provided for in Regulation 140(2), and
- (b) undertakes to cover, and continue to cover, the minimum financial obligations referred to in Regulation 80(3).

Close links

18. (1) Where close links exist between an insurance undertaking or reinsurance undertaking and other natural or legal persons, the Bank shall grant authorisation only if those links do not prevent the effective exercise of its supervisory functions.

(2) The Bank shall refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the insurance undertaking or reinsurance undertaking has close links, or difficulties involved in their enforcement, would prevent the effective exercise of its supervisory functions.

(3) The Bank shall, in the exercise of its powers under financial services legislation, require an insurance undertaking or reinsurance undertaking to provide it with the information the Bank requires to monitor compliance with the condition referred to in paragraph (1) on a continuous basis.

Policy conditions and scales of premiums

19. (1) The Bank shall not require the prior approval or systematic notification of general and special policy conditions, of scales of premiums, of the technical bases used in particular for calculating scales of premiums and technical provisions, or of forms and other documents which an undertaking intends to use in its dealings with policyholders or ceding or retro ceding undertakings.

(2) Despite paragraph (1), in relation to life insurance the Bank may, for the sole purpose of verifying compliance with rules concerning actuarial principles, require systematic notification of the technical bases used for calculating scales of premiums and technical provisions but such a requirement does not constitute a prior condition for authorisation.

(3) The Bank shall not retain or introduce prior notification or approval of proposed increases in premium rates except as part of general price control systems.

(4) The Bank, in the exercise of its powers under financial services legislation, may subject undertakings seeking or having obtained authorisation for class 18 in Part 1 of Schedule 1 to checks on their direct or indirect resources in staff and equipment, including the qualification of their medical teams and the quality of the equipment available to such undertakings to meet their commitments arising out of that class.

Economic requirements of the market

20. The Bank shall not consider any application for authorisation in terms of the economic requirements of the market.

Scheme of operations

21. (1) The scheme of operations referred to in Regulation 17(4)(c) shall include particulars or evidence of the following:

- (a) the nature of the risks or commitments which the insurance undertaking or reinsurance undertaking proposes to cover;

- (b) the kind of reinsurance arrangements which the reinsurance undertaking proposes to make with ceding undertakings;
- (c) the guiding principles as to reinsurance and to retrocession;
- (d) the basic own fund items constituting the absolute floor of the Minimum Capital Requirement;
- (e) estimates of the costs of setting up the administrative services and the organisation for securing business; the financial resources intended to meet those costs and, if the risks to be covered are classified in class 18 in Part 1 of Schedule 1, the resources at the disposal of the insurance undertaking for the provision of the assistance promised.

(2) In addition to the requirements set out in paragraph (1), for the first 3 financial years the scheme shall include the following:

- (a) a forecast balance sheet;
- (b) estimates of the future Solvency Capital Requirement, as provided for in Regulations 113 to 115, on the basis of the forecast balance sheet, as well as the calculation method used to derive those estimates;
- (c) estimates of the future Minimum Capital Requirement, as provided for in Regulations 139 and 140, on the basis of the forecast balance sheet, as well as the calculation method used to derive those estimates;
- (d) estimates of the financial resources intended to cover technical provisions, the Minimum Capital Requirement and the Solvency Capital Requirement;
- (e) in regard to non-life insurance and reinsurance—
 - (i) estimates of management expenses other than installation costs, in particular current general expenses and commissions;
 - (ii) estimates of premiums or contributions and claims;
- (f) in regard to life insurance, a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.

Shareholders and members with qualifying holdings

22. (1) The Bank shall not grant an authorisation to an undertaking to take up the business of insurance or reinsurance before it has been informed of the identities of the shareholders or members, direct or indirect, whether natural or legal persons, who have qualifying holdings in that undertaking and of the amounts of those holdings.

(2) The Bank shall not grant an authorisation to an undertaking if, taking into account the need to ensure the sound and prudent management of the undertaking, it is not satisfied as to the qualifications of the shareholders or members.

(3) For the purposes of paragraph (1) the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC, as well as the conditions regarding aggregation laid down in Article 12(4) and (5) of that Directive, shall be taken into account.

(4) The Bank shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I to Directive 2004/39/EC, provided that those rights are not exercised or otherwise used to intervene in the management of the issuer and are disposed of within one year of the acquisition.

Prior consultation with authorities of other Member States

23. (1) The Bank shall consult the supervisory authority of another Member State before the granting of an authorisation to—

- (a) a subsidiary undertaking of an insurance undertaking or reinsurance undertaking authorised in the other Member State,
- (b) a subsidiary undertaking of the parent undertaking of an insurance undertaking or reinsurance undertaking authorised in the other Member State, or
- (c) an undertaking controlled by the same person, whether natural or legal, who controls an insurance undertaking or reinsurance undertaking authorised in the other Member State.

(2) The Bank shall consult the authority of the other Member State involved which is responsible for the supervision of credit institutions or investment firms prior to the granting of an authorisation to an insurance undertaking or reinsurance undertaking which is—

- (a) a subsidiary undertaking of a credit institution or investment firm authorised in the European Union,
- (b) a subsidiary undertaking of the parent undertaking of a credit institution or investment firm authorised in the European Union, or
- (c) an undertaking controlled by the same person, whether natural or legal, who controls a credit institution or investment firm authorised in the European Union.

(3) The Bank shall consult with the authorities referred to in paragraphs (1) and (2) in particular when assessing the suitability of the shareholders and the fit and proper requirements of all persons who effectively run the undertaking

or have other key functions involved in the management of another entity which is a member of the same group.

(4) Information regarding the suitability of shareholders and the fit and proper requirements of all persons who effectively run the undertaking or have other key functions shall be exchanged between the Bank and the authorities referred to in paragraphs (1) and (2) where it is of relevance to the other authority for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.

Decision on application for authorisation

24. (1) Where the Bank is satisfied as to all the matters which it needs to consider for the purposes of the preceding Regulations it shall grant an authorisation.

(2) Where the Bank decides to refuse an application for authorisation it shall notify its decision to the applicant and shall in the notification specify the grounds for its decision.

(3) A decision of the Bank refusing an application for an authorisation is an appealable decision for the purposes of Part VIIA of the Act of 1942.

(4) A failure by the Bank to deal with a complete application for an authorisation within the period of 6 months beginning with the date on which it received the application is an appealable decision for the purposes of Part VIIA of the Act of 1942, and for this purpose an application is “complete” if it fully complies with Regulation 14(2).

Notification of authorisation to EIOPA

25. The Bank shall notify EIOPA of every authorisation granted.

Power to impose conditions

26. (1) When granting an authorisation to an insurance undertaking or reinsurance undertaking, or at any time while an authorisation has effect in relation to an insurance undertaking or reinsurance undertaking, the Bank may, by notice in writing, impose such conditions as it considers appropriate with respect to the conduct of insurance business or reinsurance business by the undertaking with a view to ensuring that the undertaking carries out in a proper manner the responsibilities imposed by or under these Regulations.

(2) The Bank may, from time to time, by notice in writing given to an insurance undertaking or reinsurance undertaking, vary or revoke a condition imposed on the undertaking under paragraph (1) (including one previously varied under this paragraph).

(3) In imposing or varying a condition under this Regulation, the Bank shall ensure that the condition, or the condition as varied, is consistent with the objects of these Regulations.

(4) A decision of the Bank imposing or varying a condition under this Regulation is an appealable decision for the purposes of Part VIIA of the Act of 1942.

Part 3

SUPERVISION

Main objective of supervision

27. The main objective of supervision is the protection of policy holders and beneficiaries.

Financial stability and pro-cyclicality

28. (1) Without prejudice to the main objective of supervision, the Bank shall, in the exercise of its general duties, duly consider the potential impact of its decisions on the stability of the financial systems concerned in the European Union, in particular in emergency situations, taking into account the information available at the relevant time.

(2) In times of exceptional movements in the financial markets, the Bank shall take into account the potential pro-cyclical effects of its actions.

General principles of supervision

29. (1) The Bank shall take a prospective and risk-based approach to its supervisory duties.

(2) The Bank shall verify on a continuous basis the proper operation of insurance business or reinsurance business and compliance with supervisory provisions by insurance undertakings and reinsurance undertakings.

(3) The supervision of insurance undertakings and reinsurance undertakings by the Bank shall comprise an appropriate combination of off site activities and on site inspections.

(4) The Bank shall apply the requirements laid down in these Regulations in a manner which is proportionate to the nature, scale and complexity of the risks inherent in the business of any insurance undertaking or reinsurance undertaking.

Scope of supervision

30. (1) The Bank shall have the sole responsibility for the financial supervision of insurance undertakings and reinsurance undertakings, including that of the business they pursue either through branches or under the freedom to provide services.

(2) For the purposes of paragraph (1) financial supervision shall include verification, with respect to the entire business of an insurance undertaking or reinsurance undertaking, of its state of solvency, of the establishment of technical provisions, of its assets and of the eligible own funds, in accordance with these Regulations and other laws applicable in the State.

(3) Where an insurance undertaking is authorised to cover the risks classified in class 18 in Part 1 of Schedule 1, the Bank's supervision shall extend to monitoring of the technical resources which the insurance undertaking has at its disposal for the purpose of carrying out the assistance operations it has undertaken to perform.

(4) If—

- (a) an insurance undertaking or reinsurance undertaking authorised in a Member State other than the State is carrying on business in the State, and
- (b) the Bank believes on reasonable grounds that the activities of the undertaking might affect the undertaking's financial soundness,

the Bank shall, without delay, notify its belief to the supervisory authority of the home Member State.

(5) If an insurance undertaking or reinsurance undertaking is carrying on business in a Member State other than the State and—

- (a) in the case of an insurance undertaking, the supervisory authority of the Member State in which the risk is situated, or the Member State of the commitment, or
- (b) in the case of a reinsurance undertaking, the supervisory authority of the host Member State,

notifies the Bank of its belief that the activities of the undertaking may affect its financial soundness, the Bank shall determine whether the undertaking is complying with the prudential principles in these Regulations.

Transparency and accountability

31. (1) The Bank shall publish the following information:

- (a) the text of laws, administrative rules and general guidance in the field of insurance regulation;
- (b) the general criteria and methods, including the tools to be used in the supervisory review process;
- (c) aggregate statistical data on key aspects of the application of the prudential framework;
- (d) the manner of exercise of the options provided for in these Regulations;
- (e) the objectives of the supervision provided for by these Regulations and its main functions and activities.

(2) The Bank shall comply with paragraph (1) in such a way as to enable a comparison with the supervisory approaches adopted by the supervisory authorities of the other Member States.

(3) The Bank shall publish and regularly update the information specified in paragraph (1) in a common format that is accessible at a single electronic location.

Prohibition of refusal of reinsurance and retrocession contracts

32. (1) The Bank shall not refuse a reinsurance contract concluded by an insurance undertaking with a reinsurance undertaking or another insurance undertaking on grounds directly related to the financial soundness of that reinsurance undertaking or insurance undertaking.

(2) The Bank shall not refuse a retrocession contract concluded by a reinsurance undertaking with a reinsurance undertaking or another insurance undertaking on grounds directly related to the financial soundness of that reinsurance undertaking or insurance undertaking.

Supervision of branches established in another Member State

33. (1) If an insurance undertaking or reinsurance undertaking authorised in a Member State other than the State carries on business in the State through a branch, the supervisory authority of the home Member State may, after having informed the Bank, carry out itself, or by persons appointed for the purpose, on site verifications of the information necessary to ensure the financial supervision of the undertaking and the Bank may participate in those verifications.

(2) If an insurance undertaking or reinsurance undertaking carries on business through a branch in a Member State other than the State, in accordance with Article 33 of the Directive, the Bank may, after having informed the supervisory authority of the host Member State, carry out itself, or by persons appointed for the purpose, on site verifications of the information necessary to ensure the financial supervision of the undertaking and the supervisory authority of the host Member State may participate in those verifications.

Information to be provided for supervisory purposes

34. (1) An insurance undertaking or reinsurance undertaking shall provide to the Bank information which is necessary for the purposes of supervision in accordance with these Regulations, taking into account the objectives of supervision laid down in Regulations 27 and 28.

(2) The information referred to in paragraph (1), when being submitted in accordance with the supervisory review process, shall include at least the information necessary to enable the Bank—

(a) to assess the system of governance applied by the undertaking, the business it is pursuing, the valuation principles applied for solvency purposes, the risks faced and the risk management systems, and its capital structure, needs and managements, and

(b) to make any appropriate decisions resulting from the exercise of its supervisory functions.

(3) Without prejudice to the powers of the Bank under financial services legislation, the Bank shall exercise those powers—

(a) to determine the nature, the scope and the format of the information referred to in paragraphs (1) and (2) which it requires insurance

undertakings and reinsurance undertakings to submit at the following points in time:

- (i) at predefined periods;
 - (ii) on the occurrence of predefined events;
 - (iii) during enquiries regarding the situation of an insurance undertaking or reinsurance undertaking,
- (b) to obtain any information regarding contracts which are held by intermediaries or regarding contracts which are entered into with third parties, and
- (c) to require information from external experts, including auditors and actuaries.
- (4) The information referred to in paragraphs (1) to (3) shall—
- (a) consist of—
 - (i) qualitative or quantitative elements (or both),
 - (ii) historic, current or prospective elements (or more than one of those), and
 - (iii) data from internal or external sources (or both), and
 - (b) comply with the following:
 - (i) it reflects the nature, scale and complexity of the undertaking, and in particular the risks inherent in the business;
 - (ii) it is accessible, complete in all material respects, comparable and consistent over time;
 - (iii) it is relevant, reliable and comprehensible.
- (5) Insurance undertakings and reinsurance undertakings shall have appropriate systems and structures in place to fulfil any information requirement, howsoever described, made by the Bank where necessary for the purpose of supervision under these Regulations as well as a written policy, approved by its board of directors, ensuring the on-going appropriateness of the information provided.
- (6) Without prejudice to Regulation 140(6) to (8), where the predefined periods referred to in paragraph (3)(a)(i) are shorter than one year, the Bank may limit regular supervisory reporting where—
- (a) the provision of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking, and

(b) the information is reported at least annually.

(7) The Bank shall not limit regular supervisory reporting with a frequency shorter than one year in the case of an insurance undertaking or reinsurance undertaking that is part of a group, unless the undertaking can demonstrate to the satisfaction of the Bank that regular supervisory reporting with a frequency shorter than one year is inappropriate, given the nature, scale and complexity of the risks inherent in the group.

(8) The limitation to regular supervisory reporting shall be granted only to undertakings that do not represent more than 20% of the State's life and non-life insurance and reinsurance market respectively, where the non-life insurance market share is based on gross written premiums and the life insurance market share is based on gross technical provisions.

(9) The Bank shall give priority to the smallest undertakings when determining the eligibility of the undertakings for those limitations.

(10) The Bank may limit regular supervisory reporting or exempt an insurance undertaking or reinsurance undertaking from reporting on an item-by-item basis where—

(a) the provision of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking,

(b) the submission of that information is not necessary for the effective supervision of the undertaking,

(c) the exemption does not undermine the stability of the financial systems concerned in the European Union, and

(d) the undertaking is able to provide the information on an ad-hoc basis.

(11) The Bank shall not exempt from reporting on an item-by-item basis an insurance undertaking or reinsurance undertaking that is part of a group, unless the undertaking can demonstrate to the satisfaction of the Bank that reporting on an item-by-item basis is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group and taking into account the objective of financial stability.

(12) The exemption from reporting on an item-by-item basis shall be granted only to undertakings that do not represent more than 20% of the State's life and non-life insurance or reinsurance market respectively, where the non-life insurance market share is based on gross written premiums and the life insurance market share is based on gross technical provisions.

(13) The Bank shall give priority to the smallest undertakings when determining the eligibility of the undertakings for those exemptions.

(14) For the purposes of paragraphs (6) and (10), as part of the supervisory review process, the Bank shall assess whether the submission of information would be overly burdensome in relation to the nature, scale and complexity of the risks of the undertaking, taking into account, at least—

- (a) the volume of premiums, technical provisions and assets of the undertaking,
- (b) the volatility of the claims and benefits covered by the undertaking,
- (c) the market risks that the investments of the undertaking give rise to,
- (d) the level of risk concentrations,
- (e) the total number of classes of life and non-life insurance for which authorisation is granted,
- (f) possible effects of the management of the assets of the undertaking on financial stability,
- (g) the systems and structures of the undertaking to provide information for supervisory purposes and the written policy referred to in paragraph (5),
- (h) the appropriateness of the system of governance of the undertaking,
- (i) the level of own funds covering the Solvency Capital Requirement and the Minimum Capital Requirement, and
- (j) whether the undertaking is a captive insurance undertaking or captive reinsurance undertaking only covering risks associated with the industrial or commercial group to which it belongs.

Annual and quarterly information etc.: transitional deadlines

35. (1) An insurance undertaking or reinsurance undertaking shall submit its regular supervisory report or annual summary of the regular supervisory report and annual quantitative templates no later than—

- (a) 20 weeks after the end of the undertaking's financial year ending on or after 30 June 2016 but before 1 January 2017,
- (b) 18 weeks after the end of the undertaking's financial year ending on or after 1 January 2017 but before 1 January 2018,
- (c) 16 weeks after the end of the undertaking's financial year ending on or after 1 January 2018 but before 1 January 2019, and
- (d) 14 weeks after the end of the undertaking's financial year ending on or after 1 January 2019 but before 1 January 2020.

(2) An insurance undertaking or reinsurance undertaking shall submit its quarterly quantitative templates no later than—

- (a) 8 weeks after the end of any quarter ending on or after 1 January 2016 but before 1 January 2017,
- (b) 7 weeks after the end of any quarter ending on or after 1 January 2017 but before 1 January 2018,
- (c) 6 weeks after the end of any quarter ending on or after 1 January 2018 but before 1 January 2019, and
- (d) 5 weeks after the end of any quarter ending on or after 1 January 2019 but before 1 January 2020.

Directors' accuracy certificates

36. (1) Insurance undertakings and reinsurance undertakings shall annex to the annual quantitative templates a directors' accuracy certificate attesting the accuracy of the information submitted in the templates which shall be submitted to the Bank in a form specified by the Bank from time to time.

(2) Insurance undertakings and reinsurance undertakings shall annex to each own risk and solvency assessment report and each regular supervisory report or annual summary of the regular supervisory report a directors' accuracy certificate attesting the accuracy of the information submitted in the reports which shall be submitted in a form specified by the Bank from time to time.

(3) At least 2 directors and the chief executive of the undertaking shall sign a directors' accuracy certificate.

Auditor's report

37. (1) Such elements of the quantitative information to be submitted by insurance undertakings and reinsurance undertakings under financial services legislation and other laws applicable in the State adopted pursuant to the Directive as may from time to time be specified by notice in writing by the Bank shall be audited by a person duly qualified under the Act of 2014 who shall make a report to the Bank in a form specified by the Bank from time to time.

(2) The report referred to in paragraph (1) shall include a reasonable assurance opinion on the elements of the report on the solvency and financial condition of the undertaking as referred to in Regulation 52 relevant to the balance sheet, own funds and capital requirements.

(3) Such elements of the quantitative information to be submitted by a participating insurance undertaking or participating reinsurance undertaking, an insurance holding company or a mixed financial holding company (as referred to in Regulation 216(3)(a) and (b)) under financial services legislation and other laws applicable in the State adopted pursuant to the Directive as may from time to time be specified by notice in writing by the Bank shall be audited by a person duly qualified under the Act of 2014 who shall make a report to the Bank in a form specified by the Bank from time to time.

(4) The report referred to in paragraph (3) shall include a reasonable assurance opinion on the elements of the report on the solvency and financial condition of the participating insurance undertaking or reinsurance undertaking, insurance holding company or mixed financial holding company as referred to in Regulation 258 relevant to the balance sheet, own funds and capital requirements.

Supervisory review process

38. (1) The Bank shall review and evaluate the strategies, processes and reporting procedures which are put in place by an insurance undertaking or reinsurance undertaking to comply with these Regulations and other laws applicable in the State adopted pursuant to the Directive.

(2) The review and evaluation shall comprise the assessment of the qualitative requirements relating to the system of governance, the assessment of the risks which the undertaking faces or may face and the assessment of the ability of the undertaking to assess its risks taking into account the environment in which it is operating.

(3) The Bank shall in particular review and evaluate compliance with the following:

- (a) the system of governance, including the own risk and solvency assessment, as set out in Regulations 44 to 51;
- (b) the technical provisions as set out in Regulations 83 to 101;
- (c) the quality and quantity of own funds as set out in Regulations 102 to 112;
- (d) the capital requirements as set out in Regulations 113 to 140;
- (e) where the undertaking uses a full or partial internal model, ongoing compliance with the requirements for full and partial internal models set out in Regulations 125 to 138;
- (f) the investment rules as set out in Regulations 141 to 143.

(4) The Bank shall have in place appropriate monitoring tools that enable it to identify deteriorating financial conditions in the undertaking and to monitor how that deterioration is remedied.

(5) The Bank shall assess the adequacy of the methods and practices of the undertaking designed to identify possible events or future changes in economic conditions that could have adverse effects on its overall financial standing.

(6) The Bank shall assess the ability of the undertaking to withstand those possible events or future changes in economic conditions.

(7) The Bank shall conduct the reviews, evaluations and assessments referred to in paragraphs (1), (3), (5) and (6) (referred to in these Regulations as “the supervisory review process”) regularly and establish the minimum frequency

and the scope of those reviews, evaluations and assessments having regard to the nature, scale and complexity of the activities of the undertaking.

Capital add-on

39. (1) Following the supervisory review process the Bank may, in exceptional circumstances, set a capital add-on for an insurance undertaking or reinsurance undertaking and direct that undertaking to comply with it.

(2) For the purposes of paragraph (1) exceptional circumstances exist where—

- (a) the Bank concludes that the risk profile of the undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using the standard formula in accordance with Regulations 116 to 124 and either—
 - (i) the requirement to use an internal model under Regulation 131 is inappropriate or has been ineffective, or
 - (ii) a partial or full internal model is being developed in accordance with Regulation 131,
- (b) the Bank concludes that the risk profile of the undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using an internal model or partial internal model in accordance with Regulations 125 to 138, because certain quantifiable risks are captured insufficiently and the adaptation of the model to better reflect the given risk profile has failed within an appropriate timeframe,
- (c) the Bank concludes that the system of governance of the undertaking deviates significantly from the standards laid down in Regulations 44 to 51, that those deviations prevent it from being able to properly identify, measure, monitor, manage and report the risks that it is or could be exposed to and that the application of other measures is in itself unlikely to improve the deficiencies sufficiently within an appropriate timeframe, or
- (d) the undertaking applies the matching adjustment referred to in Regulation 86, the volatility adjustment referred to in Regulation 88 or the transitional measures referred to in Regulations 99 and 100 and the Bank concludes that the risk profile of the undertaking deviates significantly from the assumptions underlying those adjustments and transitional measures.

(3) A direction imposed pursuant to paragraph (1) shall be in writing and shall specify the grounds for the direction.

(4) In the circumstances set out in subparagraphs (a) and (b) of paragraph (2) the capital add-on shall be calculated in such a way as to ensure that the undertaking complies with Regulation 114(3) to (5).

(5) In the circumstances set out in subparagraph (c) of paragraph (2) the capital add-on shall be proportionate to the material risks arising from the deficiencies which gave rise to the decision of the Bank to set the add on.

(6) In the circumstances set out in subparagraph (d) of paragraph (2) the capital add-on shall be proportionate to the material risks arising from the deviation referred to in that sub-paragraph.

(7) In the cases set out in subparagraphs (b) and (c) of paragraph (2) the Bank shall ensure that the undertaking makes every effort to remedy the deficiencies that led to the imposition of the capital add-on.

(8) The capital add-on shall be reviewed at least once a year by the Bank and shall be revoked when the exceptional circumstances specified in paragraph (2) are no longer applicable.

(9) The Solvency Capital Requirement including the capital add-on imposed shall replace the inadequate Solvency Capital Requirement.

(10) Despite paragraph (9) the Solvency Capital Requirement shall not include the capital add-on imposed in accordance with paragraph (2)(c) for the purposes of the calculation of the risk margin referred to in Regulation 84(9) to (11).

Supervision of outsourced functions and activities

40. (1) Without prejudice to Regulation 51, an insurance undertaking or reinsurance undertaking which outsources a function or an insurance or reinsurance activity to a person (in this Regulation referred to as a “service provider”) shall ensure that—

- (a) the service provider co-operates with the Bank in connection with the outsourced function or activity,
- (b) the undertaking, its auditors and the Bank have effective access to data related to the outsourced function or activity, and
- (c) the Bank has effective access to the business premises of the service provider and is able to exercise that right of access.

(2) Where the service provider is located in a Member State other than the State, in accordance with Article 38(2) of the Directive, the Bank shall have the right to carry out itself, or through the intermediary of persons it appoints for the purpose, on-site inspections at the premises of the service provider and shall inform the appropriate authority of that Member State before conducting an on site inspection.

(3) In circumstances where the service provider is a non-supervised entity the Bank shall inform the supervisory authority in the Member State in question.

(4) The Bank may delegate the carrying out of an on-site inspection under paragraph (2) to the appropriate authority of the Member State where the service provider is located.

(5) Where an insurance undertaking or reinsurance undertaking authorised in a Member State other than the State outsources a function or an insurance or reinsurance activity to a service provider located in the State, the supervisory authorities of the undertaking shall be permitted to carry out themselves, or through the intermediary of persons they appoint for the purpose, on-site inspections at the premises of the service provider and shall inform the appropriate authority of the service provider in the State before carrying out the on-site inspection.

(6) In circumstances where the service provider is a non-supervised entity the appropriate authority shall be the Bank.

(7) The supervisory authority may delegate the carrying out of an on site inspection under paragraph (5) to the Bank.

Transfer of insurance portfolio

41. (1) For the purposes of section 13 of the Assurance Companies Act 1909 (1909 c. 49) and subject to section 36 of the Insurance Act 1989 (No. 3 of 1989) and these Regulations, an insurance undertaking whose head office is in the State may, after consultation with the Bank, transfer all or part of its portfolios of contracts, including those concluded either under the right of establishment or the freedom to provide services, to an accepting undertaking whose head office is in the State or another Member State.

(2) Where a branch, established in another Member State, whose head office is situated in the State, proposes to transfer all or part of its portfolio of contracts, the Bank shall consult the supervisory authority of the Member State of the branch.

(3) A transfer shall not be effected unless—

- (a) the supervisory authority of the home Member State of the accepting undertaking certifies that, after taking the transfer into account, the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in Regulation 113, and
- (b) the supervisory authorities of every Member State where the contracts were concluded, either under the right of establishment or the freedom to provide services, and (in a case within paragraph (2)) the supervisory authority of the Member State in which the branch is situated, have consented.

(4) The Bank shall consult the supervisory authorities referred to in paragraph (3)(b) before the transfer to obtain their opinion or consent, and the absence of any response by a supervisory authority within 3 months of being consulted shall be deemed to be consent by that supervisory authority.

(5) Without prejudice to the requirements of section 13(3)(a) of the Assurance Companies Act 1909, a transfer in accordance with this Regulation shall be published—

- (a) prior to the transfer being authorised, by advertisement once in each of 2 daily newspapers published in the State, and
- (b) in each Member State in which the risks are situated or which is the Member State of the commitment in accordance with the law of that Member State.

(6) Where the Bank is consulted by the supervisory authority of a Member State pursuant to Article 39 of the Directive, the Bank shall provide an opinion or consent within 3 months of being consulted and the absence of any response within that period from the Bank shall be deemed to be consent.

(7) Where—

- (a) a transfer is to be effected under the law of a Member State other than the State in accordance with Article 39 of the Directive, and
- (b) the State is a Member State in which the risk is situated or is a Member State of the commitment,

the transfer shall, prior to being authorised, be published by advertisement once in *Iris Oifigiúil* and once in each of 2 daily newspapers published in the State.

(8) A transfer in accordance with this Regulation shall automatically be valid against policy holders, insured persons and any other persons having rights or obligations arising out of the contracts transferred.

Transfer of reinsurance portfolio

42. (1) Subject to paragraph (2), a reinsurance undertaking whose head office is in the State may transfer its portfolio of reinsurance contracts to another person without restriction.

(2) A reinsurance undertaking whose head office is in the State shall not acquire a portfolio of reinsurance contracts held by another reinsurance undertaking (whether having its head office in the State or another Member State) unless it has obtained from the Bank a certificate to the effect that, after taking the acquisition into account, the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in Regulation 113.

(3) In this Regulation—

“portfolio of reinsurance contracts” includes contracts entered into under the right of establishment or the freedom to provide services in a Member State, and includes a part of a portfolio;

“reinsurance contracts” means reinsurance contracts transacted by a reinsurance undertaking in the course of carrying on a reinsurance business.

Part 4

CONDITIONS GOVERNING BUSINESS

Chapter 1

Responsibilities of board of directors

Responsibility of board of directors

43. The board of directors of an insurance undertaking or reinsurance undertaking has the ultimate responsibility for compliance with these Regulations and other laws applicable in the State adopted pursuant to the Directive.

Chapter 2

System of governance

General governance requirements

44. (1) An insurance undertaking or reinsurance undertaking shall establish and maintain an effective system of governance which provides for sound and prudent management of the business carried on by it.

(2) The system of governance shall include at least—

- (a) an adequate transparent organisational structure with a clear allocation and appropriate segregation of responsibilities,
- (b) an effective system for ensuring the transmission of information, and
- (c) compliance with the requirements laid down in Regulations 45 to 51.

(3) The system of governance shall be subject to regular internal review.

(4) The system of governance shall be proportionate to the nature, scale and complexity of the operations of the undertaking.

(5) The undertaking shall have written policies in place to cover at least risk management, internal control, internal audit and, where relevant, outsourcing and shall ensure that those policies are implemented.

(6) The undertaking shall review the policies at least annually.

(7) The policies and amendments of the policies (other than minor ones) shall be subject to prior approval by the board of directors.

(8) The policies shall be adapted in view of any significant changes.

(9) The undertaking shall take reasonable steps to ensure continuity and regularity in the performance of its activities, including the development of contingency plans and for that purpose it shall employ appropriate and proportionate systems, resources and procedures.

(10) The Bank shall, where it considers it appropriate to do so, exercise its powers under financial services legislation to verify the system of governance of the undertaking and to evaluate emerging risks identified by the undertaking itself which may affect its financial soundness.

(11) The Bank shall, where it considers it appropriate to do so, exercise its powers under financial services legislation to require the undertaking to improve and strengthen its system of governance to ensure compliance with the requirements set out in Regulations 45 to 51.

Fit and proper requirements

45. An insurance undertaking or reinsurance undertaking shall notify the Bank immediately if—

- (a) a person ceases to perform a pre-approval controlled function, as defined in section 22 of the Act of 2010, which the person had been previously appointed by the undertaking to perform, or
- (b) a person who performs a pre-approval controlled function has been replaced because the person no longer complies with any standard of fitness and probity in a code issued by the Bank under section 50 of that Act.

Risk management

46. (1) An insurance undertaking or reinsurance undertaking shall establish and maintain an effective risk management system comprising strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report, on a continuous basis, the risks, on an individual and aggregated level, to which the undertaking is or could be exposed, and any interdependencies.

(2) The risk management system shall be effective and well integrated into the organisational structure and decision-making processes of the undertaking with proper consideration of the persons who effectively run the undertaking or have other key functions.

(3) The risk management system shall cover the risks that are included in the calculation of the Solvency Capital Requirement as set out in Regulation 114(6) and (7) as well as the risks which are not, or are not fully, included in the calculation of it.

(4) The risk management system shall cover at least the following areas:

- (a) underwriting and reserving;
- (b) asset–liability management;

- (c) investment, in particular derivatives and similar commitments;
- (d) liquidity and concentration risk management;
- (e) operational risk management;
- (f) reinsurance and other risk-mitigation techniques.

(5) The written policy on risk management referred to in Regulation 44(5) shall comprise policies relating to the matters specified in paragraph (4)(a) to (f).

(6) An insurance undertaking or reinsurance undertaking which applies the matching adjustment referred to in Regulation 86 or the volatility adjustment referred to in Regulation 88, shall set up a liquidity plan projecting the incoming and outgoing cash flows in relation to the assets and liabilities subject to those adjustments.

(7) As regards asset-liability management, the undertaking shall regularly assess—

- (a) the sensitivity of its technical provisions and eligible own funds to the assumptions underlying the extrapolation of the relevant risk-free interest rate term structure referred to in Regulation 85,
- (b) where the matching adjustment referred to in Regulation 86 is applied—
 - (i) the sensitivity of its technical provisions and eligible own funds to the assumptions underlying the calculation of the matching adjustment, including the calculation of the fundamental spread referred to in Regulation 87(1)(b), and the possible effect of a forced sale of assets on its eligible own funds,
 - (ii) the sensitivity of its technical provisions and eligible own funds to changes in the composition of the assigned portfolio of assets, and
 - (iii) the impact of a reduction of the matching adjustment to zero, and
- (c) where the volatility adjustment referred to in Regulation 88 is applied—
 - (i) the sensitivity of its technical provisions and eligible own funds to the assumptions underlying the calculation of the volatility adjustment and the possible effect of a forced sale of assets on its eligible own funds, and
 - (ii) the impact of a reduction of the volatility adjustment to zero.

(8) The undertaking shall submit the assessments referred to in paragraph (7) to the Bank annually as part of the information required to be submitted to the Bank under financial services legislation.

(9) Where the reduction of the matching adjustment or the volatility adjustment to zero would result in non-compliance with the Solvency Capital Requirement, the undertaking shall also submit an analysis of the measures it could apply in such a situation to re-establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce its risk profile to restore compliance with the Solvency Capital Requirement.

(10) Where the volatility adjustment referred to in Regulation 88 is applied, the written policy on risk management referred to in Regulation 44(5) shall comprise a policy on the criteria for the application of the volatility adjustment.

(11) As regards investment risk, the undertaking shall demonstrate that it complies with Regulations 141 and 142.

(12) The undertaking shall provide for a risk management function which shall be structured in such a way as to facilitate the implementation of the risk management system.

(13) In order to avoid overreliance on external credit assessment institutions when the undertaking uses an external credit rating assessment in the calculation of technical provisions or the Solvency Capital Requirement, the undertaking shall assess the appropriateness of those external credit assessments as part of its risk management by using additional assessments wherever practicably possible in order to avoid any automatic dependence on external assessments.

(14) Where the undertaking uses a partial or full internal model approved in accordance with Regulations 125 and 126 the risk management function shall cover the following additional tasks:

- (a) to design and implement the internal model;
- (b) to test and validate the internal model;
- (c) to document the internal model and any subsequent changes made to it;
- (d) to analyse the performance of the internal model and to produce summary reports of it;
- (e) to inform the board of directors about the performance of the internal model, suggesting areas needing improvement, and providing updates on the status of efforts to improve previously identified weaknesses.

Own risk and solvency assessment

47. (1) As part of its risk management system an insurance undertaking or reinsurance undertaking shall conduct its own risk and solvency assessment.

(2) The assessment shall include at least the following:

- (a) the overall solvency needs taking into account the specific risk profile, approved risk tolerance limits and the business strategy of the undertaking;
 - (b) the compliance, on a continuous basis, with the capital requirements, as laid down in Regulations 113 to 140, and with the requirements regarding technical provisions, as laid down in Regulations 83 to 101;
 - (c) the significance with which the risk profile of the undertaking deviates from the assumptions underlying the Solvency Capital Requirement as laid down in Regulation 114(3) to (5), calculated with the standard formula in accordance with Regulations 116 to 124 or with its partial or full internal model in accordance with Regulations 125 to 138.
- (3) For the purposes of paragraph (2)(a), the undertaking shall have in place processes which are proportionate to the nature, scale and complexity of the risks inherent in its business and which enable it to properly identify and assess the risks it faces in the short and long term and to which it is or could be exposed.
- (4) The undertaking shall be able to demonstrate to the Bank the methods used in the assessment under paragraph (3).
- (5) Where the undertaking applies the matching adjustment referred to in Regulation 86, the volatility adjustment referred to in Regulation 88 or the transitional measures referred to in Regulations 99 and 100, it shall perform the assessment of compliance with the capital requirements referred to in paragraph (2)(b) with and without taking into account those adjustment and transitional measures.
- (6) For the purposes of paragraph (2)(c), when an internal model is used, the assessment shall be performed together with the recalibration that transforms the internal risk numbers into the Solvency Capital Requirement risk measure and calibration.
- (7) The assessment shall be an integral part of the business strategy of the undertaking and shall be taken into account on an ongoing basis in the strategic decisions of the undertaking.
- (8) The undertaking shall perform the assessment regularly and without any delay following any significant change in its risk profile.
- (9) The undertaking shall provide the Bank with the results of each assessment in such form and manner as may be specified by the Bank as part of the information required to be provided to the Bank under financial services legislation.
- (10) The assessment shall not serve to calculate a capital requirement for the undertaking and the Solvency Capital Requirement of the undertaking shall be adjusted only in accordance Regulations 39, 234 to 237 and 241.

Internal control

48. (1) An insurance undertaking or reinsurance undertaking shall establish and maintain an effective internal control system.

(2) The system shall include administrative and accounting procedures, an internal control framework, appropriate reporting arrangements at all levels of the undertaking and a compliance function.

(3) The compliance function shall include—

- (a) advising the board of directors on compliance with these Regulations and other laws applicable in the State adopted pursuant to the Directive, and
- (b) an assessment of the possible impact of any changes to laws applicable in the State on the operations of the undertaking and the identification and assessment of compliance risk.

Internal audit

49. (1) An insurance undertaking or reinsurance undertaking shall establish and maintain an effective internal audit function.

(2) The undertaking's internal audit function shall include an evaluation of the adequacy and effectiveness of the internal control system and other elements of the system of governance.

(3) The undertaking's internal audit function shall be objective and independent from its operational functions.

(4) Any findings and recommendations of the internal audit shall be reported to the board of directors which shall determine what actions are to be taken with respect to each of the internal audit findings and recommendations and shall ensure that those actions are carried out.

Actuarial function

50. (1) An insurance undertaking or reinsurance undertaking shall establish and maintain an effective actuarial function—

- (a) to coordinate the calculation of technical provisions,
- (b) to ensure the appropriateness of the methodologies and underlying models used as well as the assumptions made in the calculation of technical provisions,
- (c) to assess the sufficiency and quality of the data used in the calculation of technical provisions,
- (d) to compare best estimates against experience,
- (e) to inform the board of directors of the reliability and adequacy of the calculation of technical provisions,

- (f) to oversee the calculation of technical provisions in the cases set out in Regulation 95,
- (g) to express an opinion on the overall underwriting policy,
- (h) to express an opinion on the adequacy of reinsurance arrangements, and
- (i) to contribute to the effective implementation of the risk management system referred to in Regulation 46 in particular with respect to the risk modelling underlying the calculation of the capital requirements set out in Regulations 113 to 140 and with respect to the assessment referred to in Regulation 47.

(2) The actuarial function shall be carried out by persons who have knowledge of actuarial and financial mathematics, commensurate with the nature, scale and complexity of the risks inherent in the business of the undertaking, and who are able to demonstrate their relevant experience with applicable professional and other standards.

Outsourcing

51. (1) An insurance undertaking or reinsurance undertaking shall be fully responsible for discharging all of its obligations under these Regulations when they outsource functions or any insurance or reinsurance activities.

(2) Where an undertaking outsources critical or important operational functions or activities, it shall not be done in such a way as to lead to any of the following:

- (a) materially impairing the quality of the system of governance of the undertaking;
 - (b) unduly increasing the operational risk;
 - (c) impairing the ability of the Bank to monitor the compliance of the undertaking with its obligations;
 - (d) undermining continuous and satisfactory service to policy holders.
- (3) An undertaking shall, in a timely manner, notify the Bank—
- (a) before outsourcing critical or important functions or activities, and
 - (b) regarding the occurrence of subsequent material developments with respect to those functions or activities.

Chapter 3

*Public disclosure**Report on solvency and financial condition: contents*

52. (1) An insurance undertaking or reinsurance undertaking shall make publicly available an annual report on its solvency and financial condition which must—

- (a) include the information required in Regulation 34(4)(a) and comply with the principles set out in Regulation 34(4)(b), and
 - (b) contain the information specified in paragraph (2), either in full or, subject to Regulation 55(3), by way of reference to equivalent information, both in nature and scope, published under other legal or regulatory requirements.
- (2) The information referred to in paragraph (1)(b) is—
- (a) a description of the business and performance of the undertaking,
 - (b) a description of the system of governance of the undertaking and an assessment of its adequacy for the risk profile of the undertaking,
 - (c) a description, separately for each category of risk, of the risk exposure, concentration, mitigation and sensitivity,
 - (d) a description, separately for assets, technical provisions and other liabilities, of the bases and methods used for their valuation, together with an explanation of any major differences in the bases and methods used for their valuation in financial statements, and
 - (e) a description of the capital management, including the following:
 - (i) the structure and amount of own funds, and their quality;
 - (ii) the amounts of the Solvency Capital Requirement and of the Minimum Capital Requirement;
 - (iii) information allowing a proper understanding of the main differences between the underlying assumptions of the standard formula and those of any internal model used by the undertaking for the calculation of its Solvency Capital Requirement;
 - (iv) the amount of any non-compliance with the Minimum Capital Requirement or any significant non-compliance with the Solvency Capital Requirement during the reporting period, even if subsequently resolved, with an explanation of its origin and consequences as well as any remedial measures taken.
- (3) Where the matching adjustment referred to in Regulation 86 is applied, the matters specified in paragraph (2)(d) include a description of the matching

adjustment and of the portfolio of obligations and assigned assets to which the matching adjustment is applied as well as a quantification of the impact of a change to zero of the matching adjustment on the undertaking's financial position.

(4) The matters specified in paragraph (2)(d) include a statement on whether the volatility adjustment referred to in Regulation 88 is used by the undertaking and a quantification of the impact of a change to zero of the volatility adjustment on the undertaking's financial position.

(5) The matters specified in paragraph (2)(e)(i) include an analysis of any significant changes as compared to the previous report and an explanation of any major differences in relation to the value of such elements in financial statements, and a brief description of the capital transferability.

(6) The disclosure of the Solvency Capital Requirement referred to in paragraph (2)(e)(ii) shall show separately the amount calculated in accordance with Regulations 116 to 138 and any capital add-on imposed in accordance with Regulation 39 or the impact of the specific parameters which the undertaking is required to use in accordance with Regulation 124, together with concise information on its justification by the Bank.

(7) Without prejudice to any disclosure that is required by law, for a transitional period until 31 December 2020, the undertaking, in disclosing the total Solvency Capital Requirement referred to in paragraph (2)(e)(ii), is not required to disclose the capital add-on or the impact of the specific parameters it is required to use in accordance with Regulation 124.

(8) The disclosure of the Solvency Capital Requirement by the undertaking shall be accompanied, where applicable, by an indication that its final amount is still subject to supervisory assessment.

Report on solvency and financial condition: transitional deadlines

53. An insurance undertaking or reinsurance undertaking shall make publicly available the solvency and financial condition report referred to in Regulation 52 no later than—

- (a) 20 weeks after the end of the undertaking's financial year ending on or after 30 June 2016 but before 1 January 2017,
- (b) 18 weeks after the end of the undertaking's financial year ending on or after 1 January 2017 but before 1 January 2018,
- (c) 16 weeks after the end of the undertaking's financial year ending on or after 1 January 2018 but before 1 January 2019, and
- (d) 14 weeks after the end of the undertaking's financial year ending on or after 1 January 2019 but before 1 January 2020.

Information for EIOPA

54. Without prejudice to Article 35 of Regulation (EU) No 1094/2010, the Bank shall provide the following information to EIOPA annually:

- (a) the average capital add on per undertaking, and the distribution of capital add ons imposed by it during the previous year, measured as a percentage of the Solvency Capital Requirement, shown separately for—
 - (i) all insurance undertakings and reinsurance undertakings together,
 - (ii) life insurance undertakings,
 - (iii) non-life insurance undertakings,
 - (iv) insurance undertakings pursuing both life and non-life activities, and
 - (v) reinsurance undertakings;
- (b) for each of the categories in subparagraph (a)(i) to (v), the proportion of capital add-ons imposed under Regulation 39(2)(a), (b) and (c) respectively;
- (c) the number of insurance undertakings and reinsurance undertakings benefiting from the limitation on regular supervisory reporting and the number of insurance undertakings and reinsurance undertakings benefiting from the exemption from reporting on an item-by-item basis referred to in Regulation 34(6) to (13), together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of capital requirements, premiums, technical provisions and assets of the insurance undertakings and reinsurance undertakings;
- (d) the number of groups benefiting from the limitation on regular supervisory reporting and the number of groups benefiting from the exemption from reporting on an item-by-item basis referred to in Regulation 255 together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of capital requirements, premiums, technical provisions and assets of all the groups.

Report on solvency and financial condition: applicable principles

55. (1) The Bank shall waive the requirement imposed by Regulation 52 to disclose certain information where—

- (a) an insurance undertaking or reinsurance undertaking applies to the Bank in writing with relevant documentation, and
- (b) the Bank is satisfied that—

- (i) the disclosure of the information by the undertaking would allow competitors of the undertaking to gain significant undue advantage, or
- (ii) there are obligations to policy holders or other counterparty relationships which bind the undertaking to secrecy or confidentiality.

(2) Where an undertaking does not disclose information in pursuance of a waiver under paragraph (1), the undertaking shall make a statement to this effect in its report on solvency and financial condition and shall state the reasons.

(3) The Bank may permit the undertaking to make use of, or refer to, public disclosures made under other legal or regulatory requirements, to the extent that those disclosures are equivalent to the information required under Regulation 52 in both their nature and scope.

(4) Paragraphs (1) and (2) do not apply to the information referred to in Regulation 52(2)(e).

Report on solvency and financial condition: updates and additional voluntary information

56. (1) In the event of any major development affecting significantly the relevance of the information disclosed in accordance with Regulations 52 and 55, an insurance undertaking or reinsurance undertaking shall disclose appropriate information on the nature and effects of that major development.

(2) For the purposes of paragraph (1), at least the following shall be regarded as major developments:

- (a) where non-compliance with the Minimum Capital Requirement is observed and the Bank either considers that the undertaking will not be able to submit a realistic short-term finance scheme or does not obtain such a scheme within one month of the date when non-compliance was observed;
- (b) where a significant non-compliance with the Solvency Capital Requirement is observed and the Bank does not obtain a realistic recovery plan within 2 months of the date when non-compliance was observed.

(3) In a case within paragraph (2)(a), the undertaking shall disclose immediately the amount of the non-compliance, together with an explanation of its origin and consequences, including any remedial measure taken; and where, in spite of a short-term finance scheme initially considered to be realistic, non-compliance with the Minimum Capital Requirement has not been resolved 3 months after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measures taken as well as any further remedial measures planned.

(4) In a case within paragraph (2)(b), the undertaking shall disclose immediately the amount of the non-compliance, together with an explanation of its origin and consequences, including any remedial measure taken; and, where, in spite of the recovery plan initially considered to be realistic, a significant non-compliance with the Solvency Capital Requirement has not been resolved 6 months after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measures taken as well as any further remedial measures planned.

(5) The undertaking may disclose, on a voluntary basis, any information or explanation related to its solvency and financial condition which is not already required to be disclosed in accordance with Regulations 52 and 55 and paragraph (1) of this Regulation.

Report on solvency and financial condition: policy and approval

57. (1) An insurance undertaking or reinsurance undertaking shall have appropriate systems and structures in place to fulfil the requirements laid down in Regulations 52, 55 and 56, as well as a written policy ensuring the ongoing appropriateness of any information disclosed in accordance with those requirements.

(2) The solvency and financial condition report shall be subject to approval by the board of directors of the undertaking and be published only after that approval.

Annual reports

58. (1) An insurance undertaking or reinsurance undertaking shall forward to the Bank each year 2 copies of the financial statements and reports laid before its annual general meeting or, where the undertaking is a single-member company and does not hold such a meeting, provided to its member.

(2) The financial statements and reports referred to in paragraph (1) shall be forwarded not later than one month after the annual general meeting or written resolution referred to in section 175(3) of the Act of 2014, as the case may be.

Chapter 4

Qualifying holdings

Interpretation

59. In this Chapter—

“assessment” and “assessment period” have the meanings given by Regulation 63(3);

“prescribed percentage” means 20%, 33% or 50%;

“proposed acquirer”, in relation to an insurance undertaking or reinsurance undertaking, means a person, or 2 or more persons acting in concert, who has or have taken a decision to, directly or indirectly, acquire or increase a qualifying holding in the undertaking;

“proposed acquisition” means—

- (a) the proposed acquisition of a qualifying holding in an insurance undertaking or reinsurance undertaking, or
- (b) a proposed increase in a qualifying holding in such an undertaking that results in the size of the holding reaching or exceeding a prescribed percentage.

Acquisitions

60. (1) A proposed acquirer shall not, directly or indirectly, acquire a qualifying holding in an insurance undertaking or reinsurance undertaking without having previously notified the Bank in writing of the intended size of the holding.

(2) A proposed acquirer who has a qualifying holding in an insurance undertaking or reinsurance undertaking shall not, directly or indirectly, increase the size of the holding without having previously notified the Bank in writing of the intended size of the holding after the increase if, as a result of the increase—

- (a) the percentage of the capital of, or the voting rights in, the undertaking that the proposed acquirer holds would reach or exceed a prescribed percentage, or
- (b) in the case of a proposed acquirer that is a company or other body corporate, the undertaking would become the proposed acquirer’s subsidiary undertaking.

(3) A notification under paragraph (1) or (2) shall include sufficient information to enable the Bank to consider the proposed acquisition against the criteria in paragraphs (1) and (2) of Regulation 64, and in particular shall include—

- (a) information as to the identity of the proposed acquirer,
- (b) information about the reputation and experience of any person who will direct the business of the undertaking as a result of the proposed acquisition,
- (c) information about how the proposed acquisition is to be financed (including details of any proposed issue of financial instruments),
- (d) information about the structure of the resulting group (indicating any changes from current structure), and
- (e) the information referred to in paragraph (4).

(4) The information mentioned in paragraph (3)(e) is the information required by the form of notification published by the Bank on 25 May 2009 entitled “Acquiring Transaction Notification Form”, as from time to time

amended or replaced by the Bank and made available on the official website of the Bank and includes any documentation required by that form.

Disposals

61. (1) A person shall not, directly or indirectly, dispose of a qualifying holding in an insurance undertaking or reinsurance undertaking without having previously notified the Bank in writing of the intended size of the holding in the undertaking after the proposed disposal.

(2) A person shall not, directly or indirectly, dispose of part of a qualifying holding in an insurance undertaking or reinsurance undertaking without having previously notified the Bank in writing of the intended size of the holding after the proposed disposal if, as a result of the disposal—

- (a) the percentage of the capital of, or the voting rights in, the undertaking that the person holds would fall to or below a prescribed percentage, or
- (b) in the case of a person that is a company or other body corporate, the undertaking would cease to be the person's subsidiary undertaking.

Insurance and reinsurance undertakings to provide information on certain acquisitions and disposals

62. (1) If an insurance undertaking or reinsurance undertaking becomes aware of the acquisition of a qualifying holding in it, or an increase in the size of such a holding that results in the holding reaching or exceeding a prescribed percentage, the undertaking shall inform the Bank in writing of the acquisition or increase without delay.

(2) If an insurance undertaking or reinsurance undertaking becomes aware of a disposal of, or a reduction in the size of, a holding in it that results in the holding ceasing to be a qualifying holding or falling to or below a prescribed percentage, the undertaking shall inform the Bank in writing of the disposal or reduction without delay.

Period for assessment of proposed acquisition

63. (1) Within 2 working days after the day on which the Bank receives a completed notification under paragraph (1) or (2) of Regulation 60 from a proposed acquirer, the Bank shall acknowledge receipt of the notification in writing.

(2) For the purposes of paragraph (1), a notification is completed if it gives all the information and documentation (whether in the notification itself or as an attachment) required by Regulation 60 to be provided for the assessment of the proposed acquisition.

(3) Within 60 working days after the date of the written acknowledgement referred to in paragraph (1) (in this Chapter referred to as the “assessment period”) the Bank shall carry out the assessment of the proposed acquisition in accordance with Regulation 64 (in this Chapter referred to as the “assessment”).

(4) In its acknowledgement of receipt of a notification referred to in paragraph (1), the Bank shall inform the proposed acquirer concerned of the date on which the assessment period will end.

(5) During the assessment period in relation to a proposed acquisition, but no later than the 50th working day of that period, the Bank may request any further information necessary to complete the assessment of the acquisition.

(6) Where the Bank makes a request under paragraph (5) it shall acknowledge the receipt of any information received in response to the request within 2 working days after the day on which the information is received.

(7) A request under paragraph (5) shall be made in writing and shall specify or describe the additional information needed.

(8) If the Bank makes a request under paragraph (5) the assessment period is to be taken to be interrupted for the shorter of—

(a) the period between the date of the request and the date of the receipt of a response from the proposed acquirer concerned, and

(b) 20 working days.

(9) The Bank may request still further information for completion or clarification of information already supplied but such a further request does not interrupt the assessment period.

(10) The Bank may, by written notice to a proposed acquirer, extend the interruption referred to in paragraph (8) in relation to a proposed acquisition to 30 working days if the proposed acquirer—

(a) is situated or regulated in a third country, or

(b) is a legal or natural person not subject to supervision under a law of a Member State that gives effect to the Directive, Directive 85/611/EEC, Directive 2004/39/EC or Directive 2006/48/EC.

Assessment of proposed acquisitions

64. (1) The objective of the assessment of a proposed acquisition relating to an insurance undertaking or reinsurance undertaking is to ensure the sound and prudent management of the undertaking.

(2) In assessing a proposed acquisition, the Bank shall, having regard to the likely influence of the proposed acquirer concerned on the undertaking, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition concerned against all of the following criteria:

(a) the reputation of the proposed acquirer;

(b) the reputation and experience of any person who will direct the business of the undertaking as a result of the proposed acquisition;

- (c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the undertaking;
- (d) whether the undertaking will be able to comply and continue to comply with the prudential requirements of these Regulations, other laws applicable in the State which are adopted pursuant to the Directive, Directive 2002/87/EC or other relevant provisions of the law of the European Union;
- (e) whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among supervisory authorities and determine the allocation of responsibilities among supervisory authorities;
- (f) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing (within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing³⁰ is being or has been committed or attempted, or that the proposed acquisition could increase the risk of money laundering or terrorist financing.

(3) The Bank shall not examine a proposed acquisition in terms of the economic needs of the market.

(4) Where 2 or more proposals to acquire or increase qualifying holdings in the same insurance undertaking or reinsurance undertaking have been notified to the Bank, the Bank shall treat the proposed acquirers concerned in a non-discriminatory manner.

Bank to co-operate with other authorities

65. (1) In carrying out its assessment of a proposed acquisition, the Bank shall consult with the relevant authorities including the supervisory authorities of other Member States if the proposed acquirer is—

- (a) an insurance undertaking, reinsurance undertaking, credit institution, investment firm or management company authorised in another Member State or in a sector other than that in which the acquisition is proposed,
- (b) the parent undertaking of an insurance undertaking, reinsurance undertaking, credit institution, investment firm or management company authorised in another Member State or in a sector other than that in which the acquisition is proposed, or
- (c) a natural or legal person who controls an insurance undertaking, reinsurance undertaking, credit institution, investment firm or management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.

³⁰OJ No. L 309, 25.11.2005, p.15

(2) In paragraph (1) “management company” has the meaning given by point 2 of Article 1a of Directive 85/611/EEC.

(3) In a case to which paragraph (1) applies, the Bank shall, without undue delay, provide any other supervisory authority concerned with any information that is essential or relevant for the assessment of a proposed acquisition and, in this regard, the Bank shall communicate to each such other supervisory authority all relevant information upon request and all essential information on its own initiative.

(4) A decision by the Bank, in the case of a proposed acquisition in an insurance undertaking or reinsurance undertaking, shall indicate any views or reservations expressed by the supervisory authority responsible for the proposed acquirer.

Bank may fix period for completion of acquisition

66. The Bank may fix a maximum period within which a proposed acquisition shall be completed, and may extend any period so fixed.

Notice of Bank’s decision

67. (1) If on completing the assessment of a proposed acquisition the Bank decides to oppose it, the Bank shall, within 2 working days, but before the end of the assessment period, inform the proposed acquirer concerned in writing and give reasons for that decision.

(2) Subject to any other law, the Bank shall publish an appropriate statement of the reasons for the decision if the proposed acquirer concerned so requests.

(3) The Bank may in its discretion publish such a statement even without any request by the proposed acquirer.

(4) If the Bank does not give notice in writing within the assessment period in relation to a proposed acquisition that it opposes the acquisition, the acquisition is deemed to have been approved.

Bank may oppose certain acquisitions

68. The Bank may oppose a proposed acquisition only if—

- (a) there are reasonable grounds for doing so on the basis of the criteria in paragraphs (1) and (2) of Regulation 64,
- (b) the information provided by the proposed acquirer concerned in its notification under paragraph (1) or (2) of Regulation 60 is incomplete, or
- (c) the proposed acquirer has not provided information in response to a request under paragraph (5) or (9) of Regulation 63.

Decision to oppose proposed acquisition to be appealable

69. A decision by the Bank to oppose a proposed acquisition is an appealable decision for the purposes of Part VIIA of the Act of 1942.

Circumstances in which proposed acquisition may not be completed

70. (1) The proposed acquirer in relation to a proposed acquisition may complete the acquisition only if—

- (a) the proposed acquirer has notified the Bank of the acquisition in accordance with Regulation 60,
- (b) the Bank has acknowledged that notification in accordance with Regulation 63, and
- (c) either—
 - (i) the assessment period in relation to the acquisition has ended and the Bank has not notified the proposed acquirer that it opposes the acquisition, or
 - (ii) the Bank has notified the proposed acquirer that it does not oppose the acquisition.

(2) If a proposed acquirer purports to complete a proposed acquisition in contravention of paragraph (1)—

- (a) the purported acquisition is of no effect to pass title to any share or any other interest, and
- (b) any exercise of powers based on the purported acquisition of the holding concerned is void.

Effect of Companies Act 2014

71. If a transaction is both a proposed acquisition and a compromise or arrangement for the purposes of section 450 of the Act of 2014, the Court shall not make an order under section 453(2)(c) of that Act in relation to the transaction until after the end of the assessment period in relation to the transaction.

Insurance and reinsurance undertakings to provide information about shareholdings etc

72. An insurance undertaking or reinsurance undertaking shall, at times specified by the Bank and at least once a year, notify the Bank of the names of shareholders or members who have qualifying holdings and the size of each such holding.

Power of Court to make certain orders

73. (1) If the Bank reasonably believes that the control exercised by a person who has a qualifying holding in an insurance undertaking or reinsurance undertaking is inconsistent with the prudent and sound management of the undertaking, it may apply to the Court for an order under paragraph (3).

(2) In making an application under paragraph (1), the Bank shall serve a copy of the application on the person to whom the application relates and on being served with the notice, that person becomes the respondent to the application.

(3) On the hearing of an application under paragraph (1), the Court may, on being satisfied that the Bank's belief is substantiated, make all or any of the following orders:

- (a) an order directing the respondent to dispose of the holding or a specified part of it;
- (b) an order suspending the exercise of the voting rights attached to the relevant shares;
- (c) an order invalidating votes already exercised by holders of those shares.

Determination of voting rights for certain purposes

74. (1) For the purpose of determining whether a holding in an insurance undertaking or reinsurance undertaking—

- (a) is a qualifying holding, or
- (b) has reached or exceeded or will reach or exceed a prescribed percentage of the capital of or voting rights in the undertaking,

the rules regarding the calculation of voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC and the conditions regarding aggregation of voting rights set out in Article 12(4) and (5) of that Directive shall be taken into account.

(2) For that purpose, voting rights or shares that an investment firm or credit institution holds as a result of providing the underwriting of financial instruments or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex 1 to Directive 2004/39/EC shall not be taken into account if those rights or shares are not exercised or otherwise used to intervene in the management of the issuer and are disposed of within one year of acquisition.

Notifications submitted before 1 January 2016

75. The assessment procedure applied to proposed acquisitions for which a notification referred to in Regulation 60 has been submitted to the Bank before 1 January 2016 shall be carried out in accordance with Part 3 of the European Communities (Non- Life Insurance) Framework Regulations 1994 (S.I. No. 359 of 1994), Part 4 of the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994) or Part 8 of the European Communities (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006), as in force immediately before that date.

Part 5

EXCHANGE OF INFORMATION AND PROMOTION OF
SUPERVISORY CONVERGENCE*Co-operation with EIOPA*

76. The Bank shall co-operate with EIOPA for the purposes of these Regulations in accordance with Regulation (EU) No 1094/2010 and shall provide EIOPA, without delay, with all information necessary to carry out its duties in accordance with that Regulation.

Exchange of information with other authorities

77. The Minister shall communicate to the Commission and to the regulatory authorities in other Member States the names of the authorities, persons and bodies which may receive information pursuant to section 33AK of the Act of 1942.

Part 6

DUTIES OF AUDITORS

Duties of auditors

78. (1) The auditors of an insurance undertaking or reinsurance undertaking shall report promptly to the Bank any fact or decision concerning that undertaking of which they have become aware while carrying out an audit of the undertaking and which is liable to bring about any of the following:

- (a) a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of insurance undertakings and reinsurance undertakings;
- (b) the impairment of the continuous functioning of the insurance undertaking or reinsurance undertaking;
- (c) a refusal to certify the accounts or the expression of reservations;
- (d) non-compliance with the Solvency Capital Requirement;
- (e) non-compliance with the Minimum Capital Requirement.

(2) The auditors of an insurance undertaking or reinsurance undertaking shall also report any facts or decisions such as are mentioned in paragraph (1) of which they have become aware in the course of carrying out an audit of an undertaking which has close links with the insurance undertaking or reinsurance undertaking resulting from a control relationship.

(3) Any communication by an auditor under paragraph (1) or (2), made in good faith, shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any law or administrative provision and shall not involve the auditor in liability of any kind.

(4) In this Regulation, “auditor” means any person authorised in accordance with Directive 84/253/EEC and performing the tasks described in—

- (a) Article 51 of Directive 78/660/EEC,
- (b) Article 37 of Directive 83/349/EEC, or
- (c) Article 31 of Directive 85/611/EEC,

or any other statutory task.

Part 7

PURSUIT OF LIFE AND NON-LIFE ACTIVITY

Pursuit of life and non-life insurance activity

79. (1) The Bank may authorise an insurance undertaking which is authorised to carry on life insurance activities to carry on non-life insurance activities in classes 1 and 2 in Part 1 of Schedule 1.

(2) If an insurance undertaking is so authorised the business of life insurance and the business of non-life insurance shall be managed separately in accordance with Regulation 80.

(3) An insurance undertaking authorised to carry on both life insurance and non-life insurance shall comply with the accounting rules governing life insurance for both.

(4) Activities relating to non-life insurance activities in classes 1 and 2 in Part 1 of Schedule 1 carried on by an insurance undertaking authorised to carry on both life insurance and non-life insurance shall be subject to the rules applicable to life insurance in the event of a winding up or reorganisation of the insurance undertaking.

(5) An insurance undertaking that has obtained an authorisation in accordance with paragraph (1) is prohibited from carrying on health insurance business as defined in section 2(1) of the Health Insurance Act 1994 (No. 16 of 1994).

Separation of life and non-life insurance management

80. (1) The separate management referred to in Regulation 79 shall be organised in such a way that activities relating to life insurance are distinct from activities relating to non-life insurance in order that the respective interests of life policyholders and non-life policyholders are not prejudiced and, in particular, that profits from life insurance benefit life policyholders as if the undertaking only carried on life insurance.

(2) Without prejudice to Regulations 113 and 139, an insurance undertaking authorised in accordance with Regulation 79 shall calculate—

- (a) a notional life Minimum Capital Requirement with respect to its activities relating to life insurance or reinsurance, calculated as if the

undertaking concerned only pursued those activities, on the basis of the separate accounts referred to in paragraph (7), and

- (b) a notional non-life Minimum Capital Requirement with respect to its activities relating to non-life insurance or reinsurance, calculated as if the undertaking concerned only pursued those activities, on the basis of the separate accounts referred to in paragraph (7).

(3) As a minimum, a life insurance undertaking authorised in accordance with Regulation 79 shall cover the following by an equivalent amount of eligible basic own-fund items:

- (a) the notional life Minimum Capital Requirement, in respect of its activities relating to life insurance;
- (b) the notional non-life Minimum Capital Requirement, in respect of its activities relating to non-life insurance.

(4) The minimum financial obligations specified in paragraph (3) in respect of activities relating to life insurance or activities relating to non-life insurance activity shall not be borne by the other activities.

(5) As long as the minimum financial obligations specified in paragraph (3) are fulfilled and provided the Bank is informed, the undertaking may use to cover the Solvency Capital Requirement referred to in Regulation 113 the explicit eligible own-fund items which are still available for one or the other activities.

(6) The Bank shall analyse the results in activities relating to life insurance and activities relating to non-life insurance so as to ensure that the requirements of paragraphs (1) to (5) are fulfilled.

(7) A life insurance undertaking authorised in accordance with Regulation 79 shall draw up accounts—

- (a) showing separately the sources of the results for life insurance and non-life insurance, including a breakdown of the origin of—
 - (i) all income (in particular premiums, payments by reinsurers and investment income), and
 - (ii) all expenditure (in particular, insurance settlements, additions to technical provisions, reinsurance premiums and operating expenses in respect of insurance business), and
- (b) showing items common to both sorts of activities entered in accordance with methods of apportionment accepted by the Bank.

(8) An insurance undertaking shall, on the basis of the accounts referred to in paragraph (7), prepare a statement in which the eligible basic own-fund items

covering each notional Minimum Capital Requirement as referred to in paragraph (2) are clearly identified, in accordance with Regulation 112(6).

(9) If the amount of eligible basic own-fund items with respect to one of the activities is insufficient to cover the minimum financial obligations referred to in paragraph (3), the Bank shall apply to the deficient activity the measures provided for in these Regulations, whatever the results in the other activity.

(10) By way of derogation from paragraph (4), those measures may involve the authorisation of a transfer of explicit eligible basic own-fund items from one sort of activities to the other.

Linked life insurance and non-life insurance undertakings

81. If—

- (a) an insurance undertaking which carries on life insurance business has financial, commercial or administrative links with an insurance undertaking which carries on non-life insurance business, or
- (b) an insurance undertaking which carries on non-life insurance business has financial, commercial or administrative links with an insurance undertaking which carries on life insurance business,

it shall provide the Bank, in such form as the Bank sees fit, with information relating to the arrangements under which any apportionment of expenses of management and income has been made between the insurance undertakings and the basis for such arrangements, and shall provide the Bank on request with copies of any agreement or other documents relevant to any such arrangements to ensure that the accounts of those undertakings are not distorted by the arrangements between those undertakings.

Part 8

VALUATION OF ASSETS AND LIABILITIES, TECHNICAL PROVISIONS, OWN FUNDS, SOLVENCY CAPITAL REQUIREMENT, MINIMUM CAPITAL REQUIREMENT AND INVESTMENT RULES

Chapter 1

Valuation of assets and liabilities

Valuation of assets and liabilities

82. (1) Unless provided to the contrary, an insurance undertaking or reinsurance undertaking shall value assets and liabilities as follows:

- (a) assets shall be valued at the amount for which they could be exchanged between knowledgeable and willing parties in an arm's length transaction;

(b) liabilities shall be valued at the amount for which they could be transferred, or settled, between knowledgeable and willing parties in an arm's length transaction.

(2) When valuing liabilities under paragraph (1)(b), no adjustment shall be made to take account of the own credit standing of the undertaking.

Chapter 2

Technical provisions

General provisions

83. (1) An insurance undertaking or reinsurance undertaking shall establish technical provisions with respect to all of its insurance and reinsurance obligations towards policy holders and beneficiaries of insurance or reinsurance contracts.

(2) The value of technical provisions shall correspond to the current amount an undertaking would have to pay if it were to transfer its insurance and reinsurance obligations immediately to another insurance undertaking or reinsurance undertaking.

(3) The calculation of technical provisions shall make use of and be consistent with information provided by the financial markets and generally available data on underwriting risks (market consistency).

(4) Technical provisions shall be calculated in a prudent, reliable and objective manner.

(5) Following the principles set out in paragraphs (2), (3) and (4) and taking into account the principles set out in Regulation 82, the calculation of technical provisions shall be carried out in accordance with Regulations 84 to 95.

Calculation of technical provisions

84. (1) The value of technical provisions shall be equal to the sum of a best estimate as set out in paragraphs (2) to (5) and a risk margin as set out in paragraph (6).

(2) The best estimate shall correspond to the probability-weighted average of future cash flows, taking account of the time value of money (expected present value of future cash flows), using the relevant risk-free interest rate term structure.

(3) The calculation of the best estimate shall be based upon up-to-date and credible information and realistic assumptions and be performed using adequate, applicable and relevant actuarial and statistical methods.

(4) The cash-flow projection used in the calculation of the best estimate shall take account of all the cash in-flows and out-flows required to settle the insurance and reinsurance obligations over their lifetime.

(5) The best estimate shall be calculated gross, without deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles which shall be calculated separately, in accordance with Regulation 94.

(6) The risk margin shall be such as to ensure that the value of the technical provisions is equivalent to the amount that an insurance undertaking or reinsurance undertaking would be expected to require in order to take over and meet the insurance and reinsurance obligations.

(7) An insurance undertaking or reinsurance undertaking shall value the best estimate and the risk margin separately.

(8) However, where future cash flows associated with insurance or reinsurance obligations can be replicated reliably using financial instruments for which a reliable market value is observable, the value of technical provisions associated with those future cash flows shall be determined on the basis of the market value of those financial instruments and separate calculations of the best estimate and the risk margin shall not be required.

(9) Where an insurance undertaking or reinsurance undertaking values the best estimate and the risk margin separately, the risk margin shall be calculated by determining the cost of providing an amount of eligible own funds equal to the Solvency Capital Requirement necessary to support the insurance and reinsurance obligations over their lifetime.

(10) The rate used in the determination of the cost of providing that amount of eligible own funds (referred to in this Regulation as the “Cost-of-Capital rate”) shall be the same for all insurance undertakings and reinsurance undertakings as reviewed periodically by EIOPA.

(11) The Cost-of-Capital rate used shall be equal to the additional rate, above the relevant risk-free interest rate, that an insurance undertaking or reinsurance undertaking would incur holding an amount of eligible own funds, as set out in Regulations 102 to 112, equal to the Solvency Capital Requirement necessary to support insurance and reinsurance obligations over the lifetime of those obligations.

Extrapolation of relevant risk-free interest rate term structure

85. (1) The determination of the relevant risk-free interest rate term structure referred to in Regulation 84(2) shall make use of, and be consistent with, information derived from relevant financial instruments.

(2) The determination referred to in paragraph (1) shall take into account relevant financial instruments of those maturities where the markets for those financial instruments as well as for bonds are deep, liquid and transparent.

(3) For maturities where the markets for the relevant financial instruments or for bonds are no longer deep, liquid and transparent, the relevant risk-free interest rate term structure shall be extrapolated.

(4) The extrapolated part of the relevant risk-free interest rate term structure shall be based on forward rates converging smoothly from one or a set of forward rates in relation to the longest maturities for which the relevant financial instrument and the bonds can be observed in a deep, liquid and transparent market to an ultimate forward rate.

Matching adjustment to relevant risk-free interest rate term structure

86. (1) An insurance undertaking or reinsurance undertaking may apply a matching adjustment to the relevant risk-free interest rate term structure to calculate the best estimate of a portfolio of life insurance or reinsurance obligations, including annuities stemming from non-life insurance or reinsurance contracts subject to prior approval by the Bank where the following conditions are met:

- (a) the undertaking has assigned a portfolio of assets, consisting of bonds and other assets with similar cash-flow characteristics, to cover the best estimate of the portfolio of insurance or reinsurance obligations and maintains that assignment over the lifetime of the obligations, except for the purpose of maintaining the replication of expected cash flows between assets and liabilities where the cash flows have materially changed;
- (b) the portfolio of insurance or reinsurance obligations to which the matching adjustment is applied and the assigned portfolio of assets are identified, organised and managed separately from other activities of the undertaking, and the assigned portfolio of assets cannot be used to cover losses arising from other activities of the undertaking;
- (c) the expected cash flows of the assigned portfolio of assets replicate each of the expected cash flows of the portfolio of insurance or reinsurance obligations in the same currency and any mismatch does not give rise to risks which are material in relation to the risks inherent in the insurance or reinsurance business to which the matching adjustment is applied;
- (d) the contracts underlying the portfolio of insurance or reinsurance obligations do not give rise to future premium payments;
- (e) the only underwriting risks connected to the portfolio of insurance or reinsurance obligations are longevity risk, expense risk, revision risk and mortality risk;
- (f) where the underwriting risk connected to the portfolio of insurance or reinsurance obligations includes mortality risk, the best estimate of the portfolio of insurance or reinsurance obligations does not increase by more than 5% under a mortality risk stress that is calibrated in accordance with Regulation 114;
- (g) the contracts underlying the portfolio of insurance or reinsurance obligations include no options for the policy holder or only a surrender option where the surrender value does not exceed the value of the

assets, valued in accordance with Regulation 82, covering the insurance or reinsurance obligations at the time the surrender option is exercised;

- (h) the cash flows of the assigned portfolio of assets are fixed and cannot be changed by the issuers of the assets or any third parties;
- (i) the insurance or reinsurance obligations of an insurance or reinsurance contract are not split into different parts when composing the portfolio of insurance or reinsurance obligations for the purpose of this paragraph.

(2) Despite paragraph (1)(h), an insurance undertaking or reinsurance undertaking may use assets where the cash flows are fixed except for a dependence on inflation, provided that those assets replicate the cash flows of the portfolio of insurance or reinsurance obligations that depend on inflation.

(3) In the event that issuers or third parties have the right to change the cash flows of an asset in such a manner that the investor receives sufficient compensation to allow it to obtain the same cash flows by re-investing in assets of an equivalent or better credit quality, the right to change the cash flows shall not disqualify the asset for admissibility to the assigned portfolio in accordance with paragraph (1)(h).

(4) An insurance undertaking or reinsurance undertaking that applies the matching adjustment to a portfolio of insurance or reinsurance obligations shall not revert back to an approach that does not include a matching adjustment.

(5) Where an insurance undertaking or reinsurance undertaking that applies the matching adjustment is no longer able to comply with the conditions set out in paragraph (1), it shall immediately inform the Bank and take the necessary measures to restore compliance with those conditions.

(6) Where the undertaking is not able to restore compliance with those conditions within 2 months of the date of non-compliance, it shall cease to apply the matching adjustment to any of its insurance or reinsurance obligations and shall not apply the matching adjustment for a period of a further 24 months.

(7) The matching adjustment shall not be applied with respect to insurance or reinsurance obligations where the relevant risk-free interest rate term structure to calculate the best estimate for those obligations includes a volatility adjustment under Regulation 88 or transitional measure on the risk-free interest rates under Regulation 99.

Calculation of matching adjustment

87. (1) For each currency the matching adjustment referred to in Regulation 86 shall be calculated in accordance with the following principles:

- (a) the matching adjustment shall be equal to the difference between—

- (i) the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of insurance or reinsurance obligations, results in a value that is equal to the value in accordance with Regulation 82 of the portfolio of assigned assets, and
 - (ii) the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of insurance or reinsurance obligations, results in a value that is equal to the value of the best estimate of the portfolio of insurance or reinsurance obligations where the time value of money is taken into account using the basic risk-free interest rate term structure;
 - (b) the matching adjustment must not include the fundamental spread reflecting the risks retained by the insurance undertaking or reinsurance undertaking;
 - (c) despite subparagraph (a), the fundamental spread must be increased where necessary to ensure that the matching adjustment for assets with sub-investment grade credit quality does not exceed the matching adjustments for assets of investment grade credit quality and the same duration and asset class;
 - (d) the use of external credit assessments in the calculation of the matching adjustment must be in accordance with Commission Delegated Regulation (EU) 2015/35.
- (2) For the purposes of paragraph (1)(b), the fundamental spread shall be—
- (a) equal to the sum of—
 - (i) the credit spread corresponding to the probability of default of the assets, and
 - (ii) the credit spread corresponding to the expected loss resulting from downgrading of the assets,
 - (b) for exposures to Member States' central governments and central banks, no lower than 30% of the long-term average of the spread over the risk-free interest rate of assets of the same duration, credit quality and asset class, as observed in financial markets, and
 - (c) for assets other than exposures to Member States' central governments and central banks, no lower than 35% of the long-term average of the spread over the risk-free interest rate of assets of the same duration, credit quality and asset class, as observed in financial markets.
- (3) The probability of default referred to in paragraph (2)(a)(i) shall be based on long-term default statistics that are relevant for the asset in relation to its duration, credit quality and asset class.

(4) Where no reliable credit spread can be derived from the default statistics referred to in paragraph (3), the fundamental spread shall be equal to the portion of the long-term average of the spread over the risk-free interest rate set out in paragraph (2)(b) and (c).

Volatility adjustment to relevant risk-free interest rate term structure

88. (1) An insurance undertaking or reinsurance undertaking may apply a volatility adjustment to the relevant risk-free interest rate term structure to calculate the best estimate referred to in Regulation 84(2) to (5) subject to prior approval by the Bank.

(2) For each relevant currency, the volatility adjustment to the relevant risk-free interest rate term structure shall be based on the spread between the interest rate that could be earned from assets included in a reference portfolio for that currency and the rates of the relevant basic risk-free interest rate term structure for that currency.

(3) The reference portfolio for a currency shall be representative for the assets which are denominated in that currency and which insurance undertakings or reinsurance undertakings are invested in to cover the best estimate for insurance and reinsurance obligations denominated in that currency.

(4) The amount of the volatility adjustment to risk-free interest rates shall correspond to 65% of the risk-corrected currency spread.

(5) The risk-corrected currency spread shall be calculated as the difference between—

(a) the spread referred to in paragraphs (2) and (3), and

(b) the portion of that spread that is attributable to a realistic assessment of expected losses or unexpected credit or other risk of the assets.

(6) The volatility adjustment shall apply only to the relevant risk-free interest rates of the term structure that are not derived by means of extrapolation in accordance with Regulation 85.

(7) The extrapolation of the relevant risk-free interest rate term structure shall be based on those adjusted risk-free interest rates.

(8) For each relevant country, the volatility adjustment to the risk-free interest rates for the currency of that country shall, before application of the 65% factor, be increased by the difference between the risk-corrected country spread and twice the risk corrected currency spread, whenever that difference is positive and the risk-corrected country spread is higher than 100 basis points.

(9) The increased volatility adjustment shall be applied to the calculation of the best estimate for insurance and reinsurance obligations of products sold in the insurance market of that country.

(10) The risk-corrected country spread is calculated in the same way as the risk-corrected currency spread for the currency of that country, but based on a reference portfolio that is representative for the assets which insurance undertakings and reinsurance undertakings are invested in to cover the best estimate for insurance and reinsurance obligations of products sold in the insurance market of that country and denominated in the currency of that country.

(11) The volatility adjustment shall not be applied with respect to insurance obligations where the relevant risk-free interest rate term structure to calculate the best estimate for those obligations includes a matching adjustment under Regulation 86.

(12) By way of derogation from Regulation 114, the Solvency Capital Requirement shall not cover the risk of loss of basic own funds resulting from changes of the volatility adjustment.

Technical information produced by EIOPA

89. (1) An insurance undertaking or reinsurance undertaking shall use the technical information referred to in Article 77e(1) of the Directive in calculating—

- (a) the best estimate in accordance with Regulation 84,
- (b) the matching adjustment in accordance with Regulation 87, and
- (c) the volatility adjustment in accordance with Regulation 88,

where that information has been adopted by the Commission in accordance with Article 77e(2) of the Directive.

(2) With respect to currencies and national markets where the adjustment referred to in Article 77e(1)(c) of the Directive is not included in the technical information adopted by the Commission, no volatility adjustment shall be applied to the relevant risk-free interest rate term structure to calculate the best estimate.

Review of long-term guarantee measures and measures on equity risk

90. (1) The Bank shall on an annual basis up to and until 1 January 2021 provide EIOPA with the following information:

- (a) the availability of long-term guarantees in insurance products in the national market and the behaviour of insurance undertakings and reinsurance undertakings as long-term investors;
- (b) the number of insurance undertakings and reinsurance undertakings applying the matching adjustment, the volatility adjustment, the extension of the recovery period in accordance with Regulation 146(5), and the transitional measures set out in Regulations 99 and 100;

- (c) the impact on the financial position of insurance undertakings and reinsurance undertakings of the matching adjustment, the volatility adjustment, the symmetric adjustment mechanism to the equity capital charge, and the transitional measures set out in Regulations 99 and 100 at national level and in an anonymised way for each undertaking;
- (d) the effect of the matching adjustment, the volatility adjustment and the symmetric adjustment mechanism to the equity capital charge on the investment behaviour of insurance undertakings and reinsurance undertakings and whether they provide undue capital relief;
- (e) the effect of any extension of the recovery period in accordance with Regulation 146(5) on the efforts of insurance undertakings and reinsurance undertakings to re-establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile in order to ensure compliance with the Solvency Capital Requirement;
- (f) where insurance undertakings and reinsurance undertakings apply the transitional measures set out in Regulations 99 and 100, whether they comply with the phasing-in plans referred to in Regulation 101 and the prospects for a reduced dependency on these transitional measures, including measures that have been taken or are expected to be taken by the undertakings and the Bank, taking into account the regulatory environment of the State.

Other elements to be taken into account in calculation of technical provisions

91. In addition to Regulation 84, when calculating technical provisions, an insurance undertaking or reinsurance undertaking shall take account of the following:

- (a) all expenses that will be incurred in servicing insurance and reinsurance obligations;
- (b) inflation, including expenses and claims inflation;
- (c) all payments to policy holders and beneficiaries, including future discretionary bonuses, which the undertaking expects to make, whether or not those payments are contractually guaranteed, unless those payments fall under Regulation 106(2).

Valuation of financial guarantees and contractual options included in insurance and reinsurance contracts

92. (1) When calculating technical provisions, an insurance undertaking or reinsurance undertaking shall take account of the value of financial guarantees and any contractual options included in insurance and reinsurance policies.

(2) Any assumptions made by an undertaking with respect to the likelihood that policy holders will exercise contractual options, including lapses and surrenders—

- (a) shall be realistic and based on current and credible information, and
- (b) shall take account, either explicitly or implicitly, of the impact that future changes in financial and non-financial conditions may have on the exercise of those options.

Segmentation

93. An insurance undertaking or reinsurance undertaking shall segment its insurance and reinsurance obligations into homogeneous risk groups, and as a minimum by lines of business, when calculating its technical provisions.

Recoverables from reinsurance contracts and special purpose vehicles

94. (1) The calculation by an insurance undertaking or reinsurance undertaking of amounts recoverable from reinsurance contracts and special purpose vehicles shall comply with Regulations 83 to 93.

(2) When calculating amounts recoverable from reinsurance contracts and special purpose vehicles, the undertaking shall take account of the time difference between recoveries and direct payments.

(3) The result from that calculation shall be adjusted to take account of expected losses due to default of the counterparty.

(4) That adjustment shall be based on an assessment of the probability of default of the counterparty and the average loss resulting from it (loss-given-default).

Data quality and application of approximations, including case-by-case approaches, for technical provisions

95. (1) An insurance undertaking or reinsurance undertaking shall have internal processes and procedures in place to ensure the appropriateness, completeness and accuracy of the data used in the calculation of its technical provisions.

(2) Where, in specific circumstances, an undertaking has insufficient data of appropriate quality to apply a reliable actuarial method to a set or subset of its insurance and reinsurance obligations, or amounts recoverable from reinsurance contracts and special purpose vehicles, appropriate approximations, including case-by-case approaches, may be used in the calculation of the best estimate.

Comparison against experience

96. (1) An insurance undertaking or reinsurance undertaking shall have processes and procedures in place to ensure that best estimates, and the assumptions underlying the calculation of best estimates, are regularly compared against experience.

(2) Where the comparison identifies systematic deviation between experience and the best estimate calculations of the undertaking, the undertaking shall make appropriate adjustments to the actuarial methods being used or the assumptions being made (or both).

Appropriateness of level of technical provisions

97. An insurance undertaking or reinsurance undertaking shall, in accordance with any request from the Bank in the exercise of its powers under financial services legislation, demonstrate the appropriateness of the level of its technical provisions, as well as the applicability and relevance of the methods applied, and the adequacy of the underlying statistical data used.

Increase of technical provisions

98. To the extent that the calculation of technical provisions of an insurance undertaking or reinsurance undertaking does not comply with Regulations 83 to 96 the Bank may, in the exercise of its powers under financial services legislation, require the undertaking to increase its amount of technical provisions in order that they correspond to the level determined pursuant to those Regulations.

Transitional measure on risk-free interest rates

99. (1) An insurance undertaking or reinsurance undertaking may, subject to prior approval by the Bank, apply a transitional adjustment to the relevant risk-free interest rate term structure with respect to admissible insurance and reinsurance obligations.

(2) For each currency the adjustment shall be calculated as a portion of the difference between—

- (a) the interest rate as determined using the methods used by the insurance undertaking or reinsurance undertaking at 31 December 2015, and
- (b) the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of admissible insurance and reinsurance obligations, results in a value that is equal to the value of the best estimate of the portfolio of admissible insurance and reinsurance obligations where the time value of money is taken into account using the relevant risk-free interest rate term structure referred to in Regulation 84(2).

(3) The portion referred to in paragraph (2) shall decrease linearly at the end of each year from 100% during the year starting from 1 January 2016 to 0% on 1 January 2032.

(4) Where an insurance undertaking or reinsurance undertaking applies the volatility adjustment referred to in Regulation 88, the relevant risk-free interest rate term structure referred to in paragraph (2)(b) shall be the adjusted relevant risk-free interest rate term structure set out in that Regulation.

(5) The admissible insurance and reinsurance obligations shall comprise only insurance or reinsurance obligations that meet the following requirements:

- (a) the contracts that give rise to the insurance and reinsurance obligations were concluded before 1 January 2016, excluding contract renewals on or after that date;

- (b) technical provisions for the insurance and reinsurance obligations were determined in accordance with the laws, regulations and administrative provisions adopted pursuant to Article 20 of Directive 2002/83/EC until 31 December 2015;
 - (c) Regulation 86 is not applied to the insurance and reinsurance obligations.
- (6) An insurance undertaking or reinsurance undertaking applying paragraph (1) shall—
- (a) not include the admissible insurance and reinsurance obligations in the calculation of the volatility adjustment set out in Regulation 88,
 - (b) not apply Regulation 100, and
 - (c) as part of their report on their solvency and financial condition referred to in Regulation 52, publicly disclose that they apply the transitional risk-free interest rate term structure, and the quantification of the impact of not applying this transitional measure on their financial position.

Transitional deduction

100. (1) An insurance undertaking or reinsurance undertaking may, subject to approval by the Bank, apply a transitional deduction to technical provisions and that deduction may be applied at the level of homogenous risks groups referred in Regulation 93.

(2) The transitional deduction shall correspond to a portion of the difference between the following 2 amounts:

- (a) the technical provisions after deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles, calculated in accordance with Regulation 83 at 1 January 2016;
- (b) the technical provisions after deduction of the amounts recoverable from reinsurance contracts calculated in accordance with the laws, regulations and administrative provisions adopted pursuant to Article 15 of Directive 73/239/EEC, Article 20 of Directive 2002/83/EC and Article 32 of Directive 2005/68/EC on 31 December 2015.

(3) The maximum portion deductible shall decrease linearly at the end of each year from 100% during the year starting from 1 January 2016 to 0% on 1 January 2032.

(4) Where an insurance undertaking or reinsurance undertaking applies at 1 January 2016 the volatility adjustment referred to in Regulation 88, the amount referred to in paragraph (2)(a) shall be calculated with the volatility adjustment at that date.

(5) Subject to prior approval by, or on the initiative of, the Bank, the amounts of technical provisions, including where applicable the amount of the volatility adjustment, used to calculate the transitional deduction referred to in paragraph (2)(a) and (b) may be recalculated every 24 months, or more frequently where the risk profile of the undertaking has materially changed.

(6) The deduction referred to in paragraph (2) may be limited by the Bank if its application could result in a reduction of the financial resources requirements that apply to the undertaking when compared with those calculated in accordance with the laws and administrative provisions adopted pursuant to Directive 73/239/EEC, Directive 2002/83/EC and Directive 2005/68/EC on 31 December 2015.

(7) An insurance undertaking or reinsurance undertaking applying paragraph (1) shall—

(a) not apply Regulation 99,

(b) when it would not comply with the Solvency Capital Requirement without application of the transitional deduction, submit annually a report to the Bank setting out measures taken and the progress made to re-establish at the end of the transitional period set out in paragraph (3) a level of eligible own funds covering the Solvency Capital Requirement or to reduce their risk profile to restore compliance with the Solvency Capital Requirement, and

(c) as part of its report on its solvency and financial condition referred to in Regulation 52, publicly disclose that it applies the transitional deduction to the technical provisions, and the quantification of the impact of not applying that transitional deduction on its financial position.

Phasing-in plan on transitional measures

101. (1) An insurance undertaking or reinsurance undertaking that applies the transitional measures set out in Regulation 99 or 100 shall inform the Bank as soon as it observes that it would not comply with the Solvency Capital Requirement without application of those transitional measures.

(2) The Bank shall require the insurance undertaking or reinsurance undertaking concerned to take the necessary measures to ensure compliance with the Solvency Capital Requirement at the end of the transitional period.

(3) Within 2 months from observation of non-compliance with the Solvency Capital Requirement without application of these transitional measures, the insurance undertaking or reinsurance undertaking concerned shall submit to the Bank a phasing-in plan setting out the planned measures to establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce its risk profile to ensure compliance with the Solvency Capital Requirement at the end of the transitional period.

(4) The insurance undertaking or reinsurance undertaking may update the phasing-in plan during the transitional period.

(5) The insurance undertaking or reinsurance undertaking shall submit annually a report to the Bank setting out the measures taken and the progress made to ensure compliance with the Solvency Capital Requirement at the end of the transitional period.

(6) The Bank shall revoke the approval for the application of the transitional measure where that progress report shows that compliance with the Solvency Capital Requirement at the end of the transitional period is unrealistic.

Chapter 3

Own funds

Determination of own funds

Own funds

102. Own funds shall comprise the sum of—

- (a) basic own funds referred to in Regulation 103, and
- (b) ancillary own funds referred to in Regulation 104.

Basic own funds

103. (1) The basic own funds of an insurance undertaking or reinsurance undertaking shall consist of the following items:

- (a) the excess of assets over liabilities, valued in accordance with Chapters 1 and 2 of this Part;
- (b) subordinated liabilities.

(2) The excess amount referred to in paragraph (1)(a) shall be reduced by the amount of own shares held by the insurance undertaking or reinsurance undertaking.

Ancillary own funds

104. (1) The ancillary own funds of an insurance undertaking or reinsurance undertaking shall consist of items other than basic own funds which can be called up to absorb losses.

(2) Ancillary own funds may comprise the following items to the extent that they are not basic own-fund items:

- (a) unpaid share capital or initial fund that has not been called up;
- (b) letters of credit and guarantees;
- (c) any other legally binding commitments received by insurance undertakings and reinsurance undertakings.

(3) In the case of a mutual or mutual-type association with variable contributions, ancillary own funds may also comprise any future claims which that association may have against its members by way of a call for supplementary contribution, within the following 12 months.

(4) Where an ancillary own-fund item has been paid in or called up, it shall be treated as an asset and cease to form part of ancillary own-fund items.

Supervisory approval of ancillary own funds

105. (1) The amounts of ancillary own-fund items to be taken into account when determining own funds shall be subject to prior approval by the Bank.

(2) The amount ascribed to each ancillary own-fund item shall reflect the loss absorbency of the item and shall be based upon prudent and realistic assumptions and, where an ancillary own-fund item has a fixed nominal value, the amount of that item shall be equal to its nominal value, where it appropriately reflects its loss absorbency.

(3) The Bank shall approve either of the following:

(a) a monetary amount for each ancillary own-fund item;

(b) a method by which to determine the amount of each ancillary own-fund item, in which case approval by the Bank of the amount determined in accordance with that method shall be granted for a specified period of time.

(4) The Bank shall base its approval for each ancillary own-fund item on an assessment of the following:

(a) the status of the counterparties concerned, in relation to their ability and willingness to pay;

(b) the recoverability of the funds, taking account of the legal form of the item, as well as any conditions which would prevent the item from being successfully paid in or called up;

(c) any information on the outcome of past calls which insurance undertakings and reinsurance undertakings have made for such ancillary own funds, to the extent that information can be reliably used to assess the expected outcome of future calls.

Surplus funds

106. (1) Surplus funds shall be deemed to be accumulated profits which have not been made available for distribution to policy holders and beneficiaries.

(2) Surplus funds shall not be considered as insurance and reinsurance liabilities to the extent that they fulfil the criteria set out in Regulation 108(1).

Classification of own funds

Characteristics and features used to classify own funds into tiers

107. (1) Own-fund items shall be classified into 3 tiers.

(2) The classification of those items shall depend upon whether they are basic own fund or ancillary own-fund items and the extent to which they possess the following characteristics:

- (a) the item is available, or can be called up on demand, to fully absorb losses on a going concern basis, as well as in the case of winding up (permanent availability);
- (b) in the case of winding-up, the total amount of the item is available to absorb losses and the repayment of the item is refused to its holder until all other obligations, including insurance and reinsurance obligations towards policy holders and beneficiaries of insurance and reinsurance contracts, have been met (subordination).

(3) When assessing the extent to which own-fund items possess the characteristics set out in paragraph (2)(a) and (b), currently and in the future, due consideration shall be given to the duration of the item, in particular whether the item is dated or not and, where an own-fund item is dated, the relative duration of the item as compared to the duration of the insurance and reinsurance obligations of the undertaking shall be considered (sufficient duration).

(4) In addition, the following features shall be considered:

- (a) whether the item is free from requirements or incentives to redeem the nominal sum (absence of incentives to redeem);
- (b) whether the item is free from mandatory fixed charges (absence of mandatory servicing costs);
- (c) whether the item is clear of encumbrances (absence of encumbrances).

Main criteria for classification into tiers

108. (1) Basic own-fund items shall be classified in Tier 1 where they substantially possess the characteristics set out in Regulation 107(2)(a) and (b), taking into consideration the features set out in Regulation 107(3) and (4).

(2) Basic own-fund items shall be classified in Tier 2 where they substantially possess the characteristic set out in Regulation 107(2)(b), taking into consideration the features set out in Regulation 107(3) and (4).

(3) Ancillary own-fund items shall be classified in Tier 2 where they substantially possess the characteristics set out in Regulation 107(2)(a) and (b), taking into consideration the features set out in Regulation 107(3) and (4).

(4) Any basic and ancillary own-fund items which do not fall within paragraphs (1) to (3) shall be classified in Tier 3.

Transitional provision for own funds

109. (1) Despite Regulation 108, basic own-fund items shall be included in Tier 1 basic own funds for up to 10 years after 1 January 2016, provided that those items—

- (a) were issued before 18 January 2015,
- (b) on 31 December 2015 could be used to meet the available solvency margin up to 50% of the solvency margin according to the laws and administrative provisions which are adopted pursuant to Article 16(3) of Directive 73/239/EEC, Article 1 of Directive 2002/13/EC, Article 27(3) of Directive 2002/83/EC and Article 36(3) of Directive 2005/68/EC, and
- (c) would not otherwise be classified in Tier 1 or Tier 2 in accordance with Regulation 108.

(2) Despite Regulation 108, basic own-fund items shall be included in Tier 2 basic own funds for up to 10 years after 1 January 2016, provided that those items—

- (a) were issued before 18 January 2015, and
- (b) on 31 December 2015 could be used to meet the available solvency margin up to 25% of the solvency margin according to the laws and administrative provisions which are adopted pursuant to Article 16(3) of Directive 73/239/EEC, Article 1 of Directive 2002/13/EC, Article 27(3) of Directive 2002/83/EC and Article 36(3) of Directive 2005/68/EC.

Classification of own funds into tiers

110. (1) An insurance undertaking or reinsurance undertaking shall classify its own-fund items on the basis of the criteria laid down in Regulation 108.

(2) For that purpose, the undertaking shall refer to the list of own-fund items referred to in Commission Delegated Regulation (EU) 2015/35, where applicable.

(3) Where an own-fund item is not covered by that list, it shall be assessed and classified by the undertaking, in accordance with paragraph (1).

(4) Classification under paragraph (3) is subject to approval by the Bank.

Classification of specific insurance own-fund items

111. (1) Without prejudice to Regulation 110 and Commission Delegated Regulation (EU) 2015/35, for the purposes of these Regulations the following classifications shall be applied:

- (a) surplus funds falling under Regulation 106(2) shall be classified in Tier 1;

- (b) letters of credit and guarantees which are held in trust for the benefit of insurance creditors by an independent trustee and provided by credit institutions authorised in accordance with Directive 2006/48/EC shall be classified in Tier 2;
- (c) any future claims which mutual or mutual-type associations of ship-owners with variable contributions solely insuring risks classified under classes 6, 12 and 17 in Part 1 of Schedule 1 may have against their members by way of a call for supplementary contributions, within the following 12 months, shall be classified in Tier 2.

(2) In accordance with Regulation 108(3), any future claims which mutual or mutual type associations with variable contributions may have against their members by way of a call for supplementary contributions, within the following 12 months, not falling under paragraph (1)(c) shall be classified in Tier 2 where they substantially possess the characteristics set out in Regulation 107(2), taking into consideration the features set out in Regulation 107(3) and (4).

Eligibility of own funds

Eligibility and limits applicable to Tiers 1, 2 and 3

112. (1) The eligible amounts of Tier 2 and Tier 3 items shall be subject to quantitative limits for Solvency Capital Requirement compliance purposes.

(2) Those limits shall be such as to ensure that at least the following conditions are met:

- (a) the proportion of Tier 1 items in the eligible own funds is higher than one third of the total amount of eligible own funds;
- (b) the eligible amount of Tier 3 items is less than one third of the total amount of eligible own funds.

(3) The amount of basic own-fund items eligible to cover the Minimum Capital Requirement which are classified in Tier 2 shall be subject to quantitative limits.

(4) Those limits shall be such as to ensure, as a minimum, that the proportion of Tier 1 items in the eligible basic own funds is higher than one half of the total amount of eligible basic own funds.

(5) The eligible amount of own funds to cover the Solvency Capital Requirement set out in Regulation 113 shall be equal to the sum of the amount of Tier 1, the eligible amount of Tier 2 and the eligible amount of Tier 3.

(6) The eligible amount of basic own funds to cover the Minimum Capital Requirement set out in Regulation 139 shall be equal to the sum of the amount of Tier 1 and the eligible amount of basic own-fund items classified in Tier 2.

Chapter 4

Solvency Capital Requirement

General provisions

General

113. (1) An insurance undertaking or reinsurance undertaking shall hold eligible own funds covering the Solvency Capital Requirement.

(2) The undertaking shall calculate its Solvency Capital Requirement in accordance with the standard formula (as set out in Regulations 116 to 124) or by using an internal model (as set out in Regulations 125 to 138).

Calculation of Solvency Capital Requirement

114. (1) An insurance undertaking or reinsurance undertaking shall calculate its Solvency Capital Requirement in accordance with paragraphs (2) to (8).

(2) The Solvency Capital Requirement shall be calculated on the presumption that the undertaking will pursue its business as a going concern.

(3) The Solvency Capital Requirement shall be calibrated so as to ensure that all quantifiable risks to which an insurance undertaking or reinsurance undertaking is exposed are taken into account.

(4) The Solvency Capital Requirement shall—

(a) cover existing business, as well as the new business expected to be written over the following 12 months, and

(b) with respect to existing business, cover only unexpected losses.

(5) The Solvency Capital Requirement shall correspond to the Value-at-Risk of the basic own funds of the undertaking subject to a confidence level of 99.5 % over a one year period.

(6) The Solvency Capital Requirement shall cover at least the following risks:

(a) non-life underwriting risk;

(b) life underwriting risk;

(c) health underwriting risk;

(d) market risk;

(e) credit risk;

(f) operational risk.

(7) Operational risk as referred to in paragraph (6)(f) shall include legal risks, and exclude risks arising from strategic decisions, as well as reputation risks.

(8) When calculating the Solvency Capital Requirement, an undertaking shall take account of the effect of risk-mitigation techniques, provided that credit risk and other risks arising from the use of such techniques are properly reflected in the Solvency Capital Requirement.

Frequency of calculation etc

115. (1) An insurance undertaking or reinsurance undertaking must comply with the following conditions:

- (a) it shall calculate the Solvency Capital Requirement at least once a year and report the result of that calculation to the Bank;
- (b) it shall hold eligible own funds which cover the last reported Solvency Capital Requirement;
- (c) it shall monitor the amount of eligible own funds and the Solvency Capital Requirement on an ongoing basis;
- (d) if its risk profile deviates significantly from the assumptions underlying the last reported Solvency Capital Requirement, it shall recalculate the Solvency Capital Requirement without delay and report it to the Bank.

(2) Where there is evidence to suggest that the risk profile of the undertaking has altered significantly since the date on which the Solvency Capital Requirement was last reported, the Bank may require the undertaking to recalculate the Solvency Capital Requirement.

Standard formula

Structure of standard formula

116. The Solvency Capital Requirement of an insurance undertaking or reinsurance undertaking calculated on the basis of the standard formula shall be the sum of the following items:

- (a) the Basic Solvency Capital Requirement, as laid down in Regulation 117;
- (b) the capital requirement for operational risk, as laid down in Regulation 121;
- (c) the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes, as laid down in Regulation 122.

Design of Basic Solvency Capital Requirement

117. (1) The Basic Solvency Capital Requirement shall comprise individual risk modules which are aggregated in accordance with Part 1 of Schedule 3.

(2) It shall consist of at least the following risk modules:

- (a) non-life underwriting risk;

- (b) life underwriting risk;
- (c) health underwriting risk;
- (d) market risk;
- (e) counterparty default risk.

(3) An insurance undertaking or reinsurance undertaking shall for the purposes of paragraph (2)(a), (b) and (c), allocate its insurance or reinsurance operations to the underwriting risk module that best reflects the technical nature of the underlying risks.

(4) The correlation coefficients for the aggregation of the risk modules referred to in paragraph (2), as well as the calibration of the capital requirements for each risk module, shall result in an overall Solvency Capital Requirement which complies with the principles set out in Regulation 114.

(5) Each of the risk modules referred to in paragraph (2) shall be calibrated using a Value at Risk measure, with a 99.5% confidence level, over a one year period and, where appropriate, diversification effects shall be taken into account in the design of each risk module.

(6) The same design and specifications for the risk modules shall be used for all insurance undertakings and reinsurance undertakings, both with respect to the Basic Solvency Capital Requirement and to any simplified calculations as laid down in Regulation 123.

(7) With regard to risks arising from catastrophes, an undertaking may, where appropriate, use geographical specifications for the calculation of the life, non-life and health underwriting risk modules.

(8) Subject to approval by the Bank, an insurance undertaking or reinsurance undertaking may, within the design of the standard formula, replace a subset of its parameters with parameters specific to the undertaking when calculating the life, non-life and health underwriting risk modules.

(9) Such parameters shall be calibrated on the basis of the internal data of the undertaking, or of data which is directly relevant for the operations of that undertaking using standardised methods.

(10) When granting approval, the Bank shall verify the completeness, accuracy and appropriateness of the data used.

Transitional provisions on standard parameters

118. (1) Despite Regulations 113, 114(3) to (5) and 117—

- (a) until 31 December 2017, the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be the same in

relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any Member State as those that would be applied to such exposures denominated and funded in their domestic currency,

- (b) in 2018, the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be reduced by 80% in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any other Member State,
- (c) in 2019, the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be reduced by 50% in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any other Member State, and
- (d) from 1 January 2020, the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be not be reduced in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any other Member State.

(2) Despite Regulations 113, 114(3) to (5) and 117 the standard parameters to be used for equities that the undertaking purchased on or before 1 January 2016, when calculating the equity risk sub-module in accordance with the standard formula without the option set out in Article 304 of the Directive, shall be calculated as the weighted averages of—

- (a) the standard parameter to be used when calculating the equity risk sub-module in accordance with Article 304 of the Directive, and
- (b) the standard parameter to be used when calculating the equity risk sub-module in accordance with the standard formula without the option set out in Article 304 of the Directive.

(3) The weight for the parameter expressed in sub-paragraph (2)(b) shall increase at least linearly at the end of each year from 0% during the year starting on 1 January 2016 to 100% on 1 January 2023.

Calculation of Basic Solvency Capital Requirement

119. (1) An insurance undertaking or reinsurance undertaking shall calculate its Basic Solvency Capital Requirement in accordance with this Regulation.

- (2) The non-life underwriting risk module—

- (a) shall reflect the risk arising from non-life insurance obligations, in relation to the perils covered and the processes used in the conduct of business,
 - (b) shall take account of the uncertainty in the results of the undertaking related to its existing insurance or reinsurance obligations as well as to the new business the undertaking expects to write over the following 12 months, and
 - (c) shall be calculated, in accordance with Part 2 of Schedule 3, as a combination of the capital requirements for at least the following sub modules:
 - (i) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements (non-life premium and reserve risk);
 - (ii) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from significant uncertainty of pricing and provisioning assumptions related to extreme or exceptional events (non-life catastrophe risk).
- (3) The life underwriting risk module—
- (a) shall reflect the risk arising from life insurance obligations, in relation to the perils covered and the processes used in the conduct of business, and
 - (b) shall be calculated, in accordance with Part 3 of Schedule 3, as a combination of the capital requirements for at least the following sub modules:
 - (i) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of mortality rates, where an increase in the mortality rate leads to an increase in the value of insurance liabilities (mortality risk);
 - (ii) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of mortality rates, where a decrease in the mortality rate leads to an increase in the value of insurance liabilities (longevity risk);
 - (iii) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend or volatility of disability, sickness and morbidity rates (disability — morbidity risk);
 - (iv) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility

of the expenses incurred in servicing insurance or reinsurance contracts (life expense risk);

(v) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the level, trend, or volatility of the revision rates applied to annuities, due to changes in the legal environment or in the state of health of the person insured (revision risk);

(vi) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level or volatility of the rates of policy lapses, terminations, renewals and surrenders (lapse risk);

(vii) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from the significant uncertainty of pricing and provisioning assumptions related to extreme or irregular events (life catastrophe risk).

(4) The health underwriting risk module—

(a) shall reflect the risk arising from the underwriting of health insurance obligations, whether it is pursued on a similar technical basis to that of life insurance or not, following from both the perils covered and the processes used in the conduct of business, and

(b) shall cover at least the following risks:

(i) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of the expenses incurred in servicing insurance or reinsurance contracts;

(ii) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements at the time of provisioning;

(iii) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from the significant uncertainty of pricing and provisioning assumptions related to outbreaks of major epidemics, as well as the unusual accumulation of risks under such extreme circumstances.

(5) The market risk module—

(a) shall reflect the risk arising from the level or volatility of market prices of financial instruments which have an impact upon the value of the assets and liabilities of the undertaking,

- (b) shall properly reflect the structural mismatch between assets and liabilities, in particular with respect to their duration, and
- (c) shall be calculated, in accordance with Part 4 of Schedule 3, as a combination of the capital requirements for at least the following sub-modules—
 - (i) the sensitivity of the values of assets, liabilities and financial instruments to changes in the term structure of interest rates, or in the volatility of interest rates (interest rate risk);
 - (ii) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of market prices of equities (equity risk);
 - (iii) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of market prices of real estate (property risk);
 - (iv) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of credit spreads over the risk-free interest rate term structure (spread risk);
 - (v) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of currency exchange rates (currency risk);
 - (vi) additional risks to an undertaking stemming either from lack of diversification in the asset portfolio or from large exposure to default risk by a single issuer of securities or a group of related issuers (market risk concentrations).
- (6) The counterparty default risk module—
 - (a) shall reflect possible losses due to unexpected default, or deterioration in the credit standing, of the counterparties and debtors of an undertaking over the following 12 months,
 - (b) shall cover risk-mitigating contracts, such as reinsurance arrangements, securitisations and derivatives, and receivables from intermediaries, as well as any other credit exposures which are not covered in the spread risk sub-module, and
 - (c) shall take appropriate account of collateral or other security held by or for the account of the undertaking and the risks associated with it.
- (7) For each counterparty, the counterparty default risk module shall take account of the overall counterparty risk exposure of the undertaking concerned to that counterparty, irrespective of the legal form of its contractual obligations to that undertaking.

Calculation of equity risk sub-module: symmetric adjustment mechanism

120. (1) The equity risk sub-module calculated in accordance with the standard formula shall include a symmetric adjustment to the equity capital charge applied to cover the risk arising from changes in the level of equity prices.

(2) The symmetric adjustment made to the standard equity capital charge, calibrated in accordance with Regulation 117(5), covering the risk arising from changes in the level of equity prices shall be based on a function of the current level of an appropriate equity index and a weighted average level of that index, and the weighted average shall be calculated over an appropriate period of time which shall be the same for all insurance undertakings and reinsurance undertakings.

(3) The symmetric adjustment made to the standard equity capital charge covering the risk arising from changes in the level of equity prices shall not result in an equity capital charge being applied that is more than 10 percentage points lower or 10 percentage points higher than the standard equity capital charge.

Capital requirement for operational risk

121. (1) The capital requirement for operational risk shall reflect operational risks to the extent they are not already reflected in the risk modules referred to in Regulation 117.

(2) That requirement shall be calibrated in accordance with Regulation 114(3) to (5).

(3) With respect to life insurance contracts where the investment risk is borne by the policy holders, the calculation of the capital requirement for operational risk shall take account of the amount of annual expenses incurred in respect of those insurance obligations.

(4) With respect to insurance and reinsurance operations other than those referred to in paragraph (3), the calculation of the capital requirement for operational risk shall take account of the volume of those operations, in terms of earned premiums and technical provisions which are held in respect of those insurance and reinsurance obligations.

(5) In that case, the capital requirement for operational risks shall not exceed 30% of the Basic Solvency Capital Requirement relating to those insurance and reinsurance operations.

Adjustment for loss-absorbing capacity of technical provisions and deferred taxes

122. (1) The adjustment referred to in Regulation 116(c) for the loss-absorbing capacity of technical provisions and deferred taxes shall reflect potential compensation of unexpected losses through a simultaneous decrease in technical provisions or deferred taxes or a combination of both.

(2) That adjustment shall take account of the risk mitigating effect provided by future discretionary benefits of insurance contracts, to the extent that an insurance undertaking or reinsurance undertaking can establish that a reduction

in such benefits may be used to cover unexpected losses when they arise. The risk mitigating effect provided by future discretionary benefits shall be no higher than the sum of technical provisions and deferred taxes relating to those future discretionary benefits.

(3) For the purpose of paragraph (2) the value of future discretionary benefits under adverse circumstances shall be compared to the value of such benefits under the underlying assumptions of the best-estimate calculation.

Simplifications in standard formula

123. (1) An insurance undertaking or reinsurance undertaking may use a simplified calculation for a specific sub module or risk module where the nature, scale and complexity of the risks it faces justifies it and where it would be disproportionate to require all undertakings to apply the standardised calculation.

(2) Simplified calculations shall be calibrated in accordance with Regulation 114(3) to (5).

Significant deviations from assumptions underlying standard formula calculation

124. (1) Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula as set out in Regulations 116 to 123 because the risk profile of an insurance undertaking or reinsurance undertaking deviates significantly from the assumptions underlying the standard formula calculation, the Bank may direct the undertaking to replace a subset of the parameters used in the standard formula calculation by parameters specific to that undertaking when calculating the life, non-life and health underwriting risk modules, as set out in Regulation 117(8) to (10).

(2) Those specific parameters shall be calculated in such a way as to ensure that the undertaking complies with Regulation 114(3) to (5).

(3) A direction under paragraph (1) shall state the Bank's reasons for giving it.

Internal model

General provisions for approval of full and partial internal models

125. (1) An insurance undertaking or reinsurance undertaking may calculate its Solvency Capital Requirement using a full or partial internal model as approved by the Bank.

(2) Such an undertaking may use partial internal models for the calculation of one or more of the following:

- (a) one or more risk modules, or sub-modules, of the Basic Solvency Capital Requirement, as set out in Regulations 117 and 119;
- (b) the capital requirement for operational risk as set out in Regulation 121;
- (c) the adjustment referred to in Regulation 122.

(3) In addition, partial modelling may be applied to the whole business of such an undertaking, or only to one or more major business units.

(4) In any application for approval by the Bank under paragraph (1), an undertaking shall submit, as a minimum, documentary evidence that the internal model fulfils the requirements set out in Regulations 132 to 137.

(5) Where the application for approval relates to a partial internal model, the requirements set out in Regulations 132 to 137 shall be adapted to take account of the limited scope of the application of the model.

(6) The Bank shall decide on the application within 6 months from the receipt of the complete application.

(7) The Bank shall approve the application only if it is satisfied that the systems of the undertaking are adequate for identifying, measuring, monitoring, managing and reporting risk and in particular, that the internal model fulfils the requirements referred to in paragraphs (4) and (5).

(8) If the Bank refuses such an application, it shall promptly give to the applicant a written notice of refusal, which must include a statement setting out the reasons for the refusal.

(9) The Bank may, in the exercise of its powers under financial services legislation, require an undertaking which has received approval to use an internal model, to provide it with an estimate of the Solvency Capital Requirement determined in accordance with the standard formula, as set out in Regulations 116 to 124.

(10) Such a requirement shall include a statement of the reasons for the requirement.

Specific provisions for approval of partial internal models

126. (1) The Bank shall approve the partial internal model of an insurance undertaking or reinsurance undertaking only where it fulfils the requirements set out in Regulation 125 and the following additional conditions:

- (a) the reason for the limited scope of application of the model is properly justified by the undertaking;
- (b) the resulting Solvency Capital Requirement reflects more appropriately the risk profile of the undertaking and in particular complies with the principles set out in Regulations 113 to 115;
- (c) its design is consistent with those principles so as to allow the partial internal model to be fully integrated into the Solvency Capital Requirement standard formula.

(2) The Bank, when assessing an application for the use of a partial internal model which covers only—

- (a) certain sub-modules of a specific risk module,
- (b) some of the business units of an undertaking with respect to a specific risk module, or
- (c) parts of both,

may require the undertaking concerned to submit a realistic transitional plan to extend the scope of the model.

(3) The transitional plan which the undertaking submits shall set out the manner in which it plans to extend the scope of the model to other sub-modules or business units, in order to ensure that the model covers a predominant part of its insurance operations with respect to that specific risk module.

Policy for changing full and partial internal models

127. (1) The Bank, as part of the initial approval process of an internal model of an undertaking, shall approve the policy for changing the model.

(2) The undertaking may change its internal model in accordance with that policy.

(3) The policy shall include a specification of minor and major changes to the internal model.

(4) Major changes to the internal model, as well as changes to that policy, shall always be subject to prior approval by the Bank, as laid down in Regulation 125.

(5) Minor changes to the internal model shall not be subject to prior approval by the Bank, insofar as they are developed in accordance with that policy.

Responsibilities of board of directors

128. (1) An application to the Bank in the case of an insurance undertaking or a reinsurance undertaking for approval of an internal model referred to in Regulation 125 or of any subsequent major changes made to that model shall be approved by the board of directors of the undertaking.

(2) The board of directors of an insurance undertaking or reinsurance undertaking which is using an internal model shall be responsible for putting in place systems which ensure that the internal model operates properly on a continuous basis.

Reversion to standard formula

129. An insurance undertaking or reinsurance undertaking which has received approval for an internal model from the Bank in accordance with Regulation 125 shall not revert to calculating the whole or any part of the Solvency Capital Requirement in accordance with the standard formula, as set out in Regulations 116 to 124, except in duly justified circumstances and subject to approval by the Bank.

Non-compliance

130. (1) In circumstances where, after having received approval from the Bank to use an internal model, an insurance undertaking or reinsurance undertaking ceases to comply with the requirements set out in Regulations 132 to 137, it shall, without delay, either—

- (a) present to the Bank a plan to restore compliance within a reasonable period of time, or
- (b) demonstrate that the effect of non-compliance is immaterial.

(2) Where the undertaking fails to implement the plan referred to in paragraph (1)(a) the Bank may require it to revert to calculating the Solvency Capital Requirement in accordance with the standard formula as set out in Regulations 116 to 124.

Significant deviations from assumptions underlying standard formula calculation

131. (1) If, because the risk profile of an insurance undertaking or reinsurance undertaking deviates significantly from the assumptions underlying the standard formula calculation, the Bank considers it inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula as set out in Regulations 116 to 124, the Bank may direct the undertaking to use an internal model to calculate the Solvency Capital Requirement, or the relevant risk modules.

(2) A direction under paragraph (1) shall state the Bank's reasons for giving it.

Use test

132. (1) An insurance undertaking or reinsurance undertaking shall demonstrate that its internal model is widely used in and plays an important role in its system of governance, referred to in Regulations 44 to 51, in particular—

- (a) its risk-management system as laid down in Regulation 46 and its decision making processes, and
- (b) its economic and solvency capital assessment and allocation processes, including the assessment referred to in Regulation 47.

(2) In addition, the undertaking shall demonstrate that the frequency of calculation of the Solvency Capital Requirement using the internal model is consistent with the frequency with which it uses its internal model for the other purposes covered by paragraph (1).

(3) The board of directors of the undertaking is responsible for ensuring the ongoing appropriateness of the design and operations of the internal model, and that the internal model continues to appropriately reflect the risk profile of the undertaking.

Statistical quality standards

133. (1) The internal model of an insurance undertaking or reinsurance undertaking, and in particular the calculation of the probability distribution forecast underlying it, shall comply with the following criteria.

(2) The methods used to calculate the probability distribution forecast—

(a) shall be based on adequate, applicable and relevant actuarial and statistical techniques,

(b) shall be consistent with the methods used to calculate technical provisions, and

(c) shall be based on current and credible information and realistic assumptions.

(3) The undertaking shall be able to justify to the Bank the assumptions underlying its internal model.

(4) Data used for the internal model shall be accurate, complete and appropriate.

(5) In addition, the data sets used in the calculation of the probability distribution forecast shall be updated at least annually by the undertaking.

(6) The Bank shall not prescribe any particular method for the calculation of the probability distribution forecast.

(7) Regardless of the calculation method chosen, the undertaking shall ensure that the ability of the internal model to rank risk shall be sufficient to ensure that it is widely used in and plays an important role in its system of governance, in particular its risk management system and decision making processes, and capital allocation in accordance with Regulation 132.

(8) The internal model shall cover all of the material risks to which insurance undertakings and reinsurance undertakings are exposed and shall cover at least the risks set out in Regulation 114(6) and (7).

(9) Where the Bank is satisfied that the system used for measuring diversification effects is adequate, the undertaking may take account of those diversification effects in its internal model of dependencies within and across risk categories.

(10) The undertaking may take full account of the effect of risk-mitigation techniques in its internal model, as long as credit risk and other risks arising from the use of risk-mitigation techniques are properly reflected in the internal model.

(11) The undertaking shall accurately assess the particular risks associated with financial guarantees and any contractual options in its internal model, where material.

(12) The undertaking shall also assess the risks associated with both policy holder options and contractual options and how it will impact on the undertaking.

(13) For that purpose, the undertaking shall take account of the impact that future changes in financial and non financial conditions may have on the exercise of those options.

(14) In its internal model, the undertaking may take account of future management actions that it would reasonably expect to carry out in specific circumstances and, if it does so, shall make allowance for the time necessary to implement such actions.

(15) In its internal model, the undertaking shall take account of all payments to policy holders and beneficiaries which it expects to make, whether or not those payments are contractually guaranteed.

Calibration standards

134. (1) An insurance undertaking or reinsurance undertaking may use a different time period or risk measure than that set out in Regulation 114(3) to (5) for internal modelling purposes as long as the outputs of the internal model can be used by the undertaking to calculate its Solvency Capital Requirement in a manner that provides policy holders and beneficiaries with a level of protection equivalent to that set out in Regulation 114.

(2) Where practicable, the undertaking shall derive its Solvency Capital Requirement directly from the probability distribution forecast generated by its internal model, using the Value-at-Risk measure set out in Regulation 114(5).

(3) Where the undertaking cannot derive its Solvency Capital Requirement directly from the probability distribution forecast generated by its internal model, the Bank may allow approximations to be used in the process to calculate the Solvency Capital Requirement, as long as the undertaking can demonstrate to the Bank that policy holders are provided with a level of protection equivalent to that provided for in Regulation 114.

(4) The Bank may require the undertaking to run its internal model on relevant benchmark portfolios and using assumptions based on external rather than internal data in order to verify the calibration of the internal model and to check that its specification is in line with generally accepted market practice.

Profit and loss attribution

135. (1) An insurance undertaking or reinsurance undertaking shall review, at least annually, the causes and sources of profits and losses for each of its major business units.

(2) The undertaking shall demonstrate how the categorisation of risk chosen in the internal model explains the causes and sources of profits and losses.

(3) The categorisation of risk and attribution of profits and losses shall reflect the risk profile of the undertaking.

Validation standards

136. (1) An insurance undertaking or reinsurance undertaking shall have a regular cycle of model validation which includes monitoring the performance of the internal model, reviewing the ongoing appropriateness of its specification, and testing its results against experience.

(2) The model validation process shall include an effective statistical process for validating the internal model which enables the undertaking to demonstrate to the Bank that the resulting capital requirements are appropriate.

(3) The statistical methods applied shall test the appropriateness of the probability distribution forecast compared not only to loss experience but also to all material new data and information relating to it.

(4) The model validation process shall include an analysis of the stability of the internal model and in particular the testing of the sensitivity of the results of the internal model to changes in key underlying assumptions. It shall also include an assessment of the accuracy, completeness and appropriateness of the data used by the internal model.

Documentation standards

137. (1) An insurance undertaking or reinsurance undertaking shall document the design and operational details of its internal model.

(2) The documentation shall—

(a) demonstrate compliance with Regulations 132 to 136,

(b) provide a detailed outline of the theory, assumptions and mathematical and empirical bases underlying the internal model, and

(c) indicate any circumstances under which the internal model does not work effectively.

(3) The undertaking shall also document all major changes to its internal model, as set out in Regulation 127.

External models and data

138. The use by an insurance undertaking or reinsurance undertaking of a model or data obtained from a third party shall not justify an exemption from any of the requirements for the internal model set out in Regulations 132 to 137.

Chapter 5

*Minimum Capital Requirement**General provisions*

139. An insurance undertaking or reinsurance undertaking shall hold eligible basic own funds to cover the Minimum Capital Requirement.

Calculation of Minimum Capital Requirement

140. (1) An insurance undertaking or reinsurance undertaking shall calculate the Minimum Capital Requirement in accordance with the following principles:

- (a) it shall be calculated in a clear and simple manner, and in such a way as to ensure that the calculation can be audited;
- (b) it shall correspond to an amount of eligible basic own funds below which policy holders and beneficiaries would be exposed to an unacceptable level of risk if the undertaking were allowed to continue its operations;
- (c) the linear function referred to in paragraph (3) used to calculate the Minimum Capital Requirement shall be calibrated to the Value-at-Risk of the basic own funds of the undertaking subject to a confidence level of 85% over a one-year period;

(2) The Minimum Capital Requirement shall have an absolute floor of—

- (a) €2,500,000 for a non-life insurance undertaking, including a captive insurance undertaking, except in the case where all or some of the risks included in one of classes 10 to 15 in Part 1 of Schedule 1 are covered, in which case the absolute floor shall be €3,700,000,
- (b) €3,700,000 for a life insurance undertaking, including a captive insurance undertaking, and
- (c) €3,600,000 for a reinsurance undertaking, except a captive reinsurance undertaking, in which case the absolute floor shall be €1,200,000.

(3) Subject to paragraph (4), the Minimum Capital Requirement of an undertaking shall be calculated as a linear function of a set or sub-set of the following variables, measured net of reinsurance:

- (a) technical provisions;
- (b) written premiums;
- (c) capital-at-risk;
- (d) deferred tax;
- (e) administrative expenses.

(4) Without prejudice to paragraph (2), the Minimum Capital Requirement shall neither fall below 25% nor exceed 45% of the undertaking's Solvency Capital Requirement calculated in accordance with Regulations 116 to 124 or Regulations 125 to 138, and including any capital add-on imposed in accordance with Regulation 39.

(5) Up until 31 December 2017, the Bank may require an undertaking to apply the percentages referred to in paragraph (4) exclusively to the undertaking's Solvency Capital Requirement calculated in accordance with the standard formula set out in Regulations 116 to 124.

(6) The undertaking shall calculate the Minimum Capital Requirement at least quarterly and report the results of the calculations to the Bank.

(7) The undertaking shall not be required to calculate the Solvency Capital Requirement on a quarterly basis for the purpose of calculating the limits referred to in paragraph (4).

(8) Where either of the limits referred to in paragraph (4) determines the undertaking's Minimum Capital Requirement, it shall provide to the Bank the necessary information to allow a proper understanding of the reasons for that.

Part 9

INVESTMENTS

Prudent person principle

141. (1) An insurance undertaking or reinsurance undertaking shall invest all its assets in accordance with the prudent person principle, as specified in paragraphs (2) to (4).

(2) The undertaking shall comply with the following investment criteria:

- (a) with respect to the whole portfolio of assets, it shall only invest in assets and instruments whose risks it can properly identify, measure, monitor, manage, control and report, and appropriately take into account in the assessment of its overall solvency needs in accordance with Regulation 47(2)(a);
- (b) it shall invest all its assets, in particular those covering the Minimum Capital Requirement and the Solvency Capital Requirement in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole and, in addition the localisation of those assets shall be such as to ensure their availability;
- (c) it shall invest its assets held to cover the technical provisions in a manner appropriate to the nature and duration of its insurance and reinsurance liabilities and in the best interest of all policy holders and beneficiaries taking into account any disclosed policy objective;
- (d) if a conflict of interest arises, the undertaking, or the entity which manages its asset portfolio, shall ensure that the investment is made in the best interest of policy holders and beneficiaries.

(3) Without prejudice to paragraph (2), with respect to assets held in respect of life insurance contracts where the investment risk is borne by the policy holders, the following criteria shall apply:

- (a) where the benefits provided by a contract are directly linked to the value of units in an UCITS as defined in Directive 85/611/EEC, or to the value of assets contained in an internal fund held by the insurance undertaking, usually divided into units, the technical provisions in respect of those benefits must be represented as closely as possible by those units or, in the case where units are not established, by those assets;
 - (b) where the benefits provided by a contract are directly linked to a share index or some other reference value other than those referred to in subparagraph (a), the technical provisions in respect of those benefits must be represented as closely as possible either by—
 - (i) the units deemed to represent the reference value, or
 - (ii) in the case where units are not established, by assets of appropriate security and marketability which correspond as closely as possible with those on which the particular reference value is based;
 - (c) where the benefits referred to in subparagraphs (a) and (b) include a guarantee of investment performance or some other guaranteed benefit, the assets held to cover the corresponding additional technical provisions shall be subject to paragraph (4).
- (4) Without prejudice to paragraph (2), with respect to assets other than those covered by paragraph (3)(a) or (b)—
- (a) the use of derivative instruments shall be possible insofar as they contribute to a reduction of risks or facilitate efficient portfolio management,
 - (b) investment and assets which are not admitted to trading on a regulated financial market shall be kept to prudent levels,
 - (c) assets shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings, or geographical area, and excessive accumulation of risk in the portfolio as a whole, and
 - (d) investments in assets issued by the same issuer, or by issuers belonging to the same group, shall not expose the insurance undertaking to excessive risk concentration.

Limits on freedom of investment

142. (1) The Bank may, where it considers it appropriate, in the exercise of its powers under financial services legislation, restrict the types of assets or reference values to which policy benefits may be linked.

(2) Any such restrictions shall be applied only where the investment risk is borne by a policy holder who is a natural person and shall not be more restrictive than those set out in Directive 85/611/EEC.

Investment in tradable securities or other financial instruments based on repackaged loans

143. With respect to insurance undertakings and reinsurance undertakings investing in tradable securities or other financial instruments based on repackaged loans that were issued before 1 January 2011, the requirements referred to in Commission Delegated Regulation (EU) 2015/35 shall apply, but only in circumstances where new underlying exposures have been added or substituted after 31 December 2014.

Part 10

UNDERTAKINGS IN DIFFICULTY OR IN IRREGULAR SITUATION

Identification and notification of deteriorating financial conditions by undertaking

144. An insurance undertaking or reinsurance undertaking shall have procedures in place to identify deteriorating financial conditions and shall immediately notify the Bank if such deterioration occurs.

Non-compliance with technical provisions

145. (1) Where an insurance undertaking or reinsurance undertaking does not comply with Regulations 83 to 101 the Bank may, in the exercise of its powers under financial services legislation, prohibit the free disposal of the undertaking's assets after having communicated its intentions to the supervisory authorities of the host Member States.

(2) The Bank shall designate the assets to be covered by such measures.

Non-compliance with Solvency Capital Requirement

146. (1) An insurance undertaking or reinsurance undertaking shall immediately inform the Bank as soon as it observes that the Solvency Capital Requirement is no longer being complied with or where there is a risk of non-compliance in the following 3 months.

(2) Within 2 months from the observation of non-compliance with the Solvency Capital Requirement an undertaking shall submit a realistic recovery plan for approval by the Bank.

(3) The Bank shall require the undertaking to take the necessary measures to achieve, within 6 months from the observation of the non-compliance with the Solvency Capital Requirement—

- (a) the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement, or
- (b) the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement.

(4) The Bank may, if it considers it appropriate, extend that period of 6 months by 3 months.

(5) In the event of exceptional adverse situations affecting insurance undertakings and reinsurance undertakings representing a significant share of the market or of the affected lines of business as declared by EIOPA, and where appropriate after consulting with the ESRB, the Bank may extend, for affected undertakings, the period referred to in paragraph (4) by a maximum period of 7 years taking into account all relevant factors, including the average duration of the technical provisions.

(6) For the purposes of paragraph (5), the Bank may request that EIOPA declare the existence of an exceptional adverse situation where insurance undertakings or reinsurance undertakings representing a significant share of the market or of the affected lines of business are unlikely to meet one of the requirements set out in paragraph (3).

(7) For the purposes of this Regulation, exceptional adverse situations exist where the financial situation of insurance undertakings or reinsurance undertakings representing a significant share of the market or of the affected lines of business are seriously or adversely affected by one or more of the following conditions:

- (a) a fall in financial markets which is unforeseen, sharp and steep;
- (b) a persistent low interest rate environment;
- (c) a high impact catastrophic event.

(8) In the situation outlined in paragraph (5), the undertaking shall, every 3 months, submit a progress report to the Bank setting out the measures taken and the progress made to—

- (a) re-establish the level of eligible own funds covering the Solvency Capital Requirement, or
- (b) reduce the risk profile to ensure compliance with the Solvency Capital Requirement.

(9) The Bank shall withdraw the extension referred to in paragraph (5) where the progress report does not show that the undertaking has made any significant progress towards achieving—

- (a) the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement, or
- (b) the reduction of the risk profile to ensure compliance with the Solvency Capital Requirement,

between the date of the observation of non-compliance with the Solvency Capital Requirement and the date of the submission of the progress report.

(10) The Bank may also in exceptional circumstances, where it is of the opinion that the financial situation of the undertaking will deteriorate further, exercise its powers under financial services legislation to restrict or prohibit the free disposal of the assets of the undertaking.

(11) Where it does so, the Bank shall inform the supervisory authorities of the host Member States of any measures it has taken, and it may also request those authorities to take the same measures.

(12) In those circumstances, the Bank shall designate the assets to be covered by such measures.

Derogation from non-compliance with Solvency Capital Requirement

147. (1) Despite paragraph (3) of Regulation 146 and without prejudice to paragraphs (5) to (9) of that Regulation, where an insurance undertaking or reinsurance undertaking complies with the Required Solvency Margin referred to in—

- (a) Part A of Annex II to the European Communities (Non-Life Insurance) Framework Regulations 1994,
- (b) Part A of Annex II to the European Communities (Life Assurance) Framework Regulations 1994, or
- (c) Schedule 1 to the European Communities (Reinsurance) Regulations 2006,

immediately before 1 January 2016, but does not comply with the Solvency Capital Requirement in the first year during which Regulations are in force, the Bank shall require the undertaking to take the necessary measures to achieve, by 31 December 2017, the establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement.

(2) An undertaking to which paragraph (1) applies shall, every 3 months, submit a progress report to the Bank setting out the measures taken and the progress made to establish the level of eligible own funds covering the Solvency Capital Requirement, or to reduce its risk profile to ensure compliance with the Solvency Capital Requirement.

(3) The Bank shall withdraw the extension referred to in paragraph (1) where the progress report does not show that the undertaking has made any significant progress towards—

- (a) the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement, or
- (b) the reduction of the risk profile to ensure compliance with the Solvency Capital Requirement,

between the date of the observation of non-compliance with the Solvency Capital Requirement and the date of the submission of the progress report.

Non-compliance with Minimum Capital Requirement

148. (1) An insurance undertaking or reinsurance undertaking shall inform the Bank immediately where it observes that its Minimum Capital Requirement is no longer being complied with or where there is a risk of non-compliance in the following 3 months.

(2) Within one month from the observation of non-compliance with the Minimum Capital Requirement, the undertaking shall submit, for approval by the Bank, a short-term realistic finance scheme—

- (a) to restore, within 3 months of that observation, the eligible basic own funds at least to the level of the Minimum Capital Requirement, or
- (b) to reduce, within 3 months of that observation, its risk profile to ensure compliance with the Minimum Capital Requirement.

(3) The Bank may also exercise its powers under financial services legislation to restrict or prohibit the free disposal of the assets of the undertaking.

(4) Where it does so, the Bank shall inform the supervisory authorities of the host Member States of any measures it has taken, and it may also request those authorities to take the same measures.

(5) In those circumstances, the Bank shall designate the assets to be covered by such measures.

Transitional arrangements regarding compliance with Minimum Capital Requirement

149. (1) By way of derogation from Regulations 148 and 153, where an insurance undertaking or reinsurance undertaking complies with the Required Solvency Margin referred to in—

- (a) Part A of Annex II to the European Communities (Non-Life Insurance) Framework Regulations 1994,
- (b) Part A of Annex II to the European Communities (Life Assurance) Framework Regulations 1994, or
- (c) Schedule 1 to the European Communities (Reinsurance) Regulations 2006,

immediately before 1 January 2016 but does not hold sufficient eligible basic own funds to cover the Minimum Capital Requirement, the undertaking shall comply with Regulation 139 by 31 December 2016.

(2) If the undertaking fails to comply with Regulation 139 within the period set out in paragraph (1), its authorisation shall be withdrawn.

Prohibition of free disposal of assets located within the State

150. The Bank may exercise its powers under financial services legislation to prohibit the free disposal of assets located within the State in order that it can comply with a request from the supervisory authority of another Member State which is empowered to designate assets of an insurance undertaking or reinsurance undertaking for the purposes of Articles 137 to 139 or Article 144(2) of the Directive.

Supervisory powers in deteriorating financial conditions

151. (1) Despite Regulations 146 and 148, where the solvency position of an insurance undertaking or reinsurance undertaking continues to deteriorate, the Bank shall, in the exercise of its powers under financial services legislation, take all measures necessary to safeguard the interests of policy holders in the case of insurance contracts, or the obligations arising out of reinsurance contracts.

(2) The measures taken pursuant to paragraph (1) shall be proportionate and thus reflect the level and duration of the deterioration of the solvency position of the undertaking.

Recovery plan and finance scheme

152. (1) The recovery plan referred to in Regulation 146(2) and the finance scheme referred to in Regulation 148(2) shall, at least, include particulars or evidence concerning the following:

- (a) estimates of management expenses, in particular current general expenses and commissions;
- (b) estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;
- (c) a forecast balance sheet;
- (d) estimates of the financial resources intended to cover the technical provisions and the Solvency Capital Requirement and the Minimum Capital Requirement;
- (e) the overall reinsurance policy.

(2) Where the Bank has required a recovery plan referred to in Regulation 146(2) or a finance scheme referred to in Regulation 148(2) in accordance with paragraph (1), it shall refrain from issuing a certificate in accordance with Regulation 41 for as long as it considers that the rights of the policy holders, or the contractual obligations of the reinsurance undertaking, are threatened.

Withdrawal of authorisation

153. (1) The Bank may withdraw an authorisation granted to an insurance undertaking or reinsurance undertaking in the following cases:

- (a) the undertaking does not make use of the authorisation within 12 months, expressly renounces it or ceases to pursue business for more than 6 months;

- (b) the undertaking no longer fulfils the conditions for authorisation;
 - (c) the undertaking fails seriously in its obligations under financial services legislation or other laws applicable in the State adopted pursuant to the Directive.
- (2) The Bank shall withdraw an authorisation granted to an insurance undertaking or reinsurance undertaking if—
 - (a) it does not comply with the Minimum Capital Requirement and the Bank considers that the finance scheme submitted is manifestly inadequate, or
 - (b) it fails to comply with the approved scheme within 3 months from the observation of non-compliance with the Minimum Capital Requirement.
- (3) If the Bank withdraws an authorisation of an insurance undertaking or reinsurance undertaking the Bank shall notify the supervisory authorities of the other Member States.
- (4) If the Bank is notified of a withdrawal or lapse of an authorisation of an insurance undertaking or reinsurance undertaking by the supervisory authority of the undertaking's home Member State, it shall take appropriate measures to prevent the undertaking from commencing new operations within the State.
- (5) The Bank shall work together with the supervisory authorities of other Member States to take all measures necessary to safeguard the interests of insured persons and, in particular, shall restrict the free disposal of the assets of the insurance undertaking in accordance with Regulation 150.
- (6) Any decision to withdraw an authorisation of an insurance undertaking or reinsurance undertaking shall state the full reasons and shall be communicated to the undertaking.
- (7) A decision of the Bank to withdraw an authorisation of an insurance undertaking or reinsurance undertaking under this Regulation is an appealable decision for the purposes of Part VIIA of the Act of 1942.
- (8) The Bank shall notify EIOPA of every withdrawal of an authorisation.

Part 11

RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE
SERVICES

Chapter 1

*Establishment by insurance undertakings**Branch establishment in another Member State*

154. (1) An insurance undertaking shall notify the Bank if it proposes to establish a branch within the territory of another Member State.

(2) The undertaking shall provide the following information when effecting the notification provided for in paragraph (1):

- (a) the Member State which is to be the host Member State;
- (b) a scheme of operations setting out, at least, the types of business envisaged and the structural organisation of the branch;
- (c) the name of a person who possesses sufficient powers to bind, in relation to third parties, the insurance undertaking and to represent it in relations with the authorities and courts of the host Member State (in this Regulation and Regulation 155 referred to as “the authorised agent”);
- (d) the address in the host Member State from which documents may be obtained and to which they may be delivered, including all communications to the authorised agent.

(3) Where a non-life insurance undertaking intends its branch to cover risks classified under class 10 in Part 1 of Schedule 1, not including carrier’s liability, it shall produce a declaration to the Bank that it has become a member of the national bureau and the national guarantee fund of the host Member State.

Communication of information to other Member State

155. (1) Unless the Bank has reason, taking into account the business envisaged, to doubt—

- (a) the adequacy of the system of governance or the financial situation of the insurance undertaking, or
- (b) that the authorised agent meets any standard of fitness and probity specified in a code issued by the Bank under section 50 of the Act of 2010,

it shall, within 3 months of receiving all the information referred to in Regulation 154(2), communicate that information to the supervisory authority of the host Member State and shall inform the insurance undertaking that it has done so.

(2) The Bank shall also furnish a certificate to the supervisory authority of the host Member State confirming, if such be the case, that the Solvency Capital Requirement and the Minimum Capital Requirement are covered by the undertaking.

(3) Where the Bank makes a decision not to communicate the information referred to in Regulation 154(2) to the supervisory authority of the host Member State it shall state the reasons for its decision to the undertaking within 3 months of receiving all the information in question.

(4) Such a decision is an appealable decision for the purposes of Part VIIA of the Act of 1942.

(5) Where the Bank receives, in relation to an insurance undertaking proposing to establish a branch within the territory of another Member State, information from the other Member State in relation to the conditions under which, in the interest of the general good, business must be pursued in that Member State, it shall communicate this information to the insurance undertaking.

Change of particulars where the State is home Member State

156. In the event of a change in any of the particulars provided to the Bank under Regulation 154(2)(b), (c) or (d), the insurance undertaking shall give written notice of the change to the Bank and to the supervisory authority of the host Member State at least one month before making the change so that the Bank may fulfil its obligations under Regulation 155 (which shall apply with necessary modifications).

Branch establishment in the State

157. (1) Before the branch of an insurance undertaking authorised in a Member State other than the State starts business in the State, the Bank shall, where applicable, within 2 months of receiving the information referred to in Article 145(2) of the Directive and a certificate confirming that the insurance undertaking covers the Solvency Capital Requirement and the Minimum Capital Requirement, notify the supervisory authority of the home Member State of the conditions under which, in the interest of the general good, that business must be pursued in the State.

(2) The insurance undertaking may establish the branch and start business in the State as from the date on which the supervisory authority of the home Member State has received the notification referred to in paragraph (1) or, if no notification is received, after the end of the period mentioned in that paragraph.

(3) With regard to Lloyd's, in the event of any litigation in the State arising out of underwritten commitments, the insured persons shall not be treated less favourably than if the litigation had been brought against businesses of a conventional type.

Change of particulars where the State is host Member State

158. In the event of a change in any of the particulars provided by an insurance undertaking to the supervisory authority of another Member State in compliance with Article 145(2) of the Directive, the insurance undertaking shall

give written notice of the change to the Bank at least one month before making the change so that, having regard to the proposed change, the Bank may fulfil its obligations under Regulation 157(1) (which shall apply with the necessary modifications).

Rights acquired by existing branches

159. Any branches which started business in the State before 1 July 1994, in accordance with the provisions for the time being in force, shall be presumed to have complied with the procedure in this Chapter.

Chapter 2

Freedom of insurance undertakings to provide services

General

Prior notification of intention to do business in another Member State

160. (1) An insurance undertaking that intends to pursue business for the first time in a Member State other than the State under the freedom to provide services shall first notify the Bank, indicating the nature of the risks or commitments it proposes to cover.

(2) The Bank shall, within one month of the notification provided for in paragraph (1), communicate the following to the supervisory authority of the Member State within which the undertaking intends to pursue business under the freedom to provide services:

- (a) if the Solvency Capital Requirement and Minimum Capital Requirement are covered by the undertaking, a certificate confirming that;
- (b) the classes of insurance which the undertaking has been authorised to offer;
- (c) the nature of the risks or commitments which the undertaking proposes to cover in the Member State.

(3) The Bank shall, at the same time, inform the undertaking of that communication.

(4) The undertaking may start business as from the date on which it is informed of the communication provided for in paragraph (2).

(5) Where the Bank makes a decision not to communicate the information referred to in paragraph (2) within the period mentioned in that paragraph, it shall state the reasons to the undertaking within that period.

(6) Such a decision is an appealable decision for the purposes of Part VIIA of the Act of 1942.

Changes in nature of risks or commitments

161. Any change which an insurance undertaking pursuing business in a Member State other than the State under the freedom to provide services intends to make to the nature of the risks or commitments it proposes to cover shall be subject to the procedure provided for in Regulation 160 (which shall apply with necessary modifications).

Carrying on business in the State

162. (1) An insurance undertaking authorised in a Member State other than the State may carry on business by way of services into the State on or after the date on which it is informed by the supervisory authority of its home Member State that it has communicated to the Bank the certificate and information referred to Article 148(1) of the Directive.

(2) Where the insurance undertaking intends to carry on insurance business by way of services into the State, the Bank shall notify the supervisory authority of the home Member State of the conditions under which, in the interest of the general good, the insurance business may be carried on in the State.

Rights acquired by existing insurance undertakings

163. Regulations 160 and 162 shall not affect rights acquired by insurance undertakings carrying on business under the freedom to provide services before 1 July 1994.

Third party motor vehicle liability

Compulsory insurance on third party motor vehicle liability

164. (1) This Regulation applies where a non-life insurance undertaking which intends, under the freedom to provide services, to cover a risk which is situated in the State, other than carrier's liability, classified under class 10 in Part 1 of Schedule 1.

(2) The undertaking shall become a member of, and participate in the financing of, the Motor Insurers' Bureau of Ireland and the national guarantee fund of the State.

(3) The undertaking shall submit a declaration to the Bank attesting that the undertaking has become a member of the Motor Insurers' Bureau of Ireland and the national guarantee fund of the State.

(4) The insurance undertaking shall not be required to make any payment or contribution to the Motor Insurers' Bureau of Ireland or the national guarantee fund of the State otherwise than by reference to its gross premium income in respect of the coverage of risks classified under class 10 of Part 1 of Schedule 1, other than carrier's liability, underwritten in the State by way of services, or in respect of the number of risks underwritten in the State by way of services in that class.

(5) The undertaking shall become a party to the Declined Cases Agreement and comply with the rules concerning the cover of aggravated risks insofar as they apply to non-life insurance undertakings authorised by the Bank; and in

this paragraph the “Declined Cases Agreement” means the Agreement made on the 18th day of June 1981 between the Minister of Industry and Commerce of the one part and each of those insurance companies and members of the Underwriting Syndicates at Lloyds who carry on motor vehicle insurance business in the State.

(6) The undertaking shall ensure that persons pursuing claims arising out of events occurring in the State are not placed in a less favourable situation as a result of the fact that the undertaking is covering a risk, other than carrier’s liability in class 10 in Part 1 of Schedule 1, by way of provision of services rather than through an establishment in the State.

(7) For this purpose the undertaking shall appoint a representative resident or established in the State who shall collect all necessary information in relation to claims, and shall possess sufficient powers to represent the undertaking in relation to persons suffering damage who could pursue claims, including the payment of such claims, and to represent it or, where necessary, to have it represented before the courts and authorities of the State in relation to those claims.

(8) The undertaking shall notify the Bank of the name and address of the representative appointed under paragraph (7) and of the claims representative in the State appointed in accordance with Article 4 of Directive 2000/26/EC.

(9) The representative appointed under paragraph (7) may also be required to represent the undertaking before the Bank with regard to checking the existence and validity of motor vehicle liability insurance policies.

(10) The appointment of the representative under paragraph (7) shall not in itself constitute the opening of a branch for the purpose of Regulation 154.

(11) Where the undertaking fails to appoint a representative in accordance with paragraph (7), the claims representative referred to in paragraph (8) may assume the functions of that representative.

Chapter 3

Competencies of supervisory authorities of host Member State

Insurance

Language

165. The Bank may require the information which it is authorised to request with regard to the business of insurance undertakings operating in the State to be provided in English.

Prior notification and prior approval

166. (1) The Bank shall not adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums, or, in the case of life insurance, the technical bases used in particular for calculating scales of premiums and technical provisions, or the forms and

other documents which an insurance undertaking authorised in a Member State other than the State intends to use in its dealings with policy holders in the State.

(2) The Bank shall only require an insurance undertaking authorised in a Member State other than the State that proposes to pursue insurance business in the State to effect non-systematic notification of policy conditions and other documents for the purpose of verifying compliance with the law concerning insurance contracts, and that requirement shall not constitute a prior condition for an undertaking to pursue its business in the State.

(3) The Bank shall not retain or introduce a requirement for prior notification or approval of proposed increases in premium rates by an insurance undertaking authorised in a Member State other than the State which conducts business in the State except as part of general price control systems.

Non-compliant insurance undertakings authorised in another Member State

167. (1) Where the Bank concludes that an insurance undertaking which is conducting business in the State through a branch or on the basis of the freedom to provide services is not complying with the legal provisions applicable to it in the State, it shall require the undertaking to remedy the failure.

(2) Where the undertaking fails to take the necessary action, the Bank shall inform the supervisory authority of the home Member State accordingly.

(3) If the undertaking persists in its failure to comply with the legal provisions applicable to it in the State, despite any measures taken by the home Member State or because those measures prove to be inadequate or are lacking in that State, the Bank may, after informing the supervisory authority of the home Member State, in the exercise of its powers under financial services legislation, take appropriate measures to prevent or penalise further failure, including, in so far as is strictly necessary, preventing the undertaking from concluding new insurance contracts in the State.

(4) Paragraphs (1) to (3) shall not affect the power of the Bank to take appropriate emergency measures to prevent or penalise failures in the State, including preventing the undertaking from concluding new insurance contracts in the State.

(5) Paragraphs (1) to (3) shall not affect the power of the Bank to penalise failures in the State by undertakings authorised in a Member State other than the State.

(6) Any measure adopted under paragraphs (3) to (5) involving restrictions on the conduct of insurance business by an insurance undertaking authorised in a Member State other than the State shall be properly reasoned and communicated to the undertaking.

(7) An insurance undertaking authorised in a Member State other than the State which is conducting business in the State shall, if the Bank requires it to do so in the exercise of its powers under financial services legislation, submit all

documents requested for the purposes of paragraphs (1) to (6) insofar as insurance undertakings authorised by the Bank are required to do so.

(8) The Bank shall inform the Commission and EIOPA of the number and types of cases which led to decisions not to communicate the information as referred to in Regulation 155(3) or 160(5) or in which measures have been taken under paragraph (3) or (4) of this Regulation.

Non-compliant insurance undertakings authorised by Bank

168. (1) Where the Bank receives a complaint from the supervisory authority of a Member State other than the State about an insurance undertaking authorised by the Bank, it shall at the earliest opportunity exercise its powers under financial services legislation to take all appropriate measures to ensure that the undertaking remedies the irregular situation brought to its attention.

(2) The Bank shall inform that supervisory authority of the measures taken.

Advertising

169. An insurance undertaking authorised in a Member State other than the State may advertise its services, through all available means of communication, in the State if it complies with the rules governing the form and content of such advertising in the State adopted in the interest of the general good.

Taxes on premiums

170. (1) Every insurance contract for which the risk or commitment is situated in the State shall be subject exclusively to the indirect taxes and parafiscal charges on insurance premiums payable under the law of the State.

(2) For the purposes of paragraph (1), movable property contained in a building situated within the territory of the State, except for goods in commercial transit, shall be considered as a risk situated in the State, even where the building and its contents are not covered by the same insurance policy.

(3) The law applicable to the contract under Article 178 of the Directive and under Regulation (EC) No 593/2008 shall not affect the fiscal arrangements applicable.

Reinsurance

Non-compliant reinsurance undertakings authorised in another Member State

171. (1) Where the Bank concludes that a reinsurance undertaking conducting business in the State through a branch or on the basis of the freedom to provide services is not complying with the law applicable to it in the State, it shall require the undertaking to remedy the failure.

(2) At the same time, the Bank shall refer those findings to the supervisory authority of the home Member State.

(3) If the undertaking persists in its failure to comply with the laws applicable to it in the State, despite any measures taken by the home Member State or because those measures prove to be inadequate or are lacking in that State, the

Bank may, after informing the supervisory authority of the home Member State, exercise its powers under financial services legislation to take appropriate measures to prevent or penalise further failure, including, in so far as is strictly necessary, preventing the undertaking from concluding new reinsurance contracts within the State.

(4) Any measure under paragraph (1) or (3) involving sanctions or restrictions on the conduct of reinsurance business shall state the reasons and shall be communicated to the undertaking.

Non-compliance by reinsurance undertaking authorised by Bank

172. (1) Where the Bank receives a complaint from the supervisory authority of a Member State other than the State about a reinsurance undertaking authorised by the Bank, it shall, at the earliest opportunity, exercise its powers under financial services legislation to take all appropriate measures to ensure that the undertaking remedies the irregular situation brought to its attention.

(2) The Bank shall inform that supervisory authority of the measures taken.

Chapter 4

Statistical information

Statistical information on cross-border activities

173. (1) An insurance undertaking shall provide the information referred to in this Regulation to the Bank separately in respect of transactions carried out under the right of establishment and those carried out on the basis of the freedom to provide services.

(2) The undertaking shall provide the amount of the premiums, claims and commissions, without deduction of reinsurance, by Member State and, for both non-life insurance business and life insurance business, by lines of business in accordance with Commission Delegated Regulation (EU) 2015/35.

(3) As regards business in class 10 in Part 1 of Schedule 1, not including carrier's liability, the undertaking shall also inform the Bank of the frequency and average cost of claims.

(4) The Bank shall submit the information referred to in this Regulation within a reasonable time and in aggregate form to the supervisory authorities of each of the Member States concerned on their request.

(5) The Bank may request the supervisory authority of the home Member State of an insurance undertaking conducting business in the State through a branch or on the basis of the freedom to provide services to provide it with the information referred to in Article 159 of the Directive which has been provided to the supervisory authority by the undertaking.

Chapter 5

*Winding-up proceedings**Winding-up of insurance undertakings*

174. Where an insurance undertaking is wound up, commitments arising out of contracts underwritten through a branch or on the basis of the freedom to provide services shall be met in the same way as those arising out of the other insurance contracts of the undertaking, without distinction as to nationality as far as the persons insured and the beneficiaries are concerned.

Winding-up of reinsurance undertakings

175. Where a reinsurance undertaking is wound up, commitments arising out of contracts underwritten through a branch or on the basis of the freedom to provide services shall be met in the same way as those arising out of the other reinsurance contracts of the undertaking.

Part 12

BRANCHES OF UNDERTAKINGS ESTABLISHED OUTSIDE
EUROPEAN UNION

Chapter 1

*Taking up of business**Principle of authorisation and conditions*

176. (1) A third-country insurance undertaking which proposes to establish a branch in the State shall make an application for authorisation to the Bank.

(2) The Bank may grant an authorisation where a third-country insurance undertaking fulfils at least the following conditions:

- (a) it is entitled to pursue insurance business under the law of the state in which its head office is situated;
- (b) it establishes a branch in the State;
- (c) it undertakes to set up at the place of management of the branch accounts specific to the business which it pursues in the State, and to keep at the place of management all the records relating to the business transacted;
- (d) it designates a general representative, to be approved by the Bank;
- (e) it holds in the State assets of an amount equal to at least 50% of the absolute floor prescribed in Regulation 140(2) in respect of the Minimum Capital Requirement and deposits with the Court 25% of that absolute floor as security;

- (f) it undertakes to cover the Solvency Capital Requirement and the Minimum Capital Requirement in accordance with the requirements of these Regulations;
- (g) it communicates the name and address of the claims representative appointed in each Member State other than the State where the risks to be covered are in class 10 of Part 1 of Schedule 1 other than carrier's liability;
- (h) it submits a scheme of operations in accordance with the provisions in Regulation 177;
- (i) it fulfils the governance requirements laid down in Regulations 44 to 51.

(3) A branch of a third-country insurance undertaking authorised to undertake insurance in the State may apply to extend its business to classes of insurance for which it is not authorised or to parts of such classes.

(4) For the purposes of this Part "branch" means a permanent presence in the State of a third-country insurance undertaking which receives authorisation and which pursues insurance business.

Scheme of operations of branch

177. (1) The scheme of operations referred to in Regulation 176(2)(h) shall set out the following:

- (a) the nature of the risks or commitments which the undertaking proposes to cover;
- (b) the guiding principles as to reinsurance;
- (c) estimates of the future Solvency Capital Requirement, on the basis of a forecast balance sheet, as well as the calculation method used to derive those estimates;
- (d) estimates of the future Minimum Capital Requirement, on the basis of a forecast balance sheet, as well as the calculation method used to derive those estimates;
- (e) the state of the eligible own funds and eligible basic own funds of the undertaking with respect to the Solvency Capital Requirement and Minimum Capital Requirement;
- (f) estimates of the costs of setting up the administrative services and the organisation for securing business, the financial resources intended to meet those costs and, where the risks to be covered are in class 18 in Part 1 of Schedule 1, the resources available for the provision of the assistance;
- (g) information on the structure of the system of governance.

(2) In addition to the requirements set out in paragraph (1), the scheme of operations shall include the following, for the first 3 financial years:

- (a) a forecast balance sheet;
- (b) estimates of the financial resources intended to cover technical provisions, the Minimum Capital Requirement and the Solvency Capital Requirement;
- (c) for non-life insurance—
 - (i) estimates of management expenses other than installation costs, in particular current general expenses and commissions;
 - (ii) estimates of premiums or contributions and claims;
- (d) for life insurance, a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.

(3) With regard to life insurance, the Bank may require third-country insurance undertakings to submit systematic notification of the technical bases used for calculating scales of premiums and technical provisions, without that requirement constituting a prior condition for a life insurance undertaking to pursue its business.

Transfer of portfolio

178. (1) For the purposes of section 13 of the Assurance Companies Act 1909, subject to section 36 of the Insurance Act 1989 and these Regulations a branch of a third-country insurance undertaking established in the State may, after consultation with the Bank, transfer all or part of its portfolios of contracts to—

- (a) an insurance undertaking with its head office in the State,
- (b) a branch of another third-country insurance undertaking established in the State,
- (c) an insurance undertaking whose head office is in another Member State, or
- (d) a branch of another third-country insurance undertaking established in another Member State.

(2) A transfer may not be effected unless—

- (a) the supervisory authority of the accepting undertaking or, where appropriate, the selected supervisory authority referred to in Regulation 181, certifies that, after taking the transfer into account, the accepting undertaking possesses the necessary eligible own funds to

cover the Solvency Capital Requirement referred to in Regulation 113, and

- (b) the supervisory authority of each Member State where the risks are situated or which is the state of the commitment have consented,

and, in the case of a transfer within paragraph (1)(d), the law of the Member State in which that branch is situated permits the transfer and the supervisory authority of that Member State has consented.

(3) The Bank shall consult the supervisory authorities referred to in paragraph (2)(b) before the transfer to obtain their opinion or consent, and the absence of any response by a supervisory authority within 3 months of being consulted shall be deemed to be consent by that supervisory authority.

(4) Without prejudice to the requirements of section 13(3)(a) of the Assurance Companies Act 1909, a transfer in accordance with this Regulation shall be published—

- (a) prior to the transfer being authorised, by advertisement once in each of 2 daily newspapers published in the State, and
- (b) in each Member State in which the risks are situated or which is the Member State of the commitment in accordance with the law of that Member State.

(5) Where the Bank is consulted by the supervisory authority of a Member State pursuant to Article 164 of the Directive, the Bank shall provide an opinion or consent within 3 months of being consulted and the absence of any response within that period from the Bank shall be deemed to be consent.

(6) Where—

- (a) a transfer is to be effected under the law of a Member State other than the State in accordance with Article 164 of the Directive, and
- (b) the State is a Member State in which the risk is situated or is a Member State of the commitment,

the transfer shall, prior to being authorised, be published by advertisement once in *Iris Oifigiúil* and once in each of 2 daily newspapers published in the State.

(7) A transfer in accordance with this Regulation shall automatically be valid against policy holders, insured persons and any other persons having rights or obligations arising out of the contracts transferred.

Technical provisions

179. (1) A third-country insurance undertaking which establishes a branch in the State shall establish adequate technical provisions to cover the insurance and reinsurance obligations assumed in the State.

(2) The technical provisions must be calculated in accordance with Regulations 83 to 101.

(3) Assets and liabilities shall be determined in accordance with Regulation 82, and own funds shall be determined in accordance with Regulations 102 to 112.

Solvency Capital Requirement and Minimum Capital Requirement

180. (1) A third-country insurance undertaking which establishes a branch in the State shall hold an amount of eligible own funds consisting of the items referred to in Regulation 112(5).

(2) The Solvency Capital Requirement and the Minimum Capital Requirement for the branch shall be calculated in accordance with these Regulations.

(3) However, for the purpose of calculating the Solvency Capital Requirement and the Minimum Capital Requirement, both for life and non-life insurance, account shall be taken only of the operations effected by the branch.

(4) The eligible amount of basic own funds required to cover the Minimum Capital Requirement and the absolute floor of that Minimum Capital Requirement shall be constituted in accordance with Regulation 112(6).

(5) The eligible amount of basic own funds shall not be less than half of the absolute floor required under Regulation 140(2).

(6) The deposit lodged in accordance with Regulation 176(2)(e) shall be counted towards such eligible basic own funds to cover the Minimum Capital Requirement.

(7) The assets representing the Solvency Capital Requirement shall be kept within the State up to the amount of the Minimum Capital Requirement and the excess shall be kept within any one or more Member States.

Advantages to undertakings authorised in more than one Member State

181. (1) Where a third-country insurance undertaking has obtained an authorisation from the Bank in relation to a branch in the State and has also obtained an authorisation for a branch from the supervisory authority of one or more other Member States, the undertaking may apply for the following advantages which may be granted only jointly:

(a) the Solvency Capital Requirement shall be calculated in relation to the entire business which it pursues within the European Union but with account being taken only of the operations effected by branches established within the European Union;

(b) the deposit required under Regulation 176(2)(e) shall be lodged in only one of the Member States where the undertaking has a branch;

(c) the assets representing the Minimum Capital Requirement shall be localised in any one of the Member States in which it pursues its activities.

(2) Application to benefit from the advantages provided for in paragraph (1) shall be made to the Bank and all the other relevant supervisory authorities.

(3) The application shall state the authority of the Member State which in future is to supervise the solvency of the entire business of the branches established in the European Union and give reasons for the selection of supervisory authority made by the undertaking.

(4) The deposit required under Regulation 176(2)(e) shall be lodged with the selected supervisory authority.

(5) The advantages provided for in paragraph (1) may be granted only where the supervisory authorities of all Member States in which an application has been made agree to them.

(6) Those advantages shall take effect from the time when the selected supervisory authority informs the other relevant supervisory authorities that it will supervise the state of solvency of the entire business of the undertaking's branches in the European Union.

(7) Where the Bank is the selected supervisory authority it shall obtain from each of the other relevant supervisory authorities the information necessary for the supervision of the overall solvency of the branches in the Member States of which they are the supervisory authorities.

(8) Where another supervisory authority is selected the Bank shall provide to that supervisory authority the information necessary for the supervision of the overall solvency of the branch in the State.

(9) If the Bank or another relevant supervisory authority so requests, the advantages provided for in paragraph (1) shall be withdrawn simultaneously by all the Member States concerned.

Accounting, prudential and statistical information and undertakings in difficulty

182. (1) For the purpose of a branch established in the State by a third-country insurance undertaking, Regulations 148(3), 150 and 151 shall apply.

(2) Where the Bank is the selected supervisory authority under Regulation 181 in relation to a third-country insurance undertaking, the State shall be treated as the undertaking's home Member State as regards the application of Regulations 145 to 148.

Separation of non-life and life business

183. A branch set up in the State by a third-country insurance undertaking shall not be authorised to simultaneously carry on life insurance and non-life insurance in the State.

Withdrawal of authorisation for undertakings authorised in more than one Member State

184. (1) Where the Bank is the selected supervisory authority referred to in Regulation 181 in relation to a third-country insurance undertaking and it withdraws the authorisation granted to the undertaking, it shall notify the supervisory authorities of the other relevant Member States to enable them to take appropriate measures.

(2) Where another supervisory authority is the selected supervisory authority under Article 167 of the Directive and it notifies the Bank of the withdrawal of the undertaking's authorisation, the Bank shall take whatever measures it considers appropriate (including, where appropriate, withdrawal of authorisation).

(3) Where the reason for the withdrawal of the authorisation by the other supervisory authority is the inadequacy of the overall state of solvency as agreed by the Member States under Article 167 of the Directive, the Bank shall also withdraw its authorisation.

Chapter 2

*Reinsurance**Equivalence*

185. Reinsurance contracts concluded with third-country insurance undertakings or third-country reinsurance undertakings shall be treated in the same manner as reinsurance contracts concluded with undertakings authorised in accordance with these Regulations where—

- (a) the solvency regime of the third country has been deemed to be equivalent to that laid down in the Directive in accordance with the delegated acts referred to in Article 172(2) of the Directive, or
- (b) the supervisory regime of the third country has been deemed to be temporarily equivalent to that laid down in the Directive in accordance with the delegated acts referred to in Article 172(4) of the Directive.

Principle and conditions for conducting reinsurance activity

186. The Bank shall not impose requirements or conditions that would result in a third-country reinsurance undertaking which commences or carries on business in the State being treated more favourably than a reinsurance undertaking with its head office in the State.

Chapter 3

*Subsidiaries**Information from Member States to Commission and EIOPA*

187. (1) The Bank shall inform the Commission, EIOPA and the supervisory authorities of the other Member States of any authorisation of a direct or

indirect subsidiary undertaking, one or more of whose parent undertakings are governed by the law of a third country.

(2) The information shall also contain an indication of the structure of the group concerned.

(3) Where an undertaking governed by the law of a third country acquires a holding in an insurance undertaking or reinsurance undertaking established in the State which results in it becoming a subsidiary undertaking of the undertaking governed by the law of the third country, the Bank shall inform the Commission, EIOPA and the supervisory authorities of the other Member States.

Third-country treatment of Community insurance and reinsurance undertakings

188. (1) As soon as practicable after becoming aware that an insurance undertaking or reinsurance undertaking is encountering difficulties in establishing itself or carrying on business in a third country, the Bank shall notify those difficulties to the Minister.

(2) The Minister shall, without delay, inform the Commission and EIOPA of any difficulties notified in accordance with paragraph (1).

Part 13

APPLICABLE LAW AND CONDITIONS OF DIRECT INSURANCE
CONTRACTS

Chapter 1

Compulsory insurance

Related obligations

189. (1) Non-life insurance undertakings may offer and conclude compulsory insurance contracts under the conditions set out in this Regulation.

(2) In circumstances where the law of the State imposes a requirement to take out insurance, all contracts relating to that requirement must comply with the specific provisions relating to that insurance laid down by the State.

(3) Where an undertaking is carrying on compulsory insurance it shall notify the Bank of any cessation of cover and such cessation may be invoked against injured third parties in the circumstances laid down by the law of the State.

Chapter 2

Conditions of insurance contracts and scales of premiums

Non-life insurance

190. (1) In performing its supervisory functions under these Regulations, the Bank shall not require non-life insurance undertakings to submit for prior authorisation or systematically notify—

- (a) general and special policy conditions,
- (b) scales of premiums, or
- (c) forms or other documents which the undertaking intends to use in its dealings with policy holders.

(2) The Bank may require non-systematic notification of those policy conditions, scales of premiums or forms or other documents for the purpose only of verifying compliance with provisions concerning insurance contracts which apply in the State but such requirements shall not constitute a prior condition for an undertaking to pursue business.

(3) A non-life insurance undertaking is required to communicate to the Bank the general and special conditions of compulsory insurance before circulating them.

(4) The Bank shall not retain or introduce an obligation of prior notification or approval of proposed increases in premium rates except as part of general price-control systems.

Life insurance

191. (1) In performing its supervisory functions under these Regulations, the Bank shall not require life insurance undertakings to submit for prior authorisation or systematically notify—

- (a) general and special policy conditions,
- (b) scales of premiums,
- (c) technical bases used in particular for calculating scales of premiums and technical provisions, or
- (d) forms or other documents which the undertaking intends to use in its dealings with policy holders.

(2) The Bank may, for the sole purpose of verifying compliance with provisions concerning actuarial principles which apply in the State, require systematic communication of the technical bases used in particular for calculating scales of premiums and technical provisions but such requirements shall not constitute a prior condition for an insurance undertaking to pursue business.

Chapter 3

Information for policy holders

Non-life insurance

General information for policy holders

192. (1) Before a non-life insurance contract is concluded by a non-life insurance undertaking the undertaking shall inform the policy holder of the following:

- (a) the law applicable to the contract, where the parties do not have a free choice;
- (b) the fact that the parties are free to choose the law applicable and the law the insurer proposes to choose.

(2) The undertaking shall also inform the policy holder of the arrangements for handling complaints by policy holders concerning contracts including, where appropriate, the existence of a complaints body, without prejudice to the right of the policy holder to take legal proceedings.

(3) The obligations referred to in paragraphs (1) and (2) apply only where the policy holder is a natural person.

Additional information in case of non-life insurance offered under right of establishment or freedom to provide services

193. (1) Where a non-life insurance undertaking is offering insurance in the State through a branch or pursuant to the freedom to provide services, it shall inform the policy holder before any commitment is entered into, of the Member State in which its head office is situated or, where appropriate, the branch with which the contract is to be concluded is situated.

(2) Any documents issued to the policy holder shall convey the information referred to in paragraph (1).

(3) The obligations imposed in paragraphs (1) and (2) shall not apply to large risks.

(4) The contract or any other document granting cover, together with the insurance proposal where it is binding upon the policy holder, shall state the address of the head office or, where appropriate, of the branch of the undertaking which grants the cover.

(5) Those documents shall also contain the name and address of the representative of the undertaking referred to in Regulation 17(4)(i).

Life insurance

Cancellation period

194. (1) A person who has concluded a contract for an individual life insurance policy is entitled to cancel the policy by giving notice of cancellation to the undertaking within the period of 30 days beginning after the date on which the person is informed that the contract has been concluded.

(2) The giving of notice of cancellation by a person shall have the effect of releasing the person from any future obligation arising from the contract.

(3) The other legal effects and the conditions of cancellation shall be determined by the law applicable to the contract, particularly as regards the arrangements for informing a person that the contract has been concluded.

- (4) For this purpose, where the law of the State is applicable to the contract—
- (a) a person shall be deemed to be informed that a contract has been concluded when the policy is delivered to the person who submitted the proposal for the insurance or, if the policy is sent directly to that person by post, the date on which the policy is posted,
 - (b) the notice of cancellation referred to in paragraph (1) shall expressly indicate that the person has withdrawn from the proposed contract,
 - (c) a notice of cancellation referred to in paragraph (1) shall be deemed to be served on the undertaking at the time when such notice is posted to an address specified by the undertaking,
 - (d) any sums paid by the person serving the notice of cancellation in connection with the contract shall be refunded in full by the undertaking,
 - (e) in the case of the service of notice of cancellation in respect of a single premium life insurance contract, the undertaking may, when the person has withdrawn from the proposed contract, refund the amount of premium paid less any losses incurred by the undertaking as a result of fluctuations in the financial markets during the period of the validity of the contract.
- (5) The provisions of paragraph (1) shall not apply in the following cases:
- (a) a contract with duration of 6 months or less;
 - (b) where, because of the status of the policy holder or the circumstances in which the contract is concluded, the policy holder does not need special protection including where:
 - (i) the contract is one where none of the proposers or policy holders is an individual;
 - (ii) the contract is a contract of creditor insurance effected for the purpose of insuring the repayment of a loan and it is intended that the contract will be assigned or deposited with the lender;
 - (iii) the contract is a contract of reinsurance.
- (6) In the case of an industrial assurance policy of insurance only, the undertaking may, through its industrial assurance agent, deliver directly to the person who is seeking the policy—
- (a) a form of notice of cancellation,
 - (b) the insurance policy, and
 - (c) any accompanying documents.

(7) For the purposes of paragraph (6), the form of notice of cancellation must specify that that person has a period of 30 days after the date of delivery by the agent within which to serve the notice of cancellation on the undertaking and in that case the period specified in paragraph (1) extends to the end of that period.

Part 14

PROVISIONS SPECIFIC TO NON-LIFE INSURANCE

Chapter 1

General provision

Policy conditions

195. General and special policy conditions shall not include any conditions intended to meet, in an individual case, the particular circumstances of the risk to be covered.

Chapter 2

Community co-insurance

Community co-insurance operations

196. (1) This Chapter applies to Community co-insurance operations.

(2) In this Chapter “Community co-insurance operations” means co-insurance operations relating to one or more risks which are in classes 3 to 16 in Part 1 of Schedule 1 and which fulfil the following conditions:

- (a) the risk is a large risk;
- (b) the risk is covered by a single contract at an overall premium and for the same period by 2 or more insurance undertakings each for its own part as co-insurer, one of them being the leading insurance undertaking;
- (c) the risk is situated within the European Union;
- (d) for the purpose of covering the risk, the leading insurance undertaking is treated as if it were the insurance undertaking covering the whole risk;
- (e) at least one of the co-insurers participates in the contract through a head office or a branch established in a Member State other than that of the leading insurance undertaking;
- (f) the leading insurance undertaking fully assumes the leader’s role in co-insurance practice and in particular determines the terms and conditions of insurance and rating.

(2) Co-insurance operations which are not Community co-insurance operations within the meaning of paragraph (1) are subject to these Regulations (but not the rules in this Chapter).

Rules that are to apply only to leading insurance undertaking

197. Regulations 160 to 164 shall apply only to the leading insurance undertaking.

Participation in Community co-insurance

198. The right of insurance undertakings to participate in Community co-insurance operations shall not be made subject to any provisions other than those of this Chapter.

Technical provisions

199. (1) An insurance undertaking shall in respect of a liability arising under Community co-insurance operations, establish and maintain technical provisions calculated in accordance with the method applied to insurance business in the State.

(2) The technical provisions shall be at least equal to those determined by the leading insurance undertaking according to the rules of its home Member State.

Statistical data

200. An insurance undertaking is required to keep statistical data showing the extent of Community co-insurance operations in which it participates and the Member States concerned.

Treatment of co-insurance contracts in winding-up proceedings

201. In the event of an insurance undertaking being wound up, liabilities arising from participation in contracts forming part of Community co-insurance operations shall be met in the same way as those arising under the other insurance contracts of the undertaking without distinction as to the nationality of the insured and of the beneficiaries.

Exchange of information between supervisory authorities

202. The Bank shall, to the extent permitted by section 33AK of the Act of 1942 provide other relevant supervisory authorities with all information necessary for the implementation of this Chapter.

Co-operation on implementation

203. (1) The Bank shall co-operate closely with the Commission and other supervisory authorities for the purposes of examining any difficulties which might arise in implementing this Chapter.

(2) In the course of that co-operation the Bank shall examine in particular any practices which might indicate that leading insurance undertakings do not assume the role of the leader in Community co-insurance operations or that the risks covered by such operations clearly do not require the participation of 2 or more insurers for their coverage.

Chapter 3

*Legal expenses insurance**Scope of Chapter*

204. (1) This Chapter applies to legal expenses insurance in class 17 in Part 1 of Schedule 1 whereby an insurance undertaking (in this Chapter referred to as a “legal expenses insurance undertaking”) promises, against the payment of a premium, to bear the costs of legal proceedings and to provide other services directly linked to insurance cover, in particular with a view to the following:

- (a) securing compensation for the loss, damage or injury suffered by the insured person, by settlement out of court or through civil or criminal proceedings;
- (b) defending or representing the insured person in civil, criminal, administrative or other proceedings or in respect of any claim made against that person.

(2) However, this Chapter does not apply to any of the following:

- (a) legal expenses insurance concerning disputes or risks arising out of, or in connection with, the use of sea-going vessels;
- (b) the activity pursued by an insurance undertaking providing civil liability cover for the purpose of defending or representing the insured person in any inquiry or proceedings where that activity is at the same time pursued in the own interest of that insurance undertaking under such cover;
- (c) the activity of legal expenses insurance undertaken by an assistance insurer which complies with the following conditions:
 - (i) the activity is pursued in a Member State other than that in which the insured person is habitually resident;
 - (ii) the activity forms part of a contract covering solely the assistance provided for persons who fall into difficulties while travelling, while away from their home or their habitual residence;
 - (iii) the contract clearly states that the cover concerned is limited to those circumstances and is ancillary to the assistance.

Separate contracts

205. Legal expenses cover shall be—

- (a) the subject of a contract separate from that drawn up for the other classes of insurance, or
- (b) dealt with in a separate section of a single policy in which the nature of the legal expenses cover is specified.

Management of claims

206. (1) A legal expenses insurance undertaking shall adopt at least one of the methods for the management of claims set out in paragraphs (3), (4) and (5).

(2) Whichever solution is adopted, the interest of persons having legal expenses cover shall be regarded as safeguarded in an equivalent manner.

(3) The legal expenses insurance undertaking shall ensure that no member of the staff who is concerned with the management of legal expenses claims, or with legal advice in respect of their management, pursues at the same time a similar activity—

- (a) where the undertaking carries on one or more other classes of insurance in relation to another class carried on by it, or
- (b) in another undertaking which has financial, commercial or administrative links with the legal expenses insurance undertaking and carries on one or more of the other classes of insurance in Part 1 of Schedule 1.

(4) The legal expenses insurance undertaking shall entrust the management of claims in respect of legal expenses insurance to an undertaking having separate legal personality which shall be mentioned in the separate contract or separate section referred to in Regulation 205 and—

- (a) if the undertaking having separate legal personality has links to an insurance undertaking which carries on one or more of the classes of insurance in Part 1 of Schedule 1, members of the staff of that undertaking who are concerned with the management of claims or with legal advice connected with such management shall not pursue the same or a similar activity in the other insurance undertaking at the same time, and
- (b) the same requirements apply to the board of directors.

(5) The contract shall provide that the insured persons may instruct a lawyer of their choice or any other appropriately qualified person, from the moment that those insured persons have a claim under that contract.

(6) For the purposes of this Regulation and Regulations 207 and 208 “lawyer” means any person entitled to pursue his professional activities under one of the denominations laid down in Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services³¹.

Free choice of lawyer

207. A contract of legal expenses insurance shall expressly provide that—

- (a) where recourse is had to a lawyer or other appropriately qualified person to defend, represent or serve the interests of the insured person in any inquiry or proceedings, the insured person shall be free to choose such lawyer or other person, and

³¹OJ No. L78, 26.3.1977, p. 17

- (b) the insured person shall be free to choose a lawyer or, if he so prefers, another appropriately qualified person, to serve his or her interests whenever a conflict of interests arises.

Exception to free choice of lawyer

208. (1) Regulation 207 does not apply where all of the following conditions are met:

- (a) the insurance is limited to cases arising from the use of road vehicles in the State;
- (b) the insurance is connected to a contract to provide assistance in the event of accident or breakdown involving a road vehicle;
- (c) neither the legal expenses insurance undertaking nor the assistance insurer carries out any class of liability insurance;
- (d) measures are taken so that the legal advice and representation of each of the parties to a dispute is effected by wholly independent lawyers where those parties are insured for legal expenses by the same insurance undertaking.

(2) The exemption granted pursuant to paragraph (1) shall not affect the application of Regulation 206.

Arbitration

209. (1) Where a dispute arises under a contract of legal expenses insurance between the legal expenses insurance undertaking and the insured, the dispute shall be referred to arbitration in accordance with Part 2 of the Arbitration Act 2010 (No. 1 of 2010), as if these Regulations were an Act to which section 29(1) of the said Act applies.

(2) The contract must inform the insured person of his right to invoke the arbitration procedure referred to in paragraph (1).

Conflict of interest

210. Whenever a conflict of interests arises, or there is disagreement over the settlement of the dispute, under a contract of legal expenses insurance the legal expenses insurance undertaking or, where appropriate, the undertaking having separate legal personality mentioned in Regulation 206(4) shall inform the person insured of the right referred to in Regulation 207 and of the possibility of having recourse to arbitration as referred to in Regulation 209.

Chapter 4

Health insurance

Health insurance as an alternative to social security

211. (1) Despite anything to the contrary in the Insurance Acts, health insurance contracts in class 2 in Part 1 of Schedule 1 which serve as a partial or

complete alternative to health insurance cover provided by the statutory social security system shall comply with the general good requirements of the State.

(2) For that purpose the “general good requirements” includes a requirement that such health insurance contracts provide for open enrolment, community rating and lifetime cover, in accordance with any enactment for the time being in force.

Part 15

PROVISIONS SPECIFIC TO LIFE INSURANCE

Premiums for new business

212. (1) Premiums for new business shall be sufficient, on reasonable actuarial assumptions, to enable a life insurance undertaking to meet all its commitments and, in particular, to establish adequate technical provisions.

(2) For that purpose, all aspects of the financial situation of a life insurance undertaking may be taken into account, without the input from resources other than premiums and income earned on them being systematic and permanent in a way that it may jeopardise the solvency of the undertaking in the long term.

Part 16

PROVISIONS SPECIFIC TO REINSURANCE

Finite reinsurance

213. (1) Where an insurance undertaking or reinsurance undertaking concludes finite reinsurance contracts or pursues finite reinsurance activities, it must be able to properly identify, measure, monitor, manage, control and report the risks arising from those contracts or activities.

(2) For the purposes of paragraph (1), finite reinsurance means reinsurance under which the explicit maximum loss potential, expressed as the maximum economic risk transferred, arising both from a significant underwriting risk and timing risk transfer, exceeds the premium over the lifetime of the contract by a limited but significant amount, together with at least one of the following features:

- (a) explicit and material consideration of the time value of money;
- (b) contractual provisions to moderate the balance of economic experience between the parties over time to achieve the target risk transfer.

Special purpose vehicles

214. (1) A special purpose vehicle shall not be established without the prior approval of the Bank.

(2) These Regulations do not apply to special purpose reinsurance vehicles authorised under the European Communities (Reinsurance) Regulations 2006.

(3) However, any new activity commenced by such a special purpose reinsurance vehicle on or after 1 January 2016 shall be subject to these Regulations and other laws applicable in the State adopted pursuant to the Directive and shall require the prior approval of the Bank.

Part 17

SUPERVISION OF INSURANCE AND REINSURANCE UNDERTAKINGS IN A GROUP

Chapter 1

Definitions and scope

Definitions

215. (1) For the purposes of this Part—

“college of supervisors” means a permanent but flexible structure for co-operation, coordination and facilitation of decision-making concerning the supervision of a group;

“group” means a group of undertakings that—

- (a) consists of a participating undertaking, its subsidiaries and the entities in which the participating undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship as set out in Article 12(1) of Directive 83/349/EEC, or
- (b) is based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among the undertakings;

“group supervisor” means the supervisory authority responsible for group supervision, determined in accordance with Regulation 248;

“insurance holding company” means a parent undertaking which is not a mixed financial holding company and the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance undertakings or reinsurance undertakings, or third-country insurance undertakings or reinsurance undertakings, at least one of such subsidiary undertakings being an insurance undertaking or reinsurance undertaking;

“mixed-activity insurance holding company” means a parent undertaking, other than an insurance undertaking, a third-country insurance undertaking, a reinsurance undertaking, a third-country reinsurance undertaking, an insurance holding company or a mixed financial holding company which includes at least one insurance undertaking or reinsurance undertaking among its subsidiary undertakings;

“mixed financial holding company” means a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC;

“participating undertaking” means an undertaking which is a parent undertaking, an undertaking which holds a participation or an undertaking linked with another undertaking by a relationship as set out in Article 12(1) of Directive 83/349/EEC;

“related undertaking” means a subsidiary undertaking, an undertaking in which a participation is held or an undertaking linked with another undertaking by a relationship as set out in Article 12(1) of Directive 83/349/EEC.

(2) The relationships mentioned in paragraph (b) of the definition of “group” in paragraph (1) may include one between undertakings that are mutual or mutual-type associations if—

- (a) one of those undertakings effectively exercises, through centralised coordination, a dominant influence over the decisions, including financial decisions, of the other undertakings that are part of the group, and
- (b) the establishment and dissolution of the relationships are subject to prior approval by the group supervisor,

and, in such a case, the undertaking exercising the centralised coordination shall be considered as the parent undertaking, and the other undertakings shall be considered as subsidiaries.

(3) For the purposes of this Part, an undertaking which the Bank considers effectively exercises a dominant influence over another undertaking shall be regarded as a parent of that other undertaking and that other undertaking shall be regarded as its subsidiary undertaking.

(4) For the purposes of this Part, the holding, directly or indirectly, of voting rights or capital in an undertaking over which, in the Bank’s opinion a significant influence is effectively exercised shall be regarded as participation.

Cases of application of group supervision

216. (1) An insurance undertaking or reinsurance undertaking which is part of a group shall be supervised at the level of the group on the basis of this Part.

(2) The provisions of these Regulations which apply to insurance undertakings and reinsurance undertakings on an individual basis shall continue to apply to undertakings to which this Part applies except where otherwise specified in this Part.

(3) Supervision at the level of the group—

- (a) shall apply to an insurance undertaking or reinsurance undertaking which is a participating undertaking in at least one insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking, in accordance with Regulations 221 to 263;

- (b) shall apply to an insurance undertaking or reinsurance undertaking, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in the European Union in accordance with Regulations 221 to 263;
- (c) shall apply to an insurance undertaking or reinsurance undertaking, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in a third country, or which is a third-country insurance undertaking or third-country reinsurance undertaking, in accordance with Regulations 264 to 267;
- (d) shall apply to an insurance undertaking or reinsurance undertaking, the parent undertaking of which is a mixed-activity insurance holding company, in accordance with Regulation 268.

(4) In the cases referred to in subparagraphs (a) and (b) of paragraph (3) where the participating insurance undertaking or reinsurance undertaking or the insurance holding company or mixed financial holding company which has its head office in the European Union is, or is a related undertaking of, a regulated entity or a mixed financial holding company which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, the Bank may, where it is group supervisor, after consulting the other supervisory authorities concerned, decide not to carry out at the level of that undertaking or holding company the supervision of risk concentration referred to in Regulation 245, the supervision of intra-group transactions referred to in Regulation 246, or both.

(5) Where a mixed financial holding company is subject to equivalent provisions under these Regulations and under Directive 2002/87/EC, in particular in terms of risk-based supervision, the Bank may, where it is group supervisor, after consulting the other supervisory authorities concerned, apply only the provisions of Directive 2002/87/EC to that mixed financial holding company.

(6) Where a mixed financial holding company is subject to equivalent provisions under these Regulations and under Directive 2006/48/EC, in particular in terms of risk-based supervision, the Bank may, where it is group supervisor, in agreement with the consolidating supervisor in the banking and investment services sector, apply only the provisions of whichever of these Regulations or that Directive relates to the most significant sector as defined in Article 3(2) of Directive 2002/87/EC.

(7) The Bank shall, where it is group supervisor, inform the EBA and EIOPA of decisions taken under paragraphs (5) and (6).

Scope of group supervision

217. (1) The Bank's role in exercising group supervision in accordance with Regulation 216 does not imply that it is required to play a supervisory role in relation to a third-country insurance undertaking, a third-country reinsurance undertaking, an insurance holding company, a mixed financial holding company

or a mixed-activity insurance holding company taken individually, without prejudice to Regulation 261 as far as insurance holding companies or mixed financial holding companies are concerned.

(2) The Bank may, where it is group supervisor, decide on a case-by-case basis not to include an undertaking in the group supervision referred to in Regulation 216 where—

- (a) the undertaking is situated in a third country where there are legal impediments to the transfer of the necessary information, without prejudice to the provisions of Regulation 232,
- (b) the undertaking which should be included is of negligible interest with respect to the objectives of group supervision, or
- (c) the inclusion of the undertaking would be inappropriate or misleading with respect to the objectives of the group supervision.

(3) However, where several undertakings of the same group, taken individually, may be excluded pursuant to paragraph (2)(b), they must nevertheless be included where, collectively, they are of non-negligible interest.

(4) Where the Bank, as group supervisor, is of the opinion that an insurance undertaking or reinsurance undertaking should not be included in the group supervision under paragraph (2)(b) or (c), it shall consult the other supervisory authorities concerned before taking a decision.

(5) Where the group supervisor excludes an insurance undertaking or reinsurance undertaking from group supervision under Article 214(2)(b) or (c) of the Directive, the Bank may ask the undertaking which is at the head of the group in question for any information which may facilitate its supervision of the insurance undertaking or reinsurance undertaking.

Ultimate parent undertaking at EU level

218. (1) Where a participating insurance undertaking or reinsurance undertaking or an insurance holding company or mixed financial holding company referred to in Regulation 216(3)(a) or (b) is itself a subsidiary undertaking of an insurance undertaking, reinsurance undertaking, insurance holding company or mixed financial holding company which has its head office in a Member State, Regulations 221 to 263 shall apply only at the level of the ultimate parent insurance undertaking, reinsurance undertaking, insurance holding company or mixed financial holding company which has its head office in a Member State.

(2) Where the ultimate parent insurance undertaking, reinsurance undertaking, insurance holding company or mixed financial holding company which has its head office in a Member State is a subsidiary undertaking of an undertaking which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, the Bank may, where it is group supervisor, after consulting the other supervisory authorities concerned, decide not to carry out

at the level of that ultimate parent undertaking the supervision of risk concentration referred to in Regulation 245, the supervision of intra-group transactions referred to in Regulation 246, or both.

Ultimate parent undertaking at national level

219. (1) Subject to paragraph (10), where a participating insurance undertaking or reinsurance undertaking or an insurance holding company or a mixed financial holding company as referred to in Regulation 216(3)(a) and (b) has its head office in the State but the ultimate parent undertaking referred to in Regulation 215 (in this Regulation and Regulation 220 referred to as the “ultimate EU parent”) has its head office in a Member State other than the State, the Bank may decide, after consulting the group supervisor and the ultimate EU parent, to subject to group supervision the ultimate parent insurance undertaking or reinsurance undertaking, insurance holding company or mixed financial holding company at national level (in this Regulation and Regulation 220 referred to as the “national parent”).

(2) In such a case, the Bank shall explain its decision to the group supervisor and the ultimate EU parent.

(3) Regulations 221 to 263 shall apply to group supervision of the national parent, subject to the provisions of this Regulation and to any other necessary modifications.

(4) The Bank may restrict group supervision of the national parent to one or several of the areas covered by Regulations 221 to 247.

(5) Where the Bank decides to apply Regulations 221 to 244 to the national parent, the choice of method made in accordance with Regulation 223 by the group supervisor in respect of the ultimate EU parent shall be recognised as determinative and applied by the Bank.

(6) Where the Bank decides to apply Regulations 221 to 244 to the national parent and where the ultimate EU parent has obtained, in accordance with Regulation 234 or 237(5), permission to calculate the group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model, that decision shall be recognised as determinative and applied by the Bank.

(7) In such a situation however, if the Bank considers that the risk profile of the national parent deviates significantly from the internal model for which permission has been obtained as mentioned in paragraph (6), and for as long as the national parent does not properly address the Bank’s concerns, the Bank may decide to impose a capital add-on to the group Solvency Capital Requirement of the national parent resulting from the application of that model or, in exceptional circumstances where such capital add-on would not be appropriate, to require the national parent to calculate its group Solvency Capital Requirement on the basis of the standard formula.

(8) The Bank shall explain any actions under paragraph (7) to both the national parent and the group supervisor.

(9) Where the Bank decides to apply Regulations 221 to 244 to the national parent, the national parent shall not be permitted to introduce in accordance with Regulation 239 or 244, an application for permission to subject any of its subsidiaries to Regulations 241 and 242.

(10) Paragraph (1) shall not apply where the national parent is a subsidiary undertaking of the ultimate EU parent and the ultimate EU parent has obtained, in accordance with Regulation 240 or 244, permission for the national parent to be subject to Regulations 241 and 242.

(11) Where the Bank is group supervisor of a group and is informed, in accordance with Article 216(1) or (4) of the Directive, of the matters referred to in it, it shall inform the college of supervisors.

Parent undertaking covering several Member States

220. (1) Where the Bank is supervising a national parent in accordance with Regulation 219, it may conclude an agreement with the supervisory authority of another Member State where another related ultimate parent undertaking at national level has its head office, with a view to carrying out group supervision at the level of a subgroup covering the State and that other Member State.

(2) In such a case, the Bank, in conjunction with the supervisory authority referred to in paragraph (1), shall explain their agreement to the group supervisor and the ultimate EU parent.

(3) Where an agreement has been concluded as mentioned in paragraph (1), group supervision shall not be carried out at the level of any ultimate parent undertaking at a national level located in Member States other than the Member State where the subgroup referred to in that paragraph is located.

(4) Regulation 219(4) to (10) shall apply to group supervision at the level of the subgroup referred to in paragraph (1) subject to any necessary modifications.

(5) Where the Bank is group supervisor of a group and is informed, in accordance with Article 217(1) of the Directive, of the matters referred to in it, it shall inform the college of supervisors.

Chapter 2

Financial position

Group solvency

Supervision of group solvency

221. (1) Supervision of group solvency shall be exercised in accordance with paragraphs (2) and (3) and Regulations 247 to 263.

(2) In the case referred to in Regulation 216(3)(a), participating insurance undertakings or reinsurance undertakings shall ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with Regulations 223 to 237.

(3) In the case referred to in Regulation 216(3)(b) insurance undertakings and reinsurance undertakings in a group shall ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with Regulation 238.

(4) Regulations 144 and 146(1) to (9) shall apply subject to any necessary modifications.

(5) Where the Bank is the group supervisor of a group, the Bank shall—

(a) subject the requirements referred to in paragraphs (2) and (3) to supervisory review in accordance with Regulations 248 to 263, and

(b) inform the other supervisory authorities within the college of supervisors on being informed by the participating undertaking that the group Solvency Capital Requirement is no longer complied with or that there is a risk of non-compliance in the following 3 months so that the college of supervisors may analyse the situation of the group.

(6) Despite paragraphs (2) and (3) above, the transitional provisions referred to in Regulations 99 to 101, 109, 118(1), 143, 256 and 259 shall apply, subject to any necessary modifications, at the level of the group.

(7) Despite paragraphs (2), (3), (4) and (5)(a), the transitional provisions referred to in Regulation 147 shall apply, subject to any necessary modifications, at the level of the group where the participating insurance undertaking or reinsurance undertaking or the insurance undertakings and reinsurance undertakings in a group comply with the Adjusted Solvency referred to in Article 9 of Directive 98/78/EC but do not comply with the group Solvency Capital Requirement.

Frequency of calculation

222. (1) The relevant data for, and the results of, the calculations referred to in Regulation 221(2) and (3) shall be submitted to the group supervisor by the participating insurance undertaking or reinsurance undertaking or, where the group is not headed by an insurance undertaking or reinsurance undertaking, by the insurance holding company or the mixed financial holding company or by the undertaking in the group identified by the group supervisor after consulting the other supervisory authorities concerned in the supervision of the group and the group itself.

(2) The insurance undertaking, reinsurance undertaking, insurance holding company or mixed financial holding company shall monitor the group Solvency Capital Requirement on an ongoing basis.

(3) Where the risk profile of the group deviates significantly from the assumptions underlying the last reported group Solvency Capital Requirement, the group Solvency Capital Requirement shall be recalculated without delay and reported to the group supervisor.

(4) Where the Bank is the group supervisor, it shall—

- (a) ensure that the calculations referred to in Regulation 221(2) and (3) are carried out at least annually, by the participating insurance undertaking or reinsurance undertaking, the insurance holding company or the mixed financial holding company, and
- (b) identify the undertaking in the group to provide the information referred to in paragraph (1).

(5) Where the Bank is the group supervisor it may require a recalculation of the group Solvency Capital Requirement where there is evidence to suggest that the risk profile of the group has altered significantly since the date on which the group Solvency Capital Requirement was last reported to it.

Choice of method of calculation

223. (1) The calculation of the solvency at the level of the group of insurance undertakings and reinsurance undertakings referred to in Regulation 216(3)(a) shall be carried out in accordance with the technical principles and one of the methods set out in Regulations 224 to 237.

(2) Subject to paragraph (3), the method for that calculation shall be the accounting consolidation-based method (method 1) as set out in Regulations 233 to 236.

(3) However, the Bank may, where it is the group supervisor of a group, decide, after consulting the other supervisory authorities concerned and the group itself, to apply to that group the deduction and aggregation method (method 2) as set out in Regulation 237, or a combination of both methods 1 and 2, where the exclusive application of method 1 would not be appropriate.

Inclusion of proportional share

224. (1) The calculation of the group solvency shall take account of the proportional share held by a participating undertaking in its related undertakings.

(2) For the purposes of paragraph (1), the proportional share shall comprise either of the following:

- (a) where method 1 is used, the percentages used for the establishment of the consolidated accounts;
- (b) where method 2 is used, the proportion of the subscribed capital that is held, directly or indirectly, by the participating undertaking.

(3) But, regardless of the method used, where the related undertaking is a subsidiary undertaking and does not have sufficient eligible own funds to cover its Solvency Capital Requirement, the total solvency deficit of the subsidiary undertaking shall be taken into account.

(4) Despite paragraph (3), the Bank may, where it is the group supervisor, allow for the solvency deficit of the subsidiary undertaking to be taken into account on a proportional basis where in the opinion of the supervisory authorities concerned in the supervision of that group, the responsibility of the

parent undertaking owning a share of the capital is strictly limited to that share of the capital.

(5) The Bank, where it is the group supervisor, shall determine, after consulting the other supervisory authorities concerned and the group itself, the proportional share which shall be taken into account in the following cases:

- (a) where there are no capital ties between some of the undertakings in a group;
- (b) where a supervisory authority has determined that the holding, directly or indirectly, of voting rights or capital in an undertaking qualifies as a participation because, in its opinion, a significant influence is effectively exercised over that undertaking;
- (c) where a supervisory authority has determined that an undertaking is a parent undertaking of another because, in its opinion, it effectively exercises a dominant influence over that other undertaking.

Elimination of double use of eligible own funds

225. (1) The double use of own funds eligible for the Solvency Capital Requirement shall not be allowed among the different insurance undertakings or reinsurance undertakings taken into account in the calculation of group solvency.

(2) For that purpose, when calculating the group solvency and where the methods described in Regulations 233 to 237 do not provide for it, the following amounts shall be excluded:

- (a) the value of any asset of the participating insurance undertaking or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of one of its related insurance undertakings or reinsurance undertakings;
- (b) the value of any asset of a related insurance undertaking or reinsurance undertaking of the participating insurance undertaking or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of that participating insurance undertaking or reinsurance undertaking;
- (c) the value of any asset of a related insurance undertaking or reinsurance undertaking of the participating insurance undertaking or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of any other related insurance undertaking or reinsurance undertaking of that participating insurance undertaking or reinsurance undertaking.

(3) Without prejudice to paragraphs (1) and (2), the following may be included in the group solvency calculation only in so far as they are eligible for covering the Solvency Capital Requirement of the related undertaking concerned:

- (a) surplus funds falling under Regulation 106(2) arising in a related life insurance undertaking or reinsurance undertaking of the participating insurance undertaking or reinsurance undertaking for which the group solvency is calculated;
 - (b) any subscribed but not paid-up capital of a related insurance undertaking or reinsurance undertaking of the participating insurance undertaking or reinsurance undertaking for which the group solvency is calculated.
- (4) But the following shall in any event be excluded from the calculation:
- (a) subscribed but not paid-up capital which represents a potential obligation on the part of the participating undertaking;
 - (b) subscribed but not paid-up capital of the participating insurance undertaking or reinsurance undertaking which represents a potential obligation on the part of a related insurance undertaking or reinsurance undertaking;
 - (c) subscribed but not paid-up capital of a related insurance undertaking or reinsurance undertaking which represents a potential obligation on the part of another related insurance undertaking or reinsurance undertaking of the same participating insurance undertaking or reinsurance undertaking.
- (5) Where the Bank or other supervisory authorities concerned in the supervision of that group consider that certain own funds eligible for the Solvency Capital Requirement of a related insurance undertaking or reinsurance undertaking other than those referred to in paragraphs (3) and (4) cannot effectively be made available to cover the Solvency Capital Requirement of the participating insurance undertaking or reinsurance undertaking for which the group solvency is calculated, those own funds may be included in the calculation only in so far as they are eligible for covering the Solvency Capital Requirement of the related undertaking.
- (6) The sum of the own funds referred to in paragraphs (3) and (5) shall not exceed the Solvency Capital Requirement of the related insurance undertaking or reinsurance undertaking.
- (7) Any eligible own funds of a related insurance undertaking or reinsurance undertaking of the participating insurance undertaking or reinsurance undertaking for which the group solvency is calculated that are subject to prior authorisation from the supervisory authority of that related undertaking in accordance with Regulation 105 shall be included in the calculation only in so far as they have been duly authorised by that supervisory authority.

Elimination of the intra-group creation of capital

226. (1) When calculating group solvency no account shall be taken of any own funds eligible for the Solvency Capital Requirement arising out of reciprocal financing between the participating insurance undertaking or reinsurance undertaking and any of the following:

- (a) a related undertaking;
- (b) a participating undertaking;
- (c) another related undertaking of any of its participating undertakings.

(2) When calculating group solvency, no account shall be taken of any own funds eligible for the Solvency Capital Requirement of a related insurance undertaking or reinsurance undertaking of the participating insurance undertaking or reinsurance undertaking for which the group solvency is calculated where the own funds concerned arise out of reciprocal financing with any other related undertaking of that participating insurance undertaking or reinsurance undertaking.

(3) Reciprocal financing includes, but is not limited to, circumstances where an insurance undertaking or reinsurance undertaking, or any of its related undertakings, holds shares in, or makes loans to, another undertaking which, directly or indirectly, holds own funds eligible for the Solvency Capital Requirement of the first undertaking.

Valuation

227. The value of the assets and liabilities shall be assessed in accordance with Regulation 82.

Related insurance undertakings and reinsurance undertakings

228. (1) Where an insurance undertaking or reinsurance undertaking has more than one related insurance undertaking or reinsurance undertaking, the group solvency calculation shall be carried out by including each of those related insurance undertakings or reinsurance undertakings.

(2) Where the Bank is the group supervisor and a related insurance undertaking or reinsurance undertaking has its head office in a Member State other than the State, the Bank shall allow the calculation to take account, in respect of the related undertaking, of the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as prescribed by the law of that other Member State unless, in the opinion of the Bank, there is a significant change to the law of that other Member State and it would not be in the interests of policyholders to do so.

Intermediate insurance holding companies

229. (1) When calculating the group solvency of an insurance undertaking or reinsurance undertaking which holds a participation in a related insurance undertaking, a related reinsurance undertaking, a third-country insurance undertaking or a third-country reinsurance undertaking through an insurance holding company or a mixed financial holding company, the situation of the insurance

holding company or mixed financial holding company shall be taken into account.

(2) For the sole purpose of that calculation, the intermediate insurance holding company or intermediate mixed financial holding company shall be treated as if it were an insurance undertaking or reinsurance undertaking subject to the rules laid down in Regulations 113 to 138 in respect of the Solvency Capital Requirement and were subject to the same conditions as are laid down in Regulations 102 to 112 in respect of own funds eligible for the Solvency Capital Requirement.

(3) In cases where an intermediate insurance holding company or an intermediate mixed financial holding company holds subordinated debt or other eligible own funds subject to limitation in accordance with Regulation 112, they shall be recognised as eligible own funds up to the amounts calculated by application of the limits set out in that Regulation to the total eligible own funds outstanding at group level as compared to the Solvency Capital Requirement at group level.

(4) Any eligible own funds of an intermediate insurance holding company or an intermediate mixed financial holding company which would require prior authorisation from a supervisory authority in accordance with Article 90 of the Directive if they were held by an insurance undertaking or reinsurance undertaking may be included in the calculation of the group solvency only in so far as they have been duly authorised by the group supervisor.

(5) The Bank, where it is the group supervisor of a group, may authorise the eligible own funds referred to in paragraph (4) to be included in the calculation of group solvency.

Equivalence concerning related third-country insurance undertakings and reinsurance undertakings

230. (1) When calculating, in accordance with Regulation 237, the group solvency of an insurance undertaking or reinsurance undertaking which is a participating undertaking in a third-country insurance undertaking or third-country reinsurance undertaking, the latter shall, solely for the purposes of that calculation, be treated as a related insurance undertaking or reinsurance undertaking.

(2) However, if the law of the third country in which that undertaking has its head office—

- (a) requires the undertaking to be licensed, registered or otherwise authorised, and
- (b) imposes on it a solvency regime at least equivalent to that laid down in Regulations 82 to 143,

the Bank, where it is group supervisor, shall permit the calculation referred to in paragraph (1) to take into account, as regards that undertaking, the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as prescribed by that law unless, in the opinion of the Bank, there is a significant

change to the law of that third country and it would not be in the interests of policyholders to do so.

(3) Subject to paragraph (8), the law of a third country shall not be taken to impose a solvency regime at least equivalent to that laid down in Regulations 82 to 143 unless verified by the group supervisor.

(4) Where the Bank is the group supervisor, it shall, on its own initiative or at the request of the participating undertaking, verify whether the law of the third country imposes a solvency regime at least equivalent to that laid down in Regulations 82 to 143.

(5) In so doing, the Bank shall, assisted by EIOPA, consult the other supervisory authorities concerned before taking its decision on equivalence.

(6) The Bank shall take its decision in accordance with the criteria adopted in accordance with Article 227(3) of the Directive.

(7) The Bank shall not take any decision in relation to a third country that contradicts any decision previously taken in respect of that third country except where it is necessary to take into account significant changes to the supervisory regime laid down in Regulations 82 to 143 or to the supervisory regime in that third country.

(8) Where the Commission adopts a decision in accordance with Article 227(4) or (5) of the Directive on equivalence of the solvency regime in the third country, that regime shall be considered equivalent for the purposes of paragraph (2) and paragraphs (3) to (7) shall not apply.

Related credit institutions, investment firms and financial institutions

231. (1) When calculating the group solvency of an insurance undertaking or reinsurance undertaking which is a participating undertaking in a credit institution, investment firm or financial institution, the participating insurance undertaking or reinsurance undertaking may apply method 1 or 2 set out in Annex I to Directive 2002/87/EC with any necessary modifications.

(2) However, method 1 set out in that Annex may be applied only with the permission of the group supervisor.

(3) Where the Bank is the group supervisor, it shall permit the application of method 1 where it is satisfied as to the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation.

(4) The method chosen shall be applied in a consistent manner over time.

(5) The Bank may, where it is the group supervisor, decide, at the request of the participating undertaking or on its own initiative, to deduct any participation as referred to in paragraph (1) from the own funds eligible for the group solvency of the participating undertaking.

Non-availability of necessary information

232. (1) Where the information necessary for calculating the group solvency of an insurance undertaking or reinsurance undertaking, concerning a related undertaking with its head office in a Member State or a third country is not available, the book value of that undertaking in the participating insurance undertaking or reinsurance undertaking shall be deducted from the own funds eligible for the group solvency.

(2) In that case, the unrealised gains connected with such participation shall not be recognised as own funds eligible for the group solvency.

Calculation method 1 (default method): accounting consolidation-based method

233. (1) The calculation of the group solvency of a participating insurance undertaking or reinsurance undertaking shall be carried out on the basis of its consolidated accounts.

(2) The group solvency of a participating insurance undertaking or reinsurance undertaking is the difference between the following:

- (a) the own funds eligible to cover the Solvency Capital Requirement, calculated on the basis of consolidated data;
- (b) the Solvency Capital Requirement at group level calculated on the basis of consolidated data.

(3) The rules laid down in Regulations 102 to 138 shall apply for the calculation of the own funds eligible for the Solvency Capital Requirement and of the Solvency Capital Requirement at group level based on consolidated data.

(4) The Solvency Capital Requirement at group level based on consolidated data (consolidated group Solvency Capital Requirement) shall be calculated on the basis of either the standard formula or an approved internal model, in a manner consistent with the general principles contained in Regulations 113 to 138.

(5) The consolidated group Solvency Capital Requirement shall have as a minimum the sum of the following:

- (a) the Minimum Capital Requirement as referred to in Regulation 140 of the participating insurance undertaking or reinsurance undertaking;
- (b) the proportional share of the Minimum Capital Requirement of the related insurance undertakings and reinsurance undertakings.

(6) That minimum shall be covered by eligible basic own funds as determined in Regulation 112(6).

(7) For the purposes of determining whether such eligible own funds qualify to cover the minimum consolidated group Solvency Capital Requirement, the principles set out in Regulations 224 to 232 shall apply subject to any necessary modifications.

(8) Regulation 148(1) and (2) shall also apply subject to any necessary modifications.

Group internal model

234. (1) An application for permission to calculate the consolidated group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance undertakings and reinsurance undertakings in the group, on the basis of an internal model, may be submitted by an insurance undertaking or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company or a mixed financial holding company to the group supervisor.

(2) The supervisory authorities concerned shall co-operate to decide on the permission and any terms and conditions of it.

(3) The Bank shall do everything in its power to reach a joint decision on the application with the other supervisory authorities concerned within 6 months from the date of receipt of the application by the group supervisor.

(4) Where the Bank is the group supervisor, it shall—

- (a) inform the other members of the college of supervisors and forward the complete application to them without delay,
- (b) where a joint decision is reached in accordance with paragraph (3), provide the applicant with a document setting out the fully reasoned decision,
- (c) in the absence of a joint decision within the period referred to in paragraph (3), make its own decision on the application and in doing so—
 - (i) take into account any views and reservations of the other supervisory authorities concerned expressed during the 6 month period referred to in paragraph (3), and
 - (ii) provide the applicant and the other supervisory authorities concerned with a document setting out its fully reasoned decision.

(5) Despite paragraph (3) and subject to paragraph (6), where any of the supervisory authorities concerned refers the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010 within the 6 month period referred to in paragraph (3), the Bank, where it is the group supervisor, shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's decision.

(6) Where, for the purposes of paragraph (5), in accordance with Articles 41(2) and (3) and 44(1)(3) of Regulation (EU) No 1094/2010, the decision proposed by the panel (as referred to in those Articles) is rejected, the Bank, where it is the group supervisor, shall take the final decision.

(7) The Bank shall not refer the matter of a group internal model to EIOPA after the end of the 6 month period referred to in paragraph (3) or after a joint decision has been reached.

(8) The Bank shall recognise as determinative and apply a decision taken by a supervisory authority other than the Bank, as group supervisor, in accordance with Article 231 of the Directive.

(9) Where the Bank is a member of the college of supervisors and it considers that the risk profile of an insurance undertaking or reinsurance undertaking under its supervision deviates significantly from the assumptions underlying the internal model approved at group level, and as long as that undertaking has not properly addressed its concerns, the Bank may, in accordance with Regulation 39, impose a capital add-on to the Solvency Capital Requirement of that insurance undertaking or reinsurance undertaking resulting from the application of such internal model.

(10) In exceptional circumstances, where such capital add-on would not be appropriate, the Bank may require the undertaking concerned to calculate its Solvency Capital Requirement on the basis of the standard formula referred to in Regulations 113 to 124.

(11) In accordance with Regulation 39(2)(a) or (c), the Bank may impose a capital add-on to the Solvency Capital Requirement of that insurance undertaking or reinsurance undertaking resulting from the application of the standard formula.

(12) The Bank shall explain any decision under paragraph (9), (10) or (11) to both the insurance undertaking or reinsurance undertaking and the other members of the college of supervisors.

Transitional measure on partial internal group model

235. Until 31 March 2022, the ultimate parent insurance undertaking or reinsurance undertaking may apply to the Bank for approval of an internal group model applicable to a part of the group where—

- (a) both the undertaking and the ultimate parent undertaking are located in the same Member State, and
- (b) that part of the group forms a distinct part having a significantly different risk profile from the rest of the group.

Group capital add-on

236. (1) In determining whether the consolidated group Solvency Capital Requirement appropriately reflects the risk profile of the group, the Bank, where it is the group supervisor, shall pay particular attention to any case where the circumstances referred to in Regulation 39(2)(a) to (d) may arise at group level, in particular where—

- (a) a specific risk existing at group level would not be sufficiently covered by the standard formula or the internal model used, because it is difficult to quantify, or
- (b) a capital add-on to the Solvency Capital Requirement of the related insurance undertakings or reinsurance undertakings is imposed by the supervisory authorities concerned, in accordance with Article 37 or 231(7) of the Directive.

(2) Where the risk profile of the group is not adequately reflected, the Bank may impose a capital add-on to the consolidated group Solvency Capital Requirement.

(3) For the purposes of paragraph (2), Regulation 39, together with any measures adopted in accordance with Article 37(6), (7) and (8) of the Directive, shall apply subject to any necessary modifications.

Calculation method 2 (alternative method): deduction and aggregation method

237. (1) The group solvency of a participating insurance undertaking or reinsurance undertaking shall be the difference between—

- (a) the aggregated group eligible own funds, as provided for in paragraph (2), and
- (b) the value in the participating insurance undertaking or reinsurance undertaking of the related insurance undertakings or reinsurance undertakings and the aggregated group Solvency Capital Requirement, as provided for in paragraph (3).

(2) The aggregated group eligible own funds are the sum of—

- (a) the own funds eligible for the Solvency Capital Requirement of the participating insurance undertaking or reinsurance undertaking, and
- (b) the proportional share of the participating insurance undertaking or reinsurance undertaking in the own funds eligible for the Solvency Capital Requirement of the related insurance undertakings or reinsurance undertakings.

(3) The aggregated group Solvency Capital Requirement is the sum of—

- (a) the Solvency Capital Requirement of the participating insurance undertaking or reinsurance undertaking, and
- (b) the proportional share of the Solvency Capital Requirement of the related insurance undertakings or reinsurance undertakings.

(4) Where the participation in a related insurance undertaking or reinsurance undertaking consists, wholly or in part, of an indirect ownership, the value in the participating insurance undertaking or reinsurance undertaking of the related insurance undertakings or reinsurance undertakings shall incorporate the value of such indirect ownership, taking into account the relevant successive interests,

and the items referred to in paragraphs (2)(b) and (3)(b) shall include the corresponding proportional shares, respectively, of the own funds eligible for the Solvency Capital Requirement of the related insurance undertakings or reinsurance undertakings and of the Solvency Capital Requirement of the related insurance undertakings or reinsurance undertakings.

(5) In the case of an application for permission to calculate the Solvency Capital Requirement of insurance undertakings and reinsurance undertakings in a group on the basis of an internal model submitted by an insurance undertaking or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company, or a mixed financial holding company, Regulation 234 shall apply subject to any necessary modifications.

(6) In determining whether the aggregated group Solvency Capital Requirement, calculated as set out in paragraph (3), appropriately reflects the risk profile of a group, the Bank shall pay particular attention to any specific risks existing at group level which would not be sufficiently covered, because they are difficult to quantify.

(7) The Bank may, where it is the group supervisor, impose a capital add-on to the aggregated group Solvency Capital Requirement where the risk profile of a group deviates significantly from the assumptions underlying the aggregated group Solvency Capital Requirement.

(8) For the purposes of paragraph (7), Regulation 39, together with implementing measures taken in accordance with Article 37(6), (7) and (8) of the Directive, shall apply subject to any necessary modifications.

Group solvency of insurance holding company or mixed financial holding company

238. (1) Where insurance undertakings and reinsurance undertakings are subsidiaries of an insurance holding company or a mixed financial holding company, the Bank, where it is the group supervisor, shall ensure that the calculation of the solvency of the group is carried out at the level of the insurance holding company or mixed financial holding company applying Regulations 223(2) to 237.

(2) For the purpose of that calculation, the parent undertaking shall be treated as if it were an insurance undertaking or reinsurance undertaking subject to the rules laid down in Regulations 113 to 138 as regards the Solvency Capital Requirement and subject to the same conditions as laid down in Regulations 102 to 112 as regards the own funds eligible for the Solvency Capital Requirement.

Subsidiaries of insurance or reinsurance undertaking: conditions

239. Regulations 241 and 242 apply to any insurance undertaking or reinsurance undertaking which is a subsidiary undertaking of another insurance undertaking or reinsurance undertaking and where all of the following conditions are met:

- (a) the subsidiary undertaking has not been the subject of a decision under Article 214(2) of the Directive and is included in the group supervision carried out by the group supervisor at the level of the parent undertaking in accordance with this Part;
- (b) the risk-management processes and internal control mechanisms of the parent undertaking cover the subsidiary undertaking and the parent undertaking satisfies the supervisory authorities concerned regarding the prudent management of the subsidiary undertaking;
- (c) the parent undertaking has received the agreement referred to in the third subparagraph of Article 246(4) of the Directive regarding the undertaking of an own risk and solvency assessment at the level of the group and the subsidiary undertaking at the same time;
- (d) the parent undertaking has received the agreement referred to in Article 256(2) of the Directive regarding a single solvency and financial condition report;
- (e) an application for permission to be subject to Regulations 241 and 242 has been submitted by the parent undertaking and a favourable decision has been made on such application in accordance with the procedure set out in Regulation 240.

Subsidiaries of insurance or reinsurance undertaking: decision on application

240. (1) Where an application is made for permission to be subject to the rules laid down in Regulations 241 and 242 or rules laid down in another Member State equivalent to those Regulations, the Bank shall co-operate fully with the supervisory authorities concerned within the college of supervisors, to decide whether or not to grant the permission sought and to determine the other terms and conditions, if any, to which such permission should be subject.

(2) An application may be submitted to the Bank if it authorised the subsidiary undertaking concerned.

(3) An application shall be submitted by the parent undertaking of the subsidiary undertaking.

(4) Where the Bank receives an application it shall inform other members of the college of supervisors and forward the complete application to them, without delay.

(5) The Bank shall do everything within its power to reach a joint decision on the application with the other supervisory authorities concerned within 3 months from the date of receipt of the application by all supervisory authorities within the college of supervisors.

(6) Where a joint decision is reached in accordance with paragraph (5) in respect of an application, the Bank shall provide the applicant with the decision stating the full reasons.

(7) Where the Bank is the group supervisor, it shall, in the absence of a joint decision within the period referred to in paragraph (5), make its own decision on the application and in doing so shall—

- (a) take into account any views and reservations of the supervisory authorities concerned, and any reservations of the other supervisory authorities within the college of supervisors, which were expressed during the 3 month period referred to in paragraph (5), and
- (b) provide the applicant and the other supervisory authorities concerned with a document setting out its fully reasoned decision.

(8) Despite paragraph (5) and subject to paragraph (9), where any of the supervisory authorities concerned refers the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010 within the 3 month period referred to in paragraph (5), the Bank, where it is the group supervisor, shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and the Bank shall take its decision in conformity with EIOPA's decision.

(9) Where, for the purposes of paragraph (8), in accordance with Articles 41(2) and (3) and 44(1)(3) of Regulation (EU) No 1094/2010, the decision proposed by the panel (as referred to in those Articles) is rejected, the Bank shall take the final decision.

(10) The Bank shall not refer the matter to EIOPA after the end of the 3 month period referred to in paragraph (5) or after a joint decision has been reached.

(11) The Bank shall recognise as determinative and apply a decision taken in accordance with Article 237 of the Directive.

Subsidiaries of insurance or reinsurance undertaking: determination of Solvency Capital Requirement

241. (1) Without prejudice to Regulation 234, the Solvency Capital Requirement of a subsidiary undertaking approved under Regulation 240 shall be calculated as set out in this Regulation.

(2) Where—

- (a) the Solvency Capital Requirement of the subsidiary undertaking is calculated on the basis of an internal model approved at group level in accordance with Regulation 234,
- (b) the Bank, as the supervisory authority which authorised the subsidiary undertaking considers that its risk profile deviates significantly from that internal model, and
- (c) that undertaking does not properly address the concerns of the Bank,

the Bank may, in the cases referred to in Regulation 39, propose to set a capital add-on to the Solvency Capital Requirement of the subsidiary undertaking resulting from the application of that model or, in exceptional circumstances where such capital add-on would not be appropriate, require the undertaking to calculate its Solvency Capital Requirement on the basis of the standard formula.

(3) The Bank shall discuss its proposal under paragraph (2) within the college of supervisors and communicate the grounds for such proposals to both the subsidiary undertaking and the college of supervisors.

(4) Where—

(a) the Solvency Capital Requirement of the subsidiary undertaking is calculated on the basis of the standard formula,

(b) the Bank, as the supervisory authority which authorised the subsidiary undertaking considers that its risk profile deviates significantly from the assumptions underlying the standard formula, and

(c) the undertaking does not properly address the concerns of the Bank,

the Bank may, in exceptional circumstances, propose that the undertaking replace a subset of the parameters used in the standard formula calculation by parameters specific to that undertaking when calculating the life, non-life and health underwriting risk modules, as set out in Regulation 124 or, in the cases referred to in Regulation 39, set a capital add-on to the Solvency Capital Requirement of the subsidiary undertaking.

(5) The Bank shall discuss its proposal under paragraph (4) within the college of supervisors and communicate the grounds for such proposal to both the subsidiary undertaking and the college of supervisors.

(6) The Bank shall do everything within its power to reach an agreement with the college of supervisors on the proposal or on other possible measures.

(7) That agreement shall be recognised as determinative and shall be applied by the Bank.

(8) Where the supervisory authority and the group supervisor (either of which may be the Bank) disagree, either of them may, within one month from the making of the proposal referred to in paragraph (2) or (4) and before an agreement has been reached in accordance with paragraph (6), refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

(9) The Bank, as the supervisory authority which authorised the subsidiary undertaking, shall defer its decision and await any decision that EIOPA may take in accordance with Article 19, as referred to in paragraph (8), and shall take its decision in conformity with EIOPA's decision.

(10) The Bank shall provide the subsidiary undertaking and the college of supervisors with a document setting out its fully reasoned decision.

(11) The Bank shall recognise as determinative and apply a decision taken in accordance with Article 238 of the Directive.

Subsidiaries of an insurance or reinsurance undertaking: non-compliance with the Solvency and Minimum Capital Requirements

242. (1) In the event of non-compliance with the Solvency Capital Requirement and without prejudice to Regulation 146, the Bank, as the supervisory authority which authorised the subsidiary undertaking, shall, without delay, forward to the college of supervisors the recovery plan submitted by the subsidiary undertaking in order to achieve, within 6 months from the observation of non-compliance with the Solvency Capital Requirement, the re-establishment of the level of eligible own funds or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement.

(2) The Bank shall do everything within its power to reach an agreement with the college of supervisors on the proposal regarding the approval of the recovery plan within 4 months from the date on which non-compliance with the Solvency Capital Requirement was first observed.

(3) In the absence of such agreement, the Bank, as the supervisory authority which authorised the subsidiary undertaking, shall decide whether the recovery plan should be approved, taking due account of the views and reservations of the other supervisory authorities within the college of supervisors.

(4) Where the Bank, as the supervisory authority which authorised the subsidiary undertaking, identifies, in accordance with Regulation 144, deteriorating financial conditions, it shall notify the college of supervisors without delay of the proposed measures to be taken; and, except in emergency situations, the measures to be taken shall be discussed within the college of supervisors.

(5) The Bank shall do everything within its power to reach an agreement with the college of supervisors on the proposed measures to be taken within one month of notification.

(6) In the absence of such agreement, the Bank, as the supervisory authority which authorised the subsidiary undertaking, shall decide whether the proposed measures should be approved, taking due account of the views and reservations of the other supervisory authorities within the college of supervisors.

(7) In the event of non-compliance with the Minimum Capital Requirement and without prejudice to Regulation 148, the Bank, as the supervisory authority which authorised the subsidiary undertaking, shall, without delay, forward to the college of supervisors the short-term finance scheme submitted by the subsidiary undertaking in order to achieve, within 3 months from the date on which non-compliance with the Minimum Capital Requirement was first observed, the re-establishment of the level of eligible own funds covering the Minimum Capital Requirement or the reduction of its risk profile to ensure compliance with the Minimum Capital Requirement.

(8) The college of supervisors shall also be informed of any measures taken to enforce the Minimum Capital Requirement at the level of the subsidiary undertaking.

(9) Where the supervisory authority and the group supervisor, either of which may be the Bank, disagree regarding—

- (a) the approval of the recovery plan, including any extension of the recovery period, within the 4 month period referred to in paragraph (2), or
- (b) the approval of the proposed measures, within the one month period referred to in paragraph (5),

either of them may, subject to paragraph (10), refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

(10) The matter shall not be referred to EIOPA—

- (a) after the end of the period referred to in paragraph (9)(a) or (b),
- (b) after an agreement has been reached within the college of supervisors in accordance with paragraph (2) or (5) as appropriate, or
- (c) in the case of emergency situations as referred to in paragraph (4).

(11) The Bank, as the supervisory authority which authorised the subsidiary undertaking, shall defer its decision and await any decision that EIOPA may take in accordance with Article 19 of Regulation (EU) No 1094/2010 and shall take its decision in conformity with EIOPA's decision.

(12) The Bank shall provide the subsidiary undertaking and the college of supervisors with a document setting out its fully reasoned decision.

(13) The Bank shall recognise as determinative and apply a decision taken in accordance with Article 239 of the Directive.

Subsidiaries of insurance or reinsurance undertaking: end of derogations for subsidiary

243. (1) The rules provided for in Regulations 241 and 242 shall cease to apply where—

- (a) the condition referred to in Regulation 239(a) is no longer complied with;
- (b) the condition referred to in Regulation 239(b) is no longer complied with and the group does not restore compliance with this condition in an appropriate period of time;
- (c) the conditions referred to in Regulation 239(c) and (d) are no longer complied with.

(2) In the case referred to in paragraph (1)(a), where the Bank, as the group supervisor of a group, decides, after consulting the college of supervisors, no longer to include the subsidiary undertaking in the group supervision it carries out, it shall immediately inform the supervisory authority concerned and the parent undertaking.

(3) For the purposes of Regulation 239(b), (c) and (d) the parent undertaking shall be responsible for ensuring that the conditions are complied with on an ongoing basis and, in the event of non-compliance, it shall inform the group supervisor and the supervisor of the subsidiary undertaking concerned without delay and shall present a plan to restore compliance within an appropriate period of time.

(4) Without prejudice to paragraph (3), the Bank, where it is the group supervisor, shall verify at least annually, on its own initiative, that the conditions referred to in Regulation 239(b), (c) and (d) continue to be complied with and shall also perform such verification upon request from the supervisory authority concerned, where the latter has significant concerns related to the ongoing compliance with those conditions.

(5) Where a verification performed identifies weaknesses, the Bank, as group supervisor, shall require the parent undertaking to present a plan to restore compliance within an appropriate period of time.

(6) Where, after consulting the college of supervisors, the Bank, as group supervisor, determines that the plan referred to in paragraph (3) or (5) is insufficient or subsequently that it is not being implemented within the agreed period of time, the Bank shall conclude that the conditions referred to in Regulation 239(b), (c) and (d) are no longer complied with and it shall immediately inform the supervisory authority concerned.

(7) The regime provided for in Regulations 241 and 242 shall be applicable again where the parent undertaking submits a new application and obtains a favourable decision in accordance with the procedure set out in Regulation 240.

Subsidiaries of an insurance holding company or mixed financial holding company

244. Regulations 239 to 243 shall apply to insurance undertakings and reinsurance undertakings which are subsidiaries of an insurance holding company or a mixed financial holding company subject to any necessary modifications.

Risk concentration and intra-group transactions

Supervision of risk concentration

245. (1) Supervision of the risk concentration at group level shall be exercised in accordance with this Regulation and Regulations 247 to 263.

(2) An insurance undertaking, reinsurance undertaking, insurance holding company or mixed financial holding company shall report to the group supervisor on a regular basis and at least annually any significant risk concentration at the level of the group unless Regulation 218(2) applies.

(3) The necessary information shall be submitted to the group supervisor by the insurance undertaking or reinsurance undertaking which is at the head of the group or, where the group is not headed by an insurance undertaking or reinsurance undertaking, by the insurance holding company, the mixed financial holding company or the insurance undertaking or reinsurance undertaking in the group identified by the group supervisor after consulting the other supervisory authorities concerned and the group.

(4) Where the Bank is the group supervisor, it shall—

- (a) identify the undertaking in the group to provide the information referred to in paragraph (3),
- (b) identify the type of risks which insurance undertakings and reinsurance undertakings in the group shall report in all circumstances,
- (c) impose appropriate thresholds based on solvency capital requirements, technical provisions, or both, in order to identify significant risk concentrations which should be reported, and
- (d) subject the risk concentrations to supervisory review and, in particular, monitor the possible risk of contagion in the group, the risk of a conflict of interests and the level or volume of risks.

(5) The Bank shall consult the other supervisory authorities concerned and the group before complying with paragraph (4)(a) to (c).

(6) When defining or giving its opinion about the type of risks that must be reported, the Bank, as group supervisor or as another supervisory authority concerned, shall take into account the specific group and risk-management structure of the group.

Supervision of intra-group transactions

246. (1) Supervision of intra-group transactions shall be exercised in accordance with this Regulation and Regulations 247 to 263.

(2) An insurance undertaking, reinsurance undertaking, insurance holding company or mixed financial holding company shall report to the group supervisor on a regular basis and at least annually all significant intra-group transactions by insurance undertakings and reinsurance undertakings within the group, including those performed with a natural person with close links to an undertaking in the group, unless Regulation 218(2) applies, and, in addition, very significant intra-group transactions shall be reported as soon as practicable.

(3) The necessary information shall be submitted to the group supervisor by the insurance undertaking or reinsurance undertaking which is at the head of the group or, where the group is not headed by an insurance undertaking or reinsurance undertaking, by the insurance holding company, the mixed financial holding company or the insurance undertaking or reinsurance undertaking in the group identified by the group supervisor after consulting the other supervisory authorities concerned and the group.

- (4) Where the Bank is the group supervisor, it shall—
- (a) identify the undertaking in the group to provide the information referred to in paragraph (3),
 - (b) identify the type of intra-group transactions which insurance undertakings and reinsurance undertakings in the group shall report in all circumstances,
 - (c) impose appropriate thresholds based on solvency capital requirements, technical provisions, or both, in order to identify intra-group transactions which should be reported, and
 - (d) subject the intra-group transactions to supervisory review and, in particular, monitor the possible risk of contagion in the group, the risk of a conflict of interests and the level or volume of risks.
- (5) The Bank shall consult the other supervisory authorities concerned and the group before complying with paragraph (4)(a) to (c).
- (6) When defining or giving its opinion about the type of intra-group transactions that must be reported, the Bank, as group supervisor or as another supervisory authority concerned, shall take into account the specific group and risk-management structure of the group.

Risk management and internal control

Supervision of system of governance

247. (1) The requirements set out in Regulations 44 to 51 shall apply at the level of the group subject to any necessary modifications.
- (2) Without prejudice to paragraph (1), the risk management and internal control systems and reporting procedures shall be implemented consistently in all the undertakings included in the scope of group supervision pursuant to Regulation 216(3)(a) and (b) so that those systems and reporting procedures can be controlled at the level of the group.
- (3) Without prejudice to paragraphs (1) and (2), the group internal control mechanisms shall include at least the following:
- (a) adequate mechanisms as regards group solvency to identify and measure all material risks incurred and to appropriately relate eligible own funds to risks;
 - (b) sound reporting and accounting procedures to monitor and manage the intra-group transactions and the risk concentration.
- (4) A participating insurance undertaking or reinsurance undertaking, insurance holding company or mixed financial holding company shall undertake the own risk and solvency assessment required by Regulation 47 at the level of the group.

(5) Where the calculation of the solvency at the level of the group is carried out in accordance with method 1, as referred to in Regulation 233, the participating insurance undertaking or reinsurance undertaking, the insurance holding company or the mixed financial holding company shall provide to the group supervisor a proper understanding of the difference between the sum of the Solvency Capital Requirements of all the related insurance undertakings or reinsurance undertakings of the group and the group consolidated Solvency Capital Requirement.

(6) Where the Bank is the group supervisor—

- (a) it shall subject the systems and reporting procedures referred to in paragraphs (1) to (3) to supervisory review, in accordance with the rules laid down in Regulations 248 to 263,
- (b) it shall subject the own-risk and solvency assessment conducted at group level to supervisory review in accordance with those Regulations, and
- (c) it may permit the participating insurance undertaking or reinsurance undertaking, insurance holding company or mixed financial holding company to undertake any assessments required by Regulation 47 at the level of the group and at the level of any subsidiary undertaking in the group at the same time, and to produce a single document covering all the assessments.

(7) Before granting permission in accordance with paragraph (6)(c), the Bank shall consult the members of the college of supervisors and duly take into account their views or reservations.

(8) Where the group obtains permission in accordance with paragraph (6)(c), it shall submit the document to all supervisory authorities concerned at the same time.

(9) A permission under paragraph (6)(c) shall not exempt the subsidiaries concerned from the obligation to ensure that the requirements of Regulation 47 are met.

Chapter 3

Measures to facilitate group supervision

Group supervisor

248. (1) A single supervisor, responsible for co-ordination and exercise of group supervision (in this Chapter referred to as the “group supervisor”), shall be designated from among the supervisory authorities of the Member States concerned in the supervision of a group.

(2) The Bank shall be the group supervisor where all insurance undertakings and reinsurance undertakings in the group are authorised by the Bank.

- (3) Where paragraph (2) does not apply and subject to paragraphs (4) to (10), the Bank shall be the group supervisor—
- (a) where the group is headed by an insurance undertaking or reinsurance undertaking and that undertaking is authorised by the Bank, or
 - (b) where the group is not headed by an insurance undertaking or reinsurance undertaking and—
 - (i) the parent of an insurance undertaking or reinsurance undertaking is an insurance holding company or a mixed financial holding company and that insurance undertaking or reinsurance undertaking is authorised by the Bank,
 - (ii) there are 2 or more insurance undertakings or reinsurance undertakings in the group which have as their parent the same insurance holding company or mixed financial holding company with its head office in the State and one of those insurance undertakings or reinsurance undertakings is authorised by the Bank,
 - (iii) the group is headed by 2 or more insurance holding companies or mixed financial holding companies each with its head office in different Member States, there is an insurance undertaking or reinsurance undertaking in each of those Member States and the insurance undertaking or reinsurance undertaking with the largest balance sheet total is authorised by the Bank,
 - (iv) there are 2 or more insurance undertakings or reinsurance undertakings in the group which have as their parent the same insurance holding company or mixed financial holding company, none of those undertakings has been authorised in the Member State in which the insurance holding company or mixed financial holding company has its head office and the insurance undertaking or reinsurance undertaking with the largest balance sheet total is authorised by the Bank, or
 - (v) the group is a group without a parent undertaking or, in any circumstances not referred to in subparagraphs (i) to (iv), the insurance undertaking or reinsurance undertaking with the largest balance sheet total is authorised by the Bank.
- (4) The Bank may, not more than once a year, request the other supervisory authorities, to derogate from the criteria set out in paragraph (3) where their application would be inappropriate, taking into account the structure of the group and the relative importance of the activities of the insurance undertakings or reinsurance undertakings in different countries, and designate a different supervisory authority as group supervisor.
- (5) The Bank shall do everything within its power to reach a joint decision with the other supervisory authorities concerned on the choice of the group

supervisor within 3 months from the request for discussion and before taking that decision, the group shall be given an opportunity to state its opinion.

(6) Where a joint decision is reached in accordance with paragraph (5) the Bank, where it is designated group supervisor, shall provide the group with the decision stating the full reasons.

(7) Despite paragraph (5), and subject to paragraph (10), where the Bank or any of the other supervisory authorities refers the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010 within the 3 month period referred to in paragraph (5), the Bank shall defer its joint decision and await any decision that EIOPA may take in accordance with paragraph (3) of that Article and shall take its joint decision in conformity with EIOPA's decision.

(8) The Bank shall not refer the matter of choice of group supervisor to EIOPA after the end of the 3 month period referred to in paragraph (5) or after a joint decision has been reached.

(9) The Bank shall recognise as determinative and apply a joint decision taken in accordance with Article 247 of the Directive.

(10) In the absence of a joint decision, paragraphs (2) and (3) apply.

Rights and duties of group supervisor and other supervisors

249. (1) The Bank, where it is the group supervisor, shall have the following duties with regard to group supervision:

- (a) co-ordination of the gathering and dissemination of relevant or essential information for going concern and emergency situations, including the dissemination of information which is of importance for the supervisory task of a supervisory authority;
- (b) supervisory review and assessment of the financial situation of the group;
- (c) assessment of compliance of the group with the rules on solvency and of risk concentration and intra-group transactions as set out in Regulations 221 to 246;
- (d) assessment of the system of governance of the group, as set out in Regulation 247, and of whether the members of the board of directors of the participating undertaking fulfil the requirements set out in any standard of fitness and probity in a code issued by the Bank under section 50 of the Act of 2010 or Regulation 261, as applicable;
- (e) planning and co-ordination, through regular meetings held at least annually or through other appropriate means, of supervisory activities in going-concern as well as in emergency situations, in co-operation with the supervisory authorities concerned and taking into account

the nature, scale and complexity of the risks inherent in the business of all undertakings that are part of the group;

- (f) leading the process for validation of any internal model at group level as set out in Regulations 234 and 237;
 - (g) leading the process for permitting the application of the regime established in Regulations 240 to 243;
 - (h) other duties assigned to the group supervisor by the Directive or deriving from the application of the Directive.
- (2) In order to facilitate the exercise of the group supervision tasks referred to in paragraph (1), the Bank, where it is the group supervisor, shall—
- (a) chair a college of supervisors comprising the supervisory authorities of all the Member States in which the head offices of any subsidiary undertaking is situated and EIOPA,
 - (b) allow supervisory authorities of significant branches and related undertakings to participate in the college of supervisors, to the extent of achieving an efficient exchange of information,
 - (c) where the effective functioning of the college of supervisors requires it, agree with the other supervisory authorities that some activities of the college be carried out by a reduced number of the supervisory authorities included in it, and
 - (d) transmit to EIOPA the information on the functioning of the college of supervisors and on any difficulties encountered that are relevant for EIOPA's reviews of the operational functioning of the college of supervisors.
- (3) The Bank, where it is a member of the college of supervisors—
- (a) shall ensure that co-operation, exchange of information and consultation processes among the supervisory authorities that are members of the college of supervisors, are effectively applied in accordance with Regulations 215 to 268, with a view to promoting the convergence of their respective decisions and activities, and
 - (b) may, where the group supervisor fails to carry out the duties referred to in paragraph (1) or where the members of the college do not cooperate to the extent required in subparagraph (a), refer the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010.
- (4) Without prejudice to any measure adopted pursuant to the Directive, the establishment and functioning of the college of supervisors shall be based on co-ordination arrangements concluded by the Bank and the other supervisory authorities concerned.

(5) Where diverging views concerning the co-ordination arrangements arise, the Bank or any other member of the college of supervisors may refer the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010.

(6) The Bank, where it is the group supervisor, shall take its final decision in conformity with EIOPA's decision.

(7) The Bank, where it is the group supervisor, shall transmit the decision to the other supervisory authorities.

(8) Without prejudice to any measure adopted pursuant to the Directive, the co-ordination arrangements referred to in paragraph (4) shall specify the procedures for—

(a) the decision-making process among the supervisory authorities concerned in accordance with Articles 231, 232 and 247 of the Directive, and

(b) consultation under Articles 218(5) and 248(4) of the Directive.

(9) Without prejudice to the rights and duties allocated by these Regulations to the group supervisor and to other supervisory authorities, the co-ordination arrangements may entrust additional tasks to the group supervisor, the other supervisory authorities or EIOPA where this would result in the more efficient supervision of the group and would not impair the supervisory activities of the members of the college of supervisors in respect of their individual responsibilities.

(10) In addition, the co-ordination arrangements may set out procedures for—

(a) consultation among the supervisory authorities concerned, and

(b) co-operation with other supervisory authorities.

Co-operation and exchange of information between supervisory authorities

250. (1) The Bank, where it is the group supervisor or where it is responsible for the supervision of an individual insurance undertaking or reinsurance undertaking in a group—

(a) shall co-operate closely with the other supervisory authorities concerned, in particular in cases where the undertaking encounters financial difficulties,

(b) shall provide those other supervisory authorities with relevant information in order to allow and facilitate the exercise of the supervisory duties of the other supervisory authorities under the Directive with the object of ensuring that they have the same amount of relevant information available to them, without prejudice to their respective responsibilities, and irrespective of whether they are established in the same Member State,

- (c) shall communicate without delay all relevant information as soon as it becomes available or exchange information on request, and
- (d) shall call immediately for a meeting of all supervisory authorities involved in group supervision in the following circumstances:
 - (i) where it becomes aware of a significant breach of the Solvency Capital Requirement or a breach of the Minimum Capital Requirement of an individual insurance undertaking or reinsurance undertaking;
 - (ii) where it becomes aware of a significant breach of the Solvency Capital Requirement at group level calculated on the basis of consolidated data or the aggregated group Solvency Capital Requirement, in accordance with whichever calculation method is used in accordance with Regulations 233 to 237;
 - (iii) where other exceptional circumstances are occurring or have occurred.

(2) In this Regulation “relevant information” includes, but is not limited to, information about actions of the group and supervisory authorities, and information provided by the group.

(3) The Bank, where it is the group supervisor, shall provide the supervisory authorities concerned and EIOPA with information regarding the group, in accordance with Regulations 18, 52(1) and 255 in particular regarding the legal structure of the group and the governance and organisational structure of the group.

(4) Where a supervisory authority has not communicated relevant information or a request for co-operation, in particular to exchange relevant information, has been rejected or has not been acted upon within 2 weeks, the Bank may refer the matter to EIOPA.

Consultation between supervisory authorities

251. (1) Without prejudice to Regulation 249, the Bank shall consult the other members of the college of supervisors before taking a decision which is of importance to the supervisory duties of another supervisory authority, with regard to—

- (a) changes in the shareholder structure, organisational or management structure of insurance undertakings and reinsurance undertakings in a group, which require the approval or authorisation of supervisory authorities,
- (b) the decision on the extension of the recovery period under Regulation 146(4) and (5), or
- (c) major sanctions or exceptional measures taken by the supervisory authority in question including the imposition of a capital add-on to

the Solvency Capital Requirement under Regulation 39 and the imposition of any limitation on the use of an internal model for the calculation of the Solvency Capital Requirement under Regulations 125 to 138.

(2) For the purposes of paragraph (1)(b) and (c), the group supervisor shall always be consulted.

(3) In addition, the Bank shall, where a decision is based on information received from other supervisory authorities, consult the other supervisory authorities concerned prior to that decision.

(4) Without prejudice to Regulation 249, the Bank may decide not to consult in cases of urgency or where such consultation may jeopardise the effectiveness of its decision.

(5) In that case, the Bank shall, without delay, inform the other supervisory authorities concerned.

Requests from group supervisor to other supervisory authorities

252. (1) Where the Bank is the group supervisor, it may invite the supervisory authorities of the Member State in which a parent undertaking has its head office, and which do not themselves exercise the group supervision pursuant to Regulation 248, to request from the parent undertaking any information which would be relevant for the exercise of its co-ordination rights and duties as laid down in Regulation 249, and to transmit that information to the Bank.

(2) Where the Bank is the group supervisor, it shall, when it needs information referred to in Regulation 255 which has already been given to another supervisory authority, contact that supervisory authority whenever possible in order to prevent duplication of reporting to the various authorities involved in supervision.

Co-operation with authorities responsible for credit institutions and investment firms

253. (1) Where an insurance undertaking or reinsurance undertaking and either a credit institution as defined in Directive 2006/48/EC or an investment firm as defined in Directive 2004/39/EC, or both, are directly or indirectly related or have a common participating undertaking, the Bank, where it authorised the insurance undertaking, reinsurance undertaking or investment firm, or is responsible for the supervision of the credit institution, shall co-operate closely with the supervisory authority concerned or (as the case may be) the authority responsible for the supervision of the investment firm or credit institution.

(2) Without prejudice to their respective responsibilities, the Bank shall provide the other authority with any information likely to simplify their task, in particular as set out in this Part.

Professional secrecy and confidentiality

254. The Bank shall exchange information with supervisory authorities and other authorities as referred to in Regulations 250 to 253.

Access to information

255. (1) The Bank shall have access to any information relevant for the purposes of exercising group supervision regardless of the nature of the undertaking concerned.

(2) Regulation 34(1) to (5) shall apply subject to any necessary modifications.

(3) Where the Bank is the group supervisor it may limit regular supervisory reporting with a frequency shorter than one year at the level of the group where all insurance undertakings or reinsurance undertakings within the group benefit from the limitation in accordance with Regulation 34(6) taking into account the nature, scale and complexity of the risks inherent in the business of the group.

(4) Where the Bank is group supervisor it may exempt from reporting on an item-by-item basis at the level of the group where all insurance undertakings and reinsurance undertakings within the group benefit from the exemption in accordance with Regulation 34(10), taking into account the nature, scale and complexity of the risks inherent in the business of the group and the objective of financial stability.

(5) The Bank may address the undertakings in the group directly to obtain the information only where such information has been requested from the insurance undertaking or reinsurance undertaking subject to group supervision and has not been supplied by it within a reasonable period of time.

Annual and quarterly information: transitional deadlines

256. (1) A participating insurance undertaking or reinsurance undertaking, an insurance holding company or a mixed financial holding company shall submit its group regular supervisory report or annual summary of the regular supervisory report and annual quantitative templates no later than—

- (a) 26 weeks after the end of the financial year of the undertaking or holding company ending on or after 30 June 2016 but before 1 January 2017,
- (b) 24 weeks after the end of the financial year of the undertaking or holding company ending on or after 1 January 2017 but before 1 January 2018,
- (c) 22 weeks after the end of the financial year of the undertaking or holding company ending on or after 1 January 2018 but before 1 January 2019, and
- (d) 20 weeks after the end of the financial year of the undertaking or holding company ending on or after 1 January 2019 but before 1 January 2020.

(2) A participating insurance undertaking or reinsurance undertaking, an insurance holding company or a mixed financial holding company shall submit the quarterly quantitative templates no later than—

- (a) 14 weeks related to any quarter ending on or after 1 January 2016 but before 1 January 2017,
- (b) 13 weeks related to any quarter ending on or after 1 January 2017 but before 1 January 2018,
- (c) 12 weeks related to any quarter ending on or after 1 January 2018 but before 1 January 2019, and
- (d) 11 weeks related to any quarter ending on or after 1 January 2019 but before 1 January 2020.

Verification of information

257. (1) The Bank may exercise its powers under financial services legislation to carry out within the State, either directly or through the intermediary of persons whom it appoints for that purpose, on-site verification of the information referred to in Regulation 255 on the premises of any of the following:

- (a) the insurance undertaking or reinsurance undertaking subject to group supervision;
- (b) related undertakings of that insurance undertaking or reinsurance undertaking;
- (c) parent undertakings of that insurance undertaking or reinsurance undertaking;
- (d) related undertakings of a parent undertaking of that insurance undertaking or reinsurance undertaking.

(2) Where the Bank wishes in specific cases to verify the information concerning an undertaking, whether regulated or not, which is part of a group and is situated in another Member State, it shall ask the supervisory authorities of that other Member State to have the verification carried out.

(3) The Bank may where it so wishes participate in that verification.

(4) Where the Bank receives such a request from another supervisory authority, it shall act upon that request either by carrying out the verification directly, by allowing an auditor or expert to carry it out, or by allowing the authority which made the request to carry it out itself; and the Bank shall inform the group supervisor of the action taken.

(5) The supervisory authority which made the request may, where it so wishes, participate in the verification when it does not carry out the verification directly.

(6) Where the request to another supervisory authority by the Bank to have a verification carried out in accordance with paragraph (2) has not been acted on within 2 weeks, or where the Bank is unable in practice to exercise its right to participate, the Bank may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

(7) In accordance with Article 21 of that Regulation EIOPA may participate in on-site examinations where they are carried out jointly by the Bank and one or more other supervisory authorities.

Group solvency and financial condition report

258. (1) Participating insurance undertakings and reinsurance undertakings, insurance holding companies and mixed financial holding companies shall make publicly available an annual report on the solvency and financial condition at the level of the group.

(2) Regulations 52, 55, 56 and 57 shall apply subject to any necessary modifications.

(3) The participating insurance undertaking or reinsurance undertaking, the insurance holding company or the mixed financial holding company may, subject to the approval of the group supervisor, provide a single solvency and financial condition report which shall comprise the following:

- (a) the information at the level of the group which must be disclosed in accordance with paragraph (1);
- (b) the information for any of the subsidiaries within the group which must be individually identifiable and disclosed in accordance with Regulations 52, 55, 56 and 57.

(4) The Bank, where it is the group supervisor, may grant approval in accordance with paragraph (3), having consulted and duly taken into account any views and reservations of the members of the college of supervisors.

(5) Where the Bank has authorised a subsidiary undertaking in the group and the report referred to in paragraph (3) fails to include information which the Bank requires comparable undertakings to provide, and the omission is material, the Bank may require the subsidiary undertaking to disclose the necessary additional information.

Group solvency and financial condition report: transitional deadlines

259. A participating insurance undertaking or reinsurance undertaking, an insurance holding company or a mixed financial holding company shall make publicly available the group solvency and financial condition report referred to in Regulation 258 no later than—

- (a) 26 weeks after the end of the financial year of the undertaking or holding company ending on or after 30 June 2016 but before 1 January 2017,

- (b) 24 weeks after the end of the financial year end of the undertaking or holding company ending on or after 1 January 2017 but before 1 January 2018,
- (c) 22 weeks after the end of the financial year of the undertaking or holding company ending on or after 1 January 2018 but before 1 January 2019, and
- (d) 20 weeks after the end of the financial year end of the undertaking or holding company ending on or after 1 January 2019 but before 1 January 2020.

Group structure

260. Insurance undertakings and reinsurance undertakings, insurance holding companies and mixed financial holding companies shall make publicly available on an annual basis the legal structure and the governance and organisational structure of the group, including a description of all subsidiaries, material related undertakings and significant branches belonging to the group.

Persons running insurance holding companies and mixed financial holding companies to be fit and proper

261. (1) An insurance holding company or mixed financial holding company shall ensure that all persons who effectively run the insurance holding company or mixed financial holding company are fit and proper to perform their duties.

(2) For the purposes of paragraph (1), the insurance holding company or mixed financial holding company shall have regard to any code setting out standards of fitness and probity issued by the Bank under section 50 of the Act of 2010.

(3) An insurance holding company or mixed financial holding company shall not appoint a person to a position by virtue of which the person will be concerned in the direction or management of the company unless it has previously notified the Bank of the proposal to make the appointment; and an appointment made in contravention of this paragraph is void.

(4) The insurance holding company or mixed financial holding company shall notify the Bank immediately if—

- (a) any of the persons referred to in paragraph (1) cease to perform functions which the person had been previously appointed by the company to perform, or
- (b) any of the persons referred to in paragraph (1) have been replaced because they no longer comply with any standard of fitness and probity set out in a code issued by the Bank under section 50 of the Act of 2010.

(5) An insurance holding company or mixed financial holding company that, without reasonable excuse, contravenes paragraph (3) commits an offence.

Qualifications, reputation and experience of persons running insurance holding companies and mixed financial holding companies

262. (1) The Bank may, in the exercise of its powers under financial services legislation, by notice in writing, require an insurance holding company or mixed financial holding company to provide it with such information as it requires concerning the qualifications, reputation and experience—

- (a) of all persons who effectively run the insurance holding company or mixed financial holding company, or
 - (b) of such of those persons as are specified in the notice.
- (2) If it appears to the Bank that a person referred to in paragraph (1)—
- (a) does not have adequate professional qualifications, knowledge or experience to enable sound and prudent management, or
 - (b) is not of good repute or integrity,

the Bank may, by notice in writing, direct the company to take such action (including the removal or dismissal of the person from the position) as is specified in the notice.

(3) An insurance holding company or mixed financial holding company to which a direction under paragraph (2) has been given shall comply with the direction within the period specified in the notice.

(4) The Bank may, by further notice in writing, vary or revoke a direction given under paragraph (2).

(5) A direction given under paragraph (2), or a variation or revocation of such a direction, takes effect from the date of the notice giving it or, if a later date is specified in the notice, from that later date.

(6) The Bank is not liable in damages for any loss of office arising directly or indirectly from a direction given under paragraph (2).

(7) A direction given under paragraph (2), or a variation of such a direction, is an appealable decision for the purposes of Part VIIA of the Act of 1942.

(8) An insurance holding company or mixed financial holding company that, without reasonable excuse, fails to comply with paragraph (3) commits an offence.

Enforcement measures

263. (1) Where—

- (a) one or more of the insurance undertakings or reinsurance undertakings in a group do not comply with one or more of the requirements referred to in Regulations 221 to 247 and 261,

- (b) those requirements are met but the solvency of the group or of an insurance undertaking or reinsurance undertaking within the group may nevertheless be jeopardised, or
- (c) intra-group transactions or risk concentrations are a threat to the financial position of one or more insurance undertakings or reinsurance undertakings in the group,

the Bank shall, where it has authorised an insurance undertaking or reinsurance undertaking in the group or is the group supervisor with respect to a group headed by an insurance holding company or mixed financial holding company, exercise its powers under financial services legislation to rectify the position as soon as possible.

(2) Where the Bank is group supervisor with respect to a group headed by an insurance holding company or mixed financial holding company and the head office of the insurance holding company or mixed financial holding company is in another Member State, the Bank shall inform the supervisory authority of that Member State of the Bank's findings with a view to enabling that supervisory authority to take the necessary measures.

(3) Where the Bank is group supervisor and the head office of an insurance undertaking or reinsurance undertaking in the group is in another Member State, the Bank shall inform the supervisory authority of that Member State of its findings with a view to enabling that supervisory authority to take the necessary measures.

(4) The Bank shall, where appropriate, co-ordinate enforcement measures with the other supervisory authorities concerned.

(5) The Bank shall, in accordance with Article 258(2) of the Directive, cooperate closely with other supervisory authorities concerned to ensure that sanctions or measures in respect of insurance holding companies and mixed financial holding companies are effective.

Chapter 4

Third countries

Parent undertakings outside EU: verification of equivalence

264. (1) Subject to paragraph (2), in the case referred to in Regulation 216(3)(c), the Bank shall verify whether the insurance undertakings and reinsurance undertakings the parent undertaking of which has its head office outside the European Union are subject to supervision, by a third-country supervisory authority, which is equivalent to that provided for by this Part on the supervision at the level of the group of insurance undertakings and reinsurance undertakings referred to in Regulation 216(3)(a) and (b).

(2) Where no delegated act as referred to in Article 260(3) or (5) of the Directive has been adopted, the verification shall be carried out by the Bank (as "acting group supervisor") if the criteria set out in Regulation 248(2) and

(3) apply, at the request of the parent undertaking or of any of the insurance undertakings and reinsurance undertakings authorised in a Member State or on its own initiative.

(3) In so doing, the Bank as acting group supervisor shall, assisted by EIOPA, consult the other supervisory authorities concerned, before taking a decision on equivalence.

(4) The Bank shall take its decision in accordance with the criteria adopted in accordance with Article 260(2) of the Directive.

(5) The Bank as acting group supervisor shall not take any decision in relation to a third country that is in opposition to any previous decision taken in respect of that third country, except where it is necessary to take into account significant changes to the supervisory regime laid down in these Regulations or to the supervisory regime in the third country.

(6) Where the Bank is not the acting group supervisor and disagrees with a decision taken in accordance with Article 260(1) of the Directive, it may, within 3 months after notification of the decision by the acting group supervisor, refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

(7) Where following the procedure referred to in Article 260(3) or (5) of the Directive the Commission does not adopt a delegated act, Regulation 266 shall apply.

(8) Where a delegated act determining that the prudential regime of a third country is temporarily equivalent is adopted in accordance with Article 260(5) of the Directive, Regulation 265 shall apply unless there is an insurance undertaking or reinsurance undertaking which has its head office in a Member State which has a balance sheet total that exceeds the balance sheet total of the parent undertaking situated outside the European Union.

(9) In that case, the task of the group supervisor shall be exercised by the acting group supervisor.

Parent undertakings outside EU: equivalence

265. (1) In the event of equivalent supervision referred to in Regulation 264, the Bank shall rely on the equivalent group supervision exercised by the third-country supervisory authorities, in accordance with paragraph (2).

(2) Regulations 248 to 263 shall apply to the co-operation with third-country supervisory authorities subject to any necessary modifications.

Parent undertakings outside EU: absence of equivalence

266. (1) In the absence of equivalent supervision referred to in Regulation 264, or where Regulation 265 does not apply in the event of temporary equivalence in accordance with Regulation 264(8), the Bank where it is group supervisor shall apply either of the following to insurance undertakings and reinsurance undertakings:

(a) Regulations 221 to 238 and 245 to 263 subject to any necessary modifications;

(b) one of the methods set out in paragraph (4).

(2) The general principles and methods set out in Regulations 221 to 263 shall apply at the level of the insurance holding company, mixed financial holding company, third-country insurance undertaking or third-country reinsurance undertaking.

(3) For the sole purpose of the group solvency calculation, the parent undertaking shall be treated as if it were an insurance undertaking or reinsurance undertaking subject to the same conditions as laid down in Regulations 102 to 112 as regards the own funds eligible for the Solvency Capital Requirement and to either of the following:

(a) a Solvency Capital Requirement determined in accordance with the principles of Regulation 229 where it is an insurance holding company or mixed financial holding company;

(b) a Solvency Capital Requirement determined in accordance with the principles of Regulation 230, where it is a third-country insurance undertaking or a third-country reinsurance undertaking.

(4) The Bank may apply other methods which ensure appropriate supervision of the insurance undertakings and reinsurance undertakings in a group.

(5) Those methods shall be agreed after consultation with the other supervisory authorities concerned.

(6) The Bank may in particular require the establishment of an insurance holding company which has its head office in a Member State or a mixed financial holding company which has its head office in a Member State and apply this Part to the insurance undertakings and reinsurance undertakings in the group headed by that insurance holding company or mixed financial holding company.

(7) The methods chosen shall allow the objectives of the group supervision as defined in this Part to be achieved and shall be notified to the other supervisory authorities concerned and the Commission.

Parent undertakings outside EU: levels

267. (1) Where the parent undertaking referred to in Regulation 264 is itself a subsidiary undertaking of an insurance holding company or a mixed financial holding company with its head office outside the European Union or of a third-country insurance undertaking or third-country reinsurance undertaking, the Bank shall apply the verification provided for in that Regulation only at the level of the ultimate parent undertaking which is a third-country insurance holding company, a third-country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.

(2) But the Bank may decide, in the absence of equivalent supervision referred to in Regulation 264, to carry out a new verification at a lower level where a parent undertaking of insurance undertakings or reinsurance undertakings exists, whether at the level of a third-country insurance holding company, a third-country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.

(3) In such a case, the Bank, as the acting group supervisor, shall explain its decision to the group.

(4) Regulation 266 shall apply subject to any necessary modifications.

Chapter 5

Mixed-activity insurance holding companies

Intra-group transactions

268. (1) Where the parent undertaking of one or more insurance undertakings or reinsurance undertakings is a mixed-activity insurance holding company, and the Bank is responsible for the supervision of one or more of these undertakings, it shall exercise general supervision along with the other supervisory authorities concerned over transactions between those insurance undertakings or reinsurance undertakings and the mixed-activity holding company and its related undertakings.

(2) Regulations 246, 250 to 257 and 263 shall apply subject to any necessary modifications.

Part 18

REORGANISATION AND WINDING-UP OF INSURANCE UNDERTAKINGS

Chapter 1

Scope and definitions

Scope of Part

269. This Part applies to reorganisation measures and winding-up proceedings concerning the following:

- (a) insurance undertakings;
- (b) branches situated in a Member State of third-country insurance undertakings.

Definitions

270. (1) For the purpose of this Part—

“administrator” means—

- (a) an administrator in relation to an insurance undertaking appointed under section 2 of the Insurance (No. 2) Act 1983 (No. 29 of 1983),
- (b) an examiner in relation to an insurance undertaking appointed under Part 10 of the Act of 2014, or
- (c) any person appointed in relation to an insurance undertaking authorised in a Member State other than the State by the competent authorities of that State for the purpose of administering reorganisation measures;

“branch”, in relation to an insurance undertaking, means a permanent presence of the insurance undertaking in the territory of a Member State other than the home Member State which pursues insurance activities;

“competent authority” means—

- (a) in the State, the Court, and
- (b) in a Member State other than the State, the administrative or judicial authority which is competent for the purposes of reorganisation measures or winding-up proceedings;

“insurance claim” means (subject to paragraph (2)) an amount which is owed by an insurance undertaking to insured persons, policy holders, beneficiaries or to any injured party having direct right of action against the insurance undertaking and which arises from an insurance contract or from any operation mentioned in classes 5 to 9 in Schedule 2 in insurance business, including an amount set aside for those persons when some elements of the debt are not yet known;

“liquidator” means—

- (a) in the State, a liquidator of an insurance undertaking appointed under the Act of 2014;
- (b) in a Member State other than the State, any person or body appointed by the competent authority or by the governing body of an insurance undertaking authorised in that Member State for the purpose of administering winding-up proceedings;

“reorganisation measures” means measures involving any intervention by the competent authority which are intended to preserve or restore the financial situation of an insurance undertaking and which affect pre-existing rights of parties other than the insurance undertaking itself, including but not limited to measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims;

“winding-up proceedings” means collective proceedings involving the realisation of the assets of an insurance undertaking and the distribution of the proceeds among the creditors, shareholders or members as appropriate, which necessarily

involve any intervention by the competent authority, including where the collective proceedings are terminated by a composition or other analogous measure, whether or not they are founded on insolvency or are voluntary or compulsory.

(2) The premium owed by an insurance undertaking as a result of the non-conclusion or cancellation of an insurance contract or operation referred to in the definition of “insurance claim” in paragraph (1) in accordance with the law applicable to such a contract or operation before the opening of the winding-up proceedings shall also be considered an insurance claim.

(3) For the purpose of the application of this Part to reorganisation measures and winding-up proceedings concerning a branch situated in a Member State of a third-country insurance undertaking the following definitions shall apply:

- (a) “home Member State” means the Member State in which the branch was granted authorisation in accordance with Articles 145 to 149 of the Directive;
- (b) “supervisory authority” means the supervisory authority of the home Member State;
- (c) “competent authority” means the competent authority of the home Member State.

Chapter 2

Reorganisation measures

Adoption of reorganisation measures — applicable law

271. (1) Only the competent authority of an insurance undertaking’s home Member State shall be entitled to decide on the reorganisation measures with respect to an insurance undertaking, including its branches.

(2) Reorganisation measures adopted in respect of an insurance undertaking, including its branches in other Member States, are governed by the Act of 2014 and the Insurance Acts, as appropriate, unless otherwise provided by Regulations 285 to 293.

(3) Reorganisation measures adopted by the competent authority of a Member State other than the State in respect of an insurance undertaking authorised in that other Member State, including any branch of the undertaking in the State, shall be recognised in the State once they become effective in that other Member State, even if, were the particular matter to be dealt with under the Act of 2014 or the Insurance Acts, such measures would not be provided for or would be provided for subject to specified conditions being fulfilled and such conditions are not fulfilled in the particular case.

Information to supervisory authorities

272. (1) The administrator of an insurance undertaking shall, without delay, inform the Bank of his or her decision on any reorganisation measures to be

adopted, where possible before the adoption of such measures and, failing that, immediately afterwards.

(2) The Bank shall then inform, without any delay, the supervisory authorities of all other Member States of that decision including the possible practical effects of the measures.

Publication of decisions on reorganisation measures

273. (1) If a right of appeal lies in the State against a reorganisation measure and the reorganisation measure is not likely to affect exclusively the rights of shareholders, members or employees of an insurance undertaking, in those capacities, the administrator of the insurance undertaking shall publish an extract from the decision on a reorganisation measure to be adopted in the Official Journal of the European Union, including the following information:

- (a) the name of the competent authority;
- (b) the name and address of the administrator;
- (c) the legislation applicable to the reorganisation measure.

(2) A reorganisation measure has effect irrespective of whether paragraph (1) is complied with and is fully effective as against creditors, unless the Court, or the law of the State, otherwise provides.

Information to known creditors — right to lodge claims

274. (1) If a reorganisation measure is adopted, the administrator of the insurance undertaking shall ensure that creditors of the undertaking of whom the administrator is aware and who have their normal place of residence, domicile or head office in a Member State other than the State are, in accordance with the procedures laid down in Regulations 282 and 283 informed of their rights (if any) to lodge claims arising as a result of the adoption of the measure.

(2) If the law of the State provides for the rights of creditors who have their normal place of residence or domicile, or whose head offices are located, in the State to lodge claims, creditors who have their normal place of residence, domicile or head offices in a Member State other than the State also have that right in accordance with the provisions of those Regulations.

Chapter 3

Winding-up proceedings

Commencement of winding-up proceedings

275. (1) Only the competent authority of an insurance undertaking's home Member State shall be entitled to decide on the opening of winding-up proceedings with respect to the insurance undertaking, including its branches in other Member States.

(2) A decision to commence winding-up proceedings in respect of an insurance undertaking, including its branches in other Member States, shall, once it takes effect in the State, also take effect in those other Member States.

(3) Winding-up proceedings in respect of an insurance undertaking, including its branches in other Member States, are governed by the Act of 2014 and the Insurance Acts, as appropriate, unless otherwise provided by Regulations 285 to 293.

(4) A decision to commence winding-up proceedings by the competent authority of a Member State other than the State, in respect of an insurance undertaking authorised in that other Member State, including any branch of the undertaking in the State, shall take effect in the State once it takes effect in that other Member State.

Information to supervisory authorities

276. (1) The liquidator shall, without delay, inform the Bank of the decision to commence winding-up proceedings, where possible before the commencement of the proceedings and, failing that, immediately afterwards.

(2) The Bank shall then inform, without any delay, the supervisory authorities of all other Member States of that decision including the possible practical effects of the proceedings.

Treatment of insurance claims

277. (1) Insurance claims shall, with respect to assets representing the technical provisions of an insurance undertaking, take absolute precedence over any other claims on the insurance undertaking including claims accorded preference under section 621 of the Act of 2014.

(2) Without prejudice to paragraph (1), where a life insurance undertaking is authorised to write non-life insurance falling in class 1 or 2 in Part 1 of Schedule 1—

- (a) insurance claims in relation to the life business of the undertaking shall, with respect to the assets representing the life technical provisions of the undertaking, take absolute precedence over any claims in relation to the non-life insurance business of the undertaking in class 1 or 2 in Part 1 of Schedule 1, and
- (b) insurance claims in relation to the insurance business of the undertaking in class 1 or 2 in Part 1 of Schedule 1 shall, with respect to the assets representing the non-life technical provisions of the undertaking take absolute precedence over any claims in relation to the life business of the undertaking.

(3) Despite paragraphs (1) and (2), expenses arising out of winding-up proceedings shall take precedence over insurance claims to the extent that the assets of the undertaking, other than the assets representing the technical provisions, are insufficient to meet such expenses; and, in such a situation, where a life

insurance undertaking writes non-life insurance in class 1 or 2 in Part 1 of Schedule 1, such expenses shall be divided proportionally between the assets representing the life technical provisions and non-life technical provisions.

(4) Subject to paragraphs (5) and (6), an insurance undertaking shall keep a register showing the assets representing the technical provisions required to be maintained by it under these Regulations or other laws applicable in the State adopted pursuant to the Directive.

(5) Where a life insurance undertaking is allowed to write non-life insurance in class 1 or 2 in Part 1 of Schedule 1, the undertaking shall keep separate registers for the assets representing the life obligations and non-life obligations.

(6) Every register to which paragraph (4) relates shall be maintained at the head office of the insurance undertaking and shall contain up-to-date details of the assets representing the technical provisions relevant to the register.

(7) The total value of the assets, valued in accordance with these Regulations, entered in each register to which paragraph (4) relates shall at no time be less than the value of the technical provisions relevant to the register.

(8) Where an asset entered in a register to which paragraph (4) relates is subject to a right in rem in favour of a creditor or a third party, with the result that part of the value of the asset is not available for the purpose of covering commitments, that fact shall be recorded in the register and the amount not available shall not be included in the total value referred to in paragraph (7).

(9) Every register to which paragraph (4) relates shall be available to the Bank at all times.

(10) The Bank may require an insurance undertaking to furnish the Bank with a certificate of the value of the assets (being the value of the assets entered in each register to which paragraph (4) relates and in the accounts and the balance sheets) on the closing date for which the accounts and balance sheets of the insurance undertaking are furnished to the Bank.

Provisions supplementary to Regulation 277

278. (1) Where assets representing the technical provisions of an insurance undertaking are subject to—

- (a) a right in rem in favour of a creditor or a third party, without meeting the conditions of Regulation 277(8),
- (b) a reservation of title in favour of a creditor or of a third party, or
- (c) a demand by a creditor for the set-off of his or her claim against the claim of the insurance undertaking,

such rights or reservations shall be disregarded if the undertaking is being wound up, except where Regulation 286, 287 or 288 applies to that asset.

(2) The composition of the assets entered in the register at the time when winding-up proceedings are commenced shall not thereafter be changed and no alteration other than the correction of purely clerical errors shall be made in the register, except with the sanction of the Court or other person having functions under the Act of 2014.

(3) Despite paragraph (2), the liquidator shall add to the assets representing the technical provisions the yield from them and the value of the pure premiums received in respect of the class of insurance concerned between the commencement of the winding-up proceedings and the time of payment of the insurance claims or until any transfer of portfolio is effected.

(4) If the product of the realisation of assets is less than their estimated value in the register, the liquidator shall be required to provide an explanation in such form or manner as the Court or other person requires to the Court or other person having functions under the Act of 2014.

Withdrawal of authorisation

279. (1) Where a liquidator of an insurance undertaking has been appointed, the Bank shall withdraw the authorisation of the undertaking in accordance with the procedure laid down in Regulation 153, except to the extent necessary for the purposes of paragraph (2).

(2) The withdrawal of authorisation pursuant to paragraph (1) shall not prevent the liquidator from pursuing some of the activities of the insurance undertaking in so far as that is necessary or appropriate for the purposes of winding-up, provided that such activities are carried on with the consent and under the supervision of the Bank.

Publication of decisions on winding-up proceedings

280. The liquidator of an insurance undertaking shall publish an extract from the decision to commence winding-up proceedings in the Official Journal of the European Union, including the following information:

- (a) the name of the competent authority;
- (b) the name and address of the liquidator;
- (c) the legislation applicable to the winding-up.

Information to known creditors

281. (1) The liquidator of an insurance undertaking shall, without delay, individually inform by written notice each known creditor who has his or her normal place of residence, domicile or head office in a Member State other than the State.

(2) The notice under paragraph (1) shall include the following information:

- (a) the periods in which steps must be taken by the creditors in the proceedings;

- (b) the consequences if a particular step is not taken within the period concerned;
- (c) the name and address of the liquidator for the purpose of lodgement of claims;
- (d) any other information of particular relevance to creditors.

(3) The notice under paragraph (1) shall also indicate whether creditors whose claims are preferential or secured in rem need to lodge their claims.

(4) In the case of insurance claims, the notice under paragraph (1) shall also indicate the general effects of the winding-up proceedings on the insurance contracts, in particular the date on which the insurance contracts or the operations will cease to produce effects and the rights and duties of insured persons with regard to the contract or operation.

Right to lodge claims

282. (1) A creditor who has a normal place of residence, domicile or head office in a Member State other than the State, including a public authority of such a Member State, shall have the right to lodge claims arising from the liquidation of an insurance undertaking.

(2) The claims of all creditors who have their normal place of residence, domicile or head office in a Member State other than the State, including a public authority of such a Member State, shall be treated in the same way and accorded the same ranking as claims of an equivalent nature which may be lodged by creditors who have their normal place of residence, domicile or head office in the State.

(3) A creditor shall send copies of documents supporting the creditor's claim, if any, and shall indicate—

- (a) the nature of the claim,
- (b) the date on which it arose,
- (c) the amount of the claim,
- (d) whether the creditor alleges preference, security in rem, or reservation of title in respect of the claim, and
- (e) where appropriate, what assets are covered by his or her security.

Languages and form

283. (1) The information in the notice referred to in Regulation 281 shall be provided in English.

(2) The form which is used for the purposes of that notice shall bear the following heading (in all the official languages of the European Union) — “Invitation to lodge a claim: time limits to be observed”.

(3) Where the known creditor is a holder of an insurance claim, the information in the notice referred to in Regulation 281 shall be provided in the official language or one of the official languages of the Member State in which the creditor has his or her normal place of residence, domicile or head office.

(4) Any creditor who has his or her normal place of residence, domicile or head office in a Member State other than the State, may lodge his or her claim in the official language of that Member State, but if he or she does so the lodgement of his or her claim shall bear the heading “Lodgement of claim” in English.

Regular information to creditors

284. The liquidator of an insurance undertaking shall keep creditors regularly informed, in an appropriate manner, in relation to the winding-up and the progress of it.

Chapter 4

Common provisions

Effects on certain contracts and rights

285. (1) Despite Regulations 271 and 275(3), the effects of the commencement of reorganisation measures or winding-up proceedings on the contracts, relationships and rights mentioned in this Regulation shall be governed by paragraph (2), (3) or (4) as appropriate.

(2) Employment contracts and employment relationships shall be governed solely by the law of the Member State applicable to the employment contract or employment relationship.

(3) A contract conferring the right to make use of or acquire immovable property shall be governed solely by the law of the Member State in whose territory the immovable property is situated.

(4) Rights of the insurance undertaking with respect to immovable property, a ship or an aircraft subject to registration in a public register shall be governed by the law of the Member State under whose authority the register is kept.

Rights in rem of third parties

286. (1) The commencement of reorganisation measures or winding-up proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, movable or immovable assets (whether they are specific assets or collections of indefinite assets as a whole which change from time to time) belonging to the insurance undertaking which are situated within the territory of a Member State other than the home Member State at the time of the commencement of the measures or proceedings.

(2) The rights in rem referred to in paragraph (1) include—

- (a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage,
- (b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee,
- (c) the right to demand the assets from, or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled, and
- (d) a right to the beneficial use of assets.

(3) The right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of paragraph (1) may be obtained, shall be considered a right in rem.

Reservation of title

287. (1) The commencement of reorganisation measures or winding-up proceedings against an insurance undertaking purchasing an asset shall not affect the seller's rights based on reservation of title where at the time of the commencement of such measures or proceedings the asset is situated in a Member State other than the State in which such measures or proceedings were commenced.

(2) The commencement of reorganisation measures or winding-up proceedings against an insurance undertaking selling an asset, after delivery of that asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the commencement of such measures or proceedings the asset sold is situated within the territory of a Member State other than the State in which such measures or proceedings were commenced.

Set-off

288. The commencement of reorganisation measures or winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the insurance undertaking where such a set-off is permitted by the law applicable to the insurance undertaking's claim.

Regulated markets

289. Despite Regulation 286, the effects of a reorganisation measure or the commencement of winding-up proceedings on the rights and obligations of the parties to a regulated market shall be governed solely by the law applicable to that market.

Regulations 286 to 289: savings

290. (1) Regulations 286 to 289 shall not preclude any of the following actions, in relation to acts which adversely affect all the creditors, namely:

- (a) actions to set aside such acts or to have such acts declared void;

- (b) actions to have such acts avoided;
- (c) actions to have such acts rendered unenforceable or declared unenforceable.

(2) Nothing in this Part shall affect any proceedings commenced in any court concerning the reorganisation or the winding-up of an insurance undertaking where such proceedings were commenced before 1 January 2016.

Detrimental acts

291. It shall be a defence to an action for voidness, voidability or unenforceability of legal acts detrimental to all the creditors, for the person concerned who has benefited from the act concerned, if—

- (a) that act is subject to the law of a Member State other than the home Member State, and
- (b) that law does not allow any means of challenging that act in the relevant case.

Protection of third-party purchasers

292. Where by an act concluded after the adoption of reorganisation measures or winding-up proceedings an insurance undertaking disposes of, for consideration—

- (a) an immovable asset,
- (b) a ship or an aircraft subject to registration in a public register, or
- (c) transferable or other securities whose existence or transfer presupposes entry in a register or account laid down by law or which are placed in a central deposit system governed by the law of a Member State,

the applicable law is the law of the Member State within whose territory the immovable asset is situated or under whose authority the register, account or system is kept.

Lawsuits pending

293. The effects of reorganisation measures or winding-up proceedings on pending legal proceedings concerning an asset or a right of which an insurance undertaking has been divested shall be governed solely by the law of the Member State in which the legal proceedings are pending.

Administrators and liquidators: proof of appointment

294. (1) The appointment of an administrator or liquidator of an insurance undertaking shall be evidenced by a copy of the court order or notice of appointment under the Act of 2014 or the Insurance Acts.

(2) An administrator or liquidator of an insurance undertaking who wishes to act in a Member State other than the State shall make available a translation of

the copy in one of the official languages of that Member State if required to do so by the competent authority of that Member State.

(3) The appointment of an administrator or liquidator to an insurance undertaking authorised in a Member State other than the State shall be evidenced in the State—

- (a) by a certified copy of the original decision of appointment, or
- (b) by any other certificate issued by the competent authority of that Member State.

(4) Where a document referred to in paragraph (3)(a) or (b) is not in English it shall be accompanied by a translation in English.

Administrators and liquidators: exercise of powers in other Member States

295. (1) The administrator or liquidator of an insurance undertaking is entitled to exercise within the territory of other Member States all the powers that he or she is entitled to exercise within the State.

(2) In particular, the administrator or liquidator may appoint one or more persons to assist or represent the administrator or liquidator in the course of the reorganisation measure or winding-up proceedings, in particular in order to help overcome any difficulties encountered by creditors in any of the other Member States.

(3) In exercise of his or her powers under the Act of 2014 or the Insurance Acts, an administrator or liquidator of an insurance undertaking shall comply with the law of the Member State within whose territory he or she wishes to take action, in particular with regard to procedures for the realisation of assets and the informing of employees.

(4) In exercising a power referred to in paragraph (3), an administrator or liquidator may not—

- (a) resort to the use of force, or
- (b) make any ruling or determination in relation to legal proceedings or disputes.

Administrators and liquidators: exercise of powers in the State

296. (1) An administrator or liquidator of an insurance undertaking authorised in a Member State other than the State is entitled to exercise within the State all the powers that he or she is entitled to exercise within the territory of the home Member State.

(2) The administrator or liquidator may, if the legislation of that Member State so permits, appoint persons to assist or represent him or her in the State in the course of the reorganisation measure or winding-up proceedings, in particular in order to help overcome any difficulties encountered by creditors in the State.

(3) In exercise of his or her powers under the legislation of the home Member State, an administrator or liquidator of an insurance undertaking authorised in a Member State other than the State shall comply with the laws of the State when taking action within the State, in particular with regard to procedures for the realisation of assets and the informing of employees.

(4) In exercising a power referred to in paragraph (3), an administrator or liquidator may not—

(a) resort to the use of force, or

(b) make any ruling or determination in relation to legal proceedings or disputes.

Registration in public register

297. (1) The registrar of companies shall, if requested by the administrator or liquidator of an insurance undertaking authorised in a Member State other than the State, or by any other authority duly empowered in that other State, register under the Act of 2014 any reorganisation measure or the decision to commence winding-up proceedings concerning the insurance undertaking and capable of being registered under that Act.

(2) The administrator or liquidator of an insurance undertaking shall, if so required by the law of a Member State other than the State, take all the measures necessary to register a reorganisation measure or the decision to open winding-up proceedings in any public register kept in that other Member State.

(3) The costs of the registration referred to in paragraphs (1) and (2) shall be regarded as costs and expenses incurred in the reorganisation or winding-up proceedings.

Professional secrecy

298. All persons required to receive or divulge information in connection with the procedures of communication laid down in Regulations 272, 276 and 299 shall be bound by professional secrecy in the same manner as laid down in Articles 64 to 69 of the Directive, except where required to disclose the information concerned by order of a court of competent jurisdiction in civil or criminal proceedings.

Treatment of branches of third-country insurance undertakings

299. (1) This Part shall apply to the reorganisation measures and winding-up proceedings concerning a branch situated in a Member State of a third-country insurance undertaking.

(2) Where a third-country insurance undertaking has branches established in more than one Member State, each branch shall be treated independently with regard to the application of this Part but the supervisory authorities, competent authorities, administrators and liquidators involved shall endeavour to co-ordinate their activities.

Part 19

OTHER PROVISIONS

Chapter 1

*Offences**Offence of making false or misleading application for authorisation*

300. (1) A person shall not, knowingly or recklessly—

- (a) apply for an authorisation using false or misleading information, or
- (b) make false or misleading statements to the Bank in relation to an application for—
 - (i) an authorisation, or
 - (ii) an approval or permission from the Bank concerning the operation of an insurance undertaking, reinsurance undertaking or special purpose vehicle.

(2) A person who fails to comply with paragraph (1) commits an offence.

Advertising offence

301. (1) A person shall not—

- (a) cause to be advertised, supply, or offer to supply, insurance, reinsurance or ancillary services,
- (b) make any other solicitation in respect of insurance, reinsurance or ancillary services, or
- (c) represent that the person is a provider of such services,

if the provision of such services would be in breach of these Regulations.

(2) A person who fails to comply with paragraph (1) commits an offence.

Offence of providing false or misleading information

302. A person who provides to the Bank information which the person knows or ought reasonably to know to be false or misleading (whether on the person's own behalf or on behalf of another person) in purported compliance with a requirement imposed by these Regulations commits an offence.

Liability of officers of undertaking for offences committed by undertaking

303. (1) Where an offence under these Regulations is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person, as well as the body corporate,

shall be guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

Summary proceedings

304. A prosecution for a summary offence under these Regulations may be taken by the Bank.

Penalties for offences

305. (1) A person who is convicted of an offence under these Regulations (other than Regulation 306) is liable—

- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or to both, or
- (b) on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years, or to both.

Continuing contravention

306. Where a person continues to contravene a provision of these Regulations in respect of which he has been convicted, he or she shall be guilty of an offence on every day on which the contravention continues after the original conviction and for each such offence he or she shall be liable on summary conviction to a class E fine.

Chapter 2

Co-operation, fees and notices

Co-operation between Member States and Commission

307. The Bank shall collaborate closely with the Commission—

- (a) for the purpose of facilitating the supervision of insurance and reinsurance within the European Union and of examining any difficulties which may arise in the application of these Regulations, and
- (b) to examine those difficulties as quickly as possible in order to find an appropriate solution.

Bank's power to charge fees

308. The Bank may prescribe pursuant to section 32E of the Act of 1942 the fees (if any) to be paid in respect of an application for authorisation under these Regulations.

Service of notice or other document by the Bank

309. The Bank may, in addition to the methods specified in section 61G(1) of the Act of 1942, give or serve a notice or other document under these Regulations to a natural person, a partnership or body corporate, electronically, that is to say by electronic mail to an email address, or by facsimile number, furnished for that purpose by the person, partnership or body corporate to the Bank.

Chapter 3

*Amendments**Insurance Act 1936*

310. For the purposes of sections 93 and 94 of the Insurance Act 1936, and whenever the context so requires, every insurance policy, bond, certificate or other instrument of insurance issued by an insurance undertaking carrying on business either by way of services or by way of establishment in respect of risks situated in the State shall be deemed to be issued in the State, and all moneys which become or may become due and payable by such insurance undertaking or syndicate under such insurance policy shall be payable and paid in the State, unless the policy otherwise provides.

Amendments of Central Bank Act 1942

311. (1) Section 2(2A) of the Act of 1942 is amended by inserting the following after paragraph (n):

- “(o) Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)³²;
- (p) Commission Implementing Regulation (EU) 2015/460 of 19 March 2015 laying down implementing technical standards with regard to the procedure concerning the approval of an internal model in accordance with Directive 2009/138/EC of the European Parliament and of the Council³³;
- (q) Commission Implementing Regulation (EU) 2015/461 of 19 March 2015 laying down implementing technical standards with regard to the process to reach a joint decision on the application to use a group internal model in accordance with Directive 2009/138/EC of the European Parliament and of the Council³⁴;
- (r) Commission Implementing Regulation (EU) 2015/462 of 19 March 2015 laying down implementing technical standards with regard to the procedures for supervisory approval to establish special purpose vehicles, for the co-operation and exchange of information between supervisory authorities regarding special purpose

³²OJ No. L12, 17.1.2015, p. 1

³³OJ No. L76, 20.3.2015, p. 13

³⁴OJ No. L76, 20.3.2015, p. 19

vehicles as well as to set out formats and templates for information to be reported by special purpose vehicles in accordance with Directive 2009/138/EC of the European Parliament and of the Council³⁵;

- (s) Commission Implementing Regulation (EU) 2015/498 of 24 March 2015 laying down implementing technical standards with regard to the supervisory approval procedure to use undertaking-specific parameters in accordance with Directive 2009/138/EC of the European Parliament and of the Council³⁶;
- (t) Commission Implementing Regulation (EU) 2015/499 of 24 March 2015 laying down implementing technical standards with regard to the procedures to be used for granting supervisory approval for the use of ancillary own-fund items in accordance with Directive 2009/138/EC of the European Parliament and of the Council³⁷;
- (u) Commission Implementing Regulation (EU) 2015/500 of 24 March 2015 laying down implementing technical standards with regard to the procedures to be followed for the supervisory approval of the application of a matching adjustment in accordance with Directive 2009/138/EC of the European Parliament and of the Council³⁸.”.

(2) Section 33AK of the Act of 1942 is amended—

(a) in subsection (5) by substituting the following for paragraph (aw):

“(aw) for any purpose connected to the functions of the Bank as a competent authority or resolution authority under Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014³⁹, or

(ax) to independent actuaries of insurance undertakings and reinsurance undertakings (within the meaning of the European Union (Insurance and Reinsurance) Regulations 2015) carrying out legal supervision of those entities and the bodies responsible for overseeing such actuaries.”, and

(b) in subsection (10) by substituting the following for paragraphs (t) and (u):

“(t) the SSM Regulation,

(u) the SSM Framework Regulation, and

³⁵OJ No. L76, 20.3.2015, p. 23

³⁶OJ No. L79, 25.3.2015, p. 8

³⁷OJ No. L79, 25.3.2015, p. 12

³⁸OJ No. L79, 25.3.2015, p. 18

³⁹OJ No. L173, 12.6.2014, p. 190

- (v) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II).”.

(3) The Act of 1942 is amended by inserting the following after section 33ANE:

“Application of Part to insurance holding companies and mixed financial holding companies

33ANF. (1) This Part applies in relation to—

- (a) the commission or suspected commission by an insurance holding company or mixed financial holding company of a contravention of—
 - (i) a provision of Part 17 of the European Union (Insurance and Reinsurance) Regulations 2015 or any other provision of those Regulations as applied to the insurance holding company or mixed financial holding company by that Part,
 - (ii) any direction given to an insurance holding company or mixed financial holding company under a provision referred to in subparagraph (i) or any direction given under financial services legislation to the insurance holding company or mixed financial holding company pursuant to a provision referred to in subparagraph (i),
 - (iii) any requirement imposed on an insurance holding company or mixed financial holding company under a provision referred to in subparagraph (i), under any direction given to an insurance holding company or mixed financial holding company under a provision referred to in subparagraph (i), or under any direction given under financial services legislation to the insurance holding company or mixed financial holding company pursuant to a provision referred to in subparagraph (i), or
 - (iv) any obligation imposed on an insurance holding company or mixed financial holding company by this Part or imposed by the Bank pursuant to a power exercised under this Part, and
- (b) participation, by a person concerned in the management of an insurance holding company or mixed financial holding company, in the commission of such a contravention.

(2) For the purposes of subsection (1)—

- (a) a reference in this Part to a regulated financial service provider or a financial service provider includes a reference to an insurance holding company or mixed financial holding company,

(b) a reference in this Part to a prescribed contravention includes a reference to a contravention, by an insurance holding company or mixed financial holding company, of a provision, direction, requirement or obligation referred to in subsection (1), and

(c) a reference in this Part to a person concerned in the management of a regulated financial service provider includes a reference to a person concerned in the management of an insurance holding company or mixed financial holding company.

(3) Nothing in this section limits the application of this Part in relation to matters other than those referred to in subsection (1).

(4) In this section “insurance holding company” and “mixed financial holding company” have the meaning assigned to them in the European Union (Insurance and Reinsurance) Regulations 2015.”.

(4) Part 2 of Schedule 2 to the Act of 1942 is amended by inserting at the end—

“

61.	S.I. No. 485 of 2015	European Union (Insurance and Reinsurance) Regulations 2015	The whole instrument
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”

Amendment of Insurance Act 1964

312. Section 1(1) of the Insurance Act 1964 (1964 No. 18) is amended in the definition of “authorising regulations” by substituting the following for paragraphs (b) and (c):

“(b) the European Communities (Non-Life Insurance) (Amendment) (No. 2) Regulations 1991 (S.I. No. 142 of 1991),

(c) the European Communities (Non-Life Insurance) Framework Regulations 1994 (S.I. No. 359 of 1994), and

(d) the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015) (so far as relating to non-life insurance business);”.

Amendments of Insurance (No. 2) Act 1983

313. Section 1(1) of the Insurance (No. 2) Act 1983 is amended—

(a) by substituting the following for the definition of “insurer”:

“ ‘insurer’ means the holder of an authorisation issued by the Bank under—

(a) the Non-Life Insurance Regulations,

- (b) the Life Assurance Regulations,
- (c) the Non-Life Insurance Framework Regulations,
- (d) the Life Assurance Framework Regulations, or
- (e) the Insurance and Reinsurance Regulations,

to carry on a class or description of insurance business;”,

- (b) by inserting the following after the definition of “insurer”:

“ ‘Insurance and Reinsurance Regulations’ means the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015);”,

- (c) by substituting the following for the definition of “policy”:

“ ‘policy’ means a document or other writing by which a contract—

- (a) of non-life insurance (within the meaning of the Non-Life Insurance Regulations, the Non-Life Insurance Framework Regulations or the Insurance and Reinsurance Regulations) or life insurance (within the meaning of the Life Assurance Regulations, the Life Assurance Framework Regulations or the Insurance and Reinsurance Regulations), or

- (b) of reinsurance (within the meaning of the Reinsurance Regulations or the Insurance and Reinsurance Regulations),

is made or agreed to be made or that is evidence of such a contract;”,

- (d) by substituting the following for the definition of “reinsurer”:

“ ‘reinsurer’ means a person who has received authorisation under the Reinsurance Regulations or the Insurance and Reinsurance Regulations to carry on reinsurance business only;”, and

- (e) in the definition of “the supervisory Regulations” by substituting the following for paragraphs (e) and (f):

“(e) the Life Assurance Framework Regulations,

(f) the European Communities (Insurance and Reinsurance Groups Supplementary Supervision) Regulations 2007 (S.I. No. 366 of 2007), and

(g) the Insurance and Reinsurance Regulations.”.

Amendments of Insurance Act 1989

314. (1) Section 2(1) of the Insurance Act 1989 is amended—

(a) in the definition of “authorisation”, by substituting for “or the Life Regulations of 1994”, “, the Life Regulations of 1994 or the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015)”,

(b) in the definition of “insurance undertaking” by substituting the following for paragraph (b):

“(b) the holder of an official authorisation in respect of insurance granted pursuant to—

(i) Council Directive No. 73/239/EEC of 24 July 1973 as amended or extended from time to time,

(ii) Council Directive No. 79/267/EEC of 5 March 1979 as amended or extended from time to time,

(iii) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 as amended or extended from time to time, or

(iv) the Swiss Confederation Agreement as defined in the European Communities (Swiss Confederation Agreement) Regulations 1996 (S.I. No. 25 of 1996),”

(c) in the definition of “life assurance” by inserting after “1994” “or Schedule 2 to the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015)”, and

(d) in the definition of “non-life insurance” by inserting after “1994”, “or Part 1 of Schedule 1 to the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015)”.

(2) Section 21 of the Insurance Act 1989 is amended by inserting the following subsection after subsection (4)—

“(5) This section shall not apply to an insurance undertaking to which the European Union (Insurance and Reinsurance) Regulations 2015 apply, other than an undertaking to which Regulation 11(1) of those Regulations applies.”.

(3) Section 22 of the Insurance Act 1989 is amended by substituting the following for paragraph (4):

“(4) This section shall not apply to those undertakings that are reinsurance undertakings, special purpose reinsurance vehicles or special purpose vehicles to which the European Communities (Reinsurance) Regulations 2006 apply or to which the European Union (Insurance and Reinsurance) Regulations 2015 apply.”.

(4) Section 24 of the Insurance Act 1989 is amended by the inserting the following subsection after subsection (3):

“(4) This section shall not apply to an insurance undertaking to which the European Union (Insurance and Reinsurance) Regulations 2015 apply other than an undertaking to which Regulation 11(1) of those Regulations applies.”.

(5) Section 34 of the Insurance Act 1989 is amended by the insertion of the following subsection after subsection (4)—

“(5) This section shall not apply to an insurance undertaking to which the European Union (Insurance and Reinsurance) Regulations 2015 apply, other than an undertaking to which Regulation 11(1) of those Regulations applies.”.

Amendment of Central Bank Act 1997

315. Section 27B(4) of the Central Bank Act 1997 (1997 No. 8) is amended by substituting the following for paragraphs (k) to (m):

“(k) Regulation 85 of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003;

(l) Regulation 52 of the European Union (Capital Requirements) Regulations 2014;

(m) Regulation 78 of the European Union (Insurance and Reinsurance) Regulations 2015;

(n) any other provision of an Act or regulations declared under subsection (5) to be a prescribed enactment for the purpose of this section.”.

Amendment of Companies Act 2014

316. Section 275(1) of the Act of 2014 is amended, in the definition of “insurance undertaking”, by substituting the following for paragraphs (d) and (e):

“(d) Regulation 2 of the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994),

(e) European Communities (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006), or

(f) Regulation 3 of the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015);”.

Amendment of European Communities (Fourth Motor Insurance Directive) Regulations 2003

317. Regulation 4(9) of the European Communities (Fourth Motor Insurance Directive) Regulations 2003 (S.I. No. 651 of 2003) is amended by substituting

for “(as amended)”, “(as amended) or Regulation 305 of the European Union (Insurance and Reinsurance) Regulations 2015, (S.I. No. 485 of 2015), according to which of those Regulations apply in relation to the undertaking,”.

Transitional provisions

318. (1) A regulatory action taken by the Bank under a provision amended by these Regulations on or before the commencement of the amendment continues to have effect according to its terms and the Bank may enforce it.

(2) The amendment of any provision by these Regulations does not preclude the taking of any legal proceedings, or the undertaking of any investigation, or disciplinary or enforcement action by the Bank or any other person, in respect of any contravention of a provision (including anything amended by these Regulations) or any misconduct which may have been committed before the commencement of the amendment.

(3) In paragraph (1) “regulatory action” includes any code, direction, order, requirement, sanction, condition, appointment or request (however described) of a regulatory nature made, given or imposed by the Bank.

SCHEDULE 1

CLASSES OF NON-LIFE INSURANCE

Part 1

CLASSES

1. Accident (including industrial injury and occupational diseases)—
 - (a) fixed pecuniary benefits,
 - (b) benefits in the nature of indemnity,
 - (c) combinations of the 2, and
 - (d) injury to passengers.
2. Sickness—
 - (a) fixed pecuniary benefits,
 - (b) benefits in the nature of indemnity, and
 - (c) combinations of the 2.
3. Land vehicles (other than railway rolling stock).

All damage to or loss of—

 - (a) land motor vehicles, and
 - (b) land vehicles other than motor vehicles.
4. Railway rolling stock.

All damage to or loss of railway rolling stock.
5. Aircraft.

All damage to or loss of aircraft.
6. Ships (sea, lake and river and canal vessels).

All damage to or loss of—

 - (a) river and canal vessels,
 - (b) lake vessels, and
 - (c) sea vessels.
7. Goods in transit (including merchandise, baggage, and all other goods).

All damage to or loss of goods in transit or baggage, irrespective of the form of transport.

8. Fire and natural forces.

All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to—

- (a) fire,
- (b) explosion,
- (c) storm,
- (d) natural forces other than storm,
- (e) nuclear energy, and
- (f) land subsidence.

9. Other damage to property.

All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to hail or frost, and any event such as theft, other than that included in class 8.

10. Motor vehicle liability.

All liability arising out of the use of motor vehicles operating on the land (including carrier's liability).

11. Aircraft liability.

All liability arising out of the use of aircraft (including carrier's liability).

12. Liability for ships (sea, lake and river and canal vessels).

All liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability).

13. General liability.

All liability other than the liabilities referred to in classes 10, 11 and 12.

14. Credit—

- (a) insolvency (general),
- (b) export credit,
- (c) instalment credit,
- (d) mortgages, and

(e) agricultural credit.

15. Suretyship—

(a) suretyship (direct), and

(b) suretyship (indirect).

16. Miscellaneous financial loss—

(a) employment risks,

(b) insufficiency of income (general),

(c) bad weather,

(d) loss of benefits,

(e) continuing general expenses,

(f) unforeseen trading expenses,

(g) loss of market value,

(h) loss of rent or revenue,

(i) other indirect trading loss,

(j) other non-trading financial loss, and

(k) other forms of financial loss.

17. Legal expenses

Legal expenses and costs of litigation.

18. Assistance

Assistance provided for persons who get into difficulties while travelling, while away from their home or their habitual residence as described in Article 2(2) of the Directive.

Part 2

AUTHORISATIONS FOR MORE THAN ONE CLASS OF INSURANCE

The following names shall be given to authorisations which simultaneously cover the following classes:

(a) Classes 1 and 2: “accident and health insurance”;

(b) Classes 1(d), 3, 7 and 10: “motor insurance”;

- (c) Classes 1(*d*), 4, 6, 7 and 12: “marine and transport insurance”;
- (d) Classes 1(*d*), 5, 7 and 11: “aviation insurance”;
- (e) Classes 8 and 9: “insurance against fire and other damage to property”;
- (f) Classes 10, 11, 12 and 13: “liability insurance”;
- (g) Classes 14 and 15: “credit and suretyship insurance”;
- (h) All classes, at the choice of the Member States, which shall notify the other Member States and the Commission of their choice.

SCHEDULE 2

CLASSES OF LIFE INSURANCE

1. Life insurance and contracts to pay annuities on human life as described in points (a)(i), (ii) and (iii) of Article 2(3) of the Directive (“Article 2(3)”) excluding those referred to in classes 2 and 3.
2. Contracts of insurance to provide a sum on marriage or on the birth of a child expressed to be in effect for a period of more than one year.
3. The insurance referred to in points (a)(i) and (ii) of Article 2(3), which are linked to investment funds.
4. Permanent health insurance, that is contracts of insurance providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of a sickness or infirmity, being contracts that—
 - (a) are expressed to be in effect for a period of not less than five years or until normal retirement age for the persons concerned, or without limit of time, and
 - (b) either:
 - (i) are not expressed to be terminable by the insurance undertaking under the terms of the contract, or
 - (ii) are expressed to be so terminable only in special circumstances mentioned in the contract.
5. Tontines, as described in point (b)(i) of Article 2(3).
6. Capital redemption operations, as described in point (b)(ii) of Article 2(3).
7. Management of group pension funds as described in point (b)(iii) and (iv) of Article 2(3).
8. The operations referred to in point (b)(v) of Article 2(3).
9. The operations referred to in point (c) of Article 2(3).

SCHEDULE 3

SOLVENCY CAPITAL REQUIREMENT (SCR) STANDARD FORMULA

Part 1

CALCULATION OF THE BASIC SOLVENCY CAPITAL REQUIREMENT

1. (1) The Basic Solvency Capital Requirement set out in Regulation 117(1) shall be equal to the following:

$$\text{Basic SCR} = \sqrt{\sum_{ij} \text{Corr}_{ij} \times \text{SCR}_i \times \text{SCR}_j}$$

where—

SCR_i denotes the risk module i;

SCR_j denotes the risk module j;

‘i,j’ means that the sum of the different terms should cover all possible combinations of i and j.

(2) In the calculation, SCR_i and SCR_j are replaced by the following:

SCR non-life denotes the non-life underwriting risk module;

SCR life denotes the life underwriting risk module;

SCR health denotes the health underwriting risk module;

SCR market denotes the market risk module;

SCR default denotes the counterparty default risk module.

(3) The factor Corr_{i,j} denotes the item set out in row i and in column j of the following correlation matrix:

i \ j	Market	Default	Life	Health	Non-life
Market	1	0,25	0,25	0,25	0,25
Default	0,25	1	0,25	0,25	0,5
Life	0,25	0,25	1	0,25	0
Health	0,25	0,25	0,25	1	0
Non-life	0,25	0,5	0	0	1

Part 2

CALCULATION OF THE NON-LIFE UNDERWRITING RISK MODULE

2. (1) The non-life underwriting risk module set out in Regulation 119(2) shall be equal to the following:

$$SCR_{\text{non-life}} = \sqrt{\sum_{ij} \text{Corr}_{ij} \times SCR_i \times SCR_j}$$

where—

SCR_i denotes the sub-module i;

SCR_j denotes the sub-module j;

“i,j” means that the sum of the different terms should cover all possible combinations of i and j.

(2) In the calculation, SCR_i and SCR_j are replaced by the following:

SCR nl premium and reserve denotes the non-life premium and reserve risk sub-module;

SCR nl catastrophe denotes the non-life catastrophe risk sub-module.

Part 3

CALCULATION OF THE LIFE UNDERWRITING RISK MODULE

3. (1) The life underwriting risk module set out in Regulation 119(3) shall be equal to the following:

$$SCR_{\text{life}} = \sqrt{\sum_{ij} \text{Corr}_{ij} \times SCR_i \times SCR_j}$$

where—

SCR_i denotes the sub-module i;

SCR_j denotes the sub-module j;

'i,j' means that the sum of the different terms should cover all possible combinations of i and j.

(2) In the calculation, SCR_i and SCR_j are replaced by the following:

SCR mortality denotes the mortality risk sub-module;

SCR longevity denotes the longevity risk sub-module;

SCR disability denotes the disability — morbidity risk sub-module;

SCR life expense denotes the life expense risk sub-module;

SCR revision denotes the revision risk sub-module;

SCR lapse denotes the lapse risk sub-module;

SCR life catastrophe denotes the life catastrophe risk sub-module.

Part 4

CALCULATION OF THE MARKET RISK MODULE

4. (1) The market risk module, set out in Regulation 119(5) shall be equal to the following:

$$SCR_{\text{market}} = \sqrt{\sum_{ij} \text{Corr}_{ij} \times SCR_i \times SCR_j}$$

where—

SCR_i denotes the sub-module i;

SCR_j denotes the sub-module j;

'i,j' means that the sum of the different terms should cover all possible combinations of i and j.

(2) In the calculation, SCR_i and SCR_j are replaced by the following:

SCR interest rate denotes the interest rate risk sub-module;

SCR equity denotes the equity risk sub-module;

SCR property denotes the property risk sub-module;

SCR spread denotes the spread risk sub-module;

SCR concentration denotes the market concentrations sub-module;

SCR currency denotes the currency risk sub-module.



GIVEN under my Official Seal,
4 November 2015.

MICHAEL NOONAN,
Minister for Finance.

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(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

€40.13



Wt. (B31613). 285. 11/15. Essentra. Gr 30-15.