Translation of Liechtenstein Law

English title:	Ordinance of 25 August 2015 on the Supervision of Insurance Undertakings (Insurance Supervision Ordinance)
Original German title:	Verordnung vom 25. August 2015 betreffend die Aufsicht über Versicherungsunternehmen (Versicherungsaufsichtsverordnung; VersAV)
Serial number (LR-Nr.):	961.011
First published:	31 August 2015
First publication no. (LGBl-Nr.):	2015-239
Last amended:	1 January 2021
Date of last amendment - publication no. (LGBl-Nr.):	2020-477
Translation date:	30 June 2023

Liechtenstein Law Gazette
Year 2015 No. 239 published on 31 August 2015

Ordinance

of 25 August 2015

on the Supervision of Insurance Undertakings (Insurance Supervision Ordinance; VersAV)

Pursuant to Article 4(2), Article 31(6), Article 33(6), Article 35(10), Article 37(8), Article 40(3), Article 41(3), Article 48, Article 52(2), Article 55(7), Article 67, Article 74(4), Article 75(5), Article 77(2) and (6), Article 78(3), Article 79(3), Article 80(6), Article 83(3), Article 99(5), Article 100(5), Article 101(4), Article 102(8), Article 115(2), Article 162(2), Article 182(9), Article 212(2), Article 213(4), Article 218(5), Article 219(4), Article 222(2), Article 239(4), Article 246(5), Article 259, Article 262(2), and Article 263(2) of the Law of 12 June 2015 on the Supervision of Insurance Undertakings (Insurance Supervision Act; VersAG), LGBl. 2015 No. 231, the Government issues the following ordinance:

I. General provisions

Article 1

Object, purpose, and definitions

1) This Ordinance, implementing the Insurance Supervision Act, governs the details of the supervision of insurance undertakings, in particular with regard to:

a) governance requirements;
b) financial resources;
c) accounting, reporting, and audit;
d) domestic activities of foreign insurance undertakings;
e) reorganisation and winding-up;

f) publications of the FMA;

g) group supervision;

h) small direct insurance undertakings.

2) It serves to implement:

a) 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) (EEA Compendium of Laws: Annex IX - 1.01);

b) Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (OJ L 153, 22.5.2014, 1).

3) The terms used in this Ordinance to denote persons and functions include persons of male and female gender alike.

II. Governance

Article 2

Governance policies

1) In their written policies, insurance undertakings shall set out rules relating at least to the following:

a) risk management;

b) internal control;

c) internal audit; and

d) outsourcing, where applicable.

2) They shall ensure that those policies are implemented.

Governing bodies and persons with key functions

Article 3

a) Notification of changes

1) Insurance undertakings must notify to the FMA any changes in the identity of the persons who effectively run the undertaking or who hold other key functions.

2) They shall transmit all information necessary for the assessment of the professional qualifications and personal integrity of these persons.

Article 4

b) Professional qualification and personal integrity

1) At least one member of the general management and one member of the supervisory board or board of directors of the undertaking must have sufficient theoretical and practical knowledge of insurance matters and management experience. This shall generally be presumed if evidence is provided of three years of management experience in an insurance undertaking of comparable size and type of business. If the undertaking intends solely to operate self-insurance as reinsurance, the FMA may allow exceptions to these requirements.

2) Governing bodies and persons with key functions must have personal integrity. This is not the case if:

a) they have been entered in the Liechtenstein Criminal Register or a foreign criminal register for an offence against the property of another as defined in the Criminal Code;
b) bankruptcy proceedings have currently been initiated against them or claims are still unsatisfied from insolvency proceedings more than ten years prior;[1]
c) they repeatedly fail to comply with orders or measures imposed by the FMA;
d) there are reasons to seriously doubt their good repute as businesspeople; or
e) there are reasons to seriously doubt their guarantee of sound and proper business operation.

1 Article 4(2)(b) amended by LGBl. 2020 No. 440.

3) If criminal proceedings for an offence against the property of another or disciplinary or supervisory proceedings are pending against one of the persons referred to in paragraph 2, the FMA may interrupt the licensing procedure in accordance with Article 74 of the National Administration Act (LVG).

Article 5

c) Evidence of personal integrity for nationals of other EEA Contracting Parties

1) In the case of nationals of other EEA Contracting Parties, it shall be presumed that the requirements of Article 4(2)(a) are met if a criminal register extract or, failing this, an equivalent document issued by a competent judicial or administrative authority in the home State or the State from which the foreign national comes is presented showing that those requirements have been met.

2) Where the document referred to in paragraph 1 is not issued, it may be replaced by a declaration on oath or by a solemn declaration made by the foreign national concerned before a competent judicial or administrative authority or a notary in the home State or the State from which that foreign national comes. A declaration that no insolvency has occurred may also be made by a professional association with the power to do so in the home State or the State from which that foreign national comes.

3) The documents and certificates shall not be presented more than three months after their date of issue.

Article 6

Consideration of matching adjustment and volatility adjustment

Where an insurance undertaking applies the matching adjustment referred to in Article 26, the volatility adjustment referred to in Article 28, or the transitional measures referred to in Articles 93 and 96, they shall perform the assessment of compliance with the capital requirement referred to in Article 37(2)(b) of the Insurance Supervision Act with and without taking into account those adjustments and transitional measures.

Article 7

Actuarial function

1) Performance of the actuarial function by the responsible actuary is permissible, provided that the relevant requirements are met, taking into account the nature, scale and complexity of the insurance undertaking's business activities. In such a case, it must be explained to the FMA how any conflicts of interest are avoided.

2) Opinions pursuant to Article 40(1)(g) and (h) of the Insurance Supervision Act shall be made in writing on a regular basis, but at least once a year.

3) Persons performing the actuarial function must, as a general rule, meet the requirements imposed on the responsible actuary.

Article 8

Responsible actuary

1) The responsible actuary appointed by the insurance undertaking shall be responsible for actuarial matters in connection with the preparation of the commercial balance sheet.

2) The professional qualification of the responsible actuary shall require:

a) sufficient knowledge of actuarial and financial mathematics. This shall generally be assumed if the person to be appointed holds the actuarial title of a fully qualified actuary from a recognised actuarial association; and

b) sufficient professional experience. As a rule, this shall be presumed if evidence is provided of at least three years of relevant professional experience.

3) The prospective responsible actuary must be notified to the FMA prior to their appointment, stating the facts that are material for the assessment of personal integrity and professional qualification. If there are reasonable doubts as to fulfilment of the conditions for appointment, the FMA may demand that another person be appointed. If the insurance undertaking does not comply with this demand or if reasonable doubts arise as to fulfilment of the conditions for appointment for this other person as well, the FMA may appoint the responsible actuary itself.

4) If circumstances become known after the appointment which would have precluded an appointment, or if the responsible actuary does not properly perform the duties incumbent upon them, the FMA may demand that another responsible actuary be appointed. The third sentence of paragraph 3 shall apply *mutatis mutandis*.

5) The withdrawal of a responsible actuary must be notified to the FMA without delay. If the termination of the contract concluded with the responsible actuary or its mutually agreed cancellation is intended, the FMA must be notified in advance, stating the reasons.

6) A responsible actuary may be appointed by way of an employment contract or outsourcing.

7) The general management of an insurance undertaking shall provide the responsible actuary with all necessary information. As soon as, in the course of the fulfilment of the responsible actuary's duties, the responsible actuary recognises that they may not be able to provide the actuarial certification referred to in Article 41(2)(b) of the Insurance Supervision Act, or only with restrictions, the responsible actuary shall inform the general management and, if the general management does not remedy the defects without delay, the responsible actuary shall inform the FMA immediately.

8) The general management of an insurance undertaking shall also submit to the FMA the actuarial certification and the associated report referred to in Article 41(2)(b) of the Insurance Supervision Act as well as the report on the appropriateness of its proposal on profit participation referred to in Article 41(2)(d) of the Insurance Supervision Act. If the general management intends to set a profit participation that deviates from the proposal of the responsible actuary, the reasons for the deviation must be communicated to the FMA in writing without delay.

III. Financial resources

A. Own funds

Article 9

Classification of own-fund items

1) When assessing the extent to which own-fund items possess the characteristics set out in Article 43(3)(a) and (b) of the Insurance Super-

vision Act, 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. 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).

2) 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).

Article 10

Main criteria for the classification into tiers

1) Basic own-fund items shall be classified in Tier 1 where they substantially possess the characteristics set out in Article 43(3)(a) and (b) of the Insurance Supervision Act, taking into consideration the features set out in Article 9.

2) Basic own-fund items shall be classified in Tier 2 where they substantially possess the characteristic set out in Article 43(3)(b) of the Insurance Supervision Act, taking into consideration the features set out in Article 9.

3) Ancillary own-fund items shall be classified in Tier 2 where they substantially possess the characteristics set out in Article 43(3)(a) and (b) of the Insurance Supervision Act, taking into consideration the features set out in Article 9.

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

Article 11

Classification of specific own-fund items

For the purposes of capital requirements, the following special classifications apply in principle:

a) surplus funds as referred to in Article 47 of the Insurance Supervision Act 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 authorised banks shall be classified in Tier 2.

Article 12

Approval of ancillary own funds

1) The amount ascribed to each ancillary own-fund item as referred to in Article 46(1) of the Insurance Supervision Act shall reflect the loss-absorbency of the item and shall be based upon prudent and realistic assumptions. 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.

2) For each ancillary own-fund item, the FMA shall base its approval pursuant to Article 46(2) of the Insurance Supervision Act 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 have made for such ancillary own funds, to the extent that information can be reliably used to assess the expected outcome of future calls.

B. Capital requirement

Article 13

Notional Minimum Capital Requirement when life and non-life insurance activities are pursued simultaneously

1) At a minimum, direct insurance undertakings operating within the scope of Article 52 of the Insurance Supervision Act shall cover the following by an equivalent amount of eligible basic own-fund items:

a) the notional life Minimum Capital Requirement, in respect of the life activity;
b) the notional non-life Minimum Capital Requirement, in respect of the non-life activity.

2) The minimum financial obligations referred to in paragraph 1, in respect of the life insurance activity and the non-life insurance activity, shall not be borne by the other activity.

3) As long as the minimum financial obligations referred to in paragraphs 1 and 2 are fulfilled and provided the FMA is informed, the insurance undertaking may use to cover the Solvency Capital Requirement the explicit eligible own-fund items which are still available for one or the other activity.

4) The data collection shall be carried out so as to show the sources of the results for life and non-life insurance separately. All income and expenditure shall be broken down according to origin. Items common to both activities shall be entered in the accounts in accordance with methods of apportionment to be accepted by the FMA.

5) Insurance undertakings shall, on the basis of the data collection, prepare a statement in which the eligible basic own-fund items covering each notional Minimum Capital Requirement as referred to in Article 52(1) of the Insurance Supervision Act are clearly identified.

6) If the eligible basic own-fund items with respect to one of the activities and the minimum financial obligations referred to in paragraphs 1 and 2 are insufficient, the FMA shall apply to the deficient activity the measures provided for in the Insurance Supervision Act, whatever the results in the other activity. By way of derogation from paragraph 2, those measures may involve a transfer of eligible basic own-fund items from one activity to the other, subject to approval by the FMA.

Article 14

Calculation of the Basic Solvency Capital Requirement for the non-life underwriting risk module

The non-life underwriting risk module shall be calculated, in accordance with Annex 3(2) of the Insurance Supervision Act, as a combination of the capital requirements for at least the following sub-modules:

a) 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);

b) 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).

Article 15

Calculation of the Basic Solvency Capital Requirement for the life underwriting risk module

The life underwriting risk module shall be calculated, in accordance with Annex 3(3) of the Insurance Supervision Act, as a combination of the capital requirements for at least the following sub-modules:

a) 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);

b) 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);

c) 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);

d) 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);

e) 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);

f) 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);

g) 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).

Article 16

Calculation of the Basic Solvency Capital Requirement for the health underwriting risk module

The health underwriting risk module shall cover at least the following risks:

a) 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;

b) 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;

c) 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.

Article 17

Calculation of the Basic Solvency Capital Requirement for the market risk module

The market risk module shall be calculated, in accordance with Annex 3(4) of the Insurance Supervision Act, as a combination of the capital requirements for at least the following sub-modules:

a) 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);

b) 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);

c) 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);

d) 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);

e) 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);

f) additional risks to an insurance 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).

Article 18

Duration-based equity risk sub-module

1) The FMA may authorise insurance undertakings providing retirement benefits as referred to in paragraph 2 to apply a duration-based equity risk sub-module of the Solvency Capital Requirement which is calibrated using a Value-at-Risk measure over a time period which is consistent with the typical holding period of equity investments for the undertaking concerned.

2) The insurance undertakings referred to in paragraph 1 must provide the following:

a) occupational retirement provision business in accordance with Article 4 of the Pension Funds Act; or

b) retirement benefits paid by reference to reaching, or the expectation of reaching, retirement where the premiums paid for those benefits have a tax deduction which is authorised to policyholders in accordance with the national legislation of the EEA Contracting Party that has authorised the undertaking.

3) An authorisation in accordance with paragraph 1 may be granted only where:

a) all assets and liabilities corresponding to the business are ring-fenced, managed and organised separately from the other activities of the insurance undertakings, without any possibility of transfer;

b) the activities of the undertaking related to paragraph 2, in relation to which this approach is applied, are pursued only in Liechtenstein and a licence has been granted for those activities; and

c) the average duration of the liabilities corresponding to the business held by the undertaking exceeds an average of 12 years.

4) A confidence level must be ensured that provides the policyholders and beneficiaries with a level of protection equivalent to that set out in Article 42 of the Insurance Supervision Act, where the approach provided for in this Article is used only in respect of those assets and liabilities referred to in paragraph 3(a). In the calculation of the Solvency Capital Requirement those assets and liabilities shall be fully considered for the purpose of assessing the diversification effects, without prejudice to the need to safeguard the interests of policyholders and beneficiaries in other EEA Contracting Parties.

5) Subject to the approval of the FMA, the approach set out in paragraph 1 shall be used only where the solvency and liquidity position as well as the strategies, processes and reporting procedures of the undertaking concerned with respect to asset–liability management are such as to ensure, on an ongoing basis, that it is able to hold equity investments for a period which is consistent with the typical holding period of equity investments for the undertaking concerned. The undertaking shall be able to demonstrate to the FMA that that condition is verified with the level of confidence necessary to provide policyholders and beneficiaries with a level of protection equivalent to that set out in Article 42 of the Insurance Supervision Act.

6) Insurance undertakings shall not revert to applying the approach set out in Article 55 of the Insurance Supervision Act, except in duly justified circumstances and subject to the approval of the FMA.

Article 19

Calculation of the equity risk sub-module (symmetric adjustment mechanism)

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 Article 54(4) of the Insurance Supervision Act, 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. The weighted average shall be calculated over an appropriate period of time which shall be the same for all insurance 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.

C. Internal models

Article 20

Statistical quality standards

1) The internal model, and in particular the calculation of the probability distribution forecast underlying it, shall comply with the criteria set out in paragraphs 2 to 9.

2) The methods used to calculate the probability distribution forecast shall be based on adequate, applicable and relevant actuarial and statistical techniques and shall be consistent with the methods used to calculate technical provisions. The methods used to calculate the probability distribution forecast shall be based upon current and credible information and realistic assumptions. Insurance undertakings shall be able to justify the assumptions underlying their internal model to the FMA.

3) Data used for the internal model shall be accurate, complete and appropriate. Insurance undertakings shall update the data sets used in the calculation of the probability distribution forecast at least annually.

4) No particular method for the calculation of the probability distribution forecast shall be prescribed.

5) Regardless of the calculation method chosen, 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 the system of governance of insurance undertakings, in particular their risk-management system and decision-making processes, and capital allocation in accordance with Article 66 of the Insurance Supervision Act.

6) The internal model shall cover all of the material risks to which insurance undertakings are exposed. Internal models shall cover at least the risks set out in Article 42(5) of the Insurance Supervision Act.

7) As regards diversification effects, insurance undertakings may take account in their internal model of dependencies within and across risk

categories, provided that the FMA is satisfied that the system used for measuring those diversification effects is adequate.

8) Insurance undertakings may take full account of the effect of risk-mitigation techniques in their 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.

9) Insurance undertakings shall accurately assess the particular risks associated with financial guarantees and any contractual options in their internal model, where material. They shall also assess the risks associated with both policyholder options and contractual options for insurance undertakings. For that purpose, they shall take account of the impact that future changes in financial and non-financial conditions may have on the exercise of those options.

10) In their internal model, insurance undertakings may take account of future management actions that they would reasonably expect to carry out in specific circumstances.

11) In the case set out in paragraph 10, the undertaking concerned shall make allowance for the time necessary to implement such actions.

12) In their internal model, insurance undertakings shall take account of all payments to policyholders and beneficiaries which they expect to make, whether or not those payments are contractually guaranteed.

Article 21

Calibration standards

1) Insurance undertakings may use a different time period or risk measure than that set out in Article 42(3) and (4) of the Insurance Supervision Act for internal modelling purposes as long as the outputs of the internal model can be used by those undertakings to calculate the Solvency Capital Requirement in a manner that provides policyholders and beneficiaries with a level of protection equivalent to that set out in Article 42 of the Insurance Supervision Act.

2) Where practicable, insurance undertakings shall derive the Solvency Capital Requirement directly from the probability distribution forecast generated by the internal model of those undertakings, using the Value-at-Risk measure set out in Article 42(4) of the Insurance Supervision Act.

3) Where insurance undertakings cannot derive the Solvency Capital Requirement directly from the probability distribution forecast generated by the internal model, the FMA may allow approximations to be used in the process to calculate the Solvency Capital Requirement, as long as those undertakings can demonstrate to the FMA that policyholders are provided with a level of protection equivalent to that provided for in Article 42 of the Insurance Supervision Act.

4) The FMA may require insurance undertakings to run their 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.

Article 22

Profit and loss attribution

1) Insurance undertakings shall review, at least annually, the causes and sources of profits and losses for each major line of business.

2) They shall demonstrate how the categorisation of risk chosen in the internal model explains the causes and sources of profits and losses. The categorisation of risk and attribution of profits and losses shall reflect the risk profile of the insurance undertakings.

Article 23

Validation standards

1) Insurance undertakings 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 insurance undertakings to demonstrate to the FMA 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 thereto.

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.

Article 24

Documentation standards

1) Insurance undertakings shall document the design and operational details of their internal model.

2) The documentation shall demonstrate compliance with Articles 20 to 23 of this Ordinance and Article 66 of the Insurance Supervision Act.

3) The documentation shall provide a detailed outline of the theory, assumptions, and mathematical and empirical bases underlying the internal model.

4) The documentation shall indicate any circumstances under which the internal model does not work effectively.

5) Insurance undertakings shall document all major changes to their internal model, as set out in Article 63 of the Insurance Supervision Act.

D. Technical provisions

Article 25

Extrapolation of the relevant risk-free interest rate term structure

1) The determination of the relevant risk-free interest rate term structure referred to in Article 77 of the Insurance Supervision Act shall make use of, and be consistent with, information derived from relevant financial instruments. That determination 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. 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.

2) 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.

Article 26

Matching adjustment to the relevant risk-free interest rate term structure

1) Insurance undertakings 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 FMA where the following conditions are met:

a) the insurance 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 undertakings, and the assigned portfolio of assets cannot be used to cover losses arising from other activities of the undertakings;
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 Article 42 of the Insurance Supervision Act;

g) the contracts underlying the portfolio of insurance or reinsurance obligations include no options for the policyholder or only a surrender option where the surrender value does not exceed the value of the assets, valued in accordance with Article 74 of the Insurance Supervision Act, 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) Notwithstanding paragraph 1(h), insurance undertakings 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. 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).

3) Insurance undertakings that apply 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. Where an insurance 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 FMA and take the necessary measures to restore compliance with those conditions. Where the undertaking is not able to restore compliance with those conditions within two 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.

4) 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 Article 28 of this Ordinance or transitional measure on the risk-free interest rates under Article 262 of the Insurance Supervision Act.

Article 27

Calculation of the matching adjustment

1) For each currency, the matching adjustment referred to in Article 26 shall be calculated in accordance with the following principles:

a) the matching adjustment must be equal to the difference of the following:
   1. 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 Article 74 of the Insurance Supervision Act of the portfolio of assigned assets;
   2. 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;

c) notwithstanding 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 applicable implementing measures for Directive 2009/138/EC.

2) For the purposes of paragraph 1(b), the fundamental spread shall be:

a) equal to the sum of the following:
   1. the credit spread corresponding to the probability of default of the assets;
   2. the credit spread corresponding to the expected loss resulting from downgrading of the assets;

b) for exposures to EEA Contracting Parties' 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;
c) for assets other than exposures to EEA Contracting Parties' 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 1(a)(1) 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).

Article 28

Volatility adjustment to the relevant risk-free interest rate term structure

1) Insurance undertakings shall be required to notify the FMA in advance of the application of a volatility adjustment to the relevant risk-free interest rate term structure to calculate the best estimate. This notification must explain how the correct application is ensured, for which currencies and countries a volatility adjustment is to be used, and how the undertaking intends to comply with the assessment, monitoring, and reporting obligations associated with the adjustment. The FMA may order compliance with further requirements.

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

3) The amount of the volatility adjustment to risk-free interest rates shall be equal to 65% of the risk-corrected currency spread. The risk-corrected currency spread shall be calculated as the difference between

the spread referred to in paragraph 2 and the portion of that spread that is attributable to a realistic assessment of expected losses or unexpected credit or other risk of the assets. 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 Article 25. The extrapolation of the relevant risk-free interest rate term structure shall be based on those adjusted risk-free interest rates.

4) For each relevant country, the volatility adjustment to the risk-free interest rates referred to in paragraph 3 for the currency of that country shall, before the 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 85 basis points. 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. 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 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.[2]

5) The volatility adjustment may 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 Article 26.

6) By way of derogation from Article 42 of the Insurance Supervision Act, the Solvency Capital Requirement shall not cover the risk of loss of basic own funds resulting from changes of the volatility adjustment.

Article 29

Separate valuation of the best estimate and the risk margin

1) When the best estimate and the risk margin are valued 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 the lifetime thereof.

2 Article 28(4) amended by LGBl. 2020 No. 283.

2) The rate used in the determination of the cost of providing that amount of eligible own funds (Cost-of-Capital rate) shall be the same for all insurance and shall be reviewed periodically.

3) The Cost-of-Capital rate used shall be equal to the additional rate, above the relevant risk-free interest rate, that an insurance undertaking would incur holding an amount of eligible own funds equal to the Solvency Capital Requirement necessary to support insurance and reinsurance obligations over the lifetime of those obligations.

Article 30

Valuation of financial guarantees and contractual options

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

2) Any assumptions made by insurance undertakings with respect to the likelihood that policyholders will exercise contractual options, including lapses and surrenders, shall be realistic and based on current and credible information. The assumptions 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.

Article 31

Segmentation

Insurance undertakings shall segment their insurance and reinsurance obligations into homogeneous risk groups, and as a minimum by lines of business, when calculating their technical provisions.

Article 32

Recoverables from reinsurance contracts and special purpose vehicles

1) The calculation by insurance undertakings of amounts recoverable from reinsurance contracts and special purpose vehicles shall comply with Articles 29 to 31 of this Ordinance and with the principles set out in Articles 75 to 78 of the Insurance Supervision Act.

2) When calculating amounts recoverable from reinsurance contracts and special purpose vehicles, insurance undertakings 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. That adjustment shall be based on an assessment of the probability of default of the counterparty and the average loss resulting therefrom (loss-given- default).

Article 33

Data quality and application of approximations

1) Insurance undertakings shall have internal processes and procedures in place to ensure the appropriateness, completeness and accuracy of the data used in the calculation of their technical provisions.

2) Where, in specific circumstances, insurance undertakings have insufficient data of appropriate quality to apply a reliable actuarial method to a set or subset of their 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.

Article 34

Comparison against experience

1) Insurance undertakings 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 insurance undertakings, the undertaking concerned shall make appropriate adjustments to the actuarial methods being used and/or the assumptions being made.

E. Additional provisions on financial resources

Article 35

Investment of assets for certain life insurance contracts

1) With respect to assets held in respect of life insurance contracts where the investment risk is borne by the policyholders, paragraphs 2 to 5 shall apply.

2) Where the benefits provided by a contract are directly linked to the value of units in an undertaking for collective investment in transferable securities (UCITS) or to the value of assets contained in an internal fund held by the insurance undertakings, 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.

3) 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 paragraph 2, the technical provisions in respect of those benefits must be represented as closely as possible either by the units deemed to represent the reference value or, 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.

4) Where the benefits referred to in paragraphs 2 and 3 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 5.

5) Without prejudice to Article 80 of the Insurance Supervision Act, the use of derivative instruments shall be possible insofar as they contribute to a reduction of risks or facilitate efficient portfolio management. Investment and assets which are not admitted to trading on a regulated financial market shall be kept to prudent levels. 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. Investments in assets issued by the same issuer, or by issuers belonging to the same group, shall not expose the insurance undertakings to excessive risk concentration.

Article 36

Additional provisions on technical provisions

1) The establishment, calculation, and valuation of technical provisions within the scope of reporting to the FMA and the solvency balance sheet shall be governed by the applicable EEA law.

2) Insurance undertakings shall be required to establish sufficient technical provisions in the commercial balance sheet for their entire business. The establishment, calculation, and valuation of technical provisions in the commercial balance sheet shall be governed *mutatis mutandis* by the rules set out in the Law on Persons and Companies (PGR) and in Annex 1.

3) The establishment, calculation, and valuation of technical provisions within the scope of reporting to the FMA by small direct insurance undertakings shall be governed by the rules set out in Chapter IX and in Annex 1.

4) The FMA may provide further details governing the establishment, creation, and valuation of technical provisions.

Article 37

Contingency and equalisation provisions

1) The FMA may require the disclosure of contingency and equalisation provisions in the commercial balance sheet, taking into account the criteria set out in paragraphs 2 to 5, unless the insurance undertaking adequately demonstrates that the consideration of diversification effects, the type, scope, and quality of capital resources, the existing reinsurance and other risk mitigation mechanisms, as well as the undertaking's capital and risk management are sufficient to appropriately address the parameter and fluctuation risk referred to in paragraph 2.

2) The contingency and equalisation provisions comprise all amounts that serve to offset, in whole or in part, unfavourable run-off results of the technical provisions and fluctuations in claims expenses. They are required when uncertainties exist in the determination of the technical provisions (contingency or parameter risk) or due to random fluctuations inherent in claims development (fluctuation risk).

3) The contingency and equalisation provisions must in principle be based on the entirety of the insurance undertaking's activities and relate to the business for its own account. However, they may also relate only to a

specific part of the insurance undertaking's activities, for example only with regard to:

a) credit insurance;

b) product liability insurance of pharmaceutical risks;

c) property and liability insurance of facilities for the production or fission of nuclear fuel or for the reprocessing of irradiated nuclear fuel against nuclear energy damage; or

d) insurance of terrorism risks with a high loss risk.

In this case, the activities to which the contingency and equalisation provisions relate must be documented.

4) Insurance undertakings shall disclose the principles and calculation methods used for determining the contingency and equalisation provisions, how maximum or minimum target amounts are determined, and which criteria are applied for allocation and release. For purposes of simplification, an insurance undertaking may also use the principles for calculation set out in Annex 2 or, in relation to the contingency and equalisation provisions in credit insurance, choose one of the methods set out in Annex 3.

5) The principles and calculation methods referred to in paragraph 4 shall be submitted to the FMA for approval in advance.

Article 38

Non-compliance with the Solvency Capital Requirement

1) The extension of the period provided for in the second sentence of Article 83(3) of the Insurance Supervision Act may not exceed seven years. It shall be permissible only in the event of exceptional adverse situations. All relevant facts shall be taken into account, including the average duration of the technical provisions.

2) Exceptional adverse situations exist where the financial situation of insurance 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 and sharp;

b) a persistent low interest rate environment;

c) a high-impact catastrophic event.

3) For the purposes of paragraphs 1 and 2, the FMA shall, where appropriate, consult the European Insurance and Occupational Pensions Authority (EIOPA) and may request it to determine the existence of exceptional adverse situations. In particular, the FMA may address such a request to EIOPA if insurance undertakings with a significant share in the market or in the affected lines of business are unlikely to meet one of the requirements set out in Article 83(3) of the Insurance Supervision Act.

4) If the period is extended, the insurance undertaking concerned shall, every three months, submit a progress report to the FMA setting out the measures taken and the progress made to re-establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile to ensure compliance with the Solvency Capital Requirement.

5) An extension of the period shall be withdrawn where that progress report shows that there was no significant progress in achieving the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of the risk profile to ensure compliance with the Solvency Capital Requirement between the date of the observation of non-compliance of the Solvency Capital Requirement and the date of the submission of the progress report.

IV. Accounting, reporting, and audit

Article 39

Business report and report to the FMA

1) For the preparation of the business report under commercial law and the consolidated business report, the provisions of the PGR and of Annex 1 of this Ordinance shall apply.

2) The annual financial statement and the consolidated financial statement shall be published and made available in printed form to anyone at their request.

3) The report to the FMA is part of the regular reporting to the FMA and shall in particular include the information to be provided for supervisory purposes. The FMA may provide further details concerning the report to the FMA and the progress report referred to in Article 265(3)(b) of the Insurance Supervision Act.

Article 40

Reporting and information to be provided for supervisory purposes

1) Insurance undertakings shall be required to submit to the FMA all information which is necessary for the purposes of supervision. Such information shall include at least the information necessary for the following when performing the supervisory review process:

a) to assess the system of governance applied by the undertakings, the business they are pursuing, the valuation principles applied for solvency purposes, the risks faced and the risk-management systems, and their capital structure, needs and management;

b) to make any appropriate decisions resulting from the exercise of their supervisory rights and duties.

2) For the purposes of paragraph 1, the FMA shall have the following powers:

a) to determine the nature, the scope and the format of the information referred to in paragraph 1 which they require insurance undertakings to submit at the following points in time:

   1. at predefined periods;
   2. upon occurrence of predefined events;
   3. during enquiries regarding the situation of an insurance undertaking;

b) to obtain any information regarding contracts which are held by insurance intermediaries, reinsurance intermediaries, or ancillary insurance intermediaries or regarding contracts which are entered into with third parties; and[3]

c) to require information from external experts, such as auditors and actuaries.

3) The information referred to in paragraphs 1 and 2 shall comprise the following:

a) qualitative or quantitative elements, or any appropriate combination thereof;

b) historic, current or prospective elements, or any appropriate combination thereof; and

c) data from internal or external sources, or any appropriate combination thereof.

3 Article 40(2)(b) amended by LGBl. 2018 No. 72.

4) The information referred to in paragraphs 1 and 2 shall comply with the following principles:

a) it must reflect the nature, scale and complexity of the business of the undertaking concerned, and in particular the risks inherent in that business;
b) it must be accessible, complete in all material respects, comparable and consistent over time; and
c) it must be relevant, reliable and comprehensible.

5) Insurance undertakings shall have appropriate systems and structures for reporting in place to fulfil the requirements on the provision of information as well as a written policy, approved by the administrative, management or supervisory body of the insurance undertaking, ensuring the ongoing appropriateness of the information submitted.

Article 41

Facilitations of reporting

1) Where the predefined periods referred to in Article 40(2)(a)(1) are shorter than one year, the FMA may limit regular reporting, where:

a) the submission 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 information is reported at least annually.

2) The FMA shall not limit regular reporting to the FMA with a frequency shorter than one year in the case of insurance undertakings that are part of a group, unless the undertaking can demonstrate to the satisfaction of the FMA that regular reporting to the FMA with a frequency shorter than one year is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group.

3) The limitation to regular reporting to the FMA shall be granted only to undertakings that do not represent more than 20% of an EEA Contracting Party's life and non-life insurance and reinsurance market respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions. The FMA shall give priority to the smallest undertakings when determining the eligibility of the undertakings for those limitations.

4) The FMA may limit regular reporting to the FMA or exempt insurance undertakings from reporting on an item-by-item basis, where:

a) the submission 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 within the EEA; and
d) the undertaking is able to provide the information on an ad-hoc basis.

5) The FMA shall not exempt from reporting on an item-by-item basis insurance undertakings that are part of a group, unless the undertaking can demonstrate to the satisfaction of the FMA 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.

6) The exemption from reporting on an item-by-item basis as referred to in paragraphs 4 and 5 shall be granted only to undertakings that do not represent more than 20% of an EEA Contracting Party's life and non-life insurance or reinsurance market respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions. The FMA shall give priority to the smallest undertakings when determining the eligibility of the undertakings for those exemptions.

7) For the purposes of paragraphs 1 to 6, as part of the supervisory review process, the FMA 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;
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

k) whether the undertaking is a captive insurance undertaking only covering risks associated with the industrial or commercial group to which it belongs.

Article 42

Reporting of foreign business

1) In its regular reporting to the FMA, each domestic insurance undertaking must report the gross premiums written for each EEA Contracting Party and for each class of insurance in respect of transactions carried out under the right of establishment and, separately, for transactions carried out under the cross-border provision of services.

2) For non-life insurance, the report must additionally include claim payments and commissions, without deduction of reinsurance, for each EEA Contracting Party and for each class of insurance and, with respect to the class of insurance of motor vehicle liability, excluding carrier's liability, the frequency and average claim payments.

3) The FMA shall in turn communicate this information to the competent authorities of the EEA Contracting Parties.

4) The information referred to in paragraphs 1 and 2 shall also be reported for transactions carried out in third countries.

Article 43

Accounting and reporting by third-country insurance undertakings

1) Third-country insurance undertakings shall separately account for and report on domestic business activities. The separate business report (annual financial statement and annual report) shall be published.

2) Upon request, the annual financial statement and the annual report of the main establishment of the third-country insurance undertaking shall be sent to each policyholder in German.

3) All accounts and reports prepared in the home State of the third-country insurance undertaking must be submitted to the FMA, namely the annual financial statement, the annual report, the report to the supervisory authority of the home State, opinions, and reports of the external audit office; these documents must be submitted in the original language and in German.

Article 44

Report on solvency and financial condition

1) Where the matching adjustment referred to in Article 26 is applied, the description referred to in Article 100(2)(d) of the Insurance Supervision Act shall 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. The description referred to shall also include a statement on whether the volatility adjustment referred to in Article 28 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.

2) The description of the structure and amount of own funds, and their quality, referred to in Article 100(2)(e)(1) of the Insurance Supervision Act shall include an analysis of any significant changes as compared to the previous reporting period 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.

3) The disclosure of the Solvency Capital Requirement referred to in Article 100(2)(e)(2) of the Insurance Supervision Act shall show separately the amount calculated in accordance with Articles 53 to 68 of the Insurance Supervision Act and any capital add-on imposed in accordance with Article 72 of the Insurance Supervision Act or the impact of the specific parameters the insurance undertaking is required to use in accordance with Articles 59 and 60 of the Insurance Supervision Act, together with concise information on its justification by the FMA.

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

5) The FMA shall permit insurance undertakings 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 infor-

mation required under Article 100 of the Insurance Supervision Act in both their nature and scope.

6) The report on solvency and financial condition published by the insurance undertaking shall be part of the regular reporting to the FMA. The FMA may provide further details concerning the report on solvency and financial position.

Article 45

Updates and additional voluntary information

1) In the event of a major development affecting significantly the relevance of the information disclosed in the report on solvency and financial condition in accordance with Article 44 of this Ordinance and Article 100 of the Insurance Supervision Act, insurance undertakings 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) non-compliance with the Minimum Capital Requirement is observed and the FMA 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) significant non-compliance with the Solvency Capital Requirement is observed and the FMA does not obtain a realistic recovery plan within two months of the date when non-compliance was observed.

3) In regard to paragraph 2(a), the FMA shall require the undertaking concerned to disclose immediately the amount of non-compliance, together with an explanation of its origin and consequences, including any remedial measure taken. 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 three 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 regard to paragraph 2(b), the FMA shall require the undertaking concerned to disclose immediately the amount of non-compliance, together with an explanation of its origin and consequences, including any remedial measure taken. 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 six 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) Insurance undertakings may disclose, on a voluntary basis, any information or explanation related to their solvency and financial condition which is not already required to be disclosed in accordance with paragraphs 1 to 4 and Article 44 of this Ordinance as well as Article 100 of the Insurance Supervision Act.

Article 46

Policy and approval of the report on solvency and financial condition

1) Insurance undertakings must have appropriate systems and structures in place to fulfil the requirements laid down in Articles 44 and 45 of this Ordinance and Article 100 of the Insurance Supervision Act as well as to have a written policy ensuring the ongoing appropriateness of any information disclosed in accordance with those provisions.

2) The report on solvency and financial condition shall be subject to approval by the administrative, management or supervisory body of the insurance undertaking and be published only after that approval.

Article 47

Information for EIOPA

1) The FMA shall provide the following information to EIOPA on an annual basis:

a) the average capital add-on per undertaking and the distribution of capital add-ons imposed by the FMA during the previous year, measured as a percentage of the Solvency Capital Requirement, shown separately for:
   1. insurance undertakings;
   2. life insurance undertakings;
   3. non-life insurance undertakings;
   4. insurance undertakings pursuing both life and non-life activities;
   5. reinsurance undertakings;

b) for each of the disclosures set out in subparagraph (a), the proportion of capital add-ons imposed under subparagraphs (a), (b), and (c) of Article 72(2) of the Insurance Supervision Act;

c) the number of insurance undertakings benefiting from the limitation from regular reporting to the FMA and the number of insurance undertakings benefiting from the exemption of reporting on an item-by-item basis referred to in Article 41, 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;

d) the number of groups benefiting from the limitation from regular reporting to the FMA and the number of groups benefiting from the exemption of reporting on an item-by-item basis referred to in Article 65 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.

2) For the purpose of reviewing long-term guarantee measures and measures on equity risk, the FMA shall, on an annual basis until 1 January 2021, provide EIOPA with the following information:

a) the availability of long-term guarantees in insurance products in the domestic markets and the behaviour of insurance undertakings as long-term investors;

b) the number of insurance undertakings applying the matching adjustment, the volatility adjustment, the extension of the recovery period, the duration-based equity risk sub-module and the transitional measures set out in Articles 93 to 96;

c) the impact on the insurance undertakings' financial position of the matching adjustment, the volatility adjustment, the symmetric adjustment mechanism to the equity capital charge, the duration-based equity risk sub-module and the transitional measures set out in Articles 93 to 96, at national level and in anonymised way for each undertaking;

d) the effect of the matching adjustment, the volatility adjustment, the symmetric adjustment mechanism to the equity capital charge and the duration-based equity risk sub-module on the investment behaviour of insurance undertakings and whether they provide undue capital relief;

e) the effect of any extension of the recovery period on the efforts of insurance 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 apply the transitional measures set out in Articles 93 to 95, whether they comply with the phasing-in plans referred to in Article 96 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 FMA, taking into account the national regulatory environment.

Article 48

External audit

The external audit required by law may also be carried out by the external audit office pursuant to the PGR, provided that it meets the special requirements described in the following articles.

Article 49

Recognition of external audit offices

1) The activity as an external audit office of an insurance undertaking shall require recognition by the FMA; this recognition shall be granted if the conditions described in this Ordinance are met.

2) The FMA shall withdraw recognition of an external audit office if:

a) the conditions for performing the audit activity are no longer met; or
b) the external audit office seriously violates its duties.

Article 50

Conditions for recognition

1) Recognition shall be granted to external audit offices if:

a) they are organised as public limited companies and have paid-up share capital of at least 200 000 Swiss francs;
b) their general management, the lead auditors, and the organisation of their operations ensure that they perform the audit tasks competently, appropriately, and on a permanent basis;

c) they hold a licence or registration under the Auditors Act;[4]
d) the members of the general management are of good repute;
e) the lead auditors are of good repute and hold a licence under the Auditors Act and demonstrate thorough knowledge of insurance auditing; and[5]
f) the external audit office has professional liability insurance appropriate to its business activities.

2) The FMA shall maintain a publicly accessible register of recognised external audit offices.

Article 51

Independence

1) The external audit offices must be independent of the insurance undertakings to be audited. They may not take on administration and accounting mandates of the insurance undertaking to be audited or other tasks that are incompatible with the audit mandate.

2) The fee income from a single audit mandate may not exceed an average of 10% of the total annual fee income of the external audit office. The audit mandates at an insurance group are considered to be a single audit mandate. The FMA may grant exemptions.

Article 52

Special duties of the external audit office

1) The external audit offices shall be obliged to:

a) notify the FMA of any changes in their articles of association and regulations as well as any changes in the composition of their governing bodies and in the lead auditors notified to the FMA;
b) entrust the management of insurance audits only to auditors who have been notified to the FMA and meet the necessary conditions;
c) notify the head of the mandate and the lead auditor to the FMA before the start of the audit; and
d) submit their business report to the FMA on an annual basis.

4 Article 50(1)(c) amended by LGBl. 2020 No. 477.
5 Article 50(1)(e) amended by LGBl. 2020 No. 477.

2) The FMA may demand information on the reasons for the withdrawal of members of the general management and of the lead auditors reported to the FMA.

Article 53

Duties of the insurance undertakings

1) An insurance undertaking must obtain the approval of the FMA before it appoints an external audit office for the first time or appoints a new external audit office. The FMA shall refuse approval if the proposed external audit office does not guarantee a proper audit.

2) If an insurance undertaking intends to change its external audit office, it must notify the FMA of the reasons.

3) If an external audit office does not properly perform the audit of an insurance undertaking, the FMA may require the insurance undertaking to appoint another external audit office to audit the business report and the consolidated business report.

4) In the event of a change of external audit office, an insurance undertaking must make the most recent audit report available to the newly appointed external audit office. The mandate to the newly appointed external audit office shall also require the approval of the FMA.

Article 54

Audit report

1) The audit report shall clearly state whether the rules governing the business activities of insurance undertakings have been complied with and whether the conditions for the granting of the licence have been met on a permanent basis and continue to be met (regulatory audit). The audit report must also state whether the insurance undertaking has complied with the provisions of the Insurance Supervision Act and this Ordinance as well as the applicable implementing measures for Directive 2009/138/EC and the relevant guidelines of EIOPA. The external audit office must carry out a risk analysis, taking into account the principle of proportionality, and define an audit strategy in which the audit depth and audit frequency for the individual audit areas are determined on the basis of the risk analysis. The external audit office must also declare whether it has received all necessary information and documents from the insurance undertaking. This also applies to the consolidated business

report if such a report has been prepared; if none has been prepared, the external audit office must declare whether a consolidated business report should have been prepared.

2) The external audit office shall independently assess the business report, the reporting to the FMA and, if such a report has been prepared, the consolidated business report; the insurance undertaking shall provide the external audit office with the necessary documents. Reports of the internal audit shall be taken into account.

3) The external audit office shall declare whether the form and content of the business report and the consolidated business report comply with the requirements of the law, the articles of association, and the regulations.[6]

4) The audit report shall be signed by the lead auditor and the external audit office.

5) The FMA shall provide further details in a guideline, in particular on:

a) reporting, including the principles of the audit and the subject of the audit;
b) the structure of the audit report;
c) the deadline for submission of the audit report and its distribution.

V. Domestic activities of foreign insurance undertakings

Article 55

Representative for the settlement of claims

1) The domestic representative of a direct insurance company to be appointed pursuant to Article 115(1)(a) of the Insurance Supervision Act shall be responsible for the following tasks:

a) collection of all necessary information in relation to claims;
b) representation of the insurance undertaking in relation to persons suffering damage who pursue claims, where the representative has been endowed with the necessary powers, including the payment of such claims;

6 Article 54(3) amended by LGBl. 2020 No. 477.

c) representation of the insurance undertaking, including the right of substitution, before the domestic courts and authorities with respect to claims of persons suffering damage;
d) representation of the insurance undertaking before the domestic authorities regarding the existence and validity of third-party motor vehicle liability insurance policies.

2) The appointment of such a representative shall not constitute the opening of a branch or agency of the insurance undertaking.

VI. Reorganisation and winding-up

Article 56

Special register of assets

1) A direct insurance undertaking in respect of whose assets bankruptcy proceedings have been initiated shall, in accordance with Article 162(1) of the Insurance Supervision Act, keep a special register of the assets used to cover the technical provisions.[7]

2) Where a direct insurance undertaking carries on both life and non-life insurance activities, it shall keep at its head office separate registers for each type of business.

3) The total value of the assets entered shall at no time be less than the value of the technical provisions.

4) Where an asset entered in the register 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 3.

5) Where the product of the realisation of assets is less than their estimated value in the registers, the liquidators shall justify this to the FMA.

7 Article 56(1) amended by LGBl. 2020 No. 440.

VII. Publications of the FMA

Article 57

Transparency

1) In addition to publishing its supervisory practice, the FMA shall in particular make the following data and information available to the public:

a) the texts of laws, regulations, administrative rules, guidelines, and recommendations in the field of insurance regulation;
b) the general criteria and methods of the supervisory review processes and tools used by the FMA;
c) aggregate statistical data on key aspects of the application of the prudential framework;
d) the objectives of insurance supervision and its main functions and activities;
e) the handling of the insurance law specified within the framework of the EEA Agreement and the options provided for therein.

2) The disclosure provided for in paragraph 1 shall be sufficient to enable a comparison of the supervisory approaches adopted by the other supervisory authorities of the different EEA Contracting Parties.

3) The disclosure shall be made in a common format and be updated regularly. The information referred to in paragraph 1 shall be accessible on the FMA website.

VIII. Group supervision

Article 58

Intermediate holding companies

1) For the purpose of Article 212 of the Insurance Supervision Act, the intermediate insurance holding company or mixed financial holding company shall be treated as if it were an insurance undertaking subject to the corresponding rules in respect of the Solvency Capital Requirement and were subject to the conditions laid down in respect of own funds eligible for the Solvency Capital Requirement.

2) In cases where an intermediate insurance holding company or intermediate mixed financial holding company holds subordinated debt or other eligible own funds subject to limitation in accordance with Article 43(4) to (7) of the Insurance Supervision Act, they shall be recognised as eligible own funds up to the amounts calculated by application of the limits set out in Article 43(4) to (7) of the Insurance Supervision Act to the total eligible own funds outstanding at group level as compared to the Solvency Capital Requirement at group level.

3) Any eligible own funds of an intermediate insurance holding company or intermediate mixed financial holding company which would require prior authorisation from a supervisory authority if they were held by an insurance undertaking may be included in the calculation of the group solvency only in so far as they have been duly authorised by the FMA, where the FMA is responsible for group supervision.

Article 59

Related third-country insurance undertakings

1) The FMA, assisted by EIOPA, shall consult the other supervisory authorities concerned before taking a decision on equivalence of the provisions of a third country pursuant to Article 213(3) of the Insurance Supervision Act. That decision shall be taken in accordance with the criteria adopted by EIOPA. The FMA shall not take any decision in relation to a third country that is contradicting any decision taken vis-à-vis that third country previously save where it is necessary to take into account significant changes to the supervisory regimes.

2) Where the FMA disagrees with the decision taken by another supervisory authority, it may refer the matter to EIOPA and request its assistance within three months after notification of the decision.

Article 60

Granting derogations to a subsidiary

1) Under Article 218 of the Insurance Supervision Act, the FMA may consult EIOPA in the event of diverging views regarding the approval of an application. In such a case, the period referred to in Article 218(3) of the Insurance Supervision Act shall be extended by one month.

2) If EIOPA is consulted, the FMA shall give due consideration to its recommendations before taking a decision.

3) If the FMA has granted the licence to the subsidiary, it shall send the applicant the joint decision of the college of supervisors, which shall be recognised as determinative and shall be applied. If EIOPA has been consulted, any significant deviations from EIOPA's view shall be explained.

Article 61

Independent decision by the FMA on the application

1) When making a decision under Article 218(4) of the Insurance Supervision Act, the FMA shall take the following into account:

a) any views and reservations expressed by the supervisory authorities concerned during the period referred to in Article 218(3) of the Insurance Supervision Act;
b) any reservations expressed by the other supervisory authorities within the college of supervisors during the period referred to in subparagraph (a);
c) the recommendation of EIOPA, if consulted.

2) The decision shall state the full reasons and shall contain an explanation of all significant deviations from the reservations of the other supervisory authorities concerned and from the recommendation of EIOPA. The FMA shall provide the applicant and the other supervisory authorities concerned with a copy of the decision.

Article 62

Determination of the Solvency Capital Requirement for a subsidiary

1) Under Article 219(3) of the Insurance Supervision Act, the FMA shall discuss its proposal within the college of supervisors and communicate the grounds for such proposal to both the subsidiary and the college of supervisors.

2) The college of supervisors shall do everything within its power to reach an agreement on the proposal by the FMA or on other possible measures. A decision reached in this way shall be recognised as determinative and shall be applied.

3) Where the supervisory authorities disagree, the matter shall be referred to EIOPA within one month from the proposal by the FMA.

4) The FMA shall take into account the recommendation of EIOPA prior to its final decision.

5) The decision shall state the full reasons and shall take into account the views and reservations of the other supervisory authorities of the college of supervisors and the recommendation of EIOPA. The decision shall be transmitted to the subsidiary and the college of supervisors. The decision shall be recognised as determinative and shall be applied.

Article 63

Non-compliance with the Minimum Capital Requirement

1) If, under Article 222 of the Insurance Supervision Act, there is a disagreement between the FMA and the college of supervisors regarding the short-term finance scheme or the measures to be taken, the matter may be referred to EIOPA and it may be requested to issue a decision.

2) The matter may not be referred to EIOPA:

a) after the end of the four-month or the one-month period respectively;

b) the college of supervisors has agreed on a solution; or

c) if a case under Article 220(1) of the Insurance Supervision Act.

3) If the matter is referred to EIOPA, the FMA shall suspend the proceedings and wait for EIOPA to issue a decision. The FMA shall take the decision of EIOPA into account and notify its decision, which shall be recognised as determinative and shall be applied, to the subsidiary and to the college of supervisors.

Article 64

General cooperation within the college of supervisors

1) The establishment and functioning of the college of supervisors shall be based on agreements concluded by the group supervisor and the other supervisory authorities concerned.

2) Where diverging views concerning the agreements referred to in paragraph 1 arise, the FMA may refer the matter to EIOPA.

3) Where the FMA is the group supervisor, it shall, after consulting the other supervisory authorities concerned, take into account any recommendations of EIOPA within two months of receiving them before

taking its final decision. The decision shall state the full reasons, including, where applicable, an explanation of why the decision deviates significantly from the recommendations of EIOPA. The FMA shall notify the other supervisory authorities concerned and EIOPA of its decision.

4) If the FMA, as the group supervisor, fails to comply with its duties under Article 238 of the Insurance Supervision Act or if the college of supervisors lacks the necessary willingness to cooperate, the matter may be referred to EIOPA. The same shall apply if the FMA fails to comply with its information duties in relation to other competent supervisory authorities within two weeks.

Article 65

Reporting

1) The FMA, if it is the group supervisor, may limit regular reporting to the FMA with a frequency shorter than one year at the level of the group where all insurance undertakings within the group benefit from the limitation in accordance with Article 41 taking into account the nature, scale and complexity of the risks inherent in the business of the group.

2) Paragraph 1 shall also apply *mutatis mutandis* to an exemption from reporting on individual items.

IX. Small direct insurance undertakings

Article 66

Reporting to the FMA

1) Articles 39(1) and (2) shall apply *mutatis mutandis* to the business report of small direct insurance undertakings.

2) As part of their regular reporting, small direct insurance undertakings shall submit a report to the FMA each year which shall be appropriate with regard to the nature, scale and complexity of the inherent risks of the undertaking. The FMA may provide further details governing the reporting, applying the provisions of Articles 40 and 41 *mutatis mutandis*.

Article 67

Minimum capital

1) A small direct insurance undertaking must have minimum capital that guarantees the undertaking's permanent fulfilment of its commitments.

2) The FMA shall determine the minimum capital required in each individual case, which must be fully paid up and which the FMA shall set in particular with regard to the classes of insurance to be pursued and in appropriate proportion to the nature, scale and complexity of the inherent risks, taking into account the management of those risks.

Article 68

Capital requirement and own funds

1) The capital requirement for small direct insurance undertakings shall be derived from the requirement to cover the solvency margin on a permanent basis.

2) Small direct insurance undertakings must always have free and unencumbered own funds of at least the size of one solvency margin.

3) Assets used to cover the own funds referred to in paragraph 2 and the minimum guarantee fund shall be invested in such a manner as to ensure the safety, quality, liquidity and profitability of the portfolio as a whole. In addition, the localisation of those assets shall be such as to ensure their availability.

Article 69

Own funds to cover the solvency margin

1) The available own funds to cover the solvency margin shall be the own funds eligible to cover the solvency margin less:

a) the capital components referred to in paragraph 6; and
b) the intangible assets recognised in the balance sheet.

2) Own funds eligible to cover the solvency margin shall be in particular:

a) the paid-up capital;

b) the reserves with the exception of the reserve for own shares or units; any loss carried forward or balance sheet loss must be deducted;

c) any profit or loss carried forward remaining after deduction of dividends to be distributed;

d) any provisions for future profit participation, to the extent they have not yet been allocated to the policyholders;

e) any fund for later attributions.

3) In cases of doubt, the FMA shall decide on the eligibility of own funds as referred to in paragraph 2.

4) Furthermore, upon application and submission of evidence by the small direct insurance company and with the approval of the FMA, the following may be counted as eligible own funds to cover the solvency margin:

a) undisclosed net reserves resulting from the valuation of assets, to the extent that these reserves are not of an exceptional nature;

b) half of the non-paid-up portion of the subscribed capital, once the paid-up portion reaches 25% of the subscribed capital, to the extent of no more than 50% of the solvency margin and no more than 50% of the total eligible own funds;

c) in the case of cooperative societies, half of the difference between the maximum possible additional contributions to which the members of the cooperative societies may be obliged for the financial year in question and the additional contributions actually required, to the extent of no more than 50% of the solvency margin and no more than 50% of the total eligible own funds;

d) if the life insurance provision has not been zillmerised or has been zillmerised at a rate lower than the acquisition cost rate included in the premiums, the difference between the life insurance provision and the life insurance provision zillmerised at the acquisition cost rate included in the premiums; however, for all contracts for which zillmerisation is possible, this difference may not exceed the deferred claims not yet due from the insurance relationship determined in accordance with Annex 1(8)(c);

e) contingency and equalisation provisions, provided that they exceed the maximum amounts referred to in Article 37(4).

5) Capital paid in on the basis of subordinated debt may be counted additionally as eligible own funds to cover the solvency margin to the extent of no more than 25% of the solvency margin and no more than 25% of the total eligible own funds as referred to in paragraphs 2 and 4 if:

a) it is repayable only after all non-subordinated creditors have been satisfied in the event of winding-up or the initiation of bankruptcy proceedings in respect of the insurance undertaking's assets;[8]
b) it has been placed at the disposal of the insurance undertaking for at least five years, the last of which has not yet commenced, or with a five-year notice period;
c) it may fall due before the agreed repayment date only in the event of the dissolution of the insurance undertaking; and
d) the underlying contract cannot be changed without the consent of the FMA.

6) The following capital components shall not be available to cover the solvency margin, and they shall reduce the eligible own funds as referred to in paragraphs 2 to 5:

a) participations in insurance undertakings, in reinsurance undertakings of a third country, in insurance holding companies or in banks, financial institutions, or investment firms;
b) subordinated claims, cumulative preference shares, or transferable securities with an indefinite term vis-à-vis undertakings referred to in subparagraph (a).

7) Where shares of another bank, investment firm, financial institution, insurance undertaking, or insurance holding company are temporarily held in order to provide financial support to the undertaking concerned for the purpose of reorganisation, the FMA may waive application of paragraph 6.

8) The own funds as referred to in paragraphs 2 to 5, and with the approval of the FMA also those referred to in paragraph 4(a), shall be eligible to cover the guarantee fund.

Article 70

Calculation of the solvency margin in non-life insurance

1) The solvency margin in non-life insurance shall be calculated either on the basis of annual premium income (premium basis) or on the basis of the average claims burden for the last three financial years (claims basis). The higher of the two calculation results shall be decisive.

8 Article 69(5)(a) amended by LGBl. 2020 No. 440.

2) For a small direct insurance company that essentially covers only credit, windstorm, hail, or frost risks, the average loss burden shall be calculated based on the last seven financial years.

3) If the calculated solvency margin is lower than that of the previous year, the solvency margin must be at least as high as the result of multiplying the solvency margin of the previous year by the ratio of the gross amount of the provision for claims outstanding at the end of the last financial year and the gross amount of this provision at the beginning of the last financial year; this ratio may not exceed 1.0.

Article 71

Premium basis

1) The premium basis shall be calculated using the gross premiums written in the last financial year. If the gross premiums earned are higher, these shall constitute the initial amount. When determining the initial amount, the premiums for risks belonging to one of the classes of insurance 11 to 13 shall be increased by 50%. For other classes of insurance, the FMA may order an increase of up to 50% to take into account the specific characteristics of these activities or contracts.

2) 18% of the first 61.3 million euros of this initial amount and 16% of the amount exceeding this amount shall be calculated and added together.

3) The premium basis shall be calculated by multiplying the sum so obtained by the ratio between the expenses for insurance claims for own account and the gross amount of expenses for insurance claims of the small direct insurance undertaking for the last three financial years; this ratio shall be at least 0.5. Upon justified request of the insurance undertaking and with the approval of the FMA, amounts recoverable from special purpose vehicles may be deducted as reinsurance.

Article 72

Claims basis

1) The claims basis shall be calculated using the gross amounts of expenses for insurance claims during the periods referred to in the first sentence of Article 70(1) and in Article 70(2). When determining the initial amount, the gross amounts of expenses for insurance claims for risks belonging to one of the classes of insurance 11 to 13 shall be in-

creased by 50%. For other classes of insurance, the FMA may order an increase of up to 50% to take into account the specific characteristics of these activities or contracts.

2) 26% of the first 42.9 million euros of the resulting annual average and 23% of the amount exceeding this amount shall be calculated and added together.

3) The claims basis shall be calculated by multiplying the sum so obtained by the ratio between the expenses for insurance claims for own account and the gross amount of expenses for insurance claims of the small direct insurance undertaking for the last three financial years; this ratio shall be at least 0.5. Upon justified request of the insurance undertaking and with the approval of the FMA, amounts recoverable from special purpose vehicles may be deducted as reinsurance.

Article 73

Health insurance

The fractions referred to in Article 71(2) and Article 72(2) shall each be reduced to a third in the case of health insurance practised on a similar technical basis to that of life assurance, if:

a) the premiums paid are calculated on the basis of sickness tables according to the mathematical method applied in insurance;
b) a provision is set up for increasing age;
c) an additional premium is collected in order to set up a safety margin of an appropriate amount;
d) the small direct insurance undertaking may no longer cancel the contract after the end of the third year of insurance at the latest; and
e) the contract provides for the possibility of increasing premiums or reducing payments even for current contracts.

Article 74

Guarantee fund and minimum guarantee fund

1) One third of the solvency margin shall be considered the guarantee fund; the guarantee fund may not fall below the minimum guarantee fund.

2) The FMA shall determine the amount of the minimum guarantee fund in each individual case, taking into account the classes of insurance pursued.

Article 75

Organisation fund

1) In addition to the minimum capital referred to in Article 67, a small direct insurance company must have an organisation fund for the costs of setting up and development or extraordinary business expansion.

2) The FMA shall determine the amount of the organisation fund in each individual case. When an insurance undertaking commences business, the organisation fund shall generally amount to between 20% and 50% of the minimum capital.

3) The organisation fund shall be endowed with assets that can be sold on short notice.

4) The organisation fund may be used for purposes other than those specified in the Act no sooner than three years after its endowment or re-endowment and only with the written approval of the FMA.

5) If the annual financial statement indicates the occurrence of a loss, the FMA may demand an increase of the organisation fund or a re-endowment thereof.

Article 76

Calculation of the solvency margin in life insurance for the entire business

The solvency margin in life insurance for the entire business of a small direct insurance company shall be obtained by adding the solvency margins for the individual classes of insurance and for the supplementary insurances.

Article 77

Calculation of the solvency margin for classes of insurance 1 (excluding supplementary insurance) and 2 in life insurance

1) The solvency margin shall be equal to the sum of the first result (paragraph 2) and the second result (paragraph 3).

2) The first result shall be calculated as 4% of the gross amount of the mathematical provisions multiplied by the ratio of the mathematical provisions less the reinsurers' share and the gross amount of the mathematical provisions for the last financial year; this ratio shall be at least 0.85.

3) The second result shall be calculated as follows:

a) The capital at risk less the reinsurers' share shall be divided by the gross amount of the capital at risk for the last financial year. The ratio so obtained shall be the reinsurance factor, which shall be at least 0.5. The capital at risk shall be the total capital payable on death less the mathematical provisions for the principal risk. Contracts with negative capital at risk shall not be taken into account, also in the following calculations.
b) The capital at risk of death insurance policies with a total term of up to three years shall be multiplied successively by the rate of 0.1% and by the reinsurance factor defined in subparagraph (a).
c) The capital at risk of death insurance policies with a total term of more than three and up to five years shall be multiplied successively by the rate of 0.15% and by the reinsurance factor defined in subparagraph (a).
d) For other insurances, the capital at risk shall be multiplied successively by the rate of 0.3% and by the reinsurance factor defined in subparagraph (a).
e) The second result shall be the sum of the amounts calculated in accordance with subparagraphs (b), (c), and (d).

Article 78

Calculation of the solvency margin for class of insurance 3 (excluding supplementary insurance) in life insurance

1) The solvency margin shall be equal to the sum of the first result (paragraph 2) and the second result (paragraph 3).

2) The first result shall be calculated as follows:

a) 4% of the gross amount of mathematical provisions for insurances for which the insurance undertaking bears an investment risk shall be multiplied by the ratio of the mathematical provisions less the reinsurers' share and the gross amount of mathematical provisions for these insurances for the last financial year; this ratio shall be at least 0.85. Upon justified request of the insurance undertaking and with the approval of the supervisory authority, amounts recoverable from special purpose vehicles may be deducted as reinsurance.

b) 1% of the gross amount of mathematical provisions for small direct insurances for which the insurance undertaking bears no investment risk and for which the allocations to cover administrative expenses are contractually fixed for more than five years shall be multiplied by the ratio of the mathematical provisions less the reinsurers' share and the gross amount of mathematical provisions for these insurances for the last financial year; this ratio shall be at least 0.85.

c) For insurances for which the insurance undertaking bears no investment risk and for which the allocations to cover administrative expenses are not contractually fixed for more than five years, the net administrative expenses attributable to them in the last financial year shall be determined; 25% of this amount shall be calculated.

d) The first result shall be the sum of the amounts calculated in accordance with subparagraphs (a) to (c).

3) The second result shall be calculated by multiplying 0.3% of the capital at risk, to the extent that the insurance undertaking assumes a mortality risk, by the ratio of the capital at risk less the share of the reinsurers and the gross amount of the capital at risk for the last financial year; this ratio must be at least 0.5. The fourth sentence of Article 77(3)(a) shall apply *mutatis mutandis*. Upon justified request of the insurance undertaking and with the approval of the supervisory authority, amounts recoverable from special purpose vehicles may be deducted as reinsurance.

Article 79

Calculation of the solvency margin for supplementary life insurances

The solvency margin for the supplementary insurances of classes of insurance 1 and 3 shall be calculated in accordance with Articles 70 to 72.

Article 80

Calculation of the solvency margin for class of insurance 4 in life insurance

The solvency margin for health insurance shall be calculated in accordance with Article 73.

Article 81

Calculation of the solvency margin for class of insurance 5 in life insurance

For tontines, the solvency margin shall be equal to 1% of the assets of the associations of subscribers.

Article 82

Calculation of the solvency margin for class of insurance 6 in life insurance

For capital redemption operations, the solvency margin shall be equal to 4% of the gross amount of the mathematical provisions for such operations multiplied by the ratio of the mathematical provisions less the reinsurers' share and the gross amount of the mathematical provisions for such operations for the last financial year; this ratio shall be at least 0.85.

Article 83

Technical provisions

1) Small direct insurance companies shall be required to maintain sufficient technical provisions for their entire business. The amount of technical provisions must at all times be such that the insurance undertakings can meet any liabilities arising out of insurance contracts as far as can reasonably be foreseen.

2) The provisions of the PGR and the rules set out in Annex 1 shall apply *mutatis mutandis* to the formation, calculation, and valuation of technical provisions.

3) The FMA may order an estimate of the technical provisions at any time.

Article 84

Cover and matching

Small direct insurance undertakings shall cover the technical provisions in respect of the entire business by matching assets in accordance with Annex 4. These assets must be localised within one or more EEA

Contracting Parties. The FMA may approve exceptions to these matching or localisation criteria.

Article 85

Investment principles and reporting obligations

1) In the case of assets covering technical provisions, account shall be taken of the type of insurance business and of the structure of the undertaking in such a way as to achieve the greatest possible security and profitability while ensuring the liquidity of the small direct insurance undertaking at all times, with adequate diversification and spread of assets.

2) Small direct insurance undertakings shall report the amount of the technical provisions and the assets serving to cover them as part of their reporting to the FMA. The FMA may provide further details governing the reporting, applying the provisions of Articles 40 and 41 *mutatis mutandis*.

Article 86

Authorised assets

1) It shall be considered adequate when a small direct insurance undertaking permits only the following assets included in Annex 1(2) on the asset side to fully cover its technical provisions:

a) investments (B) with the exception of other (B(III)(7)); securities not traded on a regulated market, but only to the extent that they can be sold on short notice;
b) debtors arising out of direct insurance operations (D(I)) and debtors arising out of reinsurance operations (D(II)) as well as claims against special purpose vehicles; but not those with due dates three months or more prior;
c) cash at bank and in hand (E(II));
d) accrued interest and rent (F(I));
e) investments in derivative financial instruments in connection with assets covering the technical provisions shall be permissible, in so far as they contribute to a reduction of investment risks or facilitate efficient portfolio management. These instruments shall be valued on a prudent basis and may be included in the valuation of the underlying assets.

2) With respect to technical provisions for life insurance contracts where the investment risk is borne by the policyholders (Annex 1(2)(E) on the liability side), the following shall apply:

a) Where the benefits provided by a contract are directly linked to the value of units in an investment fund or other segregated assets, 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 the units deemed to represent the reference value or, 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.

Article 87

Limits

1) It shall be considered adequate when a small direct insurance undertaking complies with the following limits on the assets authorised to cover the technical provisions under Article 86:

a) 30% for land and buildings (Annex 1(3)(a)) and holdings in real estate companies (companies, the business purpose of which is solely to buy, sell, rent out, and lease its own real estate), but at most 10% for a single piece of real estate; several legally separate pieces of real estate shall be considered together if they constitute an economic unit;

b) 40% for holdings, investment fund units, and other variable-interest securities;

c) subject to subparagraph (d), 5% for investments according to subparagraph (b) and other securities and loans of all types that concern the same undertaking or the same debtor; this limit shall be increased to 10% if a total of not more than 40% of the technical provisions are affected by the increase;

d) 5% for non-secured loans to debtors other than banks, insurance undertakings, and securities firms whose head office is in an EEA Contracting Party, but at most 1% for such loans to a single debtor;

e) 10% for securities that are not traded on a regulated market;

f) 3% for cash balances.

2) In the case of paragraph 1(c), the upper limit per undertaking shall be 40% if the loans are issued by a bank whose registered office is in an EEA Contracting Party that is subject to special State supervision by law. In particular, the sums resulting from the issue of the loans must be invested in assets which guarantee that demands arising from the loans are covered over the course of the entire term of the loans and which are used preferentially to repay the capital and to pay the proportionate interest in the event the issuer defaults.

3) Paragraphs 1 and 2 shall not apply to the extent that Article 86(2) applies.

Article 88

Exceptions

1) The FMA may also permit other assets to cover the technical provisions than those set out in Article 86, provided that they are equivalent with respect to risk, earnings, and liquidity.

2) The FMA may fix lower limits than those set out in Article 87 if the security of claims of the insured persons so requires.

3) The FMA may make its decisions contingent upon requirements and conditions; in this regard, it shall in particular take into account the expertise and organisation of a direct insurance undertaking.

Article 89

Custody of the assets

In individual cases, the FMA may require a direct insurance undertaking to provide for separate custody of the assets designated to cover the technical provisions.

Article 90

Valuation of the assets

1) The eligibility of the authorised assets for covering the technical provisions shall, subject to paragraphs 2 and 3, be based on their valuation for purposes of the annual financial statement in accordance with the provisions of the PGR and Annex 1.

2) Debts arising through the purchase of assets shall be deducted when valuing the assets.

3) When valuing debt claims, counterclaims that may be offset shall be deducted.

Article 91

General contingency and equalisation provision

1) Small direct insurance undertakings shall establish a general contingency and equalisation provision based on the totality of the undertaking's activities. Article 37(2) and (3) shall apply *mutatis mutandis*.

2) The contingency and equalisation provision shall be calculated according to the rules set out in Annex 2.

3) A contingency and equalisation provision for credit insurance in accordance with Article 92 shall be eligible in the establishment of this contingency and equalisation provision.

Article 92

Contingency and equalisation provision for credit insurance

1) Small direct insurance undertakings offering credit insurance (class of insurance 14) must establish a contingency and equalisation provision for the purpose of offsetting any technical deficit or above-average claims ratio arising in that class in any financial year.

2) The contingency and equalisation provision shall be calculated according to one of the four equivalent methods contained in Annex 3.

3) The contingency and equalisation provision shall not be counted toward the solvency margin up to the amount of the sum calculated in accordance with one of the methods referred to in paragraph 2.

4) Small direct insurance undertakings need not establish a contingency and equalisation provision if the gross premiums written arising from credit insurance:

a) constitute less than 4% of the total gross premiums written; and

b) amount to less than 4 million Swiss francs.

X. Transitional and final provisions

Article 93

Relevant risk-free interest rate term structure

1) A transitional adjustment to the relevant risk-free interest rate term structure in accordance with Article 262(1) of the Insurance Supervision Act shall be calculated for each currency as a portion of the difference between:

a) the interest rate as determined by the life insurance undertaking in accordance with rules in effect until entry into force of this Ordinance;

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 Article 77 of the Insurance Supervision Act.

2) The portion referred to in paragraph 1 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.

3) Where the volatility adjustment referred to in Article 28 is applied, the relevant risk-free interest rate term structure referred to in paragraph 1(b) shall be the adjusted relevant risk-free interest rate term structure set out in Article 28.

4) 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) the technical provisions for the insurance and reinsurance obligations were determined in accordance with the rules in effect before 1 January 2016;

c) Article 26 is not applied to the insurance and reinsurance obligations.

5) Insurance and reinsurance undertakings applying a transitional adjustment to the relevant risk-free interest rate structure in accordance with Article 262(1) of the Insurance Supervision Act shall:

a) not include the admissible insurance and reinsurance obligations in the calculation of the volatility adjustment set out in Article 28;
b) not apply Article 263 of the Insurance Supervision Act;
c) as part of their report on their solvency and financial condition referred to in Article 100 of the Insurance Supervision Act, 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.

Article 94

Calculation of the Basic Solvency Capital Requirement for the market risk module

1) Notwithstanding Articles 42 and 54 of the Insurance Supervision Act, the standard parameters applicable to 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 18 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 18; 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 18.

2) The weight for the parameter expressed in paragraph 1(b) of the first subparagraph 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.

Article 95

Deduction from technical provisions

1) A transitional deduction in accordance with Article 263(1) of the Insurance Supervision Act may be applied at the level of homogeneous risk groups referred to in Article 31 of this Ordinance.

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

a) the technical provisions after deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles, calculated in accordance with Article 75 of the Insurance Supervision Act;

b) the technical provisions after deduction of the amounts recoverable from reinsurance contracts calculated on the basis of rules in effect before 1 January 2016.

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 applies the volatility adjustment referred to in Article 28 on 1 January 2016, 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 FMA, 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 insurance undertaking has materially changed.

6) The deduction referred to in paragraph 2 may be limited by the FMA 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 rules in effect before 1 January 2016.

7) Where a deduction is applied, insurance undertakings must ensure that they:

a) do not apply a transitional adjustment to the relevant risk-free interest rate term;

b) when they would not comply with the Solvency Capital Requirement without application of the transitional deduction, submit annually a report to the FMA setting out measures taken and the progress made to re-establish 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;

c) as part of their report on their solvency and financial condition referred to in Article 100 of the Insurance Supervision Act, publicly disclose that they apply the transitional deduction to the technical provisions, and the quantification of the impact of not applying that transitional deduction on their financial position.

Article 96

Phasing-in plan on the transitional measures on risk-free interest rates and on technical provisions

1) Insurance undertakings that apply the transitional measures set out in Articles 262 or 263 of the Insurance Supervision Act shall inform the FMA as soon as they observe that they would not comply with the Solvency Capital Requirement without application of these transitional measures. The FMA shall require the insurance undertaking concerned to take the necessary measures to ensure compliance with the Solvency Capital Requirement at the end of the transitional period.

2) Within two months from observation of non-compliance with the Solvency Capital Requirement without application of these transitional measures, the insurance undertaking concerned shall submit to the FMA 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. The insurance undertaking concerned may update the phasing-in plan during the transitional period.

3) The insurance undertakings concerned shall submit annually a report to the FMA setting out the measures taken and the progress made to ensure compliance with the Solvency Capital Requirement at the end of the transitional period. The FMA 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.

Article 97

Report on solvency and financial condition

Within the scope of separate reporting under Article 44(3), insurance undertakings may waive the requirement to disclose separately any capital add-on or the impact of specific parameters until 31 December 2020.

Article 98

Termination of business

1) For insurance undertakings applying the transitional provision set out in Article 265 of the Insurance Supervision Act, the provisions applicable to small direct insurance undertakings shall apply *mutatis mutandis*, subject to paragraphs 2 and 3.

2) The minimum guarantee fund of the insurance undertakings referred to in paragraph 1 shall be:

a) in the case of a non-life insurance company, at least 2.5 million euros. If the undertaking insures the risks or some of the risks pertaining to one of the classes of insurance 10 to 15, the minimum guarantee fund shall be at least 3.7 million euros. If reinsurance is also pursued at the same time, the FMA may set a higher amount;
b) in the case of a life insurance company, 3.7 million euros;
c) in the case of a reinsurance undertaking, 3.6 million euros. In the case of a captive reinsurance undertaking, the FMA may permit a reduction of the minimum guarantee fund up to an amount of 1.2 million euros.

3) Where insurance undertakings referred to in paragraph 1 pursue reinsurance, the FMA may, upon application, grant further facilitations, in particular with respect to the assets intended to cover the technical provisions (admissibility and limits). Furthermore, the FMA may issue additional rules for the calculation and consideration of the solvency margin from reinsurance acceptances.

Article 99

Provisions for the implementation of European law

The provisions for the implementation of Directive 2009/138/EC as referred to in Article 274 of the Insurance Supervision Act are enumerated in Annex 5.

Article 100

Repeal of law hitherto in force

The following are hereby repealed:

a) Ordinance of 17 December 1996 on the Law on the Supervision of Insurance Undertakings (Insurance Supervision Ordinance; VersAV), LGBl. 1997 No. 41;
b) Ordinance of 14 December 1999 amending the Insurance Supervision Ordinance, LGBl. 1999 No. 250;
c) Ordinance of 25 March 2003 amending the Insurance Supervision Ordinance, LGBl. 2003 No. 95;
d) Ordinance of 21 December 2004 amending the Insurance Supervision Ordinance, LGBl. 2004 No. 302;
e) Ordinance of 10 May 2005 amending the Insurance Supervision Ordinance, LGBl. 2005 No. 92;
f) Ordinance of 3 February 2009 amending the Insurance Supervision Ordinance, LGBl. 2009 No. 66;
g) Ordinance of 1 December 2009 amending the Insurance Supervision Ordinance, LGBl. 2009 No. 333;
h) Ordinance of 5 July 2011 amending the Insurance Supervision Ordinance, LGBl. 2011 No. 318;
i) Ordinance of 4 December 2012 amending the Insurance Supervision Ordinance, LGBl. 2012 No. 391;
k) Ordinance of 29 January 2013 amending the Insurance Supervision Ordinance, LGBl. 2013 No. 85;
l) Ordinance of 2 July 2013 amending the Insurance Supervision Ordinance, LGBl. 2013 No. 261;
m) Ordinance of 25 November 2014 amending the Insurance Supervision Ordinance, LGBl. 2014 No. 299.

Article 101

Entry into force

1) Subject to paragraph 2, this Ordinance shall enter into force on 1 January 2016.

2) Articles 6, 13 to 29, 34, 44, 47, 59 to 64, 93 to 96 and 99 as well as Annex 5 shall enter into force on 1 September 2015.

The Government:
signed *Dr. Thomas Zwiefelhofer*
Deputy Prime Minister

Annex 1[9]

(Articles 36, 39, 83, 86, 87 and 90)

Accounting

1. Relationship between external form and economic content of reinsurance contracts
   a) Reinsurance contracts may in no case be treated like co-insurance contracts.
   b) Premium and claims portfolios invoiced shall not be taken into account to the extent that no actual portfolio changes have taken place; reinsurance contracts shall to this extent be treated as continuously existing contracts.

2. Layout of the balance sheet

   The balance sheet shall be compiled in account form. The following items shall be entered in this regard:

Assets

A. Intangible assets
   - I. Formation expenses
   - II. Goodwill
   - III. Expenses for the acquisition of insurance portfolios
   - IV. Other intangible assets

B. Investments
   - I. Land and buildings
   - II. Investments in affiliated undertakings and participating interests
     1. Shares in affiliated undertakings
     2. Debt securities issued by, and loans to, affiliated undertakings
     3. Participating interests

9 Annex 1 amended by LGBl. 2018 No. 72 and LGBl. 2020 No. 440.

4. Debt securities issued by, and loans to, undertakings with which an insurance undertaking is linked by virtue of a participating interest

III. Other financial investments

1. Shares and other variable-yield securities and units in unit trusts
2. Debt securities and other fixed-income securities
3. Participation in investment pools
4. Loans guaranteed by mortgages
5. Other loans
6. Bank deposits
7. Other

IV. Deposits with ceding undertakings

C. Investments for the benefit of life insurance policyholders who bear the investment risk

D. Other debtors

I. Debtors arising out of direct insurance operations

1. Policyholders
   a) Affiliated undertakings
   b) Undertakings linked by virtue of a participating interest
   c) Other policyholders
2. Insurance intermediaries, reinsurance intermediaries, and ancillary insurance intermediaries
   a) Affiliated undertakings
   b) Undertakings linked by virtue of a participating interest
   c) Other insurance intermediaries, reinsurance intermediaries, and ancillary insurance intermediaries

II. Debtors arising out of reinsurance operations

1. Affiliated undertakings
2. Undertakings linked by virtue of a participating interest
3. Other debtors

III. Other debtors

1. Affiliated undertakings

2. Undertakings linked by virtue of a participating interest
3. Other debtors

IV. Subscribed capital called but not paid

E. Other assets

I. Tangible assets (except land and buildings) and stocks

II. Cash at bank and in hand

III. Own shares or units – with an indication of their par value or their accounting par value (for non par value shares)

IV. Other

F. Prepayments and accrued income

I. Accrued interest and rent

II. Deferred claims not yet due from the insurance contract relationship

III. Other prepayments and accrued income

Liabilities

A. Capital and reserves

I. Capital called

1. Subscribed capital
2. Less: capital not called
3. Capital called, of which paid

II. Organisation fund

III. Capital reserves

IV. Retained earnings

1. Statutory reserve
2. Reserve for own shares or units
3. Reserve required by articles of association
4. Equalisation reserve
5. Other reserves

V. Profit or loss brought forward

VI. Profit or loss for the year

B. Subordinated liabilities

C. Fund for future appropriations

D. Technical provisions
   I. Provision for unearned premiums
      1. Gross amount
      2. Less: reinsurers' share
   II. Life insurance provision
      1. Gross amount
      2. Less: reinsurers' share
   III. Provision for claims outstanding
      1. Gross amount
      2. Less: reinsurers' share
   IV. Provision for bonuses and rebates
      1. Gross amount
      2. Less: reinsurers' share
   V. Contingency and equalisation provision
   VI. Other technical provisions
      1. Gross amount
      2. Less: reinsurers' share

E. Technical provisions for life insurance policies where the investment risk is borne by the policyholders
   1. Gross amount
   2. Less: reinsurers' share

F. Provisions for other risks and charges
   I. Provisions for pensions and similar obligations
   II. Provisions for taxation
   III. Other provisions

G. Deposits received from reinsurers

H. Creditors
   I. Creditors arising out of direct insurance operations
      1. Amounts owed to affiliated undertakings
      2. Amounts owed to undertakings linked by virtue of a participating interest
      3. Other creditors
   II. Other creditors arising out of reinsurance operations

1. Amounts owed to affiliated undertakings
2. Amounts owed to undertakings linked by virtue of a participating interest
3. Other creditors

III. Debenture loans

1. Amounts owed to affiliated undertakings, of which convertible
2. Amounts owed to undertakings linked by virtue of a participating interest, of which convertible
3. Other creditors, of which convertible

IV. Amounts owed to banks

1. Amounts owed to affiliated undertakings
2. Amounts owed to undertakings linked by virtue of a participating interest
3. Other creditors

V. Other creditors

1. Tax
2. Social security
3. Other liabilities to affiliated undertakings
4. Other liabilities to undertakings linked by virtue of a participating interest
5. Other liabilities to other creditors

I. Accruals and deferred income

3. Accounting provisions relating to investments
   a) The item "Land and buildings" shall comprise land, rights to land, similar land rights, and buildings, including buildings on third-party land, buildings under construction, and payments made toward land, rights to land, similar land rights, and buildings.
   b) The item "Debt securities and other fixed-income securities" shall comprise only negotiable securities.
   c) Securities bearing interest the rate of which varies in line with specific factors, for example the interest rate on the inter-bank market or on the Euromarket, shall also be regarded as debt securities and other fixed-income securities.
   d) The item "Participation in investment pools" shall comprise shares held by an undertaking in joint investments constituted by

several undertakings, the management of which has been entrusted to one of those undertakings.

e) Loans guaranteed by mortgage shall be disclosed as such even where they are also secured by insurance contracts.

f) Loans to policyholders for which the policy is the main security shall be included under "Other loans".

g) The item "Bank deposits" shall only comprise sums the withdrawal of which is subject to a time restriction. Sums deposited with no such restriction shall be disclosed under "Cash at bank and in hand" even if they bear interest.

h) Securities deposited with ceding undertakings or third parties which remain the property of the reinsurer shall be entered in the latter's accounts as an investment, under the appropriate item.

4. Deposits

a) Deposits shall be disclosed in the amount of the guarantees deposited with ceding undertakings or third parties or retained by ceding undertakings. Any expected permanent depreciations of value shall be disclosed, in order to assess the deposits at the lower value they should be assigned at the close of the financial year.

b) Deposits may not be combined with other amounts owed or set off against amounts owed to the ceding insurer.

5. Special valuation provisions for particular investments

a) The following provisions shall apply to the valuation of debt securities and other fixed-income securities that do not belong to the investments for the benefit of life insurance policyholders who bear the investment risk: Where the purchase price exceeds the amount repayable at maturity, the amount of the difference shall be written off. It is permissible, however, for the amount of the difference to be written off in instalments over the entire period remaining until repayment; in this case, the difference must be disclosed separately in the balance sheet or in the notes. Where the purchase price is lower than the amount repayable at maturity, it is permissible for the amount of the difference to be written off in instalments over the entire period remaining until repayment; in this case, the difference must be disclosed separately in the balance sheet or in the notes. Where such securities are sold before maturity and the proceeds are used to purchase other such securities, then the difference between the proceeds of sale and their book value may be spread uniformly over the period remaining until the maturity of the sold securities. These provisions shall not affect the obligation to show any expected permanent depreciations of value, in order to fix the securities at the lower value they should be assigned at the close of the financial year.

b) Investments for the benefit of life insurance policyholders who bear the investment risk shall be assessed at the current value according to point 6 or 7.

6. Current value for land or buildings

a) In the case of land and buildings, the market value at the close of the financial year according to b) and c), if applicable reduced according to d) and e), shall be assessed as the current value.

b) Market value shall mean the price at which the land and buildings could be sold under private contract between a willing seller and an arm's length buyer on the date of valuation, it being assumed that the property is publicly exposed to the market, that market conditions permit orderly disposal, and that a normal period, having regard to the nature of the property, is available for the negotiation of the sale.

c) The market value shall be determined through separate valuations of each land and buildings item, carried out at least every five years according to methods generally recognised or recognised by the FMA. Subject to d) and e), the determined estimate shall be maintained until the next determination of market value.

d) Where the value of any land and buildings item has diminished since the preceding valuation under b) and c), an appropriate write-off shall be made. If no further depreciation requires any further write-off, then the corrected value shall be maintained until the next determination of market value under b) and c), subject to e).

e) Where on the date on which the annual account statement or the consolidated annual account statement is drawn up, land and buildings have been sold or are to be sold within the short term, the value arrived at in accordance with b) to d) shall be reduced by the actual or estimated realisation costs.

f) Where it is impossible to determine the market value of a land and buildings item, the value arrived at on the basis of the principle of purchase price or production cost shall be deemed to be the current value.

7. Current value for other investments
   a) In the case of investments other than land and buildings, the likely realisable value, taking into account the principle of prudence, shall be assessed as the current value, subject to b) to d). This shall not apply to shares in affiliated undertakings and participating interests to which the equity method applies.
   b) Where investments are officially listed on an official stock exchange, the current value shall be the value on the balance sheet date or, when the balance sheet date is not a stock-exchange trading day, on the last stock-exchange trading day before that date.
   c) Where a market exists for investments other than those referred to in b), the current value shall be the average price at which such investments were traded on the balance sheet date or, when the balance sheet date is not a trading day, on the last trading day before that date.
   d) Where on the date on which the annual account statement or the consolidated annual account statement is drawn up, investments such as referred to in b) or c) have been sold or are to be sold within the short term, the value according to b) or c) shall be reduced by the actual or estimated realisation costs.

8. Accrual and deferral
   a) The item "Accrued interest and rent" shall comprise those items that represent interest and rent that have been earned up to the balance sheet date but that will only become receivable after this date.
   b) For non-life insurance, the deferral of costs of acquiring insurance contracts shall be permissible only in the form of a reduction of the provision for unearned premiums.
   c) For life insurance, the deferral of costs of acquiring insurance contracts shall be permissible to a limited extent on the basis of an appropriate procedure through the disclosure of "Deferred claims not yet due from the insurance contract relationship", insofar as they relate to acquisition costs incurred to the amount taken into account in the premium calculation and to the extent that these relate only to acquisition costs disclosed to the policyholder as one-off acquisition costs. The procedure and requirements are described in aa) to ee). Upon application, the FMA may approve another suitable procedure in justified individual cases.
      aa) One-off acquisition costs may be taken into account according to an appropriate procedure (actuarial procedure, in par-

ticular zillmer procedure). For this procedure, the actuarial acquisition cost rate, but not more than a maximum rate of 40‰, related to the single premium in the case of single-premium contracts or the sum of the premiums in the case of regular-premium contracts shall be decisive.

bb) The recognition of deferred costs is permitted only for contracts active on the balance sheet date for which the acquisition costs included in the premium calculation were actually paid out in full or in part as acquisition commission or advance payment on the commission claim in the course of the conclusion of the contract. In this case, the agreement with the insurance intermediary or ancillary insurance intermediary must stipulate that the acquisition commission must be refunded proportionately by the intermediary in the event of premature cancellation of the insurance contract. The insurance undertaking must be able to provide proof of the value of the deferral and of the enforcement of acquisition commission claims. In risk management, therefore, the collectability of cancellation commissions and regular credit checks of the intermediaries in particular must be monitored. Deferrals are not available for fee-based tariffs or staggered commission payments analogous to premium payments.

cc) For the determination of the amount of the deferral, a calculation for each individual contract must be made. A simplified calculation for the portfolio of relevant contracts is permissible only if this does not lead to a higher deferral compared with the calculation for individual contracts.

dd) The amount to be recognised in the individual contract at the inception of the insurance is determined by taking into account the acquisition cost rate applicable under aa) and must be depreciated at least on a straight-line basis over a maximum of five years. If there is a contractual agreement to that effect, the depreciation may also be determined from the highest possible premium components which, according to the calculation principles used, are not intended for benefits in the event of an insured event or to cover costs for insurance operations in the period for which the premium is paid. For life insurance contracts for which a surrender value exists on the basis of statutory provisions or contractual agreements, at least such a surrender value must be recognised as the life insurance provision. In this case, the highest possible premium components are those which are not required to form the life insurance provision in the amount of the surrender value and which, according to the calculation principles used, are not intended for benefits in the event of an insured event or to cover costs for insurance operations in the period for which the premium is paid.

ee) The amount and development of the deferral and the assumptions and insurance portfolios underlying the method and calculation shall be disclosed in the notes to the balance sheet and explained in detail in the report of the responsible actuary.

9. Accounting rules relating to mixed items between own capital and borrowed capital
   a) Where it has been contractually agreed that, in the event of winding-up or the initiation of bankruptcy proceedings in respect of the assets of the insurance undertaking, liabilities, whether or not represented by certificates, are to be repaid only after the claims of all other creditors have been met, the liabilities in question shall be disclosed under the item "Subordinated liabilities".
   b) The item "Fund for future appropriations" shall comprise amounts the distribution of which between the policyholders and the owners had not yet been determined by the balance sheet date.

10. Accounting rules relating to technical provisions
    a) The item "Technical provisions for life insurance policies where the investment risk is borne by the policyholders" shall comprise technical provisions to cover liabilities relating to investment in the context of life insurance policies the value or the return on which is determined by reference to an index or by reference to investments for which the policyholder bears the risk. If additional technical provisions are formed for such life insurance policies to cover death risks, operating expenses, benefits payable at the maturity date, or other risks, then they shall be disclosed under the item "Life insurance provision".
    b) The item "Technical provisions for life insurance policies where the investment risk is borne by the policyholders" shall also comprise technical provisions for obligations vis-à-vis the members of a tontine.
    c) Ageing reserves for health insurance policies shall be disclosed under the item "Life insurance provision".
    d) The item "Life insurance provision" shall also comprise bonuses already declared.

e) The item "Provision for bonuses and rebates" shall comprise bonuses and other amounts intended for future distribution to policyholders or contract beneficiaries that have not yet been credited to individual policyholders but also do not belong to the item "Fund for future appropriations".

f) The item "Contingency and equalisation provision" shall comprise amounts set aside in compliance with legal or administrative requirements to equalise fluctuations in loss ratios in future years or to provide for special risks.

g) Provisions for unexpired risks arising from the insurance portfolio shall be disclosed under the item "Other technical provisions".

11. Valuation of technical provisions in general

a) The amount of technical provisions must be such that an undertaking can meet any liabilities arising out of insurance contracts as far as can reasonably be foreseen.

b) If policies accepted for reinsurance are included in the income statement or the consolidated income statement with delay, then the technical provisions determined for a cut-off date prior to the balance sheet date shall be increased to the extent necessary for the fulfilment of the requirement described in a) with respect to the affected reinsurance contracts.

c) The reinsurers' shares shall comprise the actual or estimated values that, under contractual reinsurance arrangements, are deducted from the gross amounts of technical provisions. As regards the provision for unearned premiums, however, the reinsurers' shares shall be valued according to point 12, if the resulting amounts are lower than according to the provisions of the reinsurance contract in question; this shall not apply if, at the time the annual account statement or the consolidated annual account statement is compiled, the rescission of the reinsurance contract has already been determined by the balance sheet date.

12. Valuation of the provision for unearned premiums

a) The provision for unearned premiums shall comprise the share of premiums written falling within the period after the balance sheet date.

b) The provision for unearned premiums shall in principle be computed separately for each insurance contract. The use of statistical methods shall be permissible, and in particular proportional and flat-rate methods, where they may be expected to give approximately the same results as individual calculations.

c) In classes of insurance where the assumption of a temporal correlation between risk experience and premium is not appropriate, calculation methods shall be applied that take account of the differing pattern of risk over time.

13. Valuation of the life insurance provision
   a) The life insurance provision shall comprise the actuarially estimated value of an insurance undertaking's liabilities including bonuses already declared and after deducting the actuarial value of future premiums.
   b) The computation shall be made annually by an actuary or other specialist in this field on the basis of recognised actuarial methods. The interest rates used may not exceed the maximum interest rates determined by the FMA.
   c) The life insurance provision shall in principle be computed separately for each life insurance contract. Negative actuarial reserves shall be set to zero. Statistical or mathematical methods may be used where they may be expected to give approximately the same results as individual calculations.
   d) The ageing reserve for health insurance contracts may be determined with statistical or mathematical methods where they may be expected to give approximately the same results as individual calculations.

14. Valuation of the provision for claims outstanding in the case of non-life insurance
   a) A provision shall in principle be computed separately for each case on the basis of the costs still expected to be paid after the balance sheet date, including claims settlement costs of all kinds. The use of statistical methods shall be permissible if they result in an adequate provision having regard to the nature of the risks. In the case of co-insurance, the provision must proportionately correspond at least to the amount determined by the leading insurance undertaking.
   b) A separate provision shall allow for claims incurred but not reported by the balance sheet date, the amount of which shall be determined having regard to past experience as to the number of claims incurred before the balance sheet date but reported afterward and as to the magnitude of expenditures associated with these claims.

c) Where benefits resulting from a claim must be paid in the form of annuities, the amounts to be set aside for that purpose shall be calculated by recognised actuarial methods.

d) Discounting or deductions shall not be permissible.

e) Recoverable amounts arising out of the acquisition of the rights of policyholders with respect to third parties or of the legal ownership of insured property shall be deducted from the provision for claims outstanding; they shall be estimated on a prudent basis.

15. Valuation of the provision for claims outstanding in the case of life insurance

a) A provision shall in principle be computed separately for each case. Claims incurred but not reported by the balance sheet date shall be included in the computation on the basis of estimates.

b) The amount of the provision shall be calculated for each case according to the sums due to the beneficiaries, plus the costs of settling claims; amounts already paid by the balance sheet date shall be deducted.

16. Valuation of the provision for unexpired risks arising from the insurance portfolio

A provision for unexpired risks arising from the insurance portfolio shall be formed in the amount of the positive differences for own account that result for delimitable partial insurance portfolios or for the entire insurance portfolio from the following comparison with respect to risks to be borne after the balance sheet date on the basis of contracts concluded prior to this date: expenses likely to arise for claims, premium refunds, and insurance operations reduced by unearned premiums and any future premiums receivable.

17. Deposits received

a) In the balance sheet of an undertaking ceding reinsurance, this item shall comprise amounts deposited by or withheld from other insurance undertakings under reinsurance contracts. Where an undertaking ceding reinsurance has received as a deposit securities that have been transferred to its ownership, this item shall comprise the amount owed by the ceding undertaking by virtue of the deposit.

b) Deposits received may not be merged with other amounts owed to or by the other undertakings in question.

18. General provisions for the income statement
    a) The income statement shall be compiled in report form. The items enumerated in point 19 shall be disclosed. Non-life insurance accepted for reinsurance shall be included in the technical account for non-life insurance, and life insurance accepted for reinsurance shall be included in the technical account for life insurance. Insurance undertakings that do not conclude life insurance policies themselves but only accept life insurance for reinsurance may include these transactions in the technical account for non-life insurance.
    b) In the case of co-insurance, the income account shall only include the insurance undertaking's portions of the total amounts of the income and expenses.
    c) Reinsurance acceptances may be included in the income statement with up to one year delay. Other than the exceptional case of a change to the time period by which the inclusion of such transactions is delayed, the income and expenses for 12 months shall always be included in the income statement.

19. Layout of the income statement
    I. Technical account for non-life insurance
        1. Earned premiums, net of reinsurance
            a) Gross premiums written
            b) Outward reinsurance premiums
            c) Change in the gross provision for unearned premiums
            d) Change in the provision for unearned premiums, reinsurers' share
        2. Allocated investment return (transferred from the non-technical account, item 6)
        3. Other technical income, net of reinsurance
        4. Claims incurred, net of reinsurance
            a) Claims paid
                aa) Gross amount
                bb) Reinsurers' share
            b) Change in the provision for claims
                aa) Gross amount
                bb) Reinsurers' share

5. Changes in other technical provisions, net of reinsurance, not shown under other headings
6. Bonuses and rebates, net of reinsurance
7. Net operating expenses
   a) Acquisition costs
   b) Administrative expenses
   c) Reinsurance commissions and profit participation
8. Other technical charges, net of reinsurance
9. Change in the contingency and equalisation provision and in the equalisation reserves
10. Balance on the technical account for non-life insurance

II. Technical account for life insurance

1. Earned premiums, net of reinsurance
   a) Gross premiums written
   b) Outward reinsurance premiums
   c) Change in the gross provision for unearned premiums
   d) Change in the provision for unearned premiums, reinsurers' share
2. Investment income
   a) Current income from participating interests, with a separate indication of that derived from affiliated undertakings
   b) Current income from land and buildings
   c) Current income from other investments, with a separate indication of that derived from affiliated undertakings
   d) Value readjustments on investments
   e) Gains on the realisation of investments
3. Unrealised gains on investments
4. Other technical income, net of reinsurance
5. Claims incurred, net of reinsurance
   a) Claims paid
      aa) Gross amount
      bb) Reinsurers' share
   b) Change in the provision for claims

aa) Gross amount

bb) Reinsurers' share

6. Change in other technical provisions, net of reinsurance, not shown under other headings

   a) Change in life insurance provision

      aa) Gross amount

      bb) Reinsurers' share

   b) Change in other technical provisions

7. Bonuses and rebates, net of reinsurance

8. Net operating expenses

   a) Acquisition costs

   b) Administrative expenses

   c) Reinsurance commissions and profit participation

9. Investment charges

   a) Investment management charges and interest charges

   b) Value adjustments on investments

   c) Losses on the realisation of investments

10. Unrealised losses on investments

11. Other technical charges, net of reinsurance

12. Allocated investment return transferred to the non-technical account (item 4)

13. Allocations to or withdrawals from the fund for future appropriations

14. Balance on the technical account for life insurance

III. Non-technical account

1. Balance on the technical account for non-life insurance

2. Balance on the technical account for life insurance

3. Investment income

   a) Current income from participating interests, with a separate indication of that derived from affiliated undertakings

   b) Current income from land and buildings

   c) Current income from other investments, with a separate indication of that derived from affiliated undertakings

   d) Value readjustments on investments
   e) Gains on the realisation of investments
4. Allocated investment return transferred from the life insurance technical account (item 12)
5. Investment charges
   a) Investment management charges and interest charges
   b) Value adjustments on investments
   c) Losses on the realisation of investments
6. Allocated investment return (transferred to the non-life insurance technical account, item 2)
7. Other income from ordinary activities
8. Other expenses from ordinary activities
9. Profit or loss on ordinary activities
10. Extraordinary income
11. Extraordinary charges
12. Extraordinary profit or loss
13. Taxes on income and earnings
14. Other taxes
15. Profit or loss for the year

20. Gross premiums written

a) The item "Gross premiums written" shall comprise all premiums due during the financial year regardless of the fact that such amounts may relate in whole or in part to periods after the balance sheet date.

b) These premiums shall also include:

   aa) premiums yet to be written, where the premium calculation can be done only at the end of the financial year;

   bb) single premiums, including annuity premiums; the inclusion of single premiums resulting from bonus and rebate provisions shall be permissible;

   cc) additional premiums in the case of half-yearly, quarterly, or monthly payments from policyholders for expenses borne by the insurance undertaking;

   dd) reinsurance premiums due from ceding and retroceding insurance undertakings, including portfolio entries that are paid upon conclusion or change of insurance contracts accepted for reinsurance.

c) The following shall be deducted from the premiums referred to in a):

   aa) portfolio withdrawals credited to ceding and retroceding insurance undertakings that are paid upon changing or terminating insurance business accepted for reinsurance;

   bb) cancellations of premiums charged to the financial year.

d) Taxes of charges levied with premiums or on premiums may not be included in the item "Gross premiums written".

21. Outward reinsurance premiums

a) The item "Outward reinsurance premiums" shall comprise all premiums paid or payable in the financial year in respect of outward reinsurance contracts entered into by an insurance undertaking.

b) These premiums shall also include portfolio entries payable on the conclusion or amendment of outward reinsurance contracts.

c) Portfolio withdrawals payable upon changing or terminating outward reinsurance contracts shall be deducted from the premiums referred to in a).

22. Claims incurred

a) The item groups "Claims incurred, net of reinsurance" shall comprise the payments made in the financial year for claims including annuity payments and surrender payments as well as external and internal claims management expenses. Entries and withdrawals of loss provisions shall be taken into account in the same way as for portfolio entries and withdrawals as governed by points 20 and 21. Sums recoverable on the basis of subrogation and salvage within the meaning of point 14(e) that the insurance undertaking has received in the financial year shall be deducted from the gross amount of the payments for claims.

b) The item groups "Change in the provision for claims" shall comprise the difference between the provision for claims at the end of the financial year and the provision for claims at the beginning of the financial year, taking into account the difference between the amount owed on the basis of subrogation and salvage within the meaning of point 14(e) at the end of the financial year and the beginning of the financial year. The calculation of the difference shall also take into account the provisions for claims incurred but not yet reported in the financial year and for non-life insurance benefits to be paid in the form of annuities.

23. Bonuses and rebates
    a) The items "Bonuses and rebates" shall comprise the payments for bonuses and rebates made to policyholders and other beneficiaries in the financial year and provisions for this purpose at the end of the financial year, minus the provisions for this purpose at the beginning of the financial year, always net of reinsurers' shares. Payments within the meaning of the preceding sentence shall also encompass the corresponding increase of other technical provisions and offsetting of future premiums.
    b) Bonuses shall comprise premium rebates resulting from surplus or profit on business as a whole or a section of business; rebates shall comprise premium rebates resulting from the experience of individual contracts.

24. Operating costs
    a) Direct costs attributable to the conclusion of individual insurance contracts and other expenses arising from the conclusion of insurance contracts shall be disclosed in the items "Acquisition costs". These shall include acquisition commissions, renewal commissions, and advertising expenses.
    b) Staff costs, depreciation provisions in respect of office furniture and equipment, and other office expenses shall be divided among the items "Claims incurred, net of reinsurance", "Acquisition costs", "Administrative expenses", "Investment management charges and interest charges", and "Other expenses from ordinary activities", to the extent that they arise from ordinary activities. In this regard, the items "Acquisition costs" should be assigned the costs of processing proposals, the cost of drawing up the insurance document, the issuing of policies, and including the insurance contract in the portfolio; the items "Administrative expenses" shall in particular include the costs arising from premium collection, portfolio administration, handling of bonuses and rebates, and handling of reinsurance.
    c) The items "Administrative expenses" shall also include collection and portfolio management commissions.

25. Investment income and charges
    a) If an insurance undertaking compiles only a technical account for non-life insurance according to point 18(a), but not a technical ac-

count for life insurance, then it shall disclose all income and expenses in connection with investments in the corresponding items of the non-technical account.

b) If an insurance undertaking compiles only a technical account for life insurance according to point 18(a), but not a technical account for non-life insurance, then it shall disclose all income and expenses in connection with investments in the corresponding items of the technical account for life insurance.

c) If an insurance undertaking compiles both a technical account for non-life insurance and a technical account for life insurance according to point 18(a), then it shall disclose in the corresponding items of the latter account the income and expenses relating to investments that are directly connected with life insurance and the remaining income and expenses relating to investments in the corresponding items of the non-technical account. Income and expenses directly connected with life insurance shall in any event comprise the income and investments relating to separately kept investments that are intended to cover the technical provisions for life insurance. In this case, the consolidated income statement may also include all income and expenses relating to investments in the corresponding items of the non-technical account.

d) It shall be permissible to transfer part of the investment income disclosed in the technical account for life insurance to the non-technical account; the transferred amount shall be disclosed in the items "Allocated investment return transferred to the non-technical account" and "Allocated investment return transferred from the life insurance technical account". It shall also be permissible to transfer part of the investment income disclosed in the non-technical account to the technical account for non-life insurance; the transferred amount shall be disclosed in the items "Allocated investment return". A direct transfer of investment income from the technical account for life insurance to the technical account for non-life insurance shall not be permissible. When applying the last sentence of c), it shall also be permissible to transfer part of the investment income to the technical account for life insurance; the transferred amount shall be disclosed in the corresponding item.

26. Unrealised gains and losses on investments
    a) The items "Unrealised gains on investments" and "Unrealised losses on investments" shall comprise the changes to the difference between the valuation of investments for the benefit of life insurance policyholders who bear the investment risk at the current value according to point 5(b) and their valuation according to the provisions applicable to other investments.
    b) Write-ups and write-offs affecting other investments may not be included in the item referred to in a), but must be disclosed in the items "Value readjustments on investments" and "Value adjustments on investments".

27. Statement of changes in non-current assets

    The balance sheet or the notes shall also include the development of the individual items of intangible assets, land and buildings, and the individual items of investments in affiliated undertakings and participating interests. In this regard, starting with the balance sheet values at the beginning of the financial year, the accruals, reductions, transfers, write-ups, and write-offs of the financial year shall be disclosed separately.

28. Other notes on the balance sheet
    a) The notes on the balance sheet shall also include:
        aa) the balance sheet value of land and buildings that the insurance undertaking uses itself;
        bb) the amount of the loans to policyholders for which the policy is the main security;
        cc) a precise breakdown of "Other loans", if the "Other loans" not secured by policies are material;
        dd) the acquisition costs deducted from the gross amount of the provision for unearned premiums;
        ee) the zillmer deductions taken from the gross amount of the life insurance provision;
        ff) a summary of the most important computation bases for the life insurance provision;
        gg) the amounts owed on the basis of subrogation and salvage within the meaning of point 14(e) deducted from the provision for claims, if they are material;
        hh) the amount of the provision for unexpired risks arising from the insurance portfolio, if it is material.

b) If the investments disclosed in the item "Other" under "Other financial investments" are material, they must be explained in more detail in the notes. The same shall apply to the assets disclosed in the item "Other" under "Other assets", if they are material.

c) The notes shall make reference to the equalisation reserves.

d) The notes shall indicate the values of investments for the benefit of life insurance policyholders who bear the investment risk determined on the basis of the purchase or production costs and the current values of other investments. Points 6 and 7 shall apply to the determination of current values. The valuation method used to determine the current values shall be indicated for all investments; the reason for the use of the valuation method chosen in each case shall also be indicated for all investments, with the exception of land and buildings. The current values for land and buildings shall be broken down by the years in which their market values were most recently determined.

29. Notes concerning the lines of business

a) As regards non-life insurance, the notes shall disclose gross premiums written, gross premiums earned, gross claims charges, gross operating expenses, and the reinsurance balance. These amounts shall be shown broken down between direct insurance and reinsurance acceptances, if reinsurance acceptances amount to 10% or more of gross premiums written, and then within direct insurance into the following classes and groups of classes, subject to the next sentence:

aa) accident and health;

bb) motor, third-party liability;

cc) motor, other classes;

dd) marine, aviation and transport;

ee) fire and other damage to property;

ff) third-party liability;

gg) credit and suretyship;

hh) legal expenses;

ii) tourist assistance;

kk) miscellaneous.

The breakdown into classes and groups of classes within direct insurance shall not be required where the amount of the gross premiums written in a class or group of classes does not exceed 10 million euros; however, the amounts relating to the three most significant classes or groups of classes shall be disclosed in any case.

b) As regards life insurance, the notes shall disclose gross premiums written, broken down between direct insurance and reinsurance acceptances, if reinsurance acceptances amount to 10% or more of gross premiums written; moreover, the reinsurance balance shall be indicated in one sum. The gross premiums written in direct insurance shall be broken down as follows, if the following individual amounts listed exceed 10% of the total gross premiums written in direct insurance:

   aa) individual premiums and premiums under group contracts;

   bb) periodic premiums and single premiums;

   cc) premiums from non-bonus contracts, premiums from bonus contracts, and premiums from contracts where the investment risk is borne by policyholders.

c) The gross premiums written in direct insurance shall be broken down in the notes according to their regional origin into the following three partial amounts, subject to the next sentence: Liechtenstein, other EEA Contracting Parties, and other States. Partial amounts that do not exceed 5% of the total amount of the gross premiums written need not be indicated, however.

d) Insurance undertakings that only accept business for insurance need only break down the gross premiums written into non-life insurance and life insurance, instead of providing the information according to a) and b).

e) The reinsurance balance within the meaning of a) and b) shall mean the reinsurers' share in the technical balance of the section of business in question, including any associated reinsurers' shares in items that are not included in this balance.

30. Other notes on the income statement

a) The notes shall also state:

   aa) the magnitude of the reinsurance acceptances included with delay in the income statement according to point 18(c), with the respective amount of the time delay and a justification of the method used; if the method changes, the effect on the asset, financial, and income situation shall be shown separately;

bb) the breakdown of the costs for bonuses and rebates, net of reinsurance, by bonuses and by rebates, if one of these two amounts is material;

cc) commissions of all kinds for direct insurance written in the financial year.

b) If the difference between the amount of the provision for claims outstanding at the beginning of the financial year and the sum of the amounts paid during the financial year for claims incurred in previous financial years plus the amount of the provision for such outstanding claims at the end of the financial year is substantial, then the difference shall be explained in the notes according to type and amount.

c) If an insurance undertaking makes use of point 25(d), then the reason and calculation basis for every transfer shall be explained in the notes.

Annex 2
(Articles 37 and 91)

Calculation of the contingency and equalisation provision

The contingency and equalisation provision, in particular for reinsurance undertakings and captives, shall be calculated according to the following principles:

1. The contingency and equalisation provision may not exceed a maximum required amount and may not fall below a minimum required amount.
2. The maximum required amount shall be composed of the sum of the individual required amounts that are calculated in accordance with points 3 to 5 for every individual risk or every group of risks.
3. The maximum required amount may not exceed the average of the net premiums written over the last five business years multiplied by the factor 17.5.
4. The minimum required amount shall be 30% of the maximum required amount. If it is not generated by any technical surplus, then the minimum required amount shall be calculated by taking into account other resources of the undertaking on the order of the FMA.
5. The FMA may provide further details governing the calculation of required amounts.

Annex 3
(Articles 37 and 92)

Methods of calculating the contingency and equalisation provision for credit insurance

Method No. 1

The contingency and equalisation provision shall in each financial year receive 75% of any technical surplus arising on credit insurance business, subject to a limit of 12% of net premiums or contributions until the reserve has reached 150% of the highest annual amount of net premiums or contributions received during the previous five financial years.

Method No. 2

1. The contingency and equalisation provision shall be 134% of the average of the premiums written and received for own account during the previous five financial years.
2. The reserve shall in each financial year receive 75% of any technical surplus arising in credit insurance until the reserve is at least equal to the minimum calculated in accordance with point 1.

Method No. 3

The contingency and equalisation provision shall be calculated as follows:

1. All calculations shall relate to income and expenses for the insurer's own account.
2. An amount in respect of any claims shortfall for each financial year shall be placed to the contingency and equalisation provision until it has reached, or is restored to, the required amount. There shall be deemed to be a claims shortfall if the claims ratio for a financial year is lower than the average claims ratio for the reference period. The amount in respect of the claims shortfall shall be arrived at by multiplying the difference between the two ratios by the earned premiums for the financial year.
3. The required amount shall be equal to six times the standard deviation of the claims ratio in the reference period from the average claims ratio, multiplied by the earned premiums for the financial year.

4. Where claims for any financial year are in excess, an amount in respect thereof shall be taken from the contingency and equalisation provision. Claims shall be deemed to be in excess if the claims ratio for the financial year is higher than the average claims ratio over the reference period. The amount in respect of the excess claims shall be arrived at by multiplying the difference between the two ratios by the earned premiums for the financial year.
5. Irrespective of claims experience, 3.5% of the required amount of the contingency and equalisation provision shall be first placed to that reserve each financial year until its required amount has been reached or restored.
6. The length of the reference period shall be not less than 15 years and not more than 30 years. Upon notification to the FMA, no contingency and equalisation provision need be formed if no underwriting loss has been noted during the reference period.
7. The required amount of the contingency and equalisation provision and the amount to be taken from it may be reduced if the average claims ratio for the reference period in conjunction with the expenses ratio shows that the premiums include a safety margin.

Method No. 4

The contingency and equalisation provision shall be calculated as follows:

1. All calculations shall relate to income and expenses for the insurer's own account.
2. An amount in respect of any claims shortfall for each financial year shall be placed to the contingency and equalisation provision until it has reached the maximum required amount. There shall be deemed to be a claims shortfall if the claims ratio for a financial year is lower than the average claims ratio for the reference period. The amount in respect of the claims shortfall shall be arrived at by multiplying the difference between the two ratios by the earned premiums for the financial year.
3. The maximum required amount shall be equal to six times the standard deviation of the claims ratio in the reference period from the average claims ratio, multiplied by the earned premiums for the financial year.
4. Where claims for any financial year are in excess, an amount in respect thereof shall be taken from the contingency and equalisation provision until it has reached the minimum amount required. Claims shall be deemed to be in excess if the claims ratio for the financial

year is higher than the average claims ratio in the reference period. The amount in respect of the excess claims shall be arrived at by multiplying the difference between the two ratios by the earned premiums for the financial year.

5. The minimum required amount shall be equal to three times the standard deviation of the claims ratio in the reference period from the average claims ratio multiplied by the earned premiums for the financial year.
6. The length of the reference period shall be not less than 15 years and not more than 30 years. Upon notification to the FMA, no contingency and equalisation provision need be formed if no underwriting loss has been noted during the reference period.
7. Both required amounts of the contingency and equalisation provision and the amount to be placed to it or the amount to be taken from it may be reduced if the average claims ratio for the reference period in conjunction with the expenses ratio show that the premiums include a safety margin and that safety margin is more than one-and-a-half times the standard deviation of the claims ratio in the reference period. In such a case the amounts in question shall be multiplied by the quotient or one-and-a-half times the standard deviation and the safety margin.

Annex 4
(Article 84)

Matching assets for small direct insurance undertakings

1. The currency in which the commitments of a small direct insurance undertaking are payable shall be determined in accordance with the following rules:
   a) Where the cover provided by a contract is expressed in terms of a particular currency, the insurer's commitments are considered to be payable in that currency.
   b) Where the cover provided by a contract is not expressed in terms of any currency, the commitments of the insurance undertaking are considered to be payable in the currency of the country in which the risk is situated. However, the insurance undertaking may choose the currency in which the premium is expressed if there are justifiable grounds for exercising such a choice. This could be the case if, from the time the contract is entered into, it appears likely that a claim will be paid in the currency of the premium and not in the currency of the country in which the risk is situated.
   c) The currency that an insurance undertaking considers, based on experience, to be the most probable for satisfaction, or, in the absence of such experience, the currency of the country in which the undertaking is established, may be used as the basis in the case of the following risks, unless special circumstances countervail:
      aa) for contracts covering risks classified under classes 4, 5, 6, 7, 11, 12 and 13 (producers' liability only);
      bb) for contracts covering the risks classified under other classes of insurance where, in accordance with the nature of the risks, the cover is to be provided in a currency other than that which would result from the application of the above procedures.

d) Where a claim has been reported to an insurance undertaking and is payable in a specified currency other than the currency resulting from application of the above procedures, the commitments of the insurance undertaking shall be considered to be payable in that currency, and in particular the currency in which the compensation to be paid by the insurance undertaking has been determined by a court judgment or by agreement between the insurance undertaking and the insured.

e) Where a claim is assessed in a currency which is known to the insurance undertaking in advance but which is different from the currency resulting from application of the above procedures, the insurance undertakings may consider their commitments to be payable in that currency.

2. Technical provisions need not be invested in assets of the same currency in which the commitments exist if:

   a) the currency is not a currency of an EEA Contracting Party and the respective currency is not suitable for investment, especially if it is subject to transfer restrictions; or

   b) in applying the rules applicable according to point 1, assets would have to be kept in a particular currency, and these assets do not amount to more than 7% of the assets existing in other currencies. The resulting amount may not, however, exceed 2 million euros.

3. The insurance undertakings may hold non-matching assets to cover an amount not exceeding 20% of their commitments in a particular currency.

Annex 5[10]

(Article 99)

Implementing measures for Directive 2009/138/EC

1. Commission Delegated Regulation (EU) 2018/1221 of 1 June 2018 amending Delegated Regulation (EU) 2015/35 as regards the calculation of regulatory capital requirements for securitisations and simple, transparent and standardised securitisations held by insurance and reinsurance undertakings (OJ L 227, 10.9.2018, 1).
2. Commission Delegated Regulation (EU) 2019/981 of 8 March 2019 amending Delegated Regulation (EU) 2015/35 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) (OJ L 161, 18.6.2019, 1).

10 Annex 5 amended by LGBl. 2019 No. 272.