Translation of Liechtenstein Law

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Law
of 12 June 2015
on the Supervision of Insurance Undertakings (Insurance Supervision Act; VersAG)

I hereby grant My consent to the following resolution adopted by Parliament: [1]

I. General provisions

A. Object, purpose, and scope of application

Article 1

Object and purpose

1) This Act governs the supervision of insurance undertakings.

2) It serves in particular to protect insured persons from the insolvency risks of insurance undertakings and from abuses as well as to secure confidence in the Liechtenstein insurance and financial centre.

3) It also 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 1X - 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

1 Report and Motion of the Government No. 2/2015, Statement of the Government No. 55/2015

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).

Article 2

Scope of application and supplementary law

1) The following shall be subject to this Act:

a) undertakings pursuing direct insurance or reinsurance business in or from the Principality of Liechtenstein; and

b) special purpose vehicles, to which the provisions applicable to reinsurance undertakings shall apply *mutatis mutandis*.

2) This Act shall also apply to self-insurance pursued as direct insurance or reinsurance (captive).

3) In addition to the provisions of this Act, the provisions of pension fund legislation shall apply to insurance undertakings which pursue direct life insurance and at the same time provide occupational pensions.

4) Insurance undertakings wishing to provide accident insurance (against occupational accidents, non-occupational accidents, occupational diseases) are also subject to the legislation on compulsory accident insurance.

5) Health insurance and compulsory accident insurance are also governed by the relevant special legislation.

Small direct insurance undertakings

Article 3

a) Definition

1) Small direct insurance undertakings are undertakings which fulfil the following conditions:

a) the annual gross written premiums do not exceed 5.4 million euro or the equivalent in Swiss francs;[2]

2 Article 3(1)(a) amended by LGBl. 2023 No. 137.

b) the total of the undertaking's technical provisions, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles does not exceed 26.6 million euro or the equivalent in Swiss francs;[3]

c) where the undertaking belongs to a group, the total of the technical provisions of the group defined as gross of the amounts recoverable from reinsurance contracts and special purpose vehicles does not exceed 26.6 million euro or the equivalent in Swiss francs;[4]

d) the undertaking does not conclude any insurance or reinsurance contracts covering liability, credit and suretyship insurance risks, unless they constitute ancillary risks within the meaning of Article 18;

e) the business of the undertaking does not include reinsurance contracts exceeding 600 000 euro or the equivalent in Swiss francs of its gross written premium income or 2.7 million euro or the equivalent in Swiss francs of its technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, or more than 10% of its gross written premium income or more than 10% of its technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles.[5]

2) Undertakings for which the Financial Market Authority (FMA) determines the following are also small direct insurance undertakings:

a) none of the amounts specified in paragraph 1 has been exceeded for the last three consecutive years; and

b) none of the amounts specified in paragraph 1 is expected to be exceeded in the next five years.

Article 4

b) Applicable provisions

1) The FMA may grant relief to small direct insurance undertakings with regard to Articles 30 to 35 and Article 38, taking into account Article 177(3)(c) and with regard to the nature, scope and complexity of the business of an undertaking.

2) In terms of financial resources, small direct insurance undertakings shall have eligible own funds covering the Solvency Capital

3 Article 3(1)(b) amended by LGBl. 2023 No. 137.
4 Article 3(1)(c) amended by LGBl. 2023 No. 137.
5 Article 3(1)(e) amended by LGBl. 2023 No. 137.

Requirement. The Government shall provide details concerning the amount thereof by ordinance.

3) Articles 194 to 256 shall not apply where a group of undertakings subject to insurance supervision is formed exclusively by the inclusion of small direct insurance undertakings.

4) Articles 36, 37, 39, 40, 42 to 79, 100, 107 to 110, 112 to 122, 126 and 127, 129 to 131, 135, 150 and 151, and 262 to 272 shall not apply to small direct insurance undertakings.

5) This Act shall apply to all insurance undertakings which seek or have sought a licence to pursue insurance and reinsurance activities of which the annual gross written premiums or technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles are expected to exceed any of the amounts set out in Article 3(1) within the following five years. If, independently of any application for a licence to pursue insurance activities, any of the amounts set out in Article 3(1) is exceeded for three consecutive years this Act shall apply as from the fourth year.

6) Where an insurance undertaking intends to pursue activities by way of freedom of establishment or freedom to provide services, it shall not be considered a small direct insurance undertaking.

7) In any event, an undertaking is entitled to apply for or retain an ordinary licence under this Act.

B. Exceptions to the scope of application

Article 5

Statutory systems of social security

This Act shall not apply to insurance forming part of a statutory system of social security.

Article 6

Non-life insurance

1) In regard to non-life insurance, this Act shall not apply to the following operations:

a) capital redemption operations, as governed by the law in each Contracting Party to the Agreement on the European Economic Area (EEA Contracting Parties);

b) operations of provident and mutual benefit institutions whose benefits vary according to the resources available and in which the contributions of the members are determined on a flat-rate basis;

c) operations carried out by organisations not having a legal personality with the purpose of providing mutual cover for their members without there being any payment of premiums or constitution of technical reserves; and

d) export credit insurance operations for the account of or guaranteed by the State, or where the State is the insurer.

2) This Act shall not apply to mutual undertakings which pursue non-life insurance activities and which have concluded with other mutual undertakings an agreement which provides for the full reinsurance of the insurance policies issued by them or under which the accepting undertaking is to meet the liabilities arising under such policies in the place of the ceding undertaking. In such a case the accepting undertaking shall be subject to the rules of this Act.

Article 7

Life insurance

1) In regard to life insurance, this Act shall not apply to the following operations and activities:

a) operations of provident and mutual benefit institutions whose benefits vary according to the resources available and in which the contributions of the members are determined on a flat-rate basis;

b) operations carried out by organisations other than the undertakings subject to this Act, whose object is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity, whether or not the commitments arising from such operations are fully covered at all times by mathematical provisions;

2) This Act furthermore shall not apply to organisations which undertake to provide benefits solely in the event of death, where the amount of such benefits does not exceed the average funeral costs for a single death or where the benefits are provided in kind.

Article 8

Reinsurance

1) In regard to reinsurance, this Act shall not apply to undertakings with a registered office outside the EEA (third country) which pursue only reinsurance business in the Principality of Liechtenstein, provided that they are subject to supervision in their home State which is equivalent to that in Liechtenstein and do not set up an establishment in Liechtenstein.

2) Reinsurance contracts with undertakings referred to in paragraph 1 shall be treated in the same way as reinsurance contracts with undertakings which have received a licence under this Act.

3) Articles 3, 4, 18, 21, 22, 25, 26, 28, 29, 52, 106, 107 to 110, 112(1), 113, 114(1), (2), and (4), 115, 122, 125, 129, 136 to 148, 152 to 176, and 181 shall not apply to reinsurance undertakings.

Article 9

Tourist assistance

1) In regard to the "Tourist assistance" class of insurance, this Act shall not apply if:

a) the assistance is provided in the event of an accident or breakdown involving a motor vehicle when the accident or breakdown occurs in the territory of the EEA Contracting Party of the undertaking providing cover; and

b) the liability for the assistance is limited to the following operations:

   1. an on-the-spot breakdown service for which the undertaking providing cover uses, in most circumstances, its own staff and equipment;

   2. the conveyance of the vehicle to the nearest or the most appropriate location at which repairs may be carried out and the possible accompaniment of the driver and passengers to the nearest location from where they may continue their journey by other means; and

   3. where provided for by the EEA Contracting Party of the undertaking providing cover, the conveyance of the vehicle, possibly accompanied by the driver and passengers, to their home, point of departure or original destination within the same EEA Contracting Party; and

c) the assistance is not carried out by an undertaking subject to this Act.

2) In the cases referred to in paragraph 1(b)(1) and (2), the condition that the accident or breakdown must have happened in the territory of the EEA Contracting Party of the undertaking providing cover shall not apply where:

a) the beneficiary is a member of the body providing cover; and

b) the breakdown service or conveyance of the vehicle is provided simply on presentation of a membership card, without any additional premium being paid, by a similar body in the country concerned on the basis of a reciprocal agreement, or, in the case of Ireland and the United Kingdom, where the assistance operations are provided by a single body operating in both States.

C. Definitions

Article 10

Definitions and terminology

1) For purposes of this Act:

1. "host State" means a State, other than the home State, in which an insurance undertaking has a branch or provides services;
2. "supervisory authorities" means national authorities responsible under law, regulations, or administrative provisions for the supervision of insurance undertakings;
3. "participating undertaking" means an undertaking which is either a parent undertaking or other undertaking which holds a participation, or an undertaking linked with another undertaking by a relationship requiring consolidated financial reporting under the Law on Persons and Companies (PGR);
4. "participation" means the ownership, direct or by way of control, of 20% or more of the capital or voting rights of an undertaking;
5. "direct insurance" means the autonomous activity of undertakings in the assumption of risks ceded by a natural or legal person and which does not constitute reinsurance;
6. "diversification effects" means the reduction in the risk exposure of insurance undertakings and groups related to the diversification of their business, resulting from the fact that the adverse outcome from

one risk can be offset by a more favourable outcome from another risk, where those risks are not fully correlated;

7. "third-country insurance undertaking" means an insurance undertaking having its registered office in a third country that would require a licence as an insurance undertaking if its registered office were in an EEA Contracting Party;
8. "close link" means a situation in which two or more natural or legal persons are linked by control or participation. A close link between two or more natural and legal persons also includes a situation in which the persons concerned are permanently linked to the same person by a control relationship;
9. "external credit assessment institution" means a credit rating agency that is registered or certified in accordance with Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (EEA Compendium of Laws: Annex 1X - 31eb.01) or a central bank issuing credit ratings which are exempt from the application of that Regulation;
10. "financial sector" means a sector as defined in the Financial Conglomerates Act;
11. "finite reinsurance" means reinsurance under which the explicit maximum loss potential, expressed as the maximum economic risk transferred, arising both from a significant underwriting risk and timing risk transfer, exceeds the premium over the lifetime of the contract by a limited but significant amount, together with at least one of the following features:
    a) explicit and material consideration of the time value of money;
    b) contractual provisions to moderate the balance of economic experience between the parties over time to achieve the target risk transfer;
12. "financial undertaking" means an undertaking in the financial sector;
13. "captive insurance undertaking" means an insurance undertaking, owned either by a financial undertaking other than an insurance undertaking or a group of insurance undertakings or by a non-financial undertaking, the purpose of which is to provide insurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of the risks of undertakings of the group of which it is a member;
14. "outsourcing" means an arrangement of any form between an insurance undertaking and a service provider, whether the latter is a supervised entity or not, by which that service provider performs a process, a service or an activity, whether directly or by sub-

outsourcing, which would otherwise be performed by the insurance undertaking itself;

15. "mixed-activity insurance holding company" means a parent undertaking, other than an insurance undertaking, a third-country insurance undertaking, an insurance holding company, or a mixed financial holding company within the meaning of the Financial Conglomerates Act, which has at least one insurance undertaking among its subsidiaries;
16. "regulated market" means a multilateral system operated and/or managed by a market operator, which:
    a) brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems;
    b) is authorised; and
    c) functions regularly in accordance with the applicable provisions;
17. "regulated market of a third country" means a regulated market (financial market) situated in a third country:
    a) which is recognised by the home State of the insurance undertaking and meets the requirements applicable in that State; and
    b) whose traded financial instruments are of a quality comparable to that of instruments traded on the regulated market of the home State;
18. "large risks":
    a) risks classified under classes 4, 5, 6, 7, 11 and 12 in Annex 1(A);
    b) risks classified under classes 14 and 15 in Annex 1(A), where the policy holder is engaged professionally in an industrial or commercial activity or in one of the liberal professions and the risks relate to such activity;
    c) risks classified under classes 3, 8, 9, 10, 13 and 16 in Annex 1(A) insofar as the policy holder exceeds the limits of at least two of the three following criteria:[6]
        aa) balance sheet total: 6.6 million euro or the equivalent in Swiss francs;

6 Article 10(1)(18)(c) amended by LGBl. 2023 No. 137.

bb) net turnover during the financial year: 13.6 million euro or the equivalent in Swiss francs;

cc) average number of employees during the financial year: 250 employees.

If the policy holder belongs to a group of undertakings for which a consolidated financial statement is drawn up, the criteria set out above shall be applied on the basis of the consolidated financial statement;

19. "group" means a group of undertakings that:

a) consists of a participating undertaking, its subsidiaries and the entities in which the participating undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship requiring consolidated financial reporting; or

b) is based on the formation, contractually or otherwise, of strong and sustainable financial relationships among those undertakings, and that may include mutual or mutual-type associations, provided that:

aa) one of those undertakings effectively exercises, through centralised coordination, a dominant influence over the decisions, including financial decisions, of the other undertakings that are part of the group; and

bb) the formation and dissolution of such relationships are subject to prior approval by the group supervisor.

The undertaking exercising the centralised coordination shall be considered as the parent undertaking, and the other undertakings shall be considered as subsidiaries;

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

21. "home State" means a State in which the registered office of the insurance undertaking covering the risk or commitment is situated; for the purposes of Article 158, the home State shall be the EEA Contracting Party in which the branch of a third-country insurance undertaking has been licensed;

22. "holding company" means an undertaking whose sole purpose is the acquisition, management, and realisation of participations in other undertakings;

23. "capital add-on" means an order by the supervisory authority to increase the Solvency Capital Requirement in justified individual cases;
24. "college of supervisors" means a permanent but flexible structure for the cooperation, coordination and facilitation of decision-making in regard to group supervision;
25. "control relationship" means a link between a parent undertaking or a subordinate undertaking and a subsidiary or subordinate undertaking or a similar relationship between a natural or legal person and an undertaking. Every subordinate undertaking of a subordinate undertaking shall also be considered a subordinate undertaking of the superordinate undertaking which is at the head of those undertakings;
26. "concentration risk" means all risk exposures with a loss potential which is large enough to threaten the solvency or the financial position of insurance undertakings;
27. "credit risk" means the risk of loss or of adverse change in the financial situation, resulting from fluctuations in the credit standing of issuers of securities, counterparties and any debtors to which insurance undertakings are exposed, in the form of counterparty default risk, or spread risk, or market risk concentrations;
28. "winding-up proceedings" means collective proceedings involving the realisation of the assets of a direct insurance undertaking and the distribution of the proceeds among the creditors, shareholders or members as appropriate, which necessarily involve any intervention by a competent administrative or judicial authority, including where the proceedings are terminated by a composition or other analogous measure, whether or not they are founded on insolvency or are voluntary or compulsory;
29. "liquidator" means a person or body appointed by a competent administrative or judicial authority or by the governing bodies or general meeting of a direct insurance undertaking for the purpose of administering winding-up proceedings;
30. "liquidity risk" means the risk that insurance undertakings are unable to realise investments and other assets in order to settle their financial obligations when they fall due;
31. "market risk" means the risk of loss or of adverse change in the financial situation resulting, directly or indirectly, from fluctuations in the level and in the volatility of market prices of assets, liabilities and financial instruments;

32. "parent undertaking" means a parent undertaking as defined in the accounting provisions of the PGR as well as any undertaking exercising a dominant influence on another undertaking;
33. "establishment" means the registered office or a branch of an undertaking;
34. "operational risk" means the risk of loss arising from inadequate or failed internal processes, personnel or systems, or from external events;
35. "qualifying central counterparty" means a central counterparty which, pursuant to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, has been either authorised (Article 14) or recognised (Article 25);
36. "qualifying holding" means a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the undertaking in which the participation is held;
37. "risk measure" means a mathematical function which assigns a monetary amount to a given probability distribution forecast and increases monotonically with the level of risk exposure underlying that probability distribution forecast;
38. "risk-mitigation techniques" means all techniques which enable insurance undertakings to transfer part or all of their risks to another party;
39. "reinsurance" means the autonomous activity of undertakings in accepting risks ceded by an undertaking pursuing direct insurance or by another reinsurance undertaking or a third-country insurance undertaking;
40. "reorganisation measures" means all measures involving any intervention by a competent administrative or judicial authority which are intended to preserve or restore the financial situation of a direct insurance undertaking and which affect pre-existing rights of parties other than the insurance undertaking itself, including but not limited to measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims;
41. "solvency" means the presentation of the Solvency Capital Requirement and the own funds eligible to cover it;
42. "Solvency Capital Requirement" means the target value of the own funds of an undertaking to cover its own risks;

43. "State of provision of services" means the State of the commitment or the State in which the risk is situated, where that commitment or risk is covered by an insurance undertaking established in another State;
44. "State of establishment" means the State in which the insurance undertaking is established that covers the risk;
45. "State in which the risk is situated" means
    a) the State in which the property is situated, where the insurance relates either to buildings or to buildings and their contents, insofar as the contents are covered by the same insurance policy;
    b) the State of registration, where the insurance relates to vehicles of any type;
    c) the State where the policy holder took out the policy in the case of policies of a duration of four months or less covering travel or holiday risks, whatever the class concerned;
    d) in all other cases, the State of the habitual residence of the policy holder or, if the policy holder is a legal person, the State in which the establishment of the legal person is situated to which the contract relates;
46. "State of the commitment" means the State of the habitual residence of the policy holder or, if the policy holder is a legal person, the State in which the establishment of the legal person is situated to which the contract relates;
47. "permanent presence" means a presence that is to be treated in the same way as a branch, even where that presence does not take the form of a branch, but consists merely of an office managed by the own staff of the undertaking or by a person who is independent but has permanent authority to act for the undertaking as an agency would;
48. "subsidiary" means a subsidiary undertaking within the meaning of the accounting rules of the PGR and any undertaking on which an undertaking exercises a dominant influence. Every subsidiary of a subsidiary shall also be considered a subsidiary of the parent undertaking which is at the head of those undertakings;
49. "superordinate undertaking" means a parent undertaking or other undertaking that exercises a dominant influence on another undertaking;
50. "subordinate undertaking" means a subsidiary or other undertaking on which a dominant influence is exercised;
51. "related undertaking" means either a subsidiary undertaking or other undertaking in which a participation is held, or an undertaking linked

with another undertaking by a relationship requiring consolidated financial reporting under the PGR;

52. "insurance claim" means any amount which is owed by a direct insurance undertaking to policy holders, insured persons, beneficiaries or to any injured party having direct right of action against the insurance undertaking and which arises from an insurance contract or from any operation to which this Act applies in direct insurance business. This includes amounts set aside for those persons, when some elements of the debt are not yet known, as well as premiums which an insurance undertaking has to repay because a legal transaction was not concluded or was cancelled under the law applicable to it before the opening of bankruptcy or winding-up proceedings;

53. "insurance holding company" means a parent undertaking which is not a mixed financial holding company within the meaning of the Financial Conglomerates Act and the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance undertakings, or third-country insurance undertakings, at least one of such subsidiary undertakings being an insurance undertaking;

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

55. "insurance undertaking" means an undertaking which has received a licence to pursue direct life insurance or non-life insurance activities or reinsurance activities, distinguishing, where necessary, between direct insurance undertakings and reinsurance undertakings;

56. "administrator" means a person or body appointed by a competent administrative or judicial authority for the purpose of administering reorganisation measures;

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

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

59. "branch" means a branch within the meaning of Article 119(1) PGR, an agency, or any other permanent presence of an insurance undertaking in an EEA Contracting Party which is not the home State.

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

II. Taking-up of business

A. Licensing requirement and licence application

Article 11

Licensing requirement

1) Undertakings subject to supervision require a licence from the FMA to take up insurance activities.

2) Insurance undertakings with a registered office in another EEA Contracting Party do not require a licence if they meet the special conditions set out in Articles 112 et seq., subject to special legislation governing individual classes of compulsory insurance.

Article 12

Licence application

1) Companies wishing to obtain a licence to take up insurance activities must submit an application to the FMA.

2) The application must include the following information and documents:

a) the articles of association of the company;

b) the organisation and geographical area of the undertaking, including, where applicable, the group or financial conglomerate to which the undertaking belongs;

c) the opening balance sheet;

d) the annual financial statement for the last three financial years of the members and, where appropriate, the consolidated annual report;

e) evidence that eligible original own funds are available to cover the absolute floor of the Minimum Capital Requirement;

f) evidence that the undertaking will be able to hold the eligible own funds to meet the Solvency Capital Requirement;

g) evidence that the undertaking will be able to hold the eligible basic own funds to meet the Minimum Capital Requirement;

h) the identity and amount of the participations of direct or indirect shareholders, members of cooperative societies, or other members who, as natural or legal persons, hold a qualifying holding in the undertaking or are otherwise beneficial owners thereof, and the existence of any close links;

i) the names of the governing bodies and all other bodies, including the persons responsible for supervision and control or holding other key functions;

k) evidence that the company will be able to ensure the necessary governance;

l) the names of the external audit office and of the persons responsible for the mandate and, if the undertaking is part of a group or a financial conglomerate, the organisation of the mandate of the external audit office of the group or financial conglomerate;

m) the contracts or other agreements by which functions or activities are to be outsourced (outsourcing);

n) the declaration of membership in the National Bureau of Insurance and National Guarantee Fund, with simultaneous disclosure of the claims representative and communication of the name and address of the claims representatives in other EEA Contracting Parties where the risks to be covered are classified under the "Motor vehicle liability" class of insurance, other than carrier's liability;

o) information on the means of providing services under the "Tourist assistance" class of insurance;

p) a scheme of operations as referred to in Article 13;

q) at the request of the FMA, further information and documents necessary for the assessment of the application.

3) If an insurance undertaking which already holds a licence for one class of insurance applies for a licence for another class of insurance, it shall submit the documents and information referred to in paragraph 2 only if they are to be amended with respect to those already approved.

Article 13

Scheme of operations

1) The scheme of operations shall include information and evidence concerning:

a) the classes of business envisaged and the nature of the risks or commitments which the undertaking proposes to cover in direct insurance and reinsurance;

b) the reinsurance envisaged and, for reinsurance undertakings, the kind of reinsurance arrangements which the undertaking proposes to make with ceding undertakings and the guiding principles as to retrocession (retrocession plan);

c) the basic own-fund items constituting the absolute floor of the Minimum Capital Requirement;

d) estimates of the cost of setting up the administrative services and the distribution network as well as the financial resources intended to meet those costs.

2) In addition, the scheme of operations must include the following information and documents for the first three financial years:

a) a forecast balance sheet and income statement;

b) estimates of the future Solvency Capital Requirement to be calculated on the basis of the forecast liquidity situation as well as the calculation method used to derive those estimates;

c) estimates of the future Minimum Capital Requirement to be calculated on the basis of the forecast liquidity situation as well as the calculation method used to derive those estimates;

d) the financial resources intended to cover the Solvency Capital Requirement, the Minimum Capital Requirement, and the technical provisions;

e) for non-life insurance and reinsurance:

   1. estimates of management expenses other than installation costs, in particular current general expenses and commissions; and

   2. estimates of premiums or contributions and claims;

f) for life insurance, a plan setting out detailed estimates of income and expenditure in respect of direct insurance business, reinsurance acceptances and reinsurance cessions.

Article 14

Legal form, registered office, purpose, and organisation

1) Insurance undertakings must have the legal form of a public limited company, a European Company (SE), a cooperative society, or a European Cooperative Society (SCE). Special purpose vehicles may also be set up in the legal form of a trust enterprise.

2) Both the registered office under the articles of association and the head office of the undertaking must be located in the Principality of Liechtenstein. The FMA may define the requirements for the head office in more detail in a guideline.

3) The purpose and organisation of the undertaking shall be limited to insurance activities and to operations directly related thereto. In the case of reinsurance undertakings, the purpose and organisation may include a holding company function and activities in the financial sector, but not the pursuit of unrelated banking and financial activities.

B. Granting and scope of the licence

Article 15

Granting of the licence

1) The licence shall be granted if the undertaking satisfies the legal criteria. It may be granted subject to terms and conditions.

2) The FMA shall deny the licence by decree if the applicant does not satisfy the legal criteria or does not meet its requirements, in particular if:

a) there are close links between an undertaking and another natural or legal person and these close links impair the FMA in the proper performance of its duties;

b) the FMA would be impaired in the proper performance of its duties by the laws, regulations, or administrative provisions of a third country governing one or more natural or legal persons with which an undertaking has close links, or difficulties involved in the application of those provisions.

3) The FMA shall inform the Office of Justice of the license granted. The insurance undertaking must submit an application for entry in the Commercial Register to the Office of Justice within seven days of service

of the license. Upon entry in the Commercial Register, the FMA shall publish the granted license on its website.

4) If the FMA does not decide on the licence within six months after receipt of the application and the complete documentation, the applicant may file a complaint with the FMA Complaints Commission.

5) The FMA must notify the European Insurance and Occupational Pensions Authority (EIOPA) of each licence.

Article 16

Consultation of other authorities

1) Prior to the granting of a license to an undertaking, the FMA shall consult the competent authorities of other EEA Contracting Parties concerned where the undertaking is:

a) a subsidiary of an insurance undertaking authorised in another EEA Contracting Party;

b) a subsidiary of the parent undertaking of an insurance undertaking authorised in another EEA Contracting Party; or

c) controlled by the same person, whether natural or legal, who controls an insurance undertaking authorised in another EEA Contracting Party.

2) The competent authority of any EEA Contracting Party concerned responsible for the supervision of banks or investment firms shall be consulted prior to the granting of a licence to an undertaking which is:

a) a subsidiary of a bank or investment firm authorised in an EEA Contracting Party;

b) a subsidiary of the parent undertaking of a bank or investment firm authorised in an EEA Contracting Party; or

c) controlled by the same person, whether natural or legal, who controls a bank or investment firm authorised in an EEA Contracting Party.

3) When assessing the suitability of shareholders and the professional qualifications and personal integrity of the governing bodies of the undertaking seeking a licence, the FMA shall consult the competent authorities of the other EEA Contracting Parties if these persons have a management or other key function in another entity of the same group.

Article 17

Scope of the licence

1) In direct insurance, the licence shall be granted for each class of insurance separately or for several classes of insurance together. The licence shall cover the entire class, unless only some of the risks pertaining to that class are to be covered. Subject to the cases referred to in Article 18, the risks included in a class may not be covered by any other class of insurance.

2) In reinsurance, the licence shall be granted for non-life reinsurance activity, life reinsurance activity or all kinds of reinsurance.

3) The direct insurance license also entitles the holder to conduct reinsurance business in the licensed classes of insurance; the conduct of such business requires prior notification to the FMA.

4) Insurance undertakings may provide assistance services in accordance with Article 145 only if they hold a licence for the "Tourist assistance" class of insurance.

5) For insurance undertakings with a registered office in the Principality of Liechtenstein, the licence shall extend to the territory of the EEA Contracting Parties, covering both the freedom of establishment and the freedom to provide services.

Article 18

Ancillary risks

1) An insurance undertaking which has obtained a licence for a principal risk belonging to one class or a group of classes as set out in Annex 1 may also insure risks included in another class without the need to obtain an additional licence in respect of such risks provided that the risks fulfil all the following conditions:

a) they are connected with the principal risk;

b) they concern the object which is covered against the principal risk; and

c) they are covered by the contract insuring the principal risk.

2) By way of derogation from paragraph 1, the risks included in classes 14, 15 and 17 in Annex 1(A) shall not be regarded as risks ancillary to other classes. However, legal expenses insurance as set out in class 17 may be regarded as a risk ancillary to class 18, where the

conditions laid down in paragraph 1 and either of the following conditions are fulfilled:

a) the principal risk relates solely to the assistance provided for persons who fall into difficulties while travelling, while away from their home or their habitual residence; or

b) the insurance concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels.

C. Changes to licensing conditions

Article 19

Approval requirement

1) The following must be approved in advance by the FMA:

a) changes to the licensing conditions set out in Article 12(2)(a), (b), (e), (f), (g), (h), (i), (k), (l), and (m) as well as Article 13(1)(a);

b) mergers, divisions, transformations and other structural changes of insurance undertakings.

2) Entries in the Commercial Register which are necessary due to changes as referred to in paragraph 1 may be made only after the approval has been granted.

Article 20

Notification requirement

The following must be notified to the FMA:

a) changes to the licensing conditions set out in Article 12(2)(i) and (n), to the extent that key functions or the claims representative are concerned, and Article 13(1)(b); the insurance undertaking may implement the change unless it receives a communication to the contrary from the FMA within a period of four weeks after notification;

b) cases where a governing body has been replaced because it no longer meets the requirements of Article 33.

Article 21

Order by the FMA

The FMA may demand that the change to the licensing condition be carried out before new insurance contracts are concluded. Where it appears necessary to protect the interests of the insured persons, the FMA may order the change of a licensing condition with effect for existing or outstanding insurance relationships.

Article 22

Extension of insurance business

1) If a direct insurance undertaking seeks to extend its business to other classes or to extend a licence covering only some of the risks pertaining to one class, a licence by the FMA is required. The application for a licence must include a scheme of operations in accordance with Article 13 and evidence of eligible own funds to cover the Solvency Capital Requirement and the Minimum Capital Requirement.

2) An insurance undertaking pursuing life activities as set out in Annex 2 and seeking a licence to extend its business to the risks listed in classes 1 or 2 in Annex 1(A) (non-life insurance) shall also demonstrate that it:

a) possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for life insurance undertakings and the absolute floor of the Minimum Capital Requirement for non-life insurance undertakings;

b) undertakes to cover the minimum financial obligations required.

3) An insurance undertaking pursuing non-life activities for the risks listed in classes 1 or 2 in Annex 1(A) and seeking a licence to extend its business to life insurance shall also demonstrate that it:

a) possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for life insurance undertakings and the absolute floor of the Minimum Capital Requirement for non-life insurance undertakings;

b) undertakes to cover the minimum financial obligations required.

III. Conduct of insurance business

A. General provisions

Article 23

Business name and protection of designations

1) The designations "Insurance", "Reinsurance", "Insurer", "Reinsurer" or "Assurance", alone or in word combinations or as an abbreviation, and corresponding terms in other languages may be used in the company name, to designate the business purpose, or for advertising purposes only in the case of companies that have been granted a licence to operate direct insurance or reinsurance. Insurance intermediaries, reinsurance intermediaries, and ancillary insurance intermediaries may use such designations only if they are accompanied by an affix clarifying their status as intermediaries.[7]

2) Paragraph 1 shall apply *mutatis mutandis* to designations and paraphrases which suggest an activity as insurance.

Article 24

Non-insurance business

1) Non-insurance activities are not permitted.

2) Qualifying holdings of insurance undertakings in non-insurance undertakings, including changes thereto, must be notified to the FMA in advance.

3) The FMA may prohibit the holding and have it reversed or attach terms and conditions to it if the insurance undertaking or the interests of the insured persons appear to be jeopardised by the holding.

Article 25

Simultaneous pursuit of life and non-life insurance activity (separation of insurance lines of business)

1) Subject to paragraphs 2 and 3, insurance undertakings may not pursue life and non-life insurance business simultaneously.

7 Article 23(1) amended by LGBl. 2018 No. 13.

2) Undertakings authorised to pursue life insurance activity may obtain a licence for non-life insurance activities for the risks listed in classes 1 and 2 in Annex 1(A).

3) Undertakings authorised to pursue non-life insurance activity solely for the risks listed in classes 1 and 2 in Annex 1(A) may obtain a licence to pursue life insurance activity.

4) Undertakings licensed in accordance with paragraph 2 or 3 may comply with the accounting rules governing life insurance undertakings for all of their activities.

Article 26

Separation of life and non-life insurance management

1) For each activity referred to in Article 25(2) and (3), life insurance activities and non-life insurance activities must be managed separately.

2) The respective interests of life and non-life policy holders shall not be prejudiced. In particular, profits from life insurance shall benefit life policy holders as if the life insurance undertaking only pursued the activity of life insurance.

3) The accounts of the undertaking concerned may not be distorted by arrangements between undertakings which could affect the apportionment of expenses and income.

Article 27[8]

Insurance intermediaries

Insurance undertakings may use the services of insurance intermediaries, reinsurance intermediaries, and ancillary insurance intermediaries only if they hold a licence under the Insurance Distribution Act or corresponding foreign law.

8 Article 27 amended by LGBl. 2018 No. 13.

Article 28

Membership in the National Bureau of Insurance and the National Guarantee Fund

If an insurance undertaking wishes to cover the "Motor vehicle liability" class of insurance, it must join the National Bureau of Insurance and the National Guarantee Fund. At the same time, it must disclose the name and address of the claims representative appointed in each other EEA Contracting Party in accordance with Article 75b of the Road Traffic Act.

Article 29

"*Tourist assistance*" *class of insurance*

If an insurance undertaking wishes to cover the "Tourist assistance" class of insurance, it must have the resources necessary to provide such assistance.

B. Governance

Article 30

Basic principle

1) Insurance undertakings must have effective governance.

2) Effective governance is the assurance of sound and prudent management, taking into account all risks to which an insurance undertaking is exposed.

3) The governance functions shall include in particular:

a) risk management;

b) internal control (compliance);

c) the internal audit function;

d) the actuarial function.

Article 31

General governance requirements

1) Governance must be appropriate to the nature, scale and complexity of the business of an insurance undertaking.

2) Governance shall at least ensure a transparent organisational structure with a clear allocation and appropriate segregation of responsibilities and an effective system for the transmission of information.

3) Insurance undertakings must issue and implement written governance policies.

4) Governance shall be subject to regular internal review. The written policies must be reviewed at least once a year and adjusted in the event of significant changes in the circumstances on which they are based. Governance requires the written approval of the competent governing body.

5) Insurance undertakings shall have the appropriate, necessary and proportionate systems, resources, and procedures for developing and implementing governance; they must take reasonable steps to ensure continuity and regularity in the performance of their activities, including the development and observance of contingency plans, and they must be able to take the necessary measures in the event of significant changes in regard to their business or systems.

6) The Government shall provide details by ordinance.

Article 32

Review of governance

The FMA shall verify governance and evaluate emerging risks identified by the insurance undertakings which may affect their financial soundness.

Article 33

Requirements for governing bodies and persons with key functions

1) Members of the governing bodies and all other persons who are responsible for supervision and control or who have other key functions must be professionally qualified and of personal integrity.

2) At least one member of the supervisory board or the board of directors and the general management must have Liechtenstein citizenship or the citizenship of another EEA Contracting Party or of Switzerland, or must enjoy equivalent treatment on the basis of treaty arrangements. With respect to the member of the general management, the FMA may allow exceptions in special cases.

3) The persons referred to in paragraph 1 must, by virtue of their legal or habitual residence, be in a position to effectively and flawlessly perform their function and duties.

4) The persons referred to in paragraph 2 must have sufficient powers to represent the insurance undertaking before administrative authorities or courts.

5) In the case of a branch of a third-country insurance company, it shall suffice if the general agent is a resident of Liechtenstein and has the powers required under paragraph 4.

6) The Government shall provide details by ordinance.

Article 34

Requirements for members with qualifying holdings

Shareholders, members of cooperative societies, and other members with a qualifying holding in the undertaking must satisfy the requirements relating to the sound and prudent management of an insurance undertaking.

Article 35

Risk management

1) Insurance undertakings shall have in place an effective risk-management system comprising strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report, on a continuous basis the risks, at an individual and at an aggregated level, to which they are or could be exposed, and their interdependencies.

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

3) Where insurance undertakings rely on external credit ratings for the calculation of technical provisions and the Solvency Capital Requirement, they shall subject those ratings to independent and appropriate review as part of their risk management.

4) Risk management shall cover the risks to be included in the calculation of the Solvency Capital Requirement as well as the risks which are not or not fully included in the calculation thereof. At least the following areas must be covered:

a) underwriting and reserving;

b) asset-liability management;

c) investment, in particular in derivatives;

d) liquidity and concentration risk;

e) operational risks;

f) reinsurance and other risk-mitigation techniques.

5) As regards asset-liability management, insurance undertakings shall regularly assess:

a) the sensitivity of their technical provisions and eligible own funds to the assumptions underlying the extrapolation of the relevant risk-free interest rate term structure referred to in Article 77;

b) the sensitivity of their technical provisions and eligible own funds to the assumptions underlying the calculation of the matching adjustment referred to in Article 77;

c) the sensitivity of their technical provisions and eligible own funds to changes in the composition of the assigned portfolio of assets where matching adjustment is used;

d) the impact of a reduction of the matching adjustment to zero;

e) the sensitivity of their technical provisions and eligible own funds to the assumptions underlying the calculation of the volatility adjustment referred to in Article 77 and the possible effect of a forced sale of assets on their eligible own funds; and

f) the impact of a reduction of the volatility adjustment to zero.

6) Where insurance undertakings apply the matching adjustment or the volatility adjustment in relation to the liquidity and concentration risk, they shall set up a liquidity plan projecting the incoming and outgoing cash flows in relation to the assets and liabilities subject to those adjustments.

7) The insurance undertakings shall submit the assessments referred to in paragraph 5 to the FMA annually as part of their reporting. Where the

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

8) The written governance policies referred to in Article 31(3), which must also include risk management, must lay down rules that relate to the risk areas mentioned in paragraph 4.

9) Where the volatility adjustment is applied, the written policy on risk management shall comprise a policy on the criteria for the application of the volatility adjustment.

10) By ordinance, the Government may issue further rules governing the nature of the risks to be covered and their monitoring by the insurance undertaking. The FMA may define the details in a guideline.

Article 36

Risk management where an internal model is used

For insurance undertakings using a full or partial internal model for the calculation of the Solvency Capital Requirement, risk management must also cover the following additional tasks:

a) to design and implement the internal model;

b) to test and validate the internal model;

c) to document the internal model and any subsequent changes made to it;

d) to inform the governing body about the performance of the internal model, suggesting optimisable areas needing improvement, and about the status of efforts to improve previously identified weaknesses;

e) to analyse the performance of the internal model and to produce summary reports thereof.

Article 37

Internal assessment of risk and solvency

1) As part of its risk management, every insurance undertaking shall conduct an internal risk and solvency assessment. This assessment shall

be performed regularly and without any delay following any significant change in the risk profile of the undertaking.

2) The assessment referred to in paragraph 1 must at least cover the following points:

a) the overall Solvency Capital Requirement taking into account the specific risk profile, approved risk tolerance limits and the business strategy of the undertaking;

b) the compliance, on a continuous basis, with the capital requirements and with the requirements regarding technical provisions;

c) the significance with which the risk profile of the undertaking concerned deviates from the assumptions underlying the Solvency Capital Requirement calculated and with the standard formula or with its partial or full internal model.

3) For the purposes of paragraph 2(a), the undertaking shall have in place processes which are proportionate to the nature, scale and complexity of the risks inherent in its business and which enable it to properly identify and assess its short-term and long-term risks and the risks to which it is or could be exposed. The undertaking shall provide evidence of the methods used in that assessment.

4) In the cases referred to in paragraph 2(c), when an internal model is used, a recalibration must be performed that results in an adjustment of the internal model to the risk measure.

5) The internal assessment of risk and solvency shall be an integral part of the business strategy and must be taken into account on an ongoing basis in the strategic decisions of the undertaking.

6) The internal risk and solvency assessment shall not serve to calculate a capital requirement. The Solvency Capital Requirement may be adjusted only in accordance with Articles 72 and 219 and Annex 5.

7) Insurance undertakings must inform the FMA of any internal assessment of risk and solvency as part of their reporting.

8) By ordinance, the Government shall provide details governing compliance with capital requirements.

Article 38

Internal control (compliance)

1) Insurance undertakings shall have in place an effective internal control system. That system must at least include administrative and

accounting procedures, an internal control framework, appropriate reporting arrangements at all levels of the undertaking and a function for monitoring compliance with legal and business requirements.

2) The function referred to in paragraph 1 shall also include informing and advising the governing bodies with regard to compliance with insurance law. It shall also include an assessment of the possible impact of any changes in the legal environment on the operations of the undertaking concerned and the identification and assessment of compliance risk.

Article 39

Internal audit

1) Insurance undertakings shall have an effective internal audit function.

2) The internal audit function shall evaluate the adequacy and effectiveness of the internal control system (compliance) and other elements of governance.

3) The internal audit function shall be objective and independent from the operational functions.

4) Any findings and recommendations of the internal audit shall be brought to the attention of the governing bodies. The governing bodies shall determine what actions are to be taken with respect to each of the internal audit findings and recommendations and shall ensure that those actions are carried out.

Article 40

Actuarial function

1) Insurance undertakings shall provide for an effective actuarial function to:

a) coordinate the calculation of technical provisions;

b) ensure the appropriateness of the methodologies and models used as well as the assumptions made in the calculation of technical provisions;

c) assess the sufficient quantity and quality of the data used in the calculation of technical provisions;

d) compare best estimates against experience;

e) inform the governing body of the reliability and adequacy of the calculation of technical provisions;

f) oversee the calculation of technical provisions also in cases in which appropriate approximations, including case-by-case approaches, are used in the calculation of the best estimate;

g) express an opinion on the overall underwriting policy;

h) express an opinion on the adequacy of reinsurance arrangements; and

i) contribute to the effective implementation of risk management, in particular with respect to the risk modelling underlying the calculation of the capital requirements and to the assessment thereof.

2) The actuarial function shall be carried out by persons who are professionally qualified and of personal integrity and who in particular have knowledge of actuarial and financial mathematics. They must be able to identify and assess the nature, scale and complexity of the risks inherent in the business of the insurance undertaking and have relevant experience in the application of professional and other standards.

3) The Government shall provide details by ordinance.

Article 41

Responsible actuary

1) Insurance undertakings must appoint a responsible actuary with the professional qualifications and personal integrity necessary to meet the demands of the position.

2) The responsible actuary shall:

a) ensure that the calculation of premiums and actuarial provisions complies with the applicable requirements and actuarial principles. For this purpose, the responsible actuary must review the financial situation of the insurance undertaking especially with regard to whether permanent fulfilment of the commitments arising from the insurance and reinsurance contracts is guaranteed at all times and whether the undertaking has sufficient resources at least in the amount of the Solvency Capital Requirement;

b) annually confirm under the balance sheet that the required provisions have been established (actuarial certification). In a report to the general management of the undertaking, the responsible actuary must explain which calculation approaches and other assumptions form the basis of the certification;

c) inform the general management and, if the general management does not remedy the defects without delay, immediately inform the FMA as soon as, in the course of the fulfilment of the actuary's responsibilities, the responsible actuary recognises that the undertaking is not satisfying the legal requirements or the requirements imposed by the FMA;

d) with respect to insurance contracts with a claim to profit participation, present proposals to the general management concerning appropriate profit participation. In a report to the general management, the responsible actuary shall explain the facts and assumptions on which the appropriateness of the proposals is based.

3) By ordinance, the Government shall provide details governing the conditions for appointment of the responsible actuary.

C. Financial resources

1. Solvency Capital Requirement

Article 42

Basic principle

1) Insurance undertakings shall have eligible own funds covering the Solvency Capital Requirement.

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

3) When determining the Solvency Capital Requirement, a calibration shall take place. This calibration must ensure that all quantifiable risks to which an insurance undertaking is exposed are taken into account. It must cover both existing business and new business expected in the next twelve months, covering only unexpected losses with respect to existing business.

4) The Solvency Capital Requirement shall correspond to the value-at-risk of the basic own funds of an insurance undertaking with a 99.5% confidence level over a one-year period.

5) The Solvency Capital Requirement must cover at least the following risks:

a) non-life underwriting risk;

b) life underwriting risk;

c) health underwriting risk;

d) market risk;

e) credit risk;

f) operational risk, including legal risks, but excluding reputation risks and risks arising from strategic decisions.

6) When calculating the Solvency Capital Requirement, insurance undertakings shall take account of the effect of risk-mitigation techniques, provided that credit risk and other risks arising from the use of such techniques are properly reflected in the Solvency Capital Requirement. The frequency of calculation shall be governed by Article 71.

7) The Solvency Capital Requirement shall be calculated either on the basis of the standard formula or using an internal model, subject to Article 61(6).

2. Own funds

Article 43

Own funds and their eligibility

1) The own funds of an insurance undertaking shall comprise the sum of basic own funds and ancillary own funds.

2) Own-fund items shall be classified into three tiers: Tier 1 (corresponding to core capital), Tier 2 (corresponding to supplementary capital), and Tier 3.

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

a) the item is available, or can be called up on demand, to fully absorb losses on a going-concern basis, as well as in the case of winding-up (permanent availability);

b) in the case of winding-up, the total amount of the item is available to absorb losses and the repayment of the item is refused to its holder until all other obligations, including insurance obligations towards policy holders and beneficiaries of insurance and reinsurance contracts, have been met (subordination).

4) The eligible amount of own funds to cover the Solvency Capital Requirement shall be equal to the sum of the amount of Tier 1, the eligible amount of Tier 2 and the eligible amount of Tier 3.

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

6) As far as compliance with the Solvency Capital Requirement is concerned, the eligible amounts of Tier 2 and Tier 3 items shall be subject to quantitative limits. Those limits shall be such as to ensure that at least the following conditions are met:

a) the proportion of Tier 1 items in the eligible own funds is higher than one third of the total amount of eligible own funds;

b) the eligible amount of Tier 3 items is less than one third of the total amount of eligible own funds.

7) As far as compliance with the Minimum Capital Requirement is concerned, the amount of basic own-fund items eligible to cover the Minimum Capital Requirement which are classified in Tier 2 shall be subject to quantitative limits. Those limits shall be such as to ensure, as a minimum, that the proportion of Tier 1 items in the eligible basic own funds is higher than one half of the total amount of eligible basic own funds.

Article 44

Basic own funds

1) Basic own funds shall consist of the following items:

a) the amount by which the assets exceed the liabilities;

b) subordinated liabilities.

2) The amount calculated in accordance with paragraph 1 shall be reduced by the amount of own shares held by the insurance undertaking.

3) The valuation of assets and liabilities is governed by Article 74.

Article 45

Ancillary own funds

1) Ancillary own funds shall consist of items other than basic own funds which can be called up to absorb losses.

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

a) unpaid share capital that has not been called up;

b) letters of credit and guarantees;

c) all other existing receivables.

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

Article 46

Approval of ancillary own funds

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

2) The FMA shall approve:

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

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

Article 47

Surplus funds

Surplus funds shall comprise accumulated profits which have not been made allocated for distribution to policy holders and beneficiaries.

Article 48

Implementing provisions for own funds

By ordinance, the Government shall provide details governing own funds, in particular on the classification of own-fund items.

3. Minimum Capital Requirement

Article 49

Basic principle

1) Insurance undertakings shall have eligible basic own funds to cover the Minimum Capital Requirement.

2) The Minimum Capital Requirement shall be calculated in a clear and simple manner, and in such a way as to ensure that the calculation can be audited.

3) The Minimum Capital Requirement shall correspond to an amount of eligible basic own funds ensuring that the obligations of an undertaking can be met on a permanent basis and that policy holders and beneficiaries are not exposed to an unacceptable level of risk were the undertaking allowed to continue its operations; the FMA shall determine this amount on a case-by-case basis.

Article 50

Minimum Capital Requirement as a linear function

1) Subject to Article 51, the Minimum Capital Requirement shall be calculated as a linear function of the following variables or a sub-set thereof, reduced by the reinsurance share:

a) technical provisions;

b) written premiums;

c) capital-at-risk;

d) deferred tax and administrative expense.

2) The linear function referred to in paragraph 1 used to calculate the Minimum Capital Requirement shall be calibrated to the value-at-risk of the basic own funds of an insurance undertaking subject to a confidence level of 85 % over a one-year period.

Article 51

Limits for the Minimum Capital Requirement

1) The Minimum Capital Requirement shall neither fall below 25% nor exceed 45% of the Solvency Capital Requirement required under

Article 42, including any capital add-ons imposed. The FMA may require an insurance undertaking to apply the percentages referred to in the first sentence exclusively to the undertaking's Solvency Capital Requirement calculated in accordance with Articles 53 et seq. until 31 December 2017.

2) The Minimum Capital Requirement may not fall below the following limits:

a) 2 700 000 euro or the equivalent in Swiss francs for non-life insurance undertakings, including captive direct insurance undertakings;[9]

b) 4 000 000 euro or the equivalent in Swiss francs for non-life insurance undertakings, including captive insurance undertakings, where all or several of the risks included in one of the classes 10 to 15 listed in Annex 1(A) are to be covered;[10]

c) 4 000 000 euro or the equivalent in Swiss francs for life insurance undertakings, including captive direct insurance undertakings;[11]

d) 3 900 000 euro or the equivalent in Swiss francs for reinsurance undertakings, except for captive reinsurance undertakings, which are subject to a Minimum Capital Requirement of at least 1 300 000 euro or the equivalent in Swiss francs.[12]

3) Where either of the limits referred to in paragraph 1 determines an undertaking's Minimum Capital Requirement, the undertaking shall provide to the FMA information allowing a proper understanding of the reasons therefor.

Article 52

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

1) Without prejudice to the provisions governing the capital requirement, the insurance undertakings referred to in Article 25(2) and (3) shall calculate:

a) a notional life Minimum Capital Requirement with respect to their life insurance or reinsurance activity, calculated as if the undertaking concerned only pursued that activity, on the basis of separate accounts; and

9 Article 51(2)(a) amended by LGBl. 2023 No. 137.
10 Article 51(2)(b) amended by LGBl. 2023 No. 137.
11 Article 51(2)(c) amended by LGBl. 2023 No. 137.
12 Article 51(2)(d) amended by LGBl. 2023 No. 137.

b) a notional non-life Minimum Capital Requirement with respect to their non-life insurance or reinsurance activity, calculated as if the undertaking concerned only pursued that activity, on the basis of separate accounts.

2) By ordinance, the Government shall provide details governing the notional Minimum Capital Requirement referred to in paragraph 1.

4. Standard formula and internal models

Article 53

Standard formula

The Solvency Capital Requirement calculated on the basis of the standard formula shall be composed of the following items:

a) Basic Solvency Capital Requirement;

b) capital requirement for operational risk; and

c) adjustment for the loss-absorbing capacity of technical provisions and deferred taxes.

Article 54

Design of the Basic Solvency Capital Requirement

1) The Basic Solvency Capital Requirement shall comprise individual risk modules, which must be aggregated in accordance with Annex 3(1). It must consist of at least the following risk modules:

a) non-life underwriting risk;

b) life underwriting risk;

c) health underwriting risk;

d) market risk;

e) counterparty default risk.

2) For the purposes of paragraph 1(a), (b), and (c), insurance and reinsurance operations shall be allocated to the underwriting risk module that best reflects the technical nature of the underlying risks.

3) The correlation coefficients for the aggregation of the risk modules referred to in paragraph 1, as well as the calibration of the Solvency

Capital Requirements for each risk module, shall result in an overall Solvency Capital Requirement which must comply with the principles set out in Article 42.

4) Each of the risk modules referred to in paragraph 1 shall be calibrated using value-at-risk with a 99.5 % confidence level over a one-year period. Where appropriate, diversification effects shall be taken into account in the design of each risk module.

5) The same design and specifications for the risk modules must be used for all insurance undertakings, both with respect to the Basic Solvency Capital Requirement and to any simplified calculations as laid down in Article 58.

6) With regard to risks arising from catastrophes, geographical specifications may, where appropriate, be used for the calculation of the life, non-life and health underwriting risk modules.

7) Subject to approval by the FMA, insurance undertakings may, within the design of the standard formula, replace a subset of its parameters by parameters specific to the undertaking concerned when calculating the life, non-life and health underwriting risk modules; such parameters shall be calibrated on the basis of the internal data of the undertaking concerned, or of data which is directly relevant for the operations of that undertaking. When granting approval, the FMA shall verify the completeness, accuracy and appropriateness of the data used.

Article 55

Calculation of the Basic Solvency Capital Requirement

1) The Basic Solvency Capital Requirement shall be calculated in accordance with paragraphs 2 to 6.

2) The non-life underwriting risk module shall reflect the risk arising from non-life insurance obligations, in relation to the perils covered and the processes used in the conduct of business. It shall take account of the uncertainty in the results related to the insurance and reinsurance obligations of existing contracts as well as of the new business expected to be written over the following 12 months.

3) The life underwriting risk module shall reflect the risk arising from life insurance obligations, in relation to the perils covered and the processes used in the conduct of business.

4) The health underwriting risk module shall reflect the risk arising from the underwriting of obligations in health insurance, following from

both the perils covered and the processes used in the conduct of business; this applies whether it is pursued on a similar technical basis to that of life insurance or not.

5) The market risk module shall reflect the risk arising from the level or volatility of market prices of financial instruments which have an impact upon the value of the assets and liabilities of the undertaking; it shall properly reflect the structural mismatch between assets and liabilities, in particular with respect to the duration thereof.

6) The counterparty default risk module shall reflect possible losses due to unexpected default, or deterioration in the credit standing, of the counterparties and debtors of insurance undertakings over the following 12 months. This module shall cover risk-mitigating contracts, such as reinsurance arrangements, securitisations and derivatives, and receivables from intermediaries, as well as any other credit exposures which are not covered by the sub-module for the risk of an interest rate differential between a risky and a risk-free form of investment with the same credit rating; It shall take appropriate account of collateral or other security held by or for the account of the insurance undertaking and the risks associated therewith. For each counterparty, the counterparty default risk module shall take account of the overall counterparty risk exposure, irrespective of the legal form of the contractual obligations.

7) By ordinance, the Government shall provide details governing the calculation of the Basic Solvency Capital Requirement, especially in regard to sub-modules.

Article 56

Capital requirement for operational risk

1) The capital requirement for operational risk shall reflect operational risks to the extent they are not already reflected in the risk modules referred to in Article 54(1); the capital requirement shall be calibrated in accordance with Article 42(3).

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

3) With respect to insurance and reinsurance operations other than those referred to in paragraph 2, the calculation of the capital requirement for operational risk shall take account of the volume of those operations, in terms of earned premiums and technical provisions

which are held in respect of those insurance obligations. In this case, the capital requirement for operational risks shall not exceed 30% of the Basic Solvency Capital Requirement relating to those insurance and reinsurance operations.

Article 57

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

1) The adjustment for the loss-absorbing capacity of technical provisions and deferred taxes shall take account of potential compensation of unexpected losses through a simultaneous decrease in technical provisions or deferred taxes or a combination of both factors.

2) That adjustment shall take account of the risk mitigating effect provided by future discretionary benefits of insurance contracts, to the extent insurance undertakings can establish that a reduction in such benefits may be used to cover unexpected losses when they arise. The risk mitigating effect provided by future discretionary benefits shall be no higher than the sum of technical provisions and deferred taxes relating to those future discretionary benefits.

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

Article 58

Simplifications in the standard formula

Insurance undertakings may use a simplified calculation for a specific risk module or sub-module where the nature, scale and complexity of the risks they face justifies it and where it would be disproportionate to require all insurance undertakings to apply the standardised calculation. The simplified calculation shall be calibrated in accordance with Article 42(3).

Article 59

Significant deviations from the assumptions underlying the standard formula calculation

Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula because the risk profile of the insurance undertaking concerned deviates significantly from the assumptions underlying the standard formula calculation, the FMA may, by means of a decree, require the undertaking concerned to replace a subset of the parameters used in the standard formula calculation by parameters specific to that undertaking when calculating the life, non-life and health underwriting risk modules, as set out in Article 54(7). Those specific parameters shall be calculated in such a way to ensure that the undertaking complies with Article 42(3) and (4).

Article 60

Internal models for calculation of the Solvency Capital Requirement

1) Insurance undertakings may calculate the Solvency Capital Requirement using a full or partial internal model to be approved by the FMA.

2) Partial models may be used for the calculation of one or more of the following factors:

a) one or more risk modules, or sub-modules, of the Basic Solvency Capital Requirement;

b) the capital requirement for operational risk;

c) the adjustment for the loss-absorbing capacity.

3) Partial modelling may be applied to the whole business of insurance undertakings, or only to one or more major business units.

Article 61

Procedure for approving an internal model

1) Documentary evidence that the internal model fulfils the legal requirements shall be submitted together with the application for approval of an internal model.

2) Where the application for approval relates to a partial model, the legal requirements must be adapted to take account of the limited scope of the model.

3) The FMA shall decide on the approval within six months from the date of receipt of the complete application. Article 14(5) shall apply *mutatis mutandis*.

4) Approval may be granted only if the FMA is satisfied that the internal model:

a) fulfils the legal requirements; and

b) is adequate for identifying, measuring, monitoring, managing and reporting risk.

5) The rejection by the FMA of an application for the use of an internal model must be by means of a decree.

6) After approving the internal model, the FMA may require the insurance undertaking to submit a calculation of the Solvency Capital Requirement to the FMA in accordance with the standard formula.

7) No liability claims may be asserted against the FMA or its bodies arising from the approval or rejection of an internal model by the FMA.

Article 62

Special conditions for the approval of partial models

1) Where a partial internal model is used, approval shall be given only where that model fulfils the legal requirements and the following additional conditions:

a) the reason for the limited scope of application of the model is justified by the undertaking;

b) the resulting Solvency Capital Requirement reflects more appropriately the risk profile of the undertaking and in particular complies with the principles set out in article 42;

c) compliance with the principles set out in Article 42 permits full integration of the partial model in the Solvency Capital Requirement standard formula.

2) When assessing an application for the use of a partial internal model which only covers certain sub-modules of a specific risk module, or some of the business units of an insurance undertaking with respect to a specific risk module, or parts of both, the FMA may require the

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

Article 63

Policy for changing an internal model

1) As part of the initial approval of a full or partial internal model, the FMA shall approve the policy to be presented for changing the model of the insurance undertaking.

2) The policy to be presented shall include a specification of minor and major changes to the internal model.

3) Major changes to the internal model, as well as changes to the policy shall always be subject to prior approval by the FMA; minor changes to the internal model shall not be subject to prior approval, insofar as they are developed in accordance with the policy.

Article 64

Compliance with the internal model

1) The governing bodies shall be responsible for:

a) signing off on the application for approval of the internal model in accordance with Article 61 and later major changes to the model;

b) putting in place systems which ensure that the internal model operates properly on a continuous basis.

2) If, after having received approval of an internal model, an insurance undertaking ceases to satisfy the legal requirements, it shall, without delay, present to the FMA:

a) a plan to restore compliance within a reasonable period of time; or

b) evidence that the effect of non-compliance is immaterial.

3) In the event that an insurance undertaking fails to implement the plan referred to in paragraph 2, the FMA may require the insurance undertaking to revert to calculating the Solvency Capital Requirement in accordance with the standard formula. Otherwise, reverting to the standard formula after receiving approval of an internal model shall be

impermissible, except in duly justified circumstances and subject to approval by the FMA.

Article 65

Significant deviations from the assumptions underlying the standard formula calculation

Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula because the risk profile of the insurance undertaking concerned deviates significantly from the assumptions underlying the standard formula calculation, the FMA may, by means of a decree, require the undertaking concerned to use an internal model to calculate the Solvency Capital Requirement, or the relevant risk modules thereof.

Article 66

Use of the internal model (use test)

1) Insurance undertakings shall demonstrate that the internal model is widely used in and plays an important role in their governance, in particular in:

a) their risk management and decision-making processes;

b) their assessment of solvency and the associated capital allocation processes, including the assessment referred to in Article 37.

2) In addition, insurance undertakings shall demonstrate that the frequency of calculation of the Solvency Capital Requirement using the internal model is consistent with the frequency with which they use their internal model for the other purposes covered by paragraph 1.

3) The governing bodies shall be responsible for ensuring:

a) the ongoing appropriateness of the design and operations of the internal model; and

b) that the internal model continues to appropriately reflect the risk profile of the insurance undertakings concerned.

Article 67

Implementing provisions on the internal model

By ordinance, the Government shall provide details governing the approval and use of internal models, in particular in regard to:

a) statistical quality standards, in particular in regard to the probability distribution forecast;

b) calibration standards;

c) profit and loss attribution;

d) validation standards;

e) documentation standards.

Article 68

External models and data

The use of a model or data obtained from a third party shall not be considered to be a justification for exemption from any of the requirements for the internal model.

5. Monitoring of financial resources

Article 69

Responsibilities of the FMA

The FMA shall monitor the compliance of insurance undertakings with the requirements for financial resources. It shall review in particular:

a) compliance with the provisions governing capital requirements;

b) compliance with investment rules;

c) the quality and quantity of own funds;

d) where the insurance undertaking uses a full or partial internal model, on-going compliance with the requirements for full and partial internal models;

e) establishment of the required technical provisions.

Article 70

Responsibilities of the insurance undertakings

1) Insurance undertakings shall monitor the Solvency Capital Requirement and the amount of eligible own funds on an ongoing basis.

2) Insurance undertakings shall ensure that they hold eligible own funds which cover the last reported Solvency Capital Requirement.

3) If the risk profile of an insurance undertaking deviates significantly from the assumptions underlying the last reported Solvency Capital Requirement, the undertaking concerned shall recalculate the Solvency Capital Requirement without delay and report it to the FMA.

Article 71

Frequency of calculation

1) Insurance undertakings shall calculate the Solvency Capital Requirement at least once a year and report the result of that calculation to the FMA.

2) With the exception of the calculations required under Article 51(1), the Minimum Capital Requirement shall be calculated at least quarterly; the result shall be reported to the FMA immediately after each calculation.

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

Article 72

Capital add-on

1) Following the supervisory review process the FMA may in exceptional circumstances set a capital add-on for an insurance undertaking.

2) However, the FMA shall have the power pursuant to paragraph 1 only if it comes to the conclusion that:

a) the risk profile of the insurance undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement,

as calculated using the standard formula, but that on the other hand the requirement to use an internal model is inappropriate or has been ineffective; the same shall apply to the period during which a full or partial internal model is developed;

b) the risk profile of the insurance undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using a full or partial internal model because certain quantifiable risks are captured insufficiently and the adaptation of the model to better reflect the given risk profile has failed within an appropriate timeframe;

c) the governance of an insurance undertaking deviates significantly from the required standards, that those deviations prevent it from being able to properly identify, monitor, and report the risks that it is or could be exposed to and that the application of other measures is in itself unlikely to improve the deficiencies sufficiently within an appropriate timeframe; or

d) the risk profile of an insurance undertaking applying a matching adjustment or volatility adjustment as referred to in Article 77 or a transitional provision as referred to in Article 262 or 263 deviates significantly from the assumptions underlying those adjustments and transitional measures.

3) In the cases referred to in paragraph 2(a) and (b), a capital add-on shall be calculated in such a way as to ensure that the undertaking satisfies the requirements of Article 42(3) and (4).

4) In the circumstances set out in paragraph 2(c) or (d), the capital add-on shall be proportionate to the material risks arising from the deficiencies or the deviations which gave rise to the decision of the FMA to set the add-on.

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

6) The capital add-on referred to in paragraph 1 shall be reviewed at least once a year by the FMA and be removed when the undertaking has remedied the deficiencies which led to its imposition.

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

8) Notwithstanding paragraph 7, the Solvency Capital Requirement shall not include the capital add-on imposed in accordance with paragraph 1(c) for the purposes of the calculation of the risk margin referred to in Article 77(4).

Article 73

Additional monitoring of financial resources

In addition to supervising the calculation of the Solvency Capital Requirement, the FMA is authorised to develop, if necessary, instruments for assessing the ability of insurance undertakings to take account of possible events or future changes in the economic situation that could have adverse effects on the general financial and asset position of insurance undertakings. The FMA may order the undertakings to perform corresponding tests.

6. Valuation of assets and liabilities

Article 74

Valuation principles

1) In accordance with this Act, insurance undertakings shall prepare a comparison of assets on the one side and liabilities and technical provisions on the other side for the purpose of determining the available own funds (solvency balance sheet).

2) In the solvency balance sheet, insurance undertakings shall value assets and liabilities as follows:

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

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

3) When valuing liabilities under paragraph 2(b), the credit standing of the insurance undertaking may not be taken into account.

4) The valuation and presentation of assets and liabilities in the commercial balance sheet shall remain subject to the provisions of the PGR and the ordinance issued in connection with this Act. If special conditions in the capital or insurance markets justify it and if the protection of policy holders and insured persons is not adversely affected, the Government, after consulting the FMA, may authorise insurance undertakings on a case-by-case basis to deviate from the legal provisions referred to in the first sentence. Such a deviation must be

reported transparently by the insurance undertaking in the notes to the annual financial statement.

7. Technical provisions

Article 75

Basic principle

1) Insurance undertakings shall continuously establish technical provisions with respect to all of their insurance and reinsurance obligations towards policy holders and beneficiaries of insurance and reinsurance contracts on an ongoing basis.

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

3) In the solvency balance sheet, the value of technical provisions must correspond to the current amount insurance undertakings would have to pay if they were to transfer their insurance and reinsurance obligations immediately to another insurance undertaking.

4) In the solvency balance sheet, the calculation of technical provisions shall make use of and be consistent with information provided by the financial markets and generally available data on insurance risks (market consistency).

5) This article is subject to the provisions of the PGR and the ordinance issued in connection with this Act applicable to the establishment, valuation, and calculation of technical provisions in the commercial balance sheet.

Article 76

Calculation of technical provisions

1) In the solvency balance sheet, the value of the technical provisions shall correspond to the sum of a best estimate and a risk margin in accordance with Article 77.

2) In the solvency balance sheet, the following factors shall also be taken into account in calculating the technical provisions:

a) all expenses that will be incurred in settling insurance and reinsurance obligations;

b) inflation, including expenses and insurance and reinsurance claims inflation;

c) all payments to policy holders and beneficiaries, including future discretionary bonuses, which insurance undertakings expect to make, whether or not those payments are contractually guaranteed.

Article 77

Best estimate and risk margin

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

2) The determination of the relevant risk-free interest rate term structure within the meaning of paragraph 1 shall be consistent and based on information derived from relevant financial instruments. By ordinance, the Government shall provide rules governing possible adjustments to the risk-free interest rate term structure in the form of a matching adjustment for the calculation of the best estimate of certain obligations under insurance contracts or a currency-specific volatility adjustment in connection with the calculation of the best estimate.

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

4) The cash-flow projections used in the calculation of the best estimate shall take account of all the cash in- and out-flows required to settle the insurance and reinsurance obligations over the lifetime thereof. The best estimate shall be calculated gross, without deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles, which must be calculated separately.

5) The risk margin in the solvency balance sheet shall correspond to 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.

6) By ordinance, the Government shall provide details governing the calculation of the best estimate and the risk margin.

Article 78

Separate valuation of the best estimate and the risk margin

1) In the solvency balance sheet, insurance undertakings shall value the best estimate and the risk margin separately.

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

3) The Government shall provide further details by ordinance.

Article 79

Appropriateness of the technical provisions

1) Upon request from the FMA, insurance undertakings shall demonstrate the appropriateness of the level of their technical provisions, as well as the applicability and relevance of the methods applied, and the adequacy of the underlying statistical data used.

2) If the calculation of the technical provisions does not meet the legal requirements, the FMA may demand an increase in the amount of the technical provisions so that they meet these requirements.

3) By ordinance, the Government shall provide details governing the calculation of the technical provisions.

8. Capital investments

Article 80

Investment of assets

1) Insurance undertakings are required to invest all their assets in accordance with the principle of prudent business practice.

2) With respect to the entirety of the assets, insurance undertakings may invest only in assets and instruments whose risks the undertakings can properly identify, measure, monitor, manage, control and report, and

appropriately take into account in the determination of their overall Solvency Capital Requirement in accordance with Article 37(2)(a).

3) All assets, in particular those covering the Minimum Capital Requirement and the Solvency Capital Requirement, shall be invested in such a manner as to ensure the security, 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.

4) Assets held to cover the technical provisions shall also be invested in a manner appropriate to the nature and duration of the insurance and reinsurance liabilities. Those assets shall be invested in the best interest of all policy holders and beneficiaries taking into account any disclosed policy objective.

5) In the case of a conflict of interest, insurance undertakings, or the entity which manages their asset portfolio, shall ensure that the investment is made in the best interest of policy holders and beneficiaries.

6) The Government shall provide details governing the investment of assets by ordinance.

Article 81

Freedom of investment and localisation of assets

1) Insurance undertakings shall be free to choose the categories of assets, subject to the provisions of Article 80. Their investment decisions require neither prior approval by the FMA nor systematic notification to the FMA.

2) With respect to risks situated in the EEA, insurance undertakings shall not be required, with due regard to the interests of insured persons, to hold the assets covering technical provisions in respect of such risks in an EEA Contracting Party.

3) With respect to recoverables from reinsurance contracts against authorised undertakings or undertakings which have their registered office in a third country whose solvency regime is deemed to be equivalent, localisation in an EEA Contracting Party of the assets representing those recoverables is not required.

4) If the policy holder is a natural person who bears the investment risk, the FMA may by means of a guideline restrict the types of assets or reference values to which policy benefits may be linked.

9. Deterioration of the financial situation of an insurance undertaking

Article 82

Basic principle

Insurance undertakings shall have procedures in place to identify deteriorating financial conditions; they shall immediately notify the FMA when such deterioration occurs.

Article 83

Non-compliance with the Solvency Capital Requirement

1) An insurance undertaking shall immediately inform the FMA as soon as it observes that the Solvency Capital Requirement is no longer complied with, or where there is a risk of non-compliance in the following three months.

2) Within two months from the observation of non-compliance with the Solvency Capital Requirement, the insurance undertaking concerned shall submit a realistic recovery plan for approval by the FMA.

3) The FMA shall require the insurance undertaking concerned to take the necessary measures to achieve, within six months from the observation of non-compliance with the Solvency Capital Requirement, the reestablishment of the level of eligible own funds or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement. In the event of an exceptional fall in financial markets, the FMA may extend this period by three months taking into account all relevant factors. The Government shall provide further details by ordinance.

4) If the exceptional circumstances so require, where the FMA is of the opinion that the financial situation of the insurance undertaking concerned will deteriorate further, it may also restrict or prohibit the free disposal of the assets of that undertaking. It shall inform the competent supervisory authorities of those EEA Contracting Parties in which an insurance undertaking operates of any measures taken; where necessary, the foreign authorities shall be requested to assist in the enforcement of such measures. The FMA shall designate the assets to be covered by such measures.

Article 84

Non-compliance with the Minimum Capital Requirement

1) An insurance undertaking shall immediately inform the FMA as soon as it observes that the Minimum Capital Requirement is no longer complied with or where there is a risk of non-compliance in the following three months.

2) Within one month from the observation of non-compliance with the Minimum Capital Requirement, the insurance undertaking concerned must submit, for approval by the FMA, a short-term realistic finance scheme to restore, within three months of that observation, the eligible basic own funds, at least to the level of the Minimum Capital Requirement or to reduce its risk profile to ensure compliance with the Minimum Capital Requirement.

3) The FMA may also restrict or prohibit the free disposal of the assets of the insurance undertaking. It shall inform the competent supervisory authorities of those EEA Contracting Parties in which an insurance undertaking operates of any measures taken; where necessary, the foreign authorities shall be requested to assist in the enforcement of such measures. The FMA shall designate the assets to be covered by such measures.

Article 85

Non-compliance with technical provisions

Where an insurance undertaking does not comply with the technical provisions, the FMA may prohibit the free disposal of its assets after having communicated its intentions to the supervisory authorities of the EEA Contracting Parties in which an insurance undertaking operates. The FMA shall designate the assets to be covered by such measures.

Article 86

Further deterioration of the financial situation of an insurance undertaking

1) Where the financial situation of an insurance undertaking is in danger of deteriorating further, the FMA may restrict or prohibit the free disposal of the assets of that undertaking, without prejudice to its other powers. The same shall apply *mutatis mutandis* if an insurance undertaking does not establish sufficient technical provisions or does not

cover its provisions adequately or does not otherwise comply with the legal and regulatory provisions regarding capital resources and investment. Orders concerning the free disposal of assets of an insurance undertaking may also be given to third parties.

2) The FMA may take all further measures necessary to safeguard the interests of policy holders in the case of insurance contracts, or the obligations arising out of reinsurance contracts.

Article 87

Restriction of free disposal of assets situated in Liechtenstein

1) In the cases referred to in Articles 83 to 85, the FMA shall prohibit, at the request of the competent supervisory authority of an EEA home State, the free disposal by foreign insurance undertakings of assets situated in the Principality of Liechtenstein.

2) A total or partial prohibition pursuant to paragraph 1 requires that the foreign supervisory authority:

a) specifically designates the assets situated in the Principality of Liechtenstein;

b) confirms that one of the cases provided for in Articles 83 to 85 applies.

Article 88

Content of the recovery plan and the finance scheme

1) The recovery plan (Article 83(2)) and the finance scheme (Article 84(2)) must include at least the following information and evidence:

a) a forecast balance sheet and income statement, in particular a detailed statement of estimated income and expenditure relating to direct business, reinsurance acceptances, and ceded reinsurance business, and estimates of expenditure for insurance operations, in particular commissions and current general expenses;

b) the overall reinsurance policy as well as evidence and information on retrocession in the case of reinsurance;

c) estimates of the financial resources intended to cover the Solvency Capital Requirement, the Minimum Capital Requirement, and the technical provisions.

2) Where the FMA has required a recovery plan or a finance scheme, it shall refrain from issuing a certificate that the insurance undertaking has eligible own funds to cover the Solvency Capital Requirement for as long as it considers that the rights of the policy holders or the contractual obligations of the reinsurance undertaking are threatened.

D. Outsourcing

Article 89

Basic principle

1) Insurance undertakings which outsource individual functions or activities shall remain responsible for discharging their obligations.

2) Outsourcing of critical or important functions or activities shall not be undertaken in such a way as to lead to any of the following:

a) materially impairing the quality of the governance of the undertaking concerned;

b) unduly increasing the operational risk;

c) impairing the possibility of the FMA to monitor the compliance of the undertaking with its obligations;

d) undermining the quality of services for policy holders.

3) In the event of intended outsourcing, the head office of the undertaking must remain in the Principality of Liechtenstein.

Article 90

Supervision of outsourced activity

1) In the case of outsourcing under Article 89, an insurance undertaking shall ensure that the following conditions are satisfied:

a) the service provider must cooperate with the FMA in connection with the outsourced function or activity;

b) the insurance undertaking, its external audit office, and the FMA must have effective access to data related to the outsourced functions or activities;

c) the FMA and other competent supervisory authorities must have effective access to the business premises of the service provider and must be able to exercise those rights of access.

2) If the service provider is located in the Principality of Liechtenstein, the FMA shall upon request permit the supervisory authority of another EEA Contracting Party competent for an insurance undertaking to carry out itself, or through the intermediary of persons it appoints for that purpose, on-site inspections at the premises of the service provider.

3) If the service provider is located in another EEA Contracting Party, the FMA may, after consulting the competent supervisory authority in that State, carry out on-site inspections pursuant to paragraph 2.

4) In the case of paragraph 3, the FMA may delegate on-site inspections to the competent supervisory authority of the EEA Contracting Party in which the service provider is located.

5) For the purpose of protecting the insured persons, the FMA may order the amendment or termination of contracts or other agreements concerning outsourcing.

6) If problems arise in connection with inspections in the cases referred to in paragraphs 2 or 3, EIOPA may be consulted and assistance may be sought in resolving any conflicts. EIOPA is authorised to participate in on-site inspections.

Article 91

Duty of the insurance undertaking to provide information

Insurance undertakings shall, in a timely manner, notify the FMA prior to the outsourcing of critical or important functions or activities as well as of any subsequent material developments with respect to those functions or activities.

E. Participations

Article 92

Acquisition and sale of participations

1) Any natural or legal person or such persons acting in concert (the proposed acquirer) who intends or intend either to acquire or increase, directly or indirectly, a qualifying holding in an insurance undertaking, as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20%, 30% or 50% or so that the insurance undertaking would become its subsidiary (the proposed acquisition), shall notify the FMA.

2) The notification referred to in paragraph 1 must be in writing, indicating the size of the intended holding. The notification must include the information demanded by the FMA. The FMA shall publish a list with the information required to assess the acquisition.

3) Any natural or legal person who intends to dispose, directly or indirectly, of a qualifying holding in an insurance undertaking shall notify the FMA.

4) The notification referred to in paragraph 3 must be in writing, indicating the size of the holding after the proposed sale. At the same time, the FMA shall be informed of the intention to reduce the qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20%, 30% or 50% or so that the insurance undertaking would cease to be a subsidiary of the natural or legal person selling the participation.

5) The notification referred to in paragraph 3 must also be made if the thresholds referred to in paragraph 4 are not fallen below or if the insurance undertaking continues to be the subsidiary of the natural or legal person selling the participation.

Article 93

Assessment period

1) The FMA shall acknowledge receipt of the notification to the proposed acquirer in writing within a maximum of two working days. At the same time, it shall inform the proposed acquirer of the expiry of the assessment period referred to in paragraph 2.

2) The FMA shall assess the acquisition of a participation within 60 working days as from the date of the acknowledgement of receipt as referred to in paragraph 1 and receipt of all necessary documents (assessment period).

3) No later than on the 50th working day of the assessment period, the FMA may in writing request further information and documents necessary for the assessment, with explicit designation of such information and documents. For the period between the date of request for information by the FMA and the receipt of a response thereto by the proposed acquirer, but for a maximum of 20 working days, the assessment period shall be interrupted. Any further requests by the FMA for completion or clarification of the information shall be at its discretion but shall not result in an interruption of the assessment period.

4) The FMA may extend the interruption referred to in paragraph 3 up to 30 working days if the proposed acquirer is:

a) situated in a third country or supervised by a competent authority of a third country; or

b) a natural or legal person not subject to supervision under the Banking Act, the Investment Undertakings Act, the Asset Management Act, the UCITS Act, the AIFM Act, or this Act.

5) Where the FMA opposes the acquisition, it shall, within two working days of completing the assessment, but in any event within the assessment period, inform the proposed acquirer in writing stating the reasons. If the FMA does not oppose the acquisition within the assessment period, the acquisition shall be deemed approved.

Article 94

Substantive assessment of participations

1) The FMA shall, in order to ensure the sound and prudent management of the insurance undertaking in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the insurance undertaking, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

a) the personal integrity of the proposed acquirer;

b) the personal integrity and experience of any person who will direct the insurance undertaking as a result of the proposed acquisition;

c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the insurance undertaking in which the acquisition is proposed;

d) whether:

1. the insurance undertaking will be able to comply and continue to comply with the relevant prudential requirements; and

2. the group of which the insurance undertaking will become part as a consequence of the acquisition has a structure that makes it possible to exercise effective supervision, to reasonably allocate responsibilities, and to effectively exchange information among the FMA and the other competent supervisory authorities;

e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

2) The FMA may oppose the proposed acquisition if there are reasonable grounds for doing so on the basis of the criteria referred to in paragraph 1 or if the information or documents to be submitted are incomplete.

3) Where two or more proposals to acquire or increase qualifying holdings in the same insurance undertaking have been notified to the FMA, the FMA shall treat the proposed acquirers in a non-discriminatory manner.

Article 95

Acquisitions by regulated financial undertakings

1) The FMA shall work in full consultation with the competent supervisory authorities of the other EEA Contracting Parties when carrying out the assessment if the proposed acquirer is one of the following natural or legal persons:

a) a bank, insurance undertaking, investment firm, investment undertaking, or undertaking for collective investment in transferable securities authorised in another EEA Contracting Party or in a sector other than that in which the acquisition is proposed;

b) a parent undertaking of a bank, insurance undertaking, investment firm, investment undertaking, or undertaking for collective investment in transferable securities authorised in another EEA Contracting Party or in a sector other than that in which the acquisition is proposed; or

c) a natural or legal person controlling a bank, insurance undertaking, investment firm, investment undertaking, or undertaking for collective investment in transferable securities authorised in another EEA Contracting Party or in a sector other than that in which the acquisition is proposed.

2) Within the scope of cooperation referred to in paragraph 1, the FMA shall communicate all relevant information upon request and shall provide all essential information on its own initiative. In its decision on a proposed acquisition, the FMA must include all comments and reservations made by the supervisory authorities of the other EEA Contracting Parties competent for the proposed acquirer.

Article 96

Provision of information to the FMA

1) On becoming aware of them, insurance undertakings shall inform the FMA of any acquisitions or disposals of holdings in its capital that cause those holdings to exceed or fall below any of the thresholds referred to in Article 92.

2) The insurance undertakings shall also, at least once a year, inform the FMA of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at annual general meetings of shareholders or members or as a result of compliance with the regulations relating to companies listed on stock exchanges.

Article 97

Powers of the FMA

1) If a qualifying holding is to be acquired in domestic undertakings, the FMA shall take the necessary measures if the persons referred to in Article 92 exercise influence that could be detrimental to the prudent and sound management of the insurance undertaking. These measures may consist of orders and sanctions against the governing bodies or the suspension of voting rights based on the shares of the shareholders or members concerned. Such measures may also be addressed to natural or legal persons who fail to comply with the notification obligation under Article 92.

2) Where a holding is acquired despite the opposition of the FMA, the FMA may, regardless of any other sanctions to be adopted, order:

a) the suspension of the exercise of the corresponding voting rights; or
b) the nullity or annulment of any votes cast.

Article 98[13]

Voting rights

Articles 25, 26, 26a, 27, and 31 of the Disclosure Act shall apply to the determination of voting rights in connection with participations.

F. Accounting, reporting, and audit

Article 99

Business report and report to the FMA

1) Insurance undertakings having their registered office in the Principality of Liechtenstein shall prepare their business report (annual financial statement, consisting of balance sheet, income statement and notes, and annual report) and, where applicable, the consolidated business report each year as of 31 December. They must submit the business report to the FMA together with a report on the past financial year, which must in particular contain information on the solvency of the undertaking. The business report and the report to the FMA must comply with the requirements issued by the Government and the FMA and the relevant provisions of the PGR.

2) In addition to the report to the FMA, the FMA may order a quarterly report; the third sentence of paragraph 1 shall apply *mutatis mutandis*. The FMA may grant simplifications if the reporting would lead to an excessive burden on the insurance undertakings in relation to the nature, scope, and complexity of the risks.

3) For third-country insurance undertakings subject to separate accounting requirements under Article 117(1)(c), paragraphs 1 and 2 shall apply *mutatis mutandis*.

4) The insurance undertakings shall publish the business report and audit report.

13 Article 98 amended by LGBl. 2016 No. 153.

5) The Government shall provide details governing the business report and the report to the FMA by ordinance.

Article 100

Report on solvency and financial condition

1) Each year, insurance undertakings shall publish a report on their solvency and financial condition, taking into account qualitative and quantitative aspects as well as historical, current, and prospective elements, based on data from internal and external sources; this report shall form an integral part of the annual report referred to in Article 99(1).

2) The report referred to in paragraph 1 must contain the following information:

a) a description of the business and the performance of the undertaking;

b) a description of governance and an assessment of its adequacy for the risk profile of the undertaking;

c) a description of the risk exposure, concentration, mitigation and sensitivity; the description shall be provided separately for each category of risk;

d) a description, separately for assets, technical provisions, and other liabilities, of the bases and methods used for their valuation. This description must be accompanied by an explanation of any major differences in the bases and methods used for valuation in the annual financial statement;

e) a description of the capital management, including at least the following:

   1. the structure and amount of own funds, and their quality;
   2. the amounts of the Solvency Capital Requirement and of the Minimum Capital Requirement;
   3. the option used for the calculation of the Solvency Capital Requirement;
   4. information allowing a proper understanding of the main differences between the underlying assumptions of the standard formula and those of any internal model used by the undertaking for the calculation of its Solvency Capital Requirement;
   5. the amount of any non-compliance with the Minimum Capital Requirement or any significant non-compliance with the Solvency Capital Requirement during the reporting period, even

if subsequently resolved, with an explanation of its origin and consequences as well as any remedial measures taken.

3) The FMA shall permit insurance undertakings not to disclose information, with the exception of the description of the capital management under paragraph 2(e) where:

a) by disclosing such information, the competitors of the undertaking would gain significant undue advantage;

b) there are obligations to insurance undertakings or other counterparty relationships binding an undertaking to secrecy or confidentiality.

4) If the FMA allows such non-publication, the undertaking must state this in the report on its solvency and financial condition, stating the reasons.

5) By ordinance, the Government shall provide details governing the report on solvency and financial condition.

Article 101

External audit

1) Each year, the investment undertakings must submit their conduct of business to an audit by an independent external audit office recognised by the FMA. With regard to this recognition and the performance of duties by the external audit office, the FMA may carry out quality controls and accompany the audit offices in their audit activities at insurance undertakings.

1a) An external audit office shall be recognised by the FMA if:[14]

a) it holds a licence under the Auditors Act or is registered under Article 69 of the Auditors Act; and

b) the lead auditors hold a licence under the Auditors Act.

2) The insurance undertakings must provide the external auditors with all information and documents necessary for a proper audit; in particular, they shall have the following obligations towards the external auditors:

a) to keep the documents available that are necessary to ascertain and evaluate assets and liabilities;

14 Article 101(1a) amended by LGBl. 2019 No. 22.

b) to grant access to their books, booking vouchers, business correspondence, and the minutes of the board of directors and the general management;

c) to present the reports of the internal audit department.

3) In the case of third-country insurance undertakings that have a branch in the Principality of Liechtenstein, the audit at the registered office of the main establishment is recognised if it meets the requirements of this Act and also includes the domestic branch in the audit. Article 102(3) shall apply *mutatis mutandis*.

4) By ordinance, the Government shall provide details governing the recognition of external auditors and the supervision thereof.

Article 102

Responsibilities of external auditors

1) Repealed[15]

2) The external auditors shall audit whether:

a) the business activities of the insurance undertaking comply with the legal requirements and the articles of association;

b) the conditions for granting the licence, including the technical requirements, are met on a permanent basis;

c) the business report and reporting to the FMA comply with the legal requirements;

d) the consolidated business report satisfies these requirements.

3) The external auditors shall prepare an audit report. This report shall be submitted simultaneously to the supervisory board or board of directors of the insurance undertaking, to external auditors pursuant to the provisions of the PGR, and to the FMA.

4) The external auditors are obliged to immediately report to the FMA in writing all facts and decisions of the undertakings of which they become aware in the course of their duties and which:

a) constitute a breach of the laws, regulations, or administrative provisions governing the taking up and pursuit of the business of insurance undertakings;

b) may impair the continuous functioning of an insurance undertaking;

15 Article 102(1) repealed by LGBl. 2019 No. 22.

c) may result in a refusal to certify the accounts or to the expression of reservations; or

d) result in non-compliance with the Solvency Capital Requirement or the Minimum Capital Requirement.

5) At the same time, the supervisory board or board of directors and the external auditors pursuant to the provisions of the PGR must be informed of the above. Anyone who becomes aware of such events in the course of audits carried out at undertakings that have a close link with the audited insurance undertaking resulting from a control relationship is also obliged to make a notification.

6) Anyone who makes a notification in good faith in accordance with paragraphs 4 and 5 shall be exempt from any related liability.

7) The FMA may issue additional mandates to the external auditors and order special audits. The insurance undertaking must bear the resulting costs if additional audits reveal a breach of supervisory provisions; in all other cases, the costs must be borne by the State.

8) The Government shall provide further details governing the responsibilities of external auditors by ordinance. The FMA shall issue guidelines governing the responsibilities of external auditors and the content of the audit report.

G. Information requirements and confidentiality

Article 103

Duty to provide information and documents

1) The insurance undertakings shall provide the FMA with all necessary information and submit the books and business records for inspection.

2) External auditors and other third parties are required to provide information to the FMA to the extent necessary for its supervisory activities.

Article 104

Business secrecy

1) The members of the bodies of insurance undertakings and their employees as well as all other persons working for such companies shall keep facts confidential that are not known to the public and that have been entrusted or made available to them pursuant to their business connections with clients. The duty of secrecy is not limited in time.

2) This provision is subject to international agreements, the legal provisions governing the duty to give testimony or information to courts, the Financial Intelligence Unit, and other supervisory bodies as well as the provisions on cooperation with the Financial Intelligence Unit or other supervisory authorities.[16]

Article 105

Release from duty of secrecy

Policy holders may grant release from the duty of secrecy referred to in Article 104(1) upon concluding a contract or at a later time; the declaration to this effect must be in writing and be provided with knowledge of the facts. In particular, the category of persons to whom the information may be transmitted must be clearly described.

Article 106

Duty to notify policy holders

Specific information must be provided to policy holders before the conclusion and during the term of insurance contracts. The content and scope of these notification duties are set out in Annex 4.

16 Article 104(2) amended by LGBl. 2016 No. 39.

IV. Cross-border activities of insurance undertakings

A. Foreign activities of domestic insurance undertakings

1. Establishment of a branch in another EEA Contracting Party

Article 107

Conditions

1) If a direct insurance undertaking having its registered office in the Principality of Liechtenstein intends to establish a branch in another EEA Contracting Party, it must notify the FMA of this intention.

2) The notification referred to in paragraph 1 must contain:

a) the EEA Contracting Party in which the branch is to be established;

b) a scheme of operations setting out, at least, the types of business envisaged and the structural organisation of the branch;

c) the name of the proposed general agent who possesses sufficient powers;

d) the name and address of the branch; and

e) a declaration that the undertaking has become a member of the national bureau and national guarantee fund in the other EEA Contracting Party, provided it intends to cover the "Motor vehicle liability" class of insurance.

Article 108

Procedure

1) Upon receipt of the information specified in Article 107, the FMA shall examine the legal permissibility of the project, the adequacy of governance, and the financial situation of the undertaking, as well as the fulfilment by the general agent of the conditions set out in Article 33.

2) If there is no cause for concern, the FMA shall, within three months of receiving all the information, communicate the following to the supervisory authority of the other EEA Contracting Party, with simultaneous notification of the insurance undertaking:

a) the information specified in Article 107; and

b) a certificate attesting that the insurance undertaking has own funds which satisfy the Solvency Capital Requirement and the Minimum Capital Requirement.

3) Where the FMA refuses to communicate the information referred to in paragraph 2, it shall state the reasons for its refusal to the insurance undertaking concerned by means of a decree within three months of receiving all the information in question. The FMA shall inform EIOPA of the number and types of cases in which communication was refused.

4) If the supervisory authority of the other EEA Contracting Party notifies the FMA within two months of receiving the information referred to in paragraph 2 of the conditions under which, in the interest of the general good, insurance business must be pursued in the host State, the FMA shall forward this notification to the insurance undertaking concerned.

5) The insurance undertaking may establish the branch and start business as from the date upon which a communication from the foreign supervisory authority as referred to in paragraph 4 is received or, if no such communication is received, on expiry of a period of two months after a communication as referred to in paragraph 2.

6) The insurance undertaking shall notify the FMA or the supervisory authority of the EEA Contracting Party in which the branch concerned is located of any changes to the information provided pursuant to Article 107(2) no later than one month prior to their proposed implementation.

2. Cross-border provision of services in another EEA Contracting Party

Article 109

Conditions

1) If a direct insurance undertaking intends to engage in cross-border provision of services, it must notify the FMA of its intention when it first takes up business in one or more EEA Contracting Parties. At the same time, it must state which classes of insurance are to be pursued abroad and which risks are to be covered.

2) If it intends to cover the "Motor vehicle liability" class of insurance, it must also provide a declaration that the undertaking has

become a member of the national bureau and national guarantee fund in the other EEA Contracting Party.

Article 110

Procedure

1) If there is no cause for concern, the FMA shall, within one month of receiving the notification, transmit the following documents to the supervisory authority of the other EEA Contracting Party or Parties, with simultaneous notification of the insurance undertaking:

a) a certificate attesting that the insurance undertaking has own funds which satisfy the Solvency Capital Requirement and the Minimum Capital Requirement;

b) a certificate stating the classes of insurance which the undertaking has been authorised to offer and the risks which it proposes to cover in the host State.

2) Where the FMA refuses to transmit the documents referred to in paragraph 1, it shall state the reasons for its refusal to the insurance undertaking concerned by means of a decree within the specified time period. The FMA shall inform EIOPA of the number and types of cases in which transmission was refused.

3) The insurance undertaking may take up its activities in the cross-border provision of services as soon as it has been informed of the notification referred to in paragraph 1.

4) The FMA must be notified of any changes with regard to the cross-border provision of services. The FMA shall follow the procedure set out in paragraphs 1 to 3.

3. Insurance activities in third countries

Article 111

Conditions

1) An insurance undertaking having its registered office in the Principality of Liechtenstein that takes up or extends its business in a third country must first provide evidence to the FMA that it is authorised or does not require an authorisation in the country of activity

concerned; it must also indicate which insurance activity it intends to conduct in direct insurance and reinsurance and which classes of insurance it intends to pursue.

2) The evidence required under paragraph 1 must be provided irrespective of whether an insurance undertaking operates in a third country through an establishment or any other form of representation.

3) The FMA may set out special provisions governing the details.

B. Domestic activities of foreign insurance undertakings

1. Establishment of a branch by insurance undertakings with a registered office in another EEA Contracting Party

Article 112

Conditions

1) Direct insurance undertakings having their registered office in another EEA Contracting Party (home State) may establish a branch in the Principality of Liechtenstein after the supervisory authority of the home State has transmitted the following to the FMA:

a) confirmation that the insurance undertaking is authorised to pursue insurance business in the home State;

b) confirmation that the foreign supervisory authority is aware that the insurance undertaking intends to establish a branch in the Principality of Liechtenstein;

c) a scheme of operations setting out in particular the planned business activities and the organisation of the branch;

d) the name and address of the branch;

e) the name of the general agent of the branch who possesses sufficient powers; in the case of Lloyd's, evidence of the authorisation of the general agent to be sued in that capacity for the underwriters concerned and to bind them;

f) a certificate attesting that the insurance undertaking has own funds which satisfy the Solvency Capital Requirement and the Minimum Capital Requirement;

g) a declaration that the insurance undertaking has become a member of the National Bureau of Insurance and the National Guarantee Fund, if it intends to cover the "Motor vehicle liability" class of insurance.

2) Reinsurance undertakings having their registered office in another EEA Contracting Party may pursue reinsurance business in the Principality of Liechtenstein by establishing a branch if they have received an authorisation for reinsurance in their home State.

Article 113

Procedure

1) After receiving the information referred to in Article 112(1) from the competent authority of the home State, the FMA shall have a period of two months to inform the competent authority of the home State and the insurance undertaking of the conditions under which, in the interest of the general good, the branch must take up business.

2) The branch may take up its activities in Liechtenstein as soon as the period referred to in paragraph 1 has expired and the FMA has not imposed any further conditions.

3) Any changes to the information required under Article 112(1) shall be communicated in writing to the FMA and the competent authority of the home State at least one month before they are implemented.

2. Cross-border provision of services by insurance undertakings with a registered office in another EEA Contracting Party

Article 114

Conditions and procedure

1) Direct insurance undertakings having their registered office in another EEA Contracting Party may pursue their business in the Principality of Liechtenstein by way of cross-border provision of services if the supervisory authority of the home State has transmitted the following to the FMA:

a) a certificate attesting that the insurance undertaking has own funds which satisfy the Solvency Capital Requirement and the Minimum Capital Requirement;

b) a certificate stating the classes of insurance which the undertaking is authorised to cover;

c) the nature of the risks or commitments which the undertaking intends to cover in Liechtenstein.

2) The undertaking may take up its activities from the time when the FMA is demonstrably in possession of the documents referred to in paragraph 1.

3) Reinsurance undertakings having their registered office in another EEA Contracting Party may pursue reinsurance business in the Principality of Liechtenstein by way of cross-border provision of services if they have received an authorisation for reinsurance in their home State.

4) Any changes to the information required under paragraph 1 shall be communicated in writing to the FMA and the competent authority of the home State at least one month before they are implemented.

Article 115

Additional conditions for third-party motor vehicle liability

1) If an insurance undertaking intends to cover third-party motor vehicle liability in the Principality of Liechtenstein by way of cross-border provision of services, it must:

a) appoint a representative resident in Liechtenstein who is responsible for the settlement of claims; and

b) join the National Bureau of Insurance and the National Guarantee Fund and participate in the financing of these institutions.

2) The Government shall provide details by ordinance, especially regarding the status, rights, and duties of the representative referred to in paragraph 1.

3. Insurance undertakings with registered offices in third countries

Article 116

Licensing requirement

Third-country insurance undertakings require a licence under this Act in order to take up insurance business in Liechtenstein.

Article 117

Special conditions

1) A third-country insurance undertaking may be granted a licence to take up insurance business in Liechtenstein only if it fulfils the following conditions:

a) it must be entitled to pursue insurance business under the law of the State of its registered office;

b) it must set up a branch in the Principality of Liechtenstein and appoint a general agent as its head, whose appointment requires the approval of the FMA;

c) it undertakes to set up at the registered office of the branch accounts specific to the business which it pursues in Liechtenstein, and to keep all the records relating to the business transacted;

d) it must undertake to cover the Solvency Capital Requirement and the Minimum Capital Requirement;

e) it possesses in the Principality of Liechtenstein assets of an amount equal to at least one half of the absolute floor prescribed in Article 51(2) in respect of the Minimum Capital Requirement and deposits one fourth of that absolute floor as security;

f) it must communicate the name and address of the claims representative appointed in each EEA Contracting Party (other than in the Principality of Liechtenstein) where the risks to be covered are classified under class 10 of Annex 1(A), other than carrier's liability;

g) it must submit a scheme of operations in accordance with the provisions in Article 118;

h) it must fulfil the governance requirements.

2) If health insurance and compulsory insurances are to be covered, the general and special policy conditions must also be submitted to the FMA before circulating them.

Article 118

Scheme of operations

1) The scheme of operations of the branch referred to in Article 117(1)(g) shall set out the following:

a) the nature of the risks or commitments which the undertaking proposes to cover in direct insurance and reinsurance;

b) the guiding principles as to reinsurance;

c) estimates of the future Solvency Capital Requirement on the basis of a forecast balance sheet, as well as the calculation method used to derive those estimates;

d) estimates of the future Minimum Capital Requirement on the basis of a forecast balance sheet, as well as the calculation method used to derive those estimates;

e) the state of the eligible own funds and eligible basic own funds of the undertaking with respect to the Solvency Capital Requirement and Minimum Capital Requirement;

f) estimates of the cost of setting up the administrative services and the organisation for securing business, the financial resources intended to meet those costs and the resources available for the "Tourist assistance" class of insurance;

g) the governance structure.

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

a) forecast balance sheet and income statement;

b) estimates of the financial resources intended to cover the technical provisions, the Minimum Capital Requirement, and the Solvency Capital Requirement;

c) for non-life insurance:

   1. estimates of management expenses other than installation costs, in particular current general expenses and commissions;

   2. estimates of premiums or contributions and claims;

d) for life insurance, a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.

Article 119

Technical provisions

1) Third-country insurance undertakings shall establish adequate technical provisions to cover the insurance and reinsurance obligations assumed in the Principality of Liechtenstein, calculated in accordance with Articles 76 et seq.

2) Third-country insurance undertakings shall value assets and liabilities in accordance with Article 74 and determine the own funds required in accordance with Articles 43 et seq.

Article 120

Solvency Capital Requirement and Minimum Capital Requirement

1) Branches which are set up in Liechtenstein shall have an amount of eligible own funds at their disposal consisting of the items referred to in Article 43(4).

2) For the purpose of calculating the Solvency Capital Requirement and the Minimum Capital Requirement, both for life and non-life insurance, account shall be taken only of the operations effected by the branch concerned.

3) The eligible amount of basic own funds required to cover the Minimum Capital Requirement shall be constituted in accordance with Article 43(5). The eligible amount of basic own funds shall not be less than half of the absolute floor required under Article 51(2).

4) The deposit lodged in accordance with Article 117(1)(e) shall be counted towards such eligible basic own funds to cover the Minimum Capital Requirement.

5) The assets representing the Solvency Capital Requirement must be kept in the Principality of Liechtenstein up to the amount of the Minimum Capital Requirement and the excess in other EEA Contracting Parties.

Article 121

Granting and refusal of licence

The licence shall be granted if the third-country insurance undertaking complies with the legal requirements; Article 14 shall apply *mutatis mutandis*, with the licence applying only to Liechtenstein.

Article 122

Authorisation in more than one EEA Contracting Party

1) Any third-country direct insurance undertaking which has requested or obtained authorisation from more than one EEA Contracting Party may apply for the following advantages which may be granted only jointly:

a) calculation of Solvency Capital Requirement in relation to the entire business which it pursues in the territory of the EEA Contracting Parties; this calculation shall be performed only in relation to the business of the establishments situated in that territory;

b) lodging of deposit under Article 117(1)(e) in only one EEA Contracting Party;

c) localisation of assets representing the Minimum Capital Requirement in any one of the EEA Contracting Parties in which it pursues its insurance activities.

2) In the cases referred to in paragraph 1(a), account shall be taken only of the operations effected by all the branches established in the territory of the EEA Contracting Parties for the purposes of this calculation.

3) Application to benefit from the advantages provided for in paragraph 1 shall be made to all the supervisory authorities of these EEA Contracting Parties where authorisation has been requested or obtained. These authorities shall agree on the ultimately competent supervisory authority, once that supervisory authority informs the other supervisory authorities that it will supervise the state of solvency of the entire business of the establishments in the EEA Contracting Parties; the insurance undertaking shall have the right to submit an application to the competent supervisory authority, together with the reasons. The advantages shall take effect from the time when the selected supervisory authority informs the other supervisory authorities that it will assume supervision. The advantages under paragraph 1 may be granted only if all supervisory authorities concerned agree.

4) The deposit referred to in Article 117(1)(e) shall be lodged with the EEA Contracting Party concerned.

5) At the request of one or more of the EEA Contracting Parties concerned, the advantages granted under this article shall be withdrawn simultaneously by all those States.

V. Termination of insurance activities

Article 123

Basic principle

1) The FMA shall supervise the termination of insurance activities and the resolution of existing insurance contracts if the insurance activity is prohibited or voluntarily discontinued or if the license is withdrawn.

2) If all obligations under insurance law are fulfilled and the insurance activity is terminated, an insurance undertaking shall be released from supervision by the FMA.

3) The FMA shall inform the competent supervisory authorities of host States about termination proceedings, in particular in connection with a voluntary winding-up of the undertaking.

Transfer of insurance portfolio

Article 124

a) Basic principle

1) Every contract by which the insurance portfolio of an insurance undertaking is to be transferred in whole or in part, along with the associated rights and obligations, to another insurance undertaking subject to supervision shall require approval by the competent supervisory authorities.

2) The accepting insurance undertaking shall demonstrate that after taking the transfer into account it possesses the necessary eligible own funds to cover the Solvency Capital Requirement. Approval shall be refused if the interests of the insured persons are not safeguarded.

3) An authorised portfolio transfer shall have direct effect vis-à-vis the policy holders or insured persons concerned and any other person having rights or obligations under the transferred contracts.

4) The approval of the transfer of the portfolio must be published at the expense of the undertakings concerned.

Article 125

b) Rights of policy holders

1) After each portfolio transfer, policy holders have the right to cancel the insurance contract within three months of notification pursuant to paragraph 3.

2) In the case of portfolio transfers in the course of mergers and among insurance undertakings with close links, the FMA may, upon application, exclude the right of cancellation.

3) The accepting insurance undertaking is obliged to inform the policy holders individually about completion of the portfolio transfer.

Article 126

c) Transfer of portfolio by a foreign branch or by way of cross-border provision of services

1) If an insurance undertaking having its registered office in the Principality of Liechtenstein transfers all or part of a portfolio of insurance contracts concluded in another EEA Contracting Party by a branch or by way of cross-border provision of services to an undertaking having its registered office in such a State, the approval of the FMA is required. Unless there are grounds for refusal pursuant to Article 124, such approval shall be granted if:

a) the supervisory authority of the home State of the accepting undertaking certifies that after taking the transfer into account the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement;

b) the supervisory authorities of the EEA Contracting Parties where the contracts were concluded, either under the right of establishment or cross-border provision of services, agree; and

c) the supervisory authority of that State has been consulted on the transfer of the insurance portfolio of a branch.

2) Failure by the authority consulted pursuant to paragraph 1(c) to give its opinion or consent within three months of receiving a request for consultation shall be considered as tacit consent.

3) Where the transfer of the insurance portfolio is effected by a reinsurance undertaking, only paragraph 1(a) shall apply.

4) This provision shall also apply *mutatis mutandis* to the transfer of an insurance portfolio to another domestic undertaking.

Article 127

d) Transfer of portfolio by domestic branches of third-country insurance undertakings

1) Articles 123 to 126 shall apply *mutatis mutandis* if domestic branches of third-country insurance undertakings wish to transfer all or part of their insurance portfolio to an undertaking having its registered office in the Principality of Liechtenstein or in another EEA Contracting Party.

2) If the portfolio is to be transferred to a branch established in another EEA Contracting Party, the FMA must also ensure that the competent supervisory authority of the other EEA Contracting Party of the accepting undertaking certifies that:

a) after taking the transfer into account the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement;

b) the law of the EEA Contracting Party of the accepting undertaking permits such a transfer; and

c) that EEA Contracting Party has agreed to the transfer.

Article 128

Withdrawal of licence

1) The FMA may withdraw an insurance undertaking's licence for individual classes of insurance, individual lines of business, or the entire activity if:

a) an insurance undertaking no longer fulfils the conditions for granting of the licence;

b) the insurance undertaking fails seriously in its obligations under the supervisory requirements or official orders;

c) there are serious deficiencies that the continuation of business operations would endanger the interests of the insured persons; or

d) the insurance does not make use of the licence within 12 months, expressly surrenders it or ceases to pursue business operations for more than six months.

2) The FMA shall withdraw a licence in the event that the undertaking does not comply with the Minimum Capital Requirement and the FMA considers that the finance scheme submitted is manifestly inadequate or the undertaking concerned fails to comply with the approved scheme within three months from the observation of non-compliance with the Minimum Capital Requirement.

3) If the licence is withdrawn, the FMA shall take all measures likely to safeguard the concerns of the insured parties. In particular, the FMA may restrict or prohibit the free disposal of the assets of the undertaking, order the transfer of an insurance portfolio, or transfer asset management to suitable persons. It may demand a run-off plan in accordance with Article 133. The FMA shall also inform the competent authorities of the other EEA Contracting Parties and EIOPA about the withdrawal of a licence.

4) If the FMA gains knowledge of facts that would justify withdrawal of a licence, it may instead demand the dismissal of members of the supervisory board or the board of directors or of other governing bodies to whom the facts personally relate, and it may also prohibit such persons from engaging in their business activities.

5) If bankruptcy proceedings are instituted against an insurance undertaking, the FMA shall withdraw the licence. In such cases, and with the approval of the FMA, activities of the insurance undertaking may continue to be pursued insofar as that is necessary or appropriate for the purposes of winding up business activities.

Article 129

Measures against direct insurance undertakings from another EEA Contracting Party

1) If it is established that a direct insurance undertaking from an EEA Contracting Party that has a branch in the Principality of Liechtenstein or is active in the cross-border provision of services does not comply with domestic legal provisions, the FMA shall require the undertaking to cease the irregularities. At the same time, the FMA shall notify the competent supervisory authorities of the home State.

2) Where the insurance undertaking fails to take the necessary action, the competent supervisory authorities of the home State shall be informed and requested to take measures against the undertaking.

3) In the event of persistent violations of domestic supervisory legislation, the FMA may, after informing the competent supervisory

authority of the home State, prohibit the insurance undertaking from further insurance activities in Liechtenstein and order all necessary measures. The FMA shall inform EIOPA of the measures taken. Moreover, the FMA may consult EIOPA and request its assistance.

4) If the competent supervisory authority of the host State finds that a Liechtenstein insurance undertaking does not comply with the legal provisions of that State and if the FMA is informed accordingly, the FMA shall, after carrying out its own review, take the necessary measures to ensure that the Liechtenstein insurance undertaking remedies these irregularities.

Article 130

Measures against reinsurance undertakings from another EEA Contracting Party

1) If the FMA finds that a reinsurance undertaking which has a branch in Liechtenstein or provides cross-border services does not comply with the domestic provisions applicable to the reinsurance undertaking, it shall require the undertaking to remedy the irregularities; at the same time, it shall notify the competent supervisory authorities of the home State of its findings.

2) Where, despite the measures taken by the home State or because such measures prove inadequate, the reinsurance undertaking persists in violating the legal provisions applicable to it in Liechtenstein, the FMA may, after informing the competent supervisory authorities of the home State, take appropriate measures to prevent or penalise further irregularities, including, insofar as is strictly necessary, preventing that reinsurance undertaking from continuing to conclude new reinsurance or retrocession contracts in Liechtenstein. The FMA may consult EIOPA and request its intervention.

3) Any measure adopted under paragraphs 1 and 2 involving sanctions or restrictions on the conduct of reinsurance business shall state the reasons and shall be communicated to the reinsurance undertaking concerned.

Article 131

Measures against third-party insurance undertakings

1) If the FMA supervises the solvency for the entire business of a third-country insurance undertaking pursuant to Article 122(3), the

FMA shall inform the supervisory authorities of the other EEA Contracting Parties in which the undertaking is active in the event of the withdrawal of its licence.

2) If the foreign supervisory authority competent for supervising the solvency of the entire business informs the FMA of a withdrawal on the grounds that the solvency of the entire business no longer meets the requirements pursuant to Article 122, the FMA shall withdraw the licence it has granted.

Measures in the event of surrender of a licence

Article 132

a) Restoration of a lawful state of affairs and repayment of deposits

1) If an insurance undertaking that surrenders its licence no longer satisfies the legal requirements, the FMA may demand that the undertaking restore a lawful state of affairs despite the surrender.

2) Deposits by third-country insurance undertakings shall be repaid as soon as all obligations under supervisory law have been fulfilled.

Article 133

b) Run-off plan

1) An insurance undertaking surrendering its licence must submit a run-off plan to the FMA for approval and, on the request of the FMA, other documents necessary for a supervisory review.

2) The run-off plan must contain information about:

a) the run-off of financial obligations arising from insurance contracts and any reinsurance;

b) the resources provided for that purpose;

c) the persons responsible; and

d) the planned winding-up of the undertaking.

3) An insurance undertaking which has surrendered its licence is prohibited from concluding new insurance contracts in the relevant classes of insurance or in reinsurance; neither the terms nor the scope of coverage of existing insurance contracts may be extended.

Article 134

Publication

1) If the licence of an insurance undertaking is withdrawn, if the insurance undertaking surrenders its licence or, in the event of surrender, if the insurance undertaking fails to restore a lawful state of affairs, the FMA shall inform the insured persons thereof by publication.

2) The costs of publication shall be borne by the insurance undertaking.

Article 135

Notification obligation of third-country insurance undertakings

Third-country insurance undertakings operating in the Principality of Liechtenstein must notify the FMA immediately if their licence to conduct insurance business in another country has been withdrawn.

VI. Special provisions for individual sectors and classes of insurance

A. Non-life insurance

1. General provisions

Article 136

Classes of insurance

Non-life insurance shall comprise the classes of insurance listed in Annex 1(A).

Article 137

Compulsory insurances

1) Non-life insurance undertakings may offer and conclude compulsory insurance contracts in accordance with the relevant special laws.

2) A compulsory insurance contract shall satisfy the obligation to take out insurance only if it complies with the specific provisions prescribed for that insurance.

3) The cessation of cover of a compulsory insurance may be asserted against third parties only in accordance with the relevant special legislation.

4) The FMA shall notify EIOPA of the risks for which insurance is compulsory in Liechtenstein; in doing so, it must provide information on the special legal provisions and, if applicable, on the evidence of compliance with the insurance obligation.

2. Co-insurance

Article 138

Scope of application

1) Articles 139 to 141 shall apply to co-insurance operations within the EEA which shall be those co-insurance operations which relate to one or more risks classified under classes 3 to 6 of Annex 1(A) and which fulfil the following conditions:

a) the risk is a large risk;

b) the risk is covered by a single contract at an overall premium and for the same period by two or more insurance undertakings each for its own part as co-insurer, one of them being the leading insurance undertaking;

c) the risk is situated within the EEA;

d) for the purpose of covering the risk, the leading insurance undertaking authorised in the EEA is treated as if it were the insurance undertaking covering the whole risk;

e) at least one of the co-insurers participates in the contract through an establishment in an EEA Contracting Party other than that of the leading insurance undertaking;

f) the leading insurance undertaking fully assumes the roles associated with co-insurance and in particular determines the policy conditions and rating.

2) Articles 109 and 110 shall apply only to the leading insurance undertaking.

Article 139

Technical provisions

1) The amount of the technical provisions shall be determined by the different co-insurers according to the rules fixed by their home State or, in the absence of such rules, according to customary practice in that State.

2) However, the technical provisions shall be at least equal to those determined by the leading insurer according to the rules of its home State.

Article 140

Statistical data

Co-insurers shall keep statistical data showing the extent of co-insurance operations within the EEA in which they participate and the EEA Contracting Parties concerned.

Article 141

Treatment of co-insurance contracts in winding-up proceedings

In the event of an insurance undertaking being wound up, liabilities arising from participation in co-insurance contracts shall be met in the same way as those arising under the other insurance contracts of that undertaking; in particular, no distinction may be made as to the nationality of the insured and of the beneficiaries.

3. Legal expenses insurance

Article 142

Scope of application

1) Articles 143 and 144 shall apply to legal expenses insurance referred to in class 17 in Annex 1(A) whereby an insurance undertaking undertakes, against the payment of a premium, to bear the costs of legal proceedings and to provide other services directly linked to insurance cover, in particular with a view to the following:

a) securing compensation for the loss, damage or injury suffered by the insured person, by settlement out of court or through civil or criminal proceedings;

b) defending or representing the insured person in civil, criminal, administrative or other proceedings or in respect of any claim made against that person.

2) These provisions shall not apply to:

a) legal expenses insurance where such insurance concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels;

b) the activity pursued by an insurance undertaking providing civil liability cover for the purpose of defending or representing the insured person in any inquiry or proceedings where that activity is at the same time pursued in the own interest of that insurance undertaking under such cover;

c) the activity of legal expenses insurance undertaken by an insurance undertaking covering class 18 (Tourist assistance) which complies with the following conditions:

1. the activity is pursued in an EEA Contracting Party other than that in which the insured person is habitually resident;
2. the activity forms part of a contract covering solely the assistance provided for persons who fall into difficulties while travelling, while away from their home or their habitual residence.

3) For the purposes of paragraph 2(c), the contract shall clearly state that the cover concerned is limited to the circumstances referred to in that subparagraph and is ancillary to the assistance.

Article 143

Legal expenses insurance and ancillary risks

Subject to Article 18, legal expenses insurance must be pursued separately from other classes of insurance referred to in Annex 1(A).

Article 144

Management of claims

1) An insurance undertaking which operates legal expenses insurance together with other classes of insurance must transfer the processing of

benefits in legal expenses insurance to another undertaking (claims settlement undertaking). This transfer shall be considered outsourcing. The claims settlement undertaking may not pursue any insurance business other than legal expenses insurance, nor may it process benefits in other classes of insurance.

2) Article 33 shall apply *mutatis mutandis* to the general management of the claims settlement undertaking referred to in paragraph 1. Its members may not at the same time work for an insurance undertaking which pursues insurance business other than legal expenses insurance.

3) Where the claims settlement undertaking has links to an insurance undertaking which carries on one or more of the classes of insurance referred to in Annex 1(A), employees of the claims settlement undertaking who are concerned with the management of claims or with legal advice connected with such management shall not pursue the same or a similar activity in the other insurance undertaking at the same time.

4. Tourist assistance

Article 145

Object

1) The activity of the "Tourist assistance" class of insurance comprises an undertaking, against prior payment of a premium, to make aid immediately available to the beneficiary under an assistance contract where that person is in difficulties following the occurrence of a chance event, in the cases and under the conditions set out in the contract.

2) The aid may comprise the provision of benefits in cash or in kind. The provision of benefits in kind may also be effected by means of the staff and equipment of the person providing them. The insurance undertaking must have the resources necessary to provide such assistance.

3) The assistance activity shall not cover servicing, maintenance, after-sales service or the mere indication or provision of aid as an intermediary.

B. Life insurance

Article 146

Classes of insurance

Life insurance shall comprise the classes of insurance listed in Annex 2. These comprise in particular:

a) life insurance activities where they are on a contractual basis:
   1. life insurance which comprises assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or on earlier death, life assurance with return of premiums, marriage assurance, birth assurance;
   2. annuities;
   3. supplementary insurance underwritten in addition to life insurance, in particular, insurance against personal injury including incapacity for employment, insurance against death resulting from an accident and insurance against disability resulting from an accident or sickness;
   4. types of permanent health insurance not subject to cancellation currently existing in Ireland and the United Kingdom;

b) the following activities, where they arise under a contract and where they are pursued by insurance undertakings authorised to pursue another class of life insurance:
   1. operations whereby associations of subscribers are set up with a view to capitalising their contributions jointly and subsequently distributing the assets thus accumulated among the survivors or among the beneficiaries of the deceased (tontines);
   2. capital redemption operations based on actuarial calculation whereby, in return for single or periodic payments agreed in advance, commitments of specified duration and amount are undertaken;
   3. management of group pension funds, comprising the management of investments, and in particular the assets representing the reserves of bodies that effect payments on death or survival or in the event of discontinuance or curtailment of activity;
   4. the operations referred to in point 3 where they are accompanied by insurance covering either conservation of capital or payment of a minimum interest;

5. the operations carried out by life insurance undertakings such as those referred to in Chapter 1, Title 4 of Book IV of the French "Code des assurances";

c) operations relating to the length of human life which are provided for in social insurance legislation and are effected or managed by life insurance undertakings at their own risk, provided they are not subject to special legislation as referred to in Article 5.

Article 147

Premiums for new business

1) Premiums for new business shall be sufficient, on reasonable actuarial assumptions, to enable life insurance undertakings to meet all their commitments and, in particular, to establish adequate technical provisions.

2) For that purpose, all aspects of the financial situation of a life insurance undertaking may be taken into account, without the input from resources other than premiums and income earned thereon being systematic and permanent in a way that it may jeopardise the solvency of the undertaking concerned in the long term.

Article 148

Additional information to be provided

1) In addition to the information set out in Annex 4, insurance undertakings must also provide the policy holder with the information set out in paragraphs 2 and 3.

2) Where, in connection with an offer for or conclusion of a life insurance contract, an insurance undertaking provides figures relating to the amount of potential payments above and beyond the contractually agreed payments, the insurance undertaking shall, with the exception of reinsurance, provide the policy holder with a specimen calculation whereby the potential maturity payment is set out applying the basis for the premium calculation using three different rates of interest. The insurance undertaking shall inform the policy holder in a clear and comprehensible manner that the specimen calculation uses a model of computation based on notional assumptions, and that the policy holder shall not derive any contractual claims against the undertaking from the specimen calculation.

3) In the case of insurances with profit participation, the insurance undertaking shall inform the policy holder annually in writing of the status of the claims of the policy holder, incorporating the profit participation. Furthermore, where the insurance undertaking has provided figures about the potential future development of the profit participation, the insurance undertaking shall inform the policy holder of differences between the actual development and the initial data.

4) In the cases of paragraphs 1 to 3 and when providing other information, insurance undertakings shall supply specific information in order to provide a proper understanding of the risks underlying the contract which are assumed by the policy holder.

C. Reinsurance

Article 149

Prohibition of refusal of reinsurance contracts

The FMA shall not refuse a reinsurance contract concluded with a reinsurance undertaking or a direct insurance undertaking licensed under this Act on grounds directly related to the financial soundness of that undertaking.

Article 150

Finite reinsurance

Insurance undertakings which conclude finite reinsurance contracts or pursue finite reinsurance activities must properly identify, measure, monitor, manage, control and report the risks arising from those contracts or activities. The provisions governing reinsurance shall apply *mutatis mutandis* to these insurance undertakings.

D. Special purpose vehicles

Article 151

Permanent ability to perform reinsurance contracts

1) Special purpose vehicles must always ensure that reinsurance contracts can be performed on a permanent basis. For this purpose, the fair value of the capital investments of a special purpose vehicle must at all times exceed the claims risks from reinsurance contracts; this can also be ensured by means of suitable hedging instruments.

2) The FMA shall decide whether the requirements pursuant to paragraph 1 are met and whether a hedging instrument is to be considered suitable. In addition, the FMA shall issue rules governing the minimum provisions that must be contained in every reinsurance contract concluded with an insurance undertaking.

VII. Reorganisation and winding-up

A. General provisions

Article 152

Scope of application

1) This Chapter shall apply to direct insurance undertakings which have their registered office in an EEA Contracting Party.

2) For direct insurance undertakings which do not have their registered office in an EEA Contracting Party, these provisions shall apply only if they have a branch in an EEA Contracting Party.

3) Articles 164 to 176 shall apply *mutatis mutandis* to direct insurance undertakings which have their registered office in Switzerland.

Article 153

Competence

If a direct insurance undertaking is licensed in the Principality of Liechtenstein, the following shall be competent in connection with the reorganisation and winding-up of insurance undertakings:

a) the FMA for measures pursuant to Articles 82 et seq. in the event of a deterioration of the financial situation of an insurance undertaking;

b) the Court of Justice for the debt restructuring moratorium and the opening of bankruptcy proceedings.

Article 154

Duty to inform and publication abroad

1) The Court of Justice shall immediately notify the FMA of the decision on a debt restructuring moratorium or opening of bankruptcy proceedings and the specific effects of these measures. The FMA must immediately inform the supervisory authorities of the other EEA Contracting Parties of this decision and its specific effects.

2) The Court of Justice shall also immediately arrange for the publication of the debt restructuring moratorium or the opening of bankruptcy proceedings in the Official Journal of the European Union by means of an edict. The publication shall also indicate the competent administrative or judicial authority as well as the appointed custodian or liquidator and the legal remedies available against a debt restructuring moratorium or opening of bankruptcy proceedings and indicate that Liechtenstein law is applicable. The information required for the publication shall be sent without delay to the EFTA Secretariat in Brussels.

Article 155

Service of the decision on the debt restructuring moratorium and opening of bankruptcy

1) A copy of the edict on the debt restructuring moratorium and opening of bankruptcy must be served on creditors whose habitual residence, domicile or registered office is situated in another EEA Contracting Party, even if the conditions set out in Article 1(5) of the Insolvency Act are fulfilled. The edict shall be followed by a notice in all the official languages of the European Economic Area with the heading "Invitation to lodge a claim; time-limits to be observed!" This notice must indicate the court with which the claim is to be lodged and whether the creditors who are preferential or secured *in rem* must lodge their claims.[17]

17 Article 155(1) amended by LGBl. 2020 No. 394.

2) Where a creditor is the holder of an insurance claim, the notice shall be provided in the official language of the EEA Contracting Party in which the habitual residence, domicile or registered office of the creditor is situated. The notice shall further indicate the general effects of the bankruptcy proceedings on the insurance contracts, in particular, the date on which the insurance contracts or the operations will cease to produce effects and the rights and duties of insured persons with regard to the contract or operation.

Article 156

Assertion of claims

1) When lodging a claim, a creditor whose habitual residence, domicile or registered office is situated in another EEA Contracting Party shall indicate the nature of the claim, the date on which the claim arose, the amount of the claim, whether the creditor alleges preference, security *in rem* or reservation of title in respect of the claim, and what assets are covered by the creditor's security. The creditor shall enclose a copy of any supporting documents when lodging the claim.

2) Any creditor whose habitual residence, domicile or registered office is situated in another EEA Contracting Party may lodge the claim in the official language of that State. In that case, the lodging of the claim shall bear the heading "Anmeldung einer Forderung" ("Lodgement of claim") in German.

3) The preference and ranking of the claim as granted by Article 161 need not be specified.

Article 157

Activities abroad

1) At the request of the administrator, the certificate of appointment shall be issued to the administrator in one or more languages of the EEA Contracting Parties.

2) The administrator may appoint persons to assist the administrator's activities abroad.

Article 158

Branches of third-country insurance undertakings

Where a third-country insurance undertaking has branches established in more than one EEA Contracting Party, each branch shall be treated independently with regard to the application of this Chapter. The competent administrative and judicial authorities and the administrators and liquidators shall endeavour to coordinate their actions.

B. Debt restructuring moratorium

Article 159

Basic principle

1) As a reorganisation measure, a debt restructuring moratorium may be ordered in accordance with the special legal provisions.

2) A debt restructuring moratorium shall not preclude the opening of bankruptcy proceedings or other winding-up proceedings by the home State.

3) A debt restructuring moratorium shall have effect throughout the territory of the EEA Contracting Parties and Switzerland as soon as it takes effect in Liechtenstein.

4) Recovery proceedings in accordance with the provisions of the Insolvency Act may not be opened in respect of the assets of an insurance undertaking.[18]

5) In bankruptcy proceedings of an insurance undertaking, a recovery plan application in accordance with the Insolvency Act is not permissible.[19]

18 Article 159(4) inserted by LGBl. 2020 No. 394.
19 Article 159(5) inserted by LGBl. 2020 No. 394.

C. Bankruptcy

Article 160

Bankruptcy proceedings

1) The opening of bankruptcy proceedings shall have effect throughout the territory of the EEA Contracting Parties and Switzerland as soon as it takes effect in Liechtenstein.

2) The bankruptcy proceedings shall also extend to the insurance undertaking's assets situated in other EEA Contracting Parties and in Switzerland.

Article 161

Satisfaction of insurance claims

1) The assets covering technical provisions shall constitute a separate estate in bankruptcy proceedings in accordance with Article 45 of the Insolvency Act to satisfy insurance claims. The court shall order that the register of assets allocated to the separate estate be established immediately and submitted to the FMA. The FMA shall determine the separate estate for the time when bankruptcy is opened. Reflows and income from the assets dedicated to the separate estate and premiums for the insurance contracts included in the separate estate that are received after bankruptcy proceedings have been opened shall fall into this separate estate.[20]

2) The list submitted pursuant to paragraph 1 may no longer be changed once bankruptcy proceedings have been initiated. The liquidator may make technical corrections to the listed asset values with the approval of the Court of Justice.

3) If the proceeds from the realisation of the assets are lower than their valuation in the list submitted pursuant to paragraph 1, then the liquidator must communicate this to the Court of Justice and justify the deviation.

4) Repealed[21]

20 Article 161(1) amended by LGBl. 2020 No. 394.
21 Article 161(4) repealed by LGBl. 2020 No. 394.

5) The insurance claims to be found in the account books of the insurance undertaking shall be deemed lodged. The right of the creditor to lodge these claims as well shall not be affected. The lodgement of claims need not include an indication of ranking.

Article 161a[22]

Hierarchy of claims

1) Insurance claims shall take precedence over other bankruptcy claims, without prejudice to Article 161(1).

2) Claims to insurance performance take precedence over all other insurance claims. Within the same rank, the claims shall be satisfied in proportion to their amounts.

3) In derogation from Article 62(1) of the Insolvency Act, claims filed do not need to indicate their rank.

Article 162

Special register

1) Every direct insurance undertaking against which bankruptcy proceedings have been initiated shall keep at its registered office a special register of the assets used to cover the technical provisions calculated and invested in accordance with the law of the home State.

2) The Government shall provide details by ordinance.

Article 163

Information to creditors and the FMA

1) The liquidators shall regularly inform the FMA and the creditors about the course of the bankruptcy proceedings.

2) The FMA shall provide the supervisory authority of another EEA Contracting Party with information on the course of the bankruptcy proceedings upon request.

22 Article 161a inserted by LGBl. 2020 No. 394.

D. Recognition of foreign proceedings

Article 164

Basic principle

1) A decision by an EEA Contracting Party concerning recovery measures and the opening of liquidation proceedings of an insurance undertaking shall be recognised in the Principality of Liechtenstein irrespective of the conditions set out in Article 5(3) of the Insolvency Act. The decision shall be effective in Liechtenstein as soon as the decision is effective in the State in which the proceedings are opened. This shall also apply even if no recovery measure is provided for in Liechtenstein.[23]

2) The FMA may publish the decision pursuant to paragraph 1 in Liechtenstein.

Article 165

Powers of foreign administrators and liquidators

1) Foreign administrators and liquidators may exercise in the Principality of Liechtenstein, without further formality, all the powers to which they are entitled in the territory of the home State. Those powers shall not include the use of force or the right to rule on legal proceedings or disputes.

2) In exercising their powers in the Principality of Liechtenstein, the administrators and liquidators shall comply with Liechtenstein law, in particular with regard to procedures for the realisation of assets and the provision of information to employees.

3) The administrators and liquidators and the persons that represent them or otherwise assist them in their work shall be subject to business secrecy and the associated penal provisions. Information falling within the scope of business secrecy must be made accessible to the administrators and liquidators only if:

a) the information is connected to the reorganisation measure or winding-up proceedings and is actually necessary for the realisation thereof; and

23 Article 164(1) amended by LGBl. 2020 No. 394.

b) the administrator or liquidator, any representative of the administrator or liquidator, and the administrative or judicial authorities responsible for their supervision in the home State are subject to a confidentiality requirement equivalent to Liechtenstein business secrecy.

4) The information obtained pursuant to paragraph 3 may be used only for execution of the reorganisation measure or the winding-up proceedings.

5) The administrator and the liquidator shall provide evidence of their appointment by means of a certified copy of the decision by which they were appointed or by means of another certification issued by the administrative or judicial authority of the home State. A translation into German may be demanded.

Article 166

Comments

1) Upon application of the administrator or liquidator or upon request of any administrative or judicial authority of the home State, the Court of Justice shall arrange for comments pursuant to Article 12 of the Insolvency Act.[24]

2) If the insurance undertaking has a branch or assets in the Principality of Liechtenstein, then the administrator or the otherwise competent authority must submit an application in accordance with paragraph 1.

Article 167

Information

The FMA may request information on developments in the reorganisation or winding-up procedure from the competent authorities of the home State.

24 Article 166(1) amended by LGBl. 2020 No. 394.

E. Applicable law

Article 168

Basic principle

1) Reorganisation measures and winding-up proceedings shall be governed by the law of the State in which the proceedings are opened, unless otherwise provided in Articles 169 et seq.

2) The law of the State in which proceedings are opened shall determine in particular:

a) the assets which form part of the estate and the treatment of assets obtained by the insurance undertaking after the opening of the proceedings;

b) the respective powers of the insurance undertaking and the administrator or liquidator;

c) the conditions under which set-off may be invoked;

d) the effects of the opening of proceedings on current contracts to which the insurance undertaking is party;

e) the effects of the opening of proceedings on proceedings brought by individual creditors, with the exception of legal disputes pending referred to in Article 176;

f) the claims which are to be lodged and the treatment in the proceedings of claims arising after the opening of proceedings;

g) the rules governing the lodging, verification and admission of claims;

h) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims, and the rights of creditors who have obtained partial satisfaction after the opening of proceedings by virtue of a right *in rem* or through a set-off;

i) the conditions for and the effects of closure of proceedings, in particular by debt restructuring moratorium or composition;

k) rights of the creditors after the closure of proceedings;

l) who is to bear the cost and expenses incurred in the proceedings; and

m) the rules relating to the nullity, voidability or unenforceability of legal acts detrimental to all the creditors.

Article 169

Effects on certain contracts and rights

The effects of the opening of reorganisation measures and winding-up proceedings shall be governed as follows:

a) in regard to employment contracts and employment relationships, exclusively by the law of the EEA Contracting Party applicable to the employment contract;

b) in regard to a contract conferring the right to make use of or acquire immovable property, exclusively by the law of the EEA Contracting Party where the immovable property is situated;

c) in regard to rights of the insurance undertaking with respect to immovable property, a ship or an aircraft subject to registration in a public register, exclusively by the law of the EEA Contracting Party under the authority of which the register is kept.

Article 170

Rights in rem of third parties

1) The opening of proceedings shall not affect the rights *in rem* of a creditor or a third party in respect of tangible or intangible, movable or immovable property – both specific property and collections of indefinite property as a whole which change from time to time – which belong to the insurance undertaking and which are situated within the territory of another EEA Contracting Party at the time of the opening of such proceedings.

2) The rights referred to in paragraph 1 shall be in particular:

a) the right to dispose of property or have that property disposed of and to obtain satisfaction from the proceeds of or income from that property, in particular by virtue of a lien or a mortgage;

b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;

c) the right to demand the property from or to require restitution by anyone having possession or use of it contrary to the wishes of the party so entitled;

d) a right *in rem* to the beneficial use of property.

3) The right, recorded in a public register and enforceable against third parties, under which a right *in rem* within the meaning of paragraph 1 may be obtained, shall be considered to be a right *in rem*.

4) Paragraph 1 shall not preclude actions for nullity, voidability or unenforceability referred to in Article 168(2)(m).

Article 171

Reservation of title

1) The opening of proceedings against an insurance undertaking purchasing property shall not affect the rights of a seller which are based on a reservation of title where at the time of the opening of such proceedings the property is situated within the territory of an EEA Contracting Party other than that in which such proceedings were opened.

2) The opening of proceedings against an insurance undertaking which is selling property shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of such proceedings the property sold is situated within the territory of an EEA Contracting Party other than that in which such proceedings were opened.

3) Paragraphs 1 and 2 shall not preclude actions for nullity, voidability or unenforceability referred to in Article 168(2)(m).

Article 172

Set-off

1) The opening of proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the insurance undertaking, where such a set-off is permitted by the law applicable to the claim of the insurance undertaking.

2) Paragraph 1 shall not preclude actions for nullity, voidability or unenforceability referred to in Article 168(2)(m).

Article 173

Regulated markets

1) Without prejudice to Article 179, the effects of the opening of proceedings on the rights and obligations of the parties to a regulated market shall be governed solely by the law of the State applicable to that market.

2) A Paragraph 1 shall not preclude actions for nullity, voidability, or unenforceability referred to in Article 168(2)(m) under the law applicable to that market.

Article 174

Challenge

Article 168(2)(m) shall not apply where the person who has benefited from a legal act which is detrimental to all the creditors provides proof:

a) of that act being subject to the law of another EEA Contracting Party; and

b) that that law does not allow any means of challenging that act.

Article 175

Protection of third-party purchasers

The following law shall be applicable where, by an act concluded after the opening of proceedings, an insurance undertaking disposes, for consideration, of any of the following:

a) in regard to immovable property, the law of the EEA Contracting Party where the immovable property is situated;

b) in regard to ships or aircraft subject to registration in a public register, the law of the EEA Contracting Party under the authority of which the register is kept;

c) in regard to transferable or other securities, the existence or transfer of which presupposes entry in a register or account laid down by law or which are placed in a central deposit system governed by the law of an EEA Contracting Party, the law of the EEA Contracting Party under the authority of which the register, account or system is kept.

Article 176

Pending legal disputes

The effects of proceedings on a pending legal dispute concerning an asset or a right of which the insurance undertaking has been divested shall be governed solely by the law of the EEA Contracting Party in which the legal dispute is pending.

VIII. Supervisory authority, measures, and appeals

Article 177

Supervisory authority

1) The supervision of insurance undertakings shall be the responsibility of the Financial Market Authority (FMA).

2) The FMA shall supervise the entire business of insurance undertakings; it shall ensure that the legislation is complied with and that the interests of the insured parties are safeguarded.

3) Within the framework of its supervision, the FMA is obliged:

a) to take a prospective and risk-based approach;

b) to pay attention to the effects of its activities on the Liechtenstein insurance and financial centre and on affected financial systems in the EEA;

c) to respect the principle of proportionality.

4) The competence of the FMA shall not change the primary responsibility of the governing bodies of insurance undertakings to ensure that the legal requirements for insurance undertakings are permanently met.

5) The supervision taxes and fees to be paid for the activities of the FMA shall be based on financial market supervision legislation.

Article 178

Supervisory review process

1) The FMA shall review the insurance undertakings' ongoing compliance with the legal requirements.

2) The review referred to in paragraph 1 shall include in particular the evaluation of:

a) the strategies, processes and reporting procedures pursued by the insurance undertakings;

b) the qualitative requirements relating to governance;

c) the business risks; and

d) the ability of the undertakings to assess their risks taking into account the environment in which the undertakings are operating.

3) The FMA shall have in place appropriate monitoring tools that enable it to identify deteriorating financial conditions in insurance undertakings. The FMA shall assess the adequacy of the methods and practices of the insurance undertakings designed to identify possible developments in economic conditions that could have adverse effects on the overall financial standing of the undertaking concerned and it shall review the ability of the undertakings to withstand those possible developments.

4) The FMA shall conduct its reviews regularly. The FMA shall establish the minimum frequency and the scope of its reviews, evaluations and assessments having regard to the nature, scale and complexity of the activities of the insurance undertaking concerned.

Article 179

Convergence of supervisory tools and practices in the EEA

1) In the exercise of its duties, the FMA shall have regard to the convergence in respect of supervisory tools and practices in the EEA.

2) It shall have regard to the activities, guidelines, and regulations of EIOPA.

Article 180

Language

Requests, notifications and information submitted to the FMA must in principle be made in German; the FMA may allow exceptions.

Article 181

Notification of policy conditions, scales of premiums, and other documents

1) For the purpose of verifying compliance with provisions concerning insurance contracts, the FMA may require insurance undertakings that propose to pursue insurance business in Liechtenstein to effect non-systematic notification of policy conditions and other documents.

2) In justified individual cases in life insurance, the FMA may, for the purpose of verifying compliance with the provisions concerning actuarial principles, require communication of the technical bases used in particular for calculating scales of premiums and technical provisions.

3) In the case of compulsory insurance, the FMA may require that the general and special policy conditions be communicated to it for approval before they are used.

4) In health insurance, the general and special policy conditions must be submitted to the FMA before they are used, in order to enable the FMA to monitor compliance with the legal provisions on health insurance.

5) The obligations under paragraphs 1, 2, and 4 shall not constitute a condition for the taking up and pursuit of insurance business.

Article 182

Inspection powers, measures, and publication of supervisory practice

1) The FMA may take the measures necessary to fulfil its supervision and control responsibilities.

2) The FMA may make arrangements that are adequate and necessary to prevent or eliminate abuses.

3) At any time, the FMA may review the business management and the financial situation of an insurance undertaking with respect to whether the business reports, consolidated business reports, and reports to the FMA correspond to the facts and whether the own funds and provisions reach the prescribed amount and are invested and managed in accordance with the requirements.

4) The FMA shall have the power to carry out inspections at the premises of the insurance undertakings (on-the-spot inspection); the costs incurred must be borne by the insurance undertaking.

5) The FMA may in particular:

a) restrict or prohibit the free disposal of the assets of an insurance undertaking;

b) prohibit insurance undertakings from concluding new insurance contracts until a lawful state of affairs has been restored;

c) transfer the insurance portfolio and the corresponding funds to another insurance undertaking with the latter's consent;

d) demand the dismissal of the persons entrusted with overall direction, supervision, control, or general management or the general agent, as well as the persons responsible for governance, actuarial, and other key functions, and prohibit these persons from carrying on any further insurance activity for a maximum of five years.

6) Unless the concerns of the insured persons can be safeguarded in another manner, the FMA may, at the expense of the insurance undertaking, transfer powers in whole or in part that are vested in the organs of an undertaking by law or by the articles of association to a special representative who is suited to exercise these powers.

7) The FMA may involve third parties for the purpose of ensuring and fulfilling its responsibilities. The mandated third parties shall be released from their obligation of secrecy vis-à-vis the FMA. The insurance undertaking concerned shall bear the costs of the involvement of third parties.

8) In order to protect the insured parties and to safeguard confidence in the Liechtenstein insurance and financial centre, the FMA may, to the extent necessary and proportionate, inform the public about unfair conduct and other abuses by undertakings or natural persons.

9) The FMA shall ensure that its supervisory practice is made available to the public. The Government shall provide details by ordinance.

Article 183

Official secrecy

1) The persons mandated to implement this Act and any other persons consulted by them as well as all representatives of public authorities shall be subject to official secrecy without any time limits with respect to the confidential information that they gain knowledge of in the course of their official activities.

2) The information subject to official secrecy may not be transmitted to others, subject to provisions governing cooperation with other authorities as well as other special legal provisions.

3) If bankruptcy proceedings have been opened or winding-up has been initiated by a court decision against an insurance undertaking, then confidential information that does not relate to third parties may be used in civil or commercial proceedings, insofar as it is necessary for the proceedings in question.

Article 184[25]

Processing of personal data

The bodies entrusted with implementation of this Act may process or have processed personal data, including personal data relating to criminal convictions and offences, of persons responsible for the governance and management of an insurance undertaking or of a branch of an insurance undertaking, to the extent necessary for the performance of their duties under this Act.

Article 185

Appeals

1) Decisions and decrees of the FMA may be appealed within 14 days of service by way of complaint to the FMA Complaints Commission.

2) Decisions and decrees of the FMA Complaints Commission may be appealed within 14 days of service by way of complaint to the Administrative Court.

25 Article 184 amended by LGBl. 2018 No. 307.

IX. Cooperation with other authorities

A. Cooperation with other domestic authorities

Article 186

Basic principle

1) In the context of supervision, the FMA shall work together with other domestic authorities to the extent necessary for the fulfilment of its responsibilities.

2) The competent domestic authorities may transfer data as referred to in Article 184 to each other to the extent necessary for the performance of their supervisory duties.[26]

Article 187

Notification obligation of the courts and the Office of Justice

1) The courts shall provide the FMA with a copy of all judgments relating to insurance contract law.

2) The Office of Justice shall communicate all changes to entries in the Commercial Register concerning an insurance undertaking to the FMA.

B. Cooperation with foreign authorities

Article 188

Basic principle

1) The FMA may, to the extent necessary to perform its duties, work together with the competent foreign authorities within the scope of its supervision, in particular by processing data, information, reports and documents or by transmitting them to the competent foreign authority.

26 Article 186(2) inserted by LGBl. 2018 No. 307.

1a) Subject to the following provisions, cooperation with competent foreign authorities shall otherwise be governed *mutatis mutandis* by Article 26b of the FMA Act (FMAG).[27]

2) For the purpose of cooperation, the FMA may also conclude agreements with foreign supervisory authorities, subject to Article 193.

3) The FMA shall work together with EIOPA, the EFTA Surveillance Authority, and other competent European authorities and institutions in order to ensure the smooth functioning of insurance supervision.

Article 189

Exchange of information with authorities of other EEA Contracting Parties

1) Within the scope of its supervision, the FMA may exchange with the competent authorities of other EEA Contracting Parties all information necessary for the performance of its duties under this Act, provided that:

a) the sovereignty, security, public order, or other substantial national interests of Liechtenstein are not violated;

b) the recipients and the persons employed with and instructed by the competent authorities are subject to an obligation of secrecy equivalent to that of Article 183;

c) it is guaranteed that the information given will be used only for the purpose of financial market supervision, in particular the supervision of insurance undertakings; and

d) information that comes from abroad is given with the express consent of the authority that disclosed that information, and if it is guaranteed that the information will be forwarded, if at all, only for the purpose to which such foreign authority has given its consent.

2) The FMA shall inform the competent authorities of the home State of any potential adverse effects on the financial soundness of insurance undertakings operating in Liechtenstein.

27 Article 188(1a) inserted by LGBl. 2018 No. 307.

Article 190

On-the-spot inspections by authorities of other EEA Contracting Parties

1) If an insurance undertaking authorised in another EEA Contracting Party carries on its business through a domestic branch, the FMA shall, upon application, allow the supervisory authority of an EEA Contracting Party competent for an insurance undertaking to carry out itself, or through the intermediary of persons it appoints for that purpose, on-site inspections at the premises of the domestic branch.

2) Before carrying out the inspection in Liechtenstein, the competent authorities of the home State shall inform the FMA; the FMA may take part in the inspection.

3) If problems arise in connection with the inspections referred to in paragraphs 1 and 2, EIOPA may be consulted and requested to assist in the resolution of any conflicts. EIOPA is authorised to participate in on-site inspections.

Article 191

Notifications concerning subsidiaries with parent undertakings from a third country

1) The FMA shall inform the competent supervisory authorities of the other EEA Contracting Parties and the EIOPA:

a) of any licence granted to a direct or indirect subsidiary one or more of whose parent undertakings are governed by the laws of a third country;

b) whenever such a parent undertaking acquires a holding in an insurance undertaking with its registered office in an EEA Contracting Party such that that insurance undertaking would become a subsidiary.

2) When a licence referred to in paragraph 1(a) is granted to the direct or indirect subsidiary of one or more parent undertakings governed by the laws of a third country, the structure of the group shall be specified in the notification referred to in paragraph 1.

Article 192

Exchange of information with authorities of third countries

1) The FMA may exchange with the competent authorities of third countries all information necessary for the performance of duties under this Act or comparable foreign laws, applying Article 189 *mutatis mutandis*.

2) Repealed[28]

Article 193

Cooperation agreements with authorities of third countries

Cooperation agreements with supervisory authorities of third countries may be concluded only if the protection of secrecy is guaranteed under the law of the foreign country concerned in the same way as under this Act. It must be provided that information received from another EEA Contracting Party may be disclosed only with the express consent of the competent authorities of that State.

X. Supervision of insurance undertakings in a group

A. Scope of application and scope of group supervision

Article 194

Basic principle

In addition to supervision on an individual basis, insurance undertakings in a group shall be subject to supervision at the level of the group in accordance with the provisions of this Chapter. To the extent not otherwise provided therein, the provisions on supervision of insurance undertakings on an individual basis shall continue to apply to such undertakings.

28 Article 192(2) repealed by LGBl. 2018 No. 307.

Article 195

Scope of application

Articles 204 to 251 shall apply to:

a) insurance undertakings which are a participating undertaking in at least one insurance undertaking or third-country insurance undertaking;

b) insurance undertakings whose parent undertaking is an insurance holding company or a mixed financial holding company with its registered office in an EEA Contracting Party.

Article 196

Discretion of the FMA

In the cases referred to in Article 195, where the participating insurance undertaking or the insurance holding company or a mixed financial holding company which has its registered office in an EEA Contracting Party is a related undertaking of a regulated entity or a mixed financial holding company which is subject to supplementary supervision in accordance with the Financial Conglomerates Act, the FMA may, after consulting the other supervisory authorities concerned, decide not to apply, at the level of that participating insurance undertaking or that insurance holding company or that mixed financial holding company, Articles 227 and 228 (risk concentration), Articles 229 and 230 (supervision of intra-group transactions), or all of Articles 227 to 230.

Article 197

Third-country insurance undertakings

Articles 252 to 255 shall apply to insurance undertakings the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its registered office in a third country or a third-country insurance undertaking.

Article 198

Mixed-activity insurance holding company

Article 256 shall apply to insurance undertakings whose parent undertaking is a mixed-activity insurance holding company.

Article 199

Competence for supervision of undertakings taken individually

The exercise of group supervision as such shall not imply that the FMA is required to play a supervisory role in relation to the third-country insurance undertaking, the insurance holding company, the mixed-activity insurance holding company or the mixed financial holding company taken individually, without prejudice to Article 232 as far as insurance holding companies and mixed financial holding companies are concerned.

Article 200

Non-inclusion in group supervision

1) The FMA, if it is the group supervisor, may decide on a case-by-case basis not to include an undertaking in the group supervision where:

a) the undertaking is situated in a third country where there are legal impediments to the transfer of the necessary information, without prejudice to the provisions of Article 215;

b) the undertaking which should be included is of negligible interest with respect to the objectives of group supervision; or

c) the inclusion of the undertaking would be inappropriate or misleading with respect to the objectives of the group supervision.

2) However, where several undertakings of the same group, taken individually, may be excluded pursuant to paragraph 1(b), they must nevertheless be included where, collectively, they are of non-negligible interest.

3) Where the FMA is of the opinion that an insurance undertaking should not be included in the group supervision under paragraph 1(b) or (c), it shall consult the other supervisory authorities concerned before taking a decision.

Article 201

Request for information

Where the FMA does not include an insurance undertaking which has its registered office in the Principality of Liechtenstein in the group supervision under Article 200, the FMA may ask the undertaking which is at the head of the group for any information which may facilitate supervision of the insurance undertaking concerned.

Article 202

Ultimate parent undertaking

If the participating insurance undertaking, insurance holding company, or mixed financial holding company referred to in Article 195 is itself a subsidiary of another insurance undertaking, insurance holding company, or mixed financial holding company which has its registered office in an EEA Contracting Party, Articles 214 to 251 shall apply only at the level of the ultimate parent insurance undertaking, insurance holding company, or mixed financial holding company which has its registered office in an EEA Contracting Party.

Article 203

Supplementary supervision under the Financial Conglomerates Act

Where the ultimate participating parent insurance undertaking, parent insurance holding company, or mixed financial holding company which has its registered office in an EEA Contracting Party, referred to in paragraph 202, is a subsidiary of an undertaking which is subject to supplementary supervision in accordance with the Financial Conglomerates Act, the FMA may, if it is the group supervisor, after consulting the other supervisory authorities concerned, decide not to apply, at the level of that parent insurance undertaking, Articles 227 and 228 (risk concentration), Articles 229 and 230 (supervision of intra-group transactions), or all of Articles 227 to 230.

B. Supervision of financial position

1. General provisions

Article 204

Supervision of group solvency

1) In the case referred to in Article 195(a), the participating insurance undertakings shall ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with Annex 5.

2) In the case referred to in Article 195(b), the insurance undertakings in a group shall ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with Article 216.

3) The requirements referred to in paragraphs 1 and 2 shall be subject to supervisory review by the FMA in accordance with Articles 235 et seq. Articles 82 and 83 shall apply *mutatis mutandis*.

4) As soon as the participating undertaking has observed that the group Solvency Capital Requirement is no longer complied with or that there is a risk of non-compliance in the following three months, it shall inform the group supervisor without delay. If the FMA is the group supervisor, the FMA shall inform the other supervisory authorities concerned.

Article 205

Frequency of calculation

1) If the FMA is the group supervisor, it shall ensure that the calculations provided for in Article 204(1) and (2) are carried out at least annually, either by the participating insurance undertakings or by the insurance holding company or mixed financial holding company.

2) The relevant data for and the results of the calculation referred to in paragraph 1 shall be submitted to the FMA by the participating insurance undertaking or, where the group is not headed by an insurance undertaking, by the insurance holding company or mixed financial holding company or by the undertaking in the group identified by the FMA after consulting the other supervisory authorities concerned and the group itself.

3) The insurance undertakings, insurance holding companies and mixed financial holding companies shall monitor the group Solvency Capital Requirement on an ongoing basis. Where the risk profile of the group deviates significantly from the assumptions underlying the last reported group Solvency Capital Requirement, the group Solvency Capital Requirement shall be recalculated without delay and reported to the FMA, if it is the group supervisor.

4) Where there is evidence to suggest that the risk profile of the group has altered significantly since the date on which the group Solvency Capital Requirement was last reported, the FMA may, if it is the group supervisor, require a recalculation of the group Solvency Capital Requirement.

2. Supervision of group solvency for insurance undertakings that participate in at least one insurance undertaking

Article 206

Applicable provisions and choice of method

1) The calculation of the solvency at the level of the group of the insurance undertakings referred to in Article 195(a) shall be carried out in accordance with the technical principles set out in Articles 207 et seq. and one of the methods laid down in Annex 5.

2) The calculation of the solvency as referred to in paragraph 1 shall in principle be carried out in accordance with method 1, which is laid down in Annex 5.

3) If the FMA is the group supervisor, it may decide, after consulting the other supervisory authorities concerned and the group itself, to apply to that group method 2, which is laid down in Annex 5, or a combination of methods 1 and 2, where the exclusive application of method 1 would not be appropriate.

Article 207

Inclusion of proportional share

1) The calculation of the group solvency shall take account of the proportional shares held by the participating undertaking in its related undertakings.

2) For the purposes of paragraph 1, the proportional share shall comprise either of the following:

a) where method 1 is used, the percentages used for the establishment of the consolidated accounts; or

b) where method 2 is used, the proportion of the subscribed capital that is held, directly or indirectly, by the participating undertaking.

3) However, regardless of the method used, where the related undertaking is a subsidiary undertaking and does not have sufficient eligible own funds to cover its Solvency Capital Requirement, the total solvency deficit of the subsidiary shall be taken into account.

4) Where in the opinion of the FMA, the responsibility of the parent undertaking owning a share of the capital is strictly limited to that share of the capital, the FMA, if it is the group supervisor, may nevertheless allow for the solvency deficit of the subsidiary undertaking to be taken into account on a proportional basis.

5) The FMA, if it is the group supervisor, shall determine, after consulting the other supervisory authorities concerned and the group itself, the proportional share which shall be taken into account in the following cases:

a) where there are no capital ties between some of the undertakings in a group;

b) where a supervisory authority has determined that the holding, directly or indirectly, of voting rights or capital in an undertaking qualifies as a participation because, in its opinion, a significant influence is effectively exercised over that undertaking; or

c) where a supervisory authority has determined that an undertaking is a parent undertaking of another because, in the opinion of that supervisory authority, it effectively exercises a dominant influence over that other undertaking.

Article 208

Elimination of double use of eligible own funds

1) The double use of own funds eligible for the Solvency Capital Requirement among the different insurance undertakings taken into account in that calculation shall not be allowed.

2) In accordance with the principle referred to in paragraph 1, when calculating the group solvency and where methods 1 and 2 do not provide for it, the following amounts shall be excluded:

a) the value of any asset of the participating insurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of one of its related insurance undertakings;

b) the value of any asset of a related insurance undertaking of the participating insurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of that participating insurance undertaking;

c) the value of any asset of a related insurance undertaking of the participating insurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of any other related insurance undertaking of that participating insurance undertaking.

3) Without prejudice to paragraphs 1 and 2, the following may be included in the calculation only insofar as they are eligible for covering the Solvency Capital Requirement of the related undertaking concerned:

a) surplus funds arising in a related life insurance or reinsurance undertaking of the participating insurance undertaking for which the group solvency is calculated;

b) any subscribed but not paid-up capital of a related insurance undertaking of the participating insurance undertaking for which the group solvency is calculated.

4) However, the following shall in any event be excluded from the calculation in accordance with paragraph 3(b):

a) subscribed but not paid-up capital which represents a potential obligation on the part of the participating undertaking;

b) subscribed but not paid-up capital of the participating insurance undertaking which represents a potential obligation on the part of a related insurance undertaking;

c) subscribed but not paid-up capital of a related insurance undertaking which represents a potential obligation on the part of another related insurance undertaking of the same participating insurance undertaking.

5) Where the supervisory authorities consider that certain own funds eligible for the Solvency Capital Requirement of a related insurance undertaking other than those referred to in paragraph 3 cannot effectively be made available to cover the Solvency Capital Requirement of the participating insurance undertaking for which the group solvency is calculated, those own funds may be included in the calculation only insofar as they are eligible for covering the Solvency Capital Requirement of the related undertaking.

6) The sum of the own funds referred to in paragraphs 3 and 4 shall not exceed the Solvency Capital Requirement of the related insurance undertaking.

7) Any eligible own funds of a related insurance undertaking of the participating insurance undertaking for which the group solvency is calculated that are subject to prior authorisation from the FMA in accordance with Article 46 shall be included in the calculation only insofar as they have been duly authorised by the supervisory authority responsible for the supervision of that related undertaking.

Article 209

Elimination of the intra-group creation of capital

1) When calculating group solvency, no account shall be taken of any own funds eligible for the Solvency Capital Requirement arising out of reciprocal financing between the participating insurance undertaking and any of the following:

a) a related undertaking;

b) a participating undertaking;

c) another related undertaking of any of its participating undertakings.

2) When calculating group solvency, no account shall be taken of any own funds eligible for the Solvency Capital Requirement of a related insurance undertaking of the participating insurance undertaking for which the group solvency is calculated where the own funds concerned arise out of reciprocal financing with any other related undertaking of that participating insurance undertaking.

3) Reciprocal financing shall be deemed to exist at least where an insurance undertaking, or any of its related undertakings, holds shares in, or makes loans to, another undertaking which, directly or indirectly, holds own funds eligible for the Solvency Capital Requirement of the first undertaking.

Article 210

Valuation

The value of the assets and liabilities shall be assessed in accordance with Article 74.

Article 211

Related insurance undertakings

1) Where an insurance undertaking has more than one related insurance undertaking, the group solvency calculation shall be carried out by including each of those related insurance undertakings.

2) Where the related insurance undertaking has its registered office in an EEA Contracting Party other than that of the insurance undertaking with regard to which the group solvency calculation is carried out, the calculation takes account, in respect of the related undertaking, of the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down in that other EEA Contracting Party.

Article 212

Intermediate insurance holding companies and mixed financial holding companies

1) When calculating the group solvency of an insurance undertaking which holds a participation in a related insurance undertaking or third-country insurance undertaking, through an insurance holding company or a mixed financial holding company, the situation of such an insurance holding company or mixed financial holding company shall be taken into account.

2) By ordinance, the Government shall provide details, in particular on the calculation of the Solvency Capital Requirement of intermediate insurance holding companies.

Article 213

Related third-country insurance undertakings

1) When calculating the group solvency of an insurance undertaking which is a participating undertaking in a third-country insurance undertaking, in accordance with method 2, the third-country insurance undertaking shall, solely for the purposes of that calculation, be treated as a related insurance undertaking.

2) However, where the third country in which that undertaking has its registered office makes it subject to authorisation and imposes on it a solvency regime at least equivalent to that laid down in this Act, the calculation shall also take into account, as regards that undertaking, the

Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down by the third country concerned.

3) The verification of whether the third-country regime is at least equivalent shall be carried out by the FMA, if it is the group supervisor, at the request of the participating undertaking or on its own initiative, unless a decision to that effect has been taken in compliance with EIOPA requirements. The costs of the verification of equivalence shall be borne by the participating undertaking. Before taking a decision, the FMA shall consult the other supervisory authorities concerned and EIOPA.

4) The Government shall provide further details by ordinance.

Article 214

Related financial undertakings

When calculating the group solvency of an insurance undertaking with a participation in a non-insurance financial undertaking, insurance undertakings are allowed to apply *mutatis mutandis* methods 1 or 2 as laid down in Annex 1 to the Financial Conglomerates Act. However, method 1 shall be applied only where the FMA, if it is the group supervisor, is satisfied as to the level of management and internal control regarding the entities which would be included in the scope of consolidation. The method chosen shall be applied in a consistent manner over time.

Article 215

Non-availability of the necessary information

Where the information necessary for calculating the group solvency of an insurance undertaking, concerning a related undertaking with its registered office in an EEA Contracting Party or a third country, is not available to the FMA, the book value of that undertaking in the participating insurance undertaking shall be deducted from the own funds eligible for the group solvency. In that case, the unrealised gains connected with such participation shall not be recognised as own funds eligible for the group solvency.

3. Supervision of group solvency for insurance undertakings that are subsidiaries of an insurance holding company or mixed financial holding company

Article 216

Group solvency

1) Where insurance undertakings are subsidiaries of an insurance holding company or mixed financial holding company, the FMA, if it is the group supervisor, shall ensure that the calculation of the solvency of the group is carried out at the level of the insurance holding company or mixed financial holding company applying Articles 206 et seq.

2) For the purpose of the calculation in accordance with paragraph 1, the parent undertaking shall be treated as if it were an insurance undertaking subject to the rules laid down in Articles 42 et seq. as regards the Solvency Capital Requirement and subject to the same conditions as laid down in those provisions as regards the own funds eligible for the Solvency Capital Requirement.

4. Supervision of group solvency for groups with centralised risk management

a) Subsidiary of an insurance undertaking

Article 217

Conditions

Articles 219 to 222 shall apply to any insurance undertaking which is the subsidiary of an insurance undertaking where the following conditions are satisfied:

a) the subsidiary which is not exempted from group supervision under Article 200(2) is included in group supervision at the level of the parent undertaking in accordance with this Chapter;

b) the risk management and internal control mechanisms of the parent undertaking cover the subsidiary, and the parent undertaking satisfies the supervisory authorities concerned regarding the prudent management of the subsidiary;

c) the parent undertaking has received the agreement referred to in Article 234(4);

d) the parent undertaking has received the agreement referred to in Article 248(2) and (3);

e) an application for permission to be subject to Articles 219 to 222 has been submitted by the parent undertaking and a favourable decision has been made on such application in accordance with the procedure set out in Article 218.

Article 218

Procedure for granting derogations

1) In the case of applications for permission to be subject to the rules laid down in Articles 219 to 222, the FMA shall work together with the supervisory authorities concerned within the college of supervisors; in doing so, it shall consult fully to decide whether or not to grant the permission sought and to determine the other terms and conditions, if any, to which such permission should be subject.

2) An application referred to in paragraph 1 shall be submitted to the FMA, if the FMA licensed the subsidiary. The FMA shall inform and forward the complete application to the other supervisory authorities within the college of supervisors without delay.

3) The FMA shall do everything within its power to reach a joint decision on the application within three months from the date of receipt of the complete application by all supervisory authorities within the college of supervisors.

4) If a joint decision cannot be reached within the scope of paragraph 3, the FMA shall decide on the application itself, provided it is the group supervisor.

5) By ordinance, the Government shall provide details governing the consultation procedure with other supervisory authorities.

Article 219

Determination of the Solvency Capital Requirement

1) If the application can be approved under Article 218, the Solvency Capital Requirement of the subsidiary shall be calculated in accordance

with paragraphs 2 and 3, without prejudice to any internal model for the group.

2) Where the Solvency Capital Requirement of the subsidiary is calculated on the basis of an internal model approved at group level and the FMA, provided that it licensed the subsidiary, considers that the risk profile of that undertaking deviates significantly from this internal model, and as long as that undertaking does not properly address the concerns of the FMA, the FMA may, in the cases referred to in Article 72, propose to set a capital add-on to the Solvency Capital Requirement of that subsidiary resulting from the application of such model or, in exceptional circumstances where such capital add-on would not be appropriate, to require that undertaking to calculate its Solvency Capital Requirement on the basis of the standard formula. The FMA shall discuss its proposal within the college of supervisors and communicate the grounds for such proposals to both the subsidiary and the college of supervisors.

3) Where the Solvency Capital Requirement of the subsidiary is calculated on the basis of the standard formula and the FMA, provided that it licensed the subsidiary, considers that its risk profile deviates significantly from the assumptions underlying the standard formula, and as long as that undertaking does not properly address the FMA's concerns, the FMA may, in exceptional circumstances, propose that the undertaking replace a subset of the parameters used in the standard formula calculation by parameters specific to that undertaking when calculating the life, non-life and health underwriting risk modules, as set out in Article 59, or in the cases referred to in Article 72, to set a capital add-on to the Solvency Capital Requirement of that subsidiary.

4) By ordinance, the Government shall provide details governing the consultation procedure with other supervisory authorities.

Article 220

Deterioration of the financial situation

1) If the application can be approved under Article 218, the FMA, if it identifies deteriorating financial conditions at a subsidiary it licensed, shall notify the college of supervisors without delay of the proposed measures to be taken. Other than in emergency situations, the measures to be taken shall be discussed within the college of supervisors.

2) The college of supervisors shall do everything within its power to reach an agreement on the proposed measures to be taken within one month of notification.

3) In the absence of such agreement, the FMA, provided that it licensed the subsidiary, shall decide whether the proposed measures should be approved, taking due account of the views and reservations of the other supervisory authorities within the college of supervisors.

Article 221

Non-compliance with the Solvency Capital Requirement

1) If the application can be approved under Article 218, and in the event of non-compliance with the Solvency Capital Requirement and without prejudice to Article 83, the FMA, provided that it licensed the subsidiary, shall, without delay, forward to the college of supervisors the recovery plan submitted by the subsidiary. In this way, it shall be ensured that, within six months from the observation of non-compliance with the Solvency Capital Requirement, the level of eligible own funds is reestablished or its risk profile is reduced to comply with the Solvency Capital Requirement.

2) The college of supervisors shall do everything within its power to reach an agreement on the proposal of the FMA regarding the approval of the recovery plan within four months from the date on which non-compliance with the Solvency Capital Requirement was first observed.

3) In the absence of such agreement, the FMA shall decide whether the recovery plan should be approved, taking due account of the views and reservations of the other supervisory authorities within the college of supervisors.

Article 222

Non-compliance with the Minimum Capital Requirement

1) If the application can be approved under Article 218 and in the event of non-compliance with the Minimum Capital Requirement, the FMA, provided that it licensed the subsidiary, shall, without delay, forward to the college of supervisors the short-term finance scheme submitted by the subsidiary. In this way, it shall be ensured that, within three months from the observation of non-compliance with the Minimum Capital Requirement, the level of eligible own funds is reestablished or its risk profile is reduced to comply with the Minimum

Capital Requirement. The college of supervisors shall also be informed of any measures taken to enforce the Minimum Capital Requirement at the level of the subsidiary.

2) By ordinance, the Government shall provide details governing the consultation procedure with other supervisory authorities.

Article 223

End of derogations for a subsidiary

1) The rules provided for in Articles 219 to 222 shall cease to apply where:

a) the condition referred to in Article 217(a) is no longer complied with;

b) the condition referred to in Article 217(b) is no longer complied with and the group does not restore compliance with this condition in an appropriate period of time; or

c) the conditions referred to in Article 217(c) and (d) are no longer complied with.

2) In the case referred to in paragraph 1(a), where the FMA, if it is the group supervisor, decides, after consulting the college of supervisors, no longer to include the subsidiary in the group supervision it carries out, it shall immediately inform the supervisory authority concerned and the parent undertaking.

Article 224

Responsibility for compliance with conditions

1) For the purposes of Article 217(b), (c) and (d), the parent undertaking shall be responsible for ensuring that the conditions are complied with on an ongoing basis. In the event of non-compliance, it shall inform the group supervisor and the supervisor of the subsidiary concerned without delay. The parent undertaking shall present a plan to restore compliance within an appropriate period of time.

2) Without prejudice to paragraph 1, the FMA shall verify at least annually that the conditions referred to in Article 217(b), (c) and (d) continue to be complied with. The FMA shall also perform such verification upon request from the supervisory authority concerned, where the latter has significant concerns related to the ongoing compliance with those conditions.

3) Where the verification performed identifies shortcomings, the FMA shall require the parent undertaking to present a plan to restore compliance within an appropriate period of time.

4) Where, after consulting the college of supervisors, the FMA, if it is the group supervisor, determines that the plan referred to in paragraph 1 or 3 is insufficient or subsequently that it is not being implemented within the agreed period of time, the FMA shall conclude that the conditions referred to in Article 217(b), (c) and (d) are no longer complied with and it shall immediately inform the supervisory authority concerned.

Article 225

New application of the parent undertaking

The regime provided for in Articles 219 to 222 shall be applicable again where the parent undertaking submits a new application and obtains a favourable decision in accordance with the procedure set out in Article 218.

b) Subsidiary of an insurance holding company or a mixed financial holding company

Article 226

Applicable provisions

Articles 217 to 225 shall apply *mutatis mutandis* to insurance undertakings which are subsidiaries of an insurance holding company or a mixed financial holding company.

C. Risk concentration and intra-group transactions

1. Supervision of risk concentration

Article 227

Basic principle

1) If the FMA is the group supervisor, it shall supervise the risk concentration at group level.

2) When defining or giving their opinion about the type of risks, the FMA and the other supervisory authorities concerned shall take into account the specific group and risk-management structure of the group.

3) When reviewing the risk concentrations, the possible risk of contagion in the group, the risk of a conflict of interests, and the level or volume of risks shall in particular be monitored.

Article 228

Reporting obligations

1) Insurance undertakings, insurance holding companies, and mixed financial holding companies are obliged to report any significant risk concentration at group level to the FMA, if the FMA is the group supervisor, on a regular basis and at least once a year.

2) The necessary information shall be submitted to the FMA by the insurance undertaking which is at the head of the group or, where the group is not headed by an insurance undertaking, by the insurance holding company, the mixed financial holding company, or the insurance undertaking in the group identified by the FMA, if it is the group supervisor, after consulting the other supervisory authorities concerned and the group itself.

3) If the FMA is the group supervisor, it shall, after consulting the other supervisory authorities concerned and the group itself, identify the type of risks insurance undertakings in a particular group shall report in all circumstances.

4) In order to identify significant risk concentration, the FMA, if it is the group supervisor, shall, after consulting the other supervisory authorities concerned and the group itself, impose appropriate thresholds based on solvency capital requirements, technical provisions, or both.

2. Supervision of intra-group transactions

Article 229

Basic principle

If the FMA is the group supervisor, it shall subject the intra-group transactions to a supervisory review.

Article 230

Reporting obligations

1) Insurance undertakings, insurance holding companies, and mixed financial holding companies shall report on a regular basis and at least annually to the FMA, if it is the group supervisor, all significant intra-group transactions by insurance undertakings within a group, including those performed with a natural person with close links to an undertaking in the group.

2) Significant intra-group transactions must be reported as soon as practicable.

3) The necessary information shall be submitted to the FMA by the insurance undertaking which is at the head of the group or, where the group is not headed by an insurance undertaking, by the insurance holding company, the mixed insurance holding company, or the insurance undertaking in the group identified by the FMA, if it is the group supervisor, after consulting the other supervisory authorities concerned and the group itself.

4) If the FMA is the group supervisor, it shall, after consulting the other supervisory authorities concerned and the group itself, identify the type of intra-group transactions insurance undertakings in a particular group must report in all circumstances.

5) Articles 227(2) and (3) and 228(4) shall apply *mutatis mutandis*.

D. Risk management and internal control

Article 231

Supervision of governance

1) The governance requirements set out in Articles 30 to 41 shall apply *mutatis mutandis* at group level.

2) Without prejudice to paragraph 1, the risk management and internal control systems and reporting procedures shall be implemented consistently in all the undertakings included in the scope of group supervision pursuant to Article 195(a) and (b) so that those systems and reporting procedures can be controlled at the level of the group.

3) The systems and reporting referred to in paragraphs 1 and 2 as well as Article 232 shall be subject to supervisory review by the FMA, if it is the group supervisor.

Article 232

Governing bodies of insurance holding companies and mixed financial holding companies

All persons who effectively run the insurance holding company or mixed financial holding company shall have the professional qualifications and personal integrity to perform their duties. Article 33 shall apply *mutatis mutandis*.

Article 233

Internal control mechanisms

Without prejudice to Article 231, the internal control mechanisms shall include at least the following:

a) adequate mechanisms as regards group solvency to identify and measure all material risks incurred and to appropriately relate eligible own funds to risks;

b) sound reporting and accounting procedures to monitor and manage the intra-group transactions and risk concentrations.

Article 234

Risk and solvency assessment

1) The participating insurance undertaking, insurance holding company, or mixed financial holding company shall be required to undertake at the level of the group the assessment required by Article 37.

2) The own-risk and solvency assessment conducted in accordance with paragraph 1 shall be subject to supervisory review by the FMA, if it is the group supervisor.

3) Where the calculation of the solvency at the level of the group is carried out in accordance with method 1 (standard method), the participating insurance undertaking, insurance holding company, or mixed financial holding company shall provide to the group supervisor a proper understanding of the difference between the sum of the Solvency Capital Requirements of all the related insurance undertakings of the group and the group consolidated Solvency Capital Requirement.

4) Where the participating insurance undertaking, insurance holding company, or mixed financial holding company so decides, and subject to the agreement of the FMA, if it is the group supervisor, it may undertake any assessments required by Article 37 at the level of the group and at the level of any subsidiary in the group at the same time, and may produce a single document covering all the assessments.

5) Before granting an agreement in accordance with paragraph 4, the FMA shall consult the members of the college of supervisors and duly take into account their views or reservations.

6) Where the group exercises the option provided in paragraph 4, it shall submit the document to all supervisory authorities concerned at the same time. The exercise of that option shall not exempt the subsidiaries concerned from the obligation to ensure that the requirements of Article 37 are met.

E. Measures for the exercise of group supervision

1. Group supervisor

Article 235

Basic principle

1) A single supervisor, responsible for coordination and exercise of group supervision (group supervisor), shall be designated from among the supervisory authorities of the EEA Contracting Parties concerned.

2) The FMA is authorised to exercise this competence.

3) In order to ensure the exercise of group supervision, in cases where the FMA is not the group supervisor, the undertakings must fulfil their obligations which they would otherwise have towards the FMA, even if this competence is vested in a supervisory authority of another EEA Contracting Party.

Article 236

Criteria for determining the group supervisor

1) Where the same supervisory authority is competent for all insurance undertakings in a group, the task of group supervisor shall be exercised by that supervisory authority.

2) Where a group is headed by an insurance undertaking, the supervisory authority which authorised that undertaking shall be the group supervisor.

3) Where a group is not headed by an insurance undertaking, the group supervisor shall be determined as follows:

a) Where the parent undertaking of an insurance undertaking is an insurance holding company or a mixed financial holding company, the supervisory authority which authorised that insurance undertaking shall be the group supervisor.

b) Where more than one insurance undertaking with a registered office in an EEA Contracting Party have as their parent the same insurance holding company or mixed financial holding company, and one of those undertakings has been authorised in the EEA Contracting Party in which the insurance holding company or mixed financial holding company has its registered office, the supervisory authority

which authorised that insurance undertaking shall be the group supervisor.

c) Where the group is headed by more than one insurance holding company or mixed financial holding company with a registered office in different EEA Contracting Parties and there is an insurance undertaking in each of those Contracting Parties, the supervisory authority of the insurance undertaking with the largest balance sheet total shall be the group supervisor.

d) Where more than one insurance undertaking with a registered office in an EEA Contracting Party have as their parent the same insurance holding company or mixed financial holding company and none of those undertakings has been authorised in the EEA Contracting Party in which the insurance holding company or mixed financial holding company has its registered office, the supervisory authority of the insurance undertaking with the largest balance sheet total shall be the group supervisor.

e) Where the group is a group without a parent undertaking, or in any circumstances not referred to in subparagraphs (a) to (d), the supervisory authority which authorised the insurance undertaking with the largest balance sheet total shall be the group supervisor.

Article 237

Special cases

1) In particular cases, the supervisory authorities concerned may, at the request of any of the authorities, take a joint decision to derogate from the criteria set out in Article 236 where their application would be inappropriate, taking into account the structure of the group and the relative importance of the insurance undertakings' activities in different countries, and designate a different authority as group supervisor.

2) The supervisory authorities concerned shall do everything within their power to reach a joint decision on the choice of the group supervisor within three months from the request referred to in paragraph 1. Before taking their decision, the supervisory authorities concerned shall give the group an opportunity to state its opinion. The designated group supervisor shall notify the group of the joint decision stating the full reasons.

3) Where any of the supervisory authorities concerned has consulted EIOPA, the supervisory authorities concerned shall suspend their proceedings and wait for EIOPA's decision. They shall take their

decision in accordance with the grounds of EIOPA's decision, which shall be binding and shall be recognised by the authorities concerned.

4) In the absence of a joint decision to derogate from the criteria set out in Article 236, the task of group supervisor shall be exercised by the supervisory authority identified in accordance with Article 236.

Article 238

Responsibilities of the FMA as group supervisor

If the FMA is the group supervisor, it shall be responsible for the following tasks in particular:

a) coordination of the gathering and dissemination of relevant or essential information for going concern and emergency situations, including the dissemination of information which is of importance for the supervisory task of a supervisory authority;

b) supervisory review and assessment of the financial situation of the group;

c) assessment of compliance of the group with the rules on solvency and of risk concentration and intra-group transactions;

d) assessment of the governance of the group in accordance with Articles 231 to 234 and of whether the governing bodies of the participating undertaking fulfil the requirements set out in Articles 33 and 232;

e) planning and coordination, through regular meetings held at least annually or through other appropriate means, of supervisory activities in going-concern as well as in emergency situations, in cooperation with the supervisory authorities concerned and taking into account the nature, scale and complexity of the risks inherent in the business of all undertakings that are part of the group;

f) other tasks assigned to the group supervisor by this Act.

Article 239

College of supervisors

1) In order to facilitate the exercise of the group supervision tasks referred to in Article 238, a college of supervisors, chaired by the group supervisor, shall be established. The FMA may participate in this college even if it is not the group supervisor.

2) The college of supervisors shall ensure that cooperation, exchange of information and consultation processes among the supervisory authorities that are members of the college of supervisors contribute to the convergence of their decisions and activities.

3) The membership of the college of supervisors shall include the group supervisor and supervisory authorities of all the EEA Contracting Parties in which the registered office of all subsidiary undertakings is situated, together with EIOPA.

4) The Government shall provide details governing the college of supervisors by ordinance.

2. Cooperation and exchange of information

Article 240

Basic principle

1) The FMA shall work together with other domestic authorities to ensure the proper functioning of group supervision.

2) The FMA shall work together with the competent foreign authorities to the extent necessary, in particular by processing data, information, reports, and documents or by transmitting them abroad. For the purpose of cooperation, agreements may also be concluded with foreign supervisory authorities.

3) The FMA may at any time and to the extent necessary obtain information on the activities of Liechtenstein undertakings abroad and on the financial circumstances of supervised undertakings.

4) Article 188(3) shall apply *mutatis mutandis* to cooperation with EIOPA and other European authorities.

Article 241

Cooperation with the group supervisor

1) The authorities responsible for the supervision of the individual insurance undertakings in a group and the group supervisor shall cooperate closely, in particular in cases where an insurance undertaking encounters financial difficulties.

2) With the objective of ensuring that the supervisory authorities, including the group supervisor, have the same amount of relevant information available to them, without prejudice to their respective responsibilities, and irrespective of whether they are established in the same EEA Contracting Party, the FMA shall provide the other supervisory authorities with such information in order to allow them to exercise their supervisory tasks.

3) If the FMA is responsible for the supervision of an individual insurance undertaking in a group or if the FMA is the group supervisor, it shall call immediately for a meeting of all supervisory authorities involved in group supervision in particular:

a) where it becomes aware of a significant breach of the Solvency Capital Requirement or a breach of the Minimum Capital Requirement of an individual insurance undertaking;

b) where it becomes aware of a significant breach of the Solvency Capital Requirement at group level calculated on the basis of consolidated data or the aggregated group Solvency Capital Requirement; or

c) where other exceptional circumstances are occurring or have occurred.

Article 242

Consultation between supervisory authorities

1) Prior to any decision of importance to the supervisory tasks of other supervisory authorities, the FMA shall hear the other supervisory authorities in particular with regard to the following:

a) changes in the shareholder structure, organisational or management structure of insurance undertakings in a group, which require the approval or authorisation of supervisory authorities;

b) major sanctions or exceptional measures taken by supervisory authorities, including the imposition of a capital add-on to the Solvency Capital Requirement under Article 72 and the imposition of any limitation on the use of an internal model for the calculation of the Solvency Capital Requirement; in these cases, the group supervisor must be consulted;

c) extension of a period as referred to in Article 83(3).

2) In addition, the FMA shall, where a decision is based on information received from other supervisory authorities, consult the supervisory authorities concerned prior to that decision. In the cases

referred to in paragraph 1(b) and (c), the FMA shall always consult the group supervisor.

3) The FMA may decide not to consult in cases of urgency or where such consultation may jeopardise the effectiveness of the decision. In that case, the FMA shall, without delay, inform the other supervisory authorities concerned.

Article 243

Requests from the group supervisor to other supervisory authorities

1) The group supervisor may invite the FMA, in cases in which the parent undertaking has its registered office in Liechtenstein, but the FMA is not itself the group supervisor, to request from the parent undertaking any information which would be relevant for the exercise of its rights and duties as laid down in Article 238, and to transmit that information to the group supervisor.

2) Paragraph 1 shall apply *mutatis mutandis* if the FMA is the group supervisor.

Article 244

Cooperation with other supervisory authorities

Where an insurance undertaking and either a bank or an investment firm, or both, are directly or indirectly related or have a common participating undertaking, the FMA shall cooperate closely with the authorities responsible for the supervision of those other undertakings.

Article 245

Confidentiality of information

Information obtained in the course of group supervision, and in particular the exchange of information with other authorities provided for in this Act, shall be subject to the provisions on official secrecy (Article 183).

Article 246

Access to information

1) The natural and legal persons included within the scope of group supervision, and their related undertakings and participating undertakings, may exchange any information which could be relevant for the purposes of group supervision.

2) The FMA shall grant the authority responsible for exercising group supervision access to any information relevant for the purpose of that supervision.

3) The FMA may address the undertakings in the group directly to obtain the necessary information only where such information has been requested from the insurance undertaking subject to group supervision and has not been supplied by it within a reasonable period of time.

4) The FMA, if it is the group supervisor, when it needs information referred to in paragraph 2 which has already been given to another supervisory authority, contact that authority in order to prevent duplication of reporting to the different supervisory authorities.

5) If the FMA is the group supervisor, it may grant simplifications in regard to reporting; the Government shall provide details by ordinance.

Article 247

Verification of information

1) The FMA may carry out in Liechtenstein, either directly or through the intermediary of persons whom it appoints for that purpose, on-site verification of the information referred to in Article 246 on the premises of any of the following:

a) the insurance undertaking subject to group supervision;

b) related undertakings of that insurance undertaking;

c) parent undertakings of that insurance undertaking;

d) related undertakings of a parent undertaking of that insurance undertaking.

2) Where the FMA wishes in specific cases to verify the information concerning an undertaking, whether regulated or not, which is part of a group and is situated in another EEA Contracting Party, it shall ask the supervisory authorities of that other Contracting Party to have the verification carried out. If the foreign supervisory authority does not

take action within two weeks or if the FMA is prevented from participating in the verification, the FMA is authorised to involve EIOPA and request its assistance.

3) If the FMA is requested by another competent supervisory authority to carry out such a verification, the FMA may act upon that request either by carrying out the verification directly, by allowing an auditor or expert to carry it out, or by allowing the authority which made the request to carry it out itself. The group supervisor shall be informed of the action taken.

4) The supervisory authority which made the request may, where it so wishes, participate in the verification when it does not carry out the verification directly.

Article 248

Report on solvency, financial condition, and structure of the group

1) Participating insurance undertakings, insurance holding companies or mixed financial holding companies shall publish annually a report on the solvency and financial condition at group level. Article 100 shall apply *mutatis mutandis*.

2) Where a participating insurance undertaking, insurance holding company or mixed financial holding company so decides, and subject to the agreement of the group supervisor, it may provide a single solvency and financial condition report which shall contain the following:

a) the information at the level of the group which must be disclosed in accordance with paragraph 1;

b) the information for any of the subsidiaries within the group which must be individually identifiable and disclosed in accordance with Article 100.

3) Before granting an agreement in accordance with paragraph 2, the group supervisor shall consult the members of the college of supervisors and duly take into account their views or reservations.

4) Where the report referred to in paragraph 2 fails to include information which the supervisory authority having authorised a subsidiary within the group requires comparable undertakings to provide, and where the omission is material, the FMA shall have the power to require the subsidiary concerned to disclose the necessary additional information.

5) Participating insurance undertakings, insurance holding companies or mixed financial holding companies shall publish annually a report on the legal structure, governance and organisational structure at group level. This report shall cover all subsidiaries and significant branches and significant related undertakings of the group.

3. Enforcement measures

Article 249

Competence

1) Where the insurance undertakings in a group do not comply with the requirements referred to in this Chapter or where the requirements are met but solvency may nevertheless be jeopardised or where the intra-group transactions or the risk concentrations are a threat to the financial position of the insurance undertakings, the FMA must require the necessary measures from the following undertakings in order to rectify the situation as soon as possible:

a) the insurance holding company or mixed financial holding company, where the FMA is the group supervisor;

b) the insurance undertakings which it supervises.

2) In the case referred to in paragraph 1(a), the FMA shall inform the other competent supervisory authorities of its findings if the insurance holding company or mixed financial holding company does not have its registered office in Liechtenstein.

3) In the case referred to in paragraph 1(b), the FMA shall inform the other competent supervisory authorities of its findings if the insurance undertaking does not have its registered office in Liechtenstein.

Article 250

Measures against insurance holding companies and mixed financial holding companies

With regard to insurance holding companies and mixed financial holding companies, the FMA may take the same measures as it may take with regard to insurance undertakings.

Article 251

Coordination

1) The FMA shall where appropriate coordinate its enforcement measures with other competent supervisory authorities.

2) Action shall be coordinated in particular when the head office or main establishment of an insurance holding company or mixed financial holding company is not located at its registered office.

F. Group supervision in the case of parent undertakings with registered offices in third countries

Article 252

Verification of equivalence

1) In the case referred to in Article 197, the FMA shall verify, together with the other supervisory authorities concerned, whether the insurance undertakings, the parent undertaking of which has its registered office in a third country, are subject to supervision, by a third-country supervisory authority, which is equivalent to the group supervision provided for by this Act.

2) The verification referred to in paragraph 1 shall be carried out by the FMA, where it would be the group supervisor if the criteria set out in Article 236 were to apply, at the request of the parent undertaking or of any of the insurance undertakings authorised in an EEA Contracting Party or on its own initiative. The participating undertaking shall bear the costs of verification of equivalence. The FMA may request EIOPA's assistance in making the decision.

3) Before taking a decision on equivalence, the FMA, with the assistance of EIOPA, shall consult the other supervisory authorities concerned.

4) The FMA shall not take any decision that contradicts an earlier decision taken vis-à-vis the third country, provided that no significant changes in the supervisory regime concerned have occurred.

Article 253

Equivalent group supervision in third countries

1) In the case of equivalent supervision within the meaning of Article 252, the equivalent group supervision carried out in a third country shall be taken into account.

2) Articles 235 to 251 shall apply *mutatis mutandis* to cooperation with the supervisory authorities of third countries.

3) Paragraphs 1 and 2 shall also apply where EIOPA or another European authority has determined the provisional equivalence of a supervisory regime of a third country, unless the group has an insurance undertaking in an EEA Contracting Party whose balance sheet total is larger than that of its parent undertaking with its registered office in the third country.

Article 254

Absence of equivalence

1) In the absence of equivalent supervision referred to in Article 252 or 253(3), either Articles 204 to 251, *mutatis mutandis* and with the exception of Articles 217 to 226, or one of the methods set out in paragraph 3 shall apply to insurance undertakings. The general principles and methods set out in this regard shall apply at the level of the insurance holding company, the mixed financial holding company, or the third-country insurance undertaking.

2) For the sole purpose of the group solvency calculation, the parent undertaking shall be treated as if it were an individual insurance undertaking subject to the same conditions as laid down for an individual undertaking as regards the own funds eligible for the Solvency Capital Requirement and to either of the following:

a) a Solvency Capital Requirement determined in accordance with the principles of Article 212 where it is an insurance holding company or a mixed financial holding company;

b) a Solvency Capital Requirement determined in accordance with the principles of Article 213, where it is a third-country insurance undertaking.

3) The FMA is authorised to apply other methods which ensure appropriate supervision of the insurance undertakings in a group. Those methods must be agreed by the group supervisor, after consulting the other supervisory authorities concerned.

Article 255

Supervisory levels

1) Where the parent undertaking referred to in Article 252 is itself a subsidiary of an insurance holding company or mixed financial holding company having its registered office in a third country or of a third-country insurance undertaking, the verification provided for in Article 252 shall apply only at the level of the ultimate parent undertaking which is a third-country insurance holding company, a mixed third-country financial holding company, or a third-country insurance undertaking.

2) The FMA shall however have the discretion to decide, in the absence of equivalent supervision referred to in Article 252, to carry out a new verification at a lower level where a parent undertaking of insurance undertakings exists, whether a third-country insurance holding company, a mixed third-country financial holding company, or a third-country insurance undertaking.

3) Article 254 shall apply *mutatis mutandis*.

G. Mixed-activity insurance holding company

Article 256

Intra-group transactions

1) Where the parent undertaking of one or more insurance undertakings is a mixed-activity insurance holding company, the FMA shall, if it is the supervisor of those insurance undertakings, exercise supervision together with the other competent authorities over transactions between those insurance undertakings and the mixed-activity insurance holding company.

2) Articles 230, 240 to 247, and 249 to 251 shall apply *mutatis mutandis*.

XI. Penal provisions

Article 257

Misdemeanours and contraventions

1) The Court of Justice shall punish with imprisonment of up to one year or a monetary penalty of up to 360 daily rates for a misdemeanour anyone who:

a) without a licence, carries out an activity subject to the licensing requirement under this Act (Article 11(1));

b) violates business secrecy or induces or attempts to induce such a violation (Articles 104 and 165(3)).

2) The Court of Justice shall punish with imprisonment of up to six months or a monetary penalty of up to 180 daily rates for a misdemeanour anyone who:

a) violates terms and conditions imposed in connection with a licence;

b) violates the provisions governing financial resources (Articles 42 to 88, 119, 120, 151(1), and 204(2));

c) makes false statements to the FMA, in particular in order to obtain a licence for business operations (Articles 12 and 13), authorisation for establishment or the provision of services (Article 107 to 111), approval of changes to licensing conditions (Articles 19 to 22), or approval of a transfer of the insurance portfolios (Articles 124 to 127);

d) provides false information to external auditors;

e) fails to properly keep the business books, or fails to properly store the business books and records;

f) as an auditor, grossly violates responsibilities, in particular by making untrue statements in the audit report or by withholding material facts, by failing to make prescribed requests to the insurance undertaking, or by failing to submit prescribed reports and notifications (Article 102);

g) as a responsible actuary, grossly violates responsibilities;

h) as a special representative, grossly violates responsibilities;

i) as a claims settlement undertaking, pursues insurance business other than processing of benefits in legal expenses insurance or processes benefits in other classes of insurance;

k) pursues a non-insurance business (Article 24(1)).

3) The FMA shall punish with a fine of up to 100,000 francs for committing a contravention anyone who:

a) violates the governance provisions (Articles 30 to 41 and 231 to 234);

b) violates the provisions governing separation of insurance lines of business (Articles 25 and 26) or governing activities in legal expenses insurance (Articles 143 and 144);

c) fails to prepare or publish the business report according to the requirements (Articles 99 and 100);

d) fails to meet reporting obligations or fails to meet them fully or in a timely manner;

e) fails to have the regular external audit or an external audit ordered by the FMA carried out or fails to meet its obligations vis-à-vis the external auditors (Article 101);

f) fails to submit the required reports to the FMA or to a foreign supervisory authority responsible for group supervision in a timely manner or fails to comply with the duties to provide documents;

g) fails to obtain the required approvals from the FMA or fails to do so in a timely manner;

h) fails to comply with a demand to bring about a lawful state of affairs or with any other decree of the FMA;

i) uses the services of an insurance intermediary, reinsurance intermediary or ancillary insurance intermediary who does not have the necessary licence (Article 27);[29]

k) violates the provisions on outsourcing (Articles 89 to 91);

l) improperly uses terms suggesting that it operates as an insurance undertaking;

m) violates the proper performance of claims settlement in third-party motor vehicle liability in accordance with Article 75c(1) of the Road Traffic Act;

n) fails to meet the duties to provide information and documents to the FMA (Article 103) and the duties to notify policy holders (Articles 106, 125(3), 142(3), and 148).

4) If the offences are committed negligently, the maximum penalties are reduced by half.

29 Article 257(3)(i) amended by LGBl. 2018 No. 13.

5) The FMA may announce the imposition of legally effective punishments and fines, provided that doing so is compatible with the purpose of this Act and is proportionate.

Article 258

Liability

If the violations are committed in the business operations of a legal person, a general or limited partnership, or a sole proprietorship, the penal provisions shall apply to the persons who have acted on its behalf or should have acted on its behalf, but with joint and several liability of the legal person, partnership, or sole proprietorship for monetary penalties and fines.

XII. Transitional and final provisions

Article 259

Implementing ordinances

The Government shall issue the ordinances required to implement this Act.

Article 260

Amounts in euro

Where this Act makes reference to the euro, the exchange value in Swiss francs or other currencies to be used with effect from 31 December of each year shall be the value which applies on the last day of the preceding October.

Article 261

Revision of amounts expressed in euro

The amounts expressed in euro in this Act shall be periodically adjusted on the basis of the consumer price index published by Eurostat. The Government shall set out the adjustments by ordinance and shall use

the amounts published by the European Commission in the Official Journal of the European Union.

Article 262

Relevant risk-free interest rate term structure

1) With the approval of the FMA, insurance undertakings may apply a transitional adjustment to the relevant risk-free interest rate term structure with respect to admissible insurance and reinsurance obligations.

2) By ordinance, the Government shall provide details in particular governing the relevant interest rates, permissible volatility adjustments, and permissible insurance and reinsurance obligations.

Article 263

Technical provisions on the basis of solvency

1) With the approval of the FMA, insurance undertakings may make a transitional deduction from the technical provisions.

2) By ordinance, the Government shall provide details in particular governing determination of the transitional deduction, volatility adjustment, and limitation of the deduction.

Article 264

Powers of the FMA as of entry into force of this article

1) As of the entry into force of this article, the FMA may decide on approval concerning:

a) ancillary own funds in accordance with Article 46;

b) classification of own funds by tiers in accordance with Article 48;

c) undertaking-specific parameters for Basic Solvency Capital Requirements in accordance with Article 54;

d) internal models in accordance with Articles 61 and 62;

e) special purpose vehicles in accordance with Article 151;

f) ancillary own funds of an intermediate insurance holding company in accordance with Article 212(2);

g) internal model for the supervision of group solvency in accordance with Article 206 and Annex 5;

h) the use of a matching adjustment or volatility adjustment in accordance with Article 77;

i) a transitional adjustment to the relevant risk-free interest rate term structure in accordance with Article 262;

k) a deduction from the technical provisions in accordance with Article 263.

2) As of the entry into force of this article, the FMA may:

a) define the scope of application and scope of group supervision in accordance with Articles 194 to 203;

b) determine the competent authority for group supervision in accordance with Articles 236 and 237;

c) appoint a college of supervisors in accordance with Article 239.

3) As of the entry into force of this article, the FMA may also:

a) define the method for calculating solvency at the level of the group in accordance with Article 206 and Annex 5;

b) decide on the equivalence of the supervisory regime of a third country in accordance with Articles 213 and 252;

c) decide on the supervision of solvency for groups with centralised risk management in accordance with Articles 217 to 219;

d) in the absence of equivalence of group supervision in third countries, take action in accordance with Articles 252 to 255;

e) decide that transitional measures in accordance with Articles 265 to 271 apply;

f) grant a licence under Article 25.

4) Decisions of the FMA on applications by insurance undertakings relating to the subject matters mentioned in paragraphs 2 and 3 shall take effect no earlier than 1 January 2016.

Article 265

Termination of business

1) Insurance undertakings which, by 1 January 2016, cease to conduct new insurance or reinsurance contracts and exclusively administer their existing insurance portfolio in order to terminate their activity shall not

be subject to this Act, with the exception of Articles 152 to 176, 185 to 193, and 259 to 261, where:

a) the undertaking has satisfied the FMA that it will terminate its activity before 1 January 2019; or

b) the undertaking is subject to reorganisation measures set out in Articles 152 to 159 and an administrator has been appointed.

2) The provisions exempted from the scope of application in paragraph 1 shall apply to:

a) insurance undertakings as referred to in paragraph 1(a) from 1 January 2019 or from an earlier date where the FMA is not satisfied with the progress that has been made towards terminating the insurance undertaking's activity;

b) insurance undertakings as referred to in paragraph 1(b) from 1 January 2021 or from an earlier date where the FMA is not satisfied with the progress that has been made towards terminating the undertaking's activity.

3) Insurance undertakings shall be subject to the transitional measures in paragraphs 1 and 2 only if the following conditions are met:

a) the insurance undertaking is not part of a group, or if it is, all undertakings that are part of the group cease to conclude new insurance or reinsurance contracts;

b) the insurance undertaking shall provide the FMA with an annual report setting out what progress has been made in terminating its activity;

c) the insurance undertaking has notified the FMA that it applies the transitional measures.

4) The FMA shall draw up a list of the insurance undertakings concerned and communicate that list to all the other supervisory authorities of the EEA Contracting Parties.

5) Paragraphs 1 and 2 shall not prevent insurance undertakings from pursuing business under this Act.

Article 266

Reporting

1) For a period of four years from 1 January 2016, the deadline for insurance undertakings to submit the information referred to in Articles 99 and 100 to the FMA on an annual or less frequent basis shall decrease

by two weeks each financial year, starting from no later than 20 weeks after the insurance undertaking's financial year end in relation to its financial year ending on or after 30 June 2016 but before 1 January 2017, to no later than 14 weeks after the insurance undertaking's financial year end in relation to its financial years ending on or after 30 June 2019 but before 1 January 2020.

2) For a period of four years from 1 January 2016, the deadline for insurance undertakings to disclose the information referred to in Article 100 shall decrease by two weeks each financial year, starting from no later than 20 weeks after the insurance undertaking's financial year end in relation to its financial year ending on or after 30 June 2016 but before 1 January 2017, to no later than 14 weeks after the insurance undertaking's financial year end in relation to its financial years ending on or after 30 June 2019 but before 1 January 2020.

3) For a period of four years from 1 January 2016, the deadline for insurance undertakings to submit the information referred to in Articles 99 and 100 to the FMA on a quarterly basis shall decrease by one week each financial year, starting from no later than eight weeks related to any quarter ending on or after 1 January 2016 but before 1 January 2017, to five weeks related to any quarter ending on or after 1 January 2019 but before 1 January 2020.

4) Paragraphs 1 to 3 of this Article shall apply *mutatis mutandis* to participating insurance undertakings, insurance holding companies and mixed financial holding companies at the level of the group pursuant to Articles 246 and 248, whereby the deadlines referred to shall be extended by six weeks respectively.

Article 267

Basic own funds and their items

1) Basic own-fund items shall be included in Tier 1 basic own funds for up to 10 years after 1 January 2016, provided that those items:

a) were issued before 1 January 2016 or prior to the date of entry into force of the delegated act of the European authorities, whichever is the earlier,

b) on 31 December 2015 could be used to meet the available solvency margin up to 50% of the solvency margin according to supervisory legislation hitherto in force, and

c) would not otherwise be classified in Tier 1 or Tier 2 in accordance with Article 43.

2) Basic own-fund items shall be included in Tier 2 basic own funds for up to 10 years after 1 January 2016, provided that those items:

a) were issued before 1 January 2016 or prior to the date of entry into force of the delegated act of the European authorities, whichever is the earlier, and

b) on 31 December 2015 could be used to meet the available solvency margin up to 25% of the solvency margin according to supervisory legislation hitherto in force.

Article 268

Tradable securities or other financial instruments

With respect to insurance undertakings investing in tradable securities or other financial instruments based on repackaged loans that were issued before 1 January 2011, the requirements laid down by the European authorities shall apply only in circumstances where new underlying exposures were added or substituted after 31 December 2014.

Article 269

Standard parameters

Notwithstanding Articles 42 and 54, the following shall apply with respect to the standard parameters to be used:

a) until 31 December 2017 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be the same in relation to exposures to EEA Contracting Parties' central governments or central banks denominated and funded in the domestic currency of any EEA Contracting Party as the ones that would be applied to such exposures denominated and funded in their domestic currency;

b) in 2018 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be reduced by 80% in relation to exposures to EEA Contracting Parties' central governments or central banks denominated and funded in the domestic currency of any other EEA Contracting Party;

c) in 2019 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be reduced by 50% in

relation to exposures to EEA Contracting Parties' central governments or central banks denominated and funded in the domestic currency of any other EEA Contracting Party;

d) in 2020 and beyond the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall not be reduced in relation to exposures to EEA Contracting Parties' central governments or central banks denominated and funded in the domestic currency of any other EEA Contracting Party.

Article 270

Compliance with the Solvency Capital Requirement

1) Insurance undertakings that comply with the Required Solvency Margin on 31 December 2015 under the supervisory legislation hitherto in force but do not comply with the Solvency Capital Requirement by 31 December 2016 shall be obliged by the FMA to take the necessary measures to achieve the establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement by 31 December 2017.

2) 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 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.

3) The extension referred to in paragraph 1 shall be withdrawn where that progress report shows that there was no significant progress in achieving the reestablishment 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.

Article 271

Group supervision

1) The FMA may on application allow the ultimate parent insurance undertaking, during a period until 31 March 2022, to apply for the approval of an internal group model applicable to a part of a group

where both the undertaking and the ultimate parent undertaking are located in Liechtenstein and if this part forms a distinct part having a significantly different risk profile from the rest of the group.

2) The transitional provisions applicable to individual insurance undertakings under this Act shall apply *mutatis mutandis* in the context of group supervision.

Article 272

Insurance undertakings licensed under the law hitherto in force

Licences for insurance undertakings granted under the law hitherto in force shall continue to be valid to the extent that the requirements under this Act and the associated ordinance are met.

Article 273

Repeal of law hitherto in force

The following are hereby repealed:

a) Law of 6 December 1995 on the Supervision of Insurance Undertakings (Insurance Supervision Act; VersAG), LGBl. 1996 No. 23;

b) Law of 23 October 2002 amending the Insurance Supervision Act, LGBl. 2002 No. 157;

c) Law of 16 April 2003 amending the Insurance Supervision Act, LGBl. 2003 No. 137;

d) Law of 18 June 2004 amending the Insurance Supervision Act, LGBl. 2004 No. 188;

e) Law of 26 November 2004 amending the Insurance Supervision Act, LGBl. 2005 No. 14;

f) Law of 25 November 2005 amending the Insurance Supervision Act, LGBl. 2006 No. 31;

g) Law of 20 April 2006 amending the Insurance Supervision Act, LGBl. 2006 No. 123;

h) Law of 17 May 2006 amending the Insurance Supervision Act, LGBl. 2006 No. 128;

i) Law of 24 November 2006 amending the Insurance Supervision Act, LGBl. 2007 No. 14;

k) Law of 22 June 2007 amending the Insurance Supervision Act, LGBl. 2007 No. 231;

l) Law of 20 September 2007 amending the Insurance Supervision Act, LGBl. 2007 No. 264;

m) Law of 20 September 2007 amending the Insurance Supervision Act, LGBl. 2007 No. 276;

n) Law of 22 October 2009 amending the Insurance Supervision Act, LGBl. 2009 No. 328;

o) Law of 25 November 2010 amending the Insurance Supervision Act, LGBl. 2011 No. 10.

Article 274

Reference to legal provisions of the European Union

1) Where the ordinances enacted in conjunction with this Act refer to provisions for the implementation of Directive 2009/138/EC, those provisions shall be regarded as national legal provisions until their incorporation into the EEA Agreement.

2) The full text of the implementing provisions referred to in paragraph 1 is published in the Official Journal of the European Union at http://eur-lex.europa.eu; the full text may also be accessed on the FMA website at www.fma-li.li.

Article 275

Entry into force

1) This Act shall enter into force on 1 January 2016 if no referendum is called before the deadline and subject to paragraphs 2 and 4, and otherwise on the day after its promulgation.

2) Article 264 shall enter into force on the day after the promulgation.

3) Article 1(3)(b) shall enter into force at the same time as the Decision of the EEA Joint Committee incorporating Directive 2014/51/EU.[30]

4) Article 90(6), the last sentence of Article 129(3), the last sentence of Article 130(2), Article 190(3), Article 237(3), the last sentence of Article

30 Entry into force: 1 August 2019 (LGBl. 2019 No. 195).

252(2), and Annex 5(2)(4) and (6) shall enter into force at the same time as the Decision of the EEA Joint Committee incorporating Directive 2014/51/EU or the Decision of the EEA Joint Committee incorporating Regulation (EU) No 1094/2010, whichever time is later.[31]

Representing the Reigning Prince:
signed *Alois*
Hereditary Prince

signed *Adrian Hasler*
Prime Minister

31 Entry into force: 1 August 2019 (LGBl. 2019 No. 195).

Annex 1

Classes of non-life insurance

A. Classification of risks according to classes of insurance

1. Accident (including industrial injury and occupational diseases)
   - fixed pecuniary benefits;
   - benefits in the nature of indemnity;
   - combinations of the two;
   - injury to passengers.
2. Sickness
   - fixed pecuniary benefits;
   - benefits in the nature of indemnity;
   - combinations of the two.
3. Land vehicles (other than railway rolling stock)

   All damage to or loss of:
   - land motor vehicles;
   - land vehicles other than motor vehicles.
4. Railway rolling stock

   All damage to or loss of railway rolling stock.
5. Aircraft

   All damage to or loss of aircraft.
6. Ships (sea, lake and river and canal vessels)

   All damage to or loss of:
   - river and canal vessels;
   - lake vessels;
   - sea vessels.
7. Goods in transit (including merchandise, baggage, and all other goods)

   All damage to or loss of goods in transit or baggage, irrespective of the form of transport.

8. Fire and natural forces

   All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to:
   - fire;
   - explosion;
   - storm;
   - natural forces other than storm;
   - nuclear energy;
   - land subsidence.

9. Other damage to property

   All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to hail or frost, and any event such as theft, other than that included in class 8.

10. Motor vehicle liability

    All liability arising out of the use of motor vehicles operating on the land (including carrier's liability).

11. Aircraft liability

    All liability arising out of the use of aircraft (including carrier's liability).

12. Liability for ships (sea, lake and river and canal vessels)

    All liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability).

13. General liability

    All liability other than those referred to in classes 10, 11 and 12.

14. Credit
    - insolvency (general);
    - export credit;
    - instalment credit;
    - mortgages;
    - agricultural credit.

15. Suretyship
    - suretyship (direct);
    - suretyship (indirect).

16. Miscellaneous financial loss
    - employment risks;
    - insufficiency of income (general);
    - bad weather;
    - loss of benefits;

- continuing general expenses;
- unforeseen trading expenses;
- loss of market value;
- loss of rent or revenue;
- other indirect trading loss;
- other non-trading financial loss;
- other forms of financial loss.

17. Legal expenses

    Legal expenses and costs of litigation.

18. Tourist assistance

    Assistance for persons who get into difficulties while travelling, while away from their home or their habitual residence.

B. Description of authorisations granted for more than one class of insurance (joint descriptions)

Where a licence simultaneously covers:

a) classes 1 and 2, it shall be granted under the description "Accident and Health Insurance";

b) classes 1 (fourth indent), 3, 7 and 10, it shall be granted under the description "Motor Insurance";

c) classes 1 (fourth indent), 4, 6, 7 and 12, it shall be granted under the description "Marine and Transport Insurance";

d) classes 1 (fourth indent), 5, 7 and 11, it shall be granted under the description "Aviation Insurance";

e) classes 8 and 9, it shall be granted under the description "Insurance against Fire and other Damage to Property";

f) classes 10, 11, 12 and 13, it shall be granted under the description "Liability Insurance";

g) classes 14 and 15, it shall be granted under the description "Credit and Suretyship Insurance".

Annex 2

Classes of life insurance

1. Life insurance
2. Marriage assurance, birth assurance
3. Unit- and fund-linked life insurance
4. Permanent health insurance (including insurance against disability)
5. Tontines
6. Capital redemption operations
7. Management of institutions for occupational retirement provision (pension funds)
8. Operations carried out in accordance with Chapter 1, Title 4 of Book IV of the French "Code des assurances"
9. Operations relating to the length of human life under a country's social insurance legislation, insofar as they are effected or managed by life insurance undertakings at their own risk

Annex 3

Solvency Capital Requirement (SCR) standard formula

1. Calculation of the Basic Solvency Capital Requirement

The Basic Solvency Capital Requirement set out in Article 54(1) shall be equal to the following:

$$\text{Basic SCR} = \sqrt{\sum_{i,j} Corr_{i,j} \times SCR_i \times SCR_j}$$

where SCR_i denotes the risk module i and SCR_j denotes the risk module j, and where "i, j" means that the sum of the different terms should cover all possible combinations of i and j. In the calculation, SCR_i and SCR_j are replaced by the following :

- $SCR_{non\text{-}life}$ denotes the non-life underwriting risk module;
- SCR_{life} denotes the life underwriting risk module;
- SCR_{health} denotes the health underwriting risk module;
- SCR_{market} emotes the market risk module;
- $SCR_{default}$ denotes the counterparty default risk module.

The factor Corr i, j denotes the item set out in row i and in column j of the following correlation matrix:

j i	Market	Default	Life	Health	Non-life
Market	1	0.25	0.25	0.25	0.25
Default	0.25	1	0.25	0.25	0.5
Life	0.25	0.25	1	0.25	0
Health	0.25	0.25	0.25	1	0
Non-life	0.25	0.5	0	0	1

2. Calculation of the non-life underwriting risk module

The non-life underwriting risk module set out in Article 55(2) shall be equal to the following:

$$SCR_{non\text{-}life} = \sqrt{\sum_{i,j} Corr_{i,j} \times SCR_i \times SCR_j}$$

where SCR_i denotes the sub-module i and SCR_j denotes the sub-module j, and where "i, j" means that the sum of the different terms should cover all possible combinations of i and j. In the calculation, SCR_i and SCR_j are replaced by the following:

- $SCR_{nl\ premium\ and\ reserve}$ denotes the non-life premium and reserve risk sub-module;
- $SCR_{nl\ catastrophe}$ denotes the non-life catastrophe risk sub-module.

3. Calculation of the life underwriting risk module

The life underwriting risk module set out in Article 105(3) shall be equal to the following:

$$SCR_{life} = \sqrt{\sum_{i,j} Corr_{i,j} \times SCR_i \times SCR_j}$$

where SCR_i denotes the sub-module i and SCR_j denotes the sub-module j, and where "i, j" means that the sum of the different terms should cover all possible combinations of i and j. In the calculation, SCR_i and SCR_j are replaced by the following:

- $SCR_{mortality}$ denotes the mortality risk sub-module;
- $SCR_{longevity}$ denotes the longevity risk sub-module;
- $SCR_{disability}$ denotes the disability – morbidity risk sub-module;
- $SCR_{life\ expense}$ denotes the life expense risk sub-module;
- $SCR_{revision}$ denotes the revision risk sub-module;
- SCR_{lapse} denotes the lapse risk sub-module;
- $SCR_{life\ catastrophe}$ denotes the life catastrophe risk sub-module.

4. Calculation of the market risk module

Structure of the market risk module

The market risk module set out in Article 55(5) shall be equal to the following:

$$SCR_{market} = \sqrt{\sum_{i,j} Corr_{i,j} \times SCR_i \times SCR_j}$$

where SCR_i denotes the sub-module i and SCR_j denotes the sub-module j, and where "i, j" means that the sum of the different terms

should cover all possible combinations of i and j. In the calculation, SCR_i and SCR_j are replaced by the following:

- $SCR_{interest\ rate}$ denotes the interest rate risk sub-module;
- SCR_{equity} denotes the equity risk sub-module;
- $SCR_{property}$ denotes the property risk sub-module;
- SCR_{spread} denotes the spread risk sub-module;
- $SCR_{concentration}$ denotes the market risk concentrations sub-module;
- $SCR_{currency}$ denotes the currency risk sub-module.

Annex 4

Notification requirements towards policyholders under Article 106 and 148

1. Information requirements before conclusion of an insurance contract

1) The insurance undertakings shall provide the policy holder with the following information before the conclusion of the contract:

a) name, address, legal form, and registered office of the insurance undertaking and of any branch through which the contract has been concluded;

b) the general and special policy conditions applicable to the insurance relationship;

c) information on the type, scope, and maturity of the insurance undertaking benefits, where no general policy conditions are used;

d) information on the term of the insurance relationship;

e) information on the amount of the premiums, with individual specification of the premiums if the insurance relationship is to include several independent insurance contracts, and on the manner of payment of the premiums, as well as information on any additional fees and expenses and on the total amount to be paid;

f) information on the amount of time during which the applicant is to be bound by the application;

g) notice concerning the rights pertaining to the cooling-off period;

h) address of the competent supervisory authority to which the policy holder may turn in the case of complaints relating to the insurance undertaking;

i) the law applicable to the contract, where the parties do not have a free choice, or, where the parties are free to choose the contract law applicable, an indication of that free choice and the law the insurance undertaking proposes to choose;

k) the arrangements for handling complaints concerning contracts by policy holders, lives assured or beneficiaries under contracts including, where appropriate, the existence of a complaints body.

2) In the case of life insurance, insurance undertakings shall also provide the policy holder with the following additional information before the conclusion of the contract:

a) the definition of each benefit and each option;

b) the term of the contract;

c) the means of terminating the contract;

d) the means of payment of premiums and duration of payments;

e) the means of calculation and distribution of bonuses;

f) an indication of surrender and paid-up values and the extent to which they are guaranteed;

g) information on the premiums for each benefit, both main benefits and supplementary benefits, where appropriate;

h) for unit-linked policies, the definition of the units to which the benefits are linked;

i) an indication of the nature of the underlying assets for unit-linked policies;

k) arrangements for application of the cooling-off period;

l) general information on the tax arrangements applicable to the type of policy;

m) a concrete reference to the report on the solvency and financial condition as laid down in Article 100, allowing the policy holder easy access to this information.

2. Information requirements during the term of an insurance contract

Insurance undertakings must provide the policyholder with the following information during the term of an insurance contract:

a) changes to the name, address, legal form, and registered office of the insurance undertaking and of any establishment through which the contract has been concluded;

b) in life insurance:
- changes to policy conditions, both general and special;
- changes to the information set out in point 2(d) to (k) where they arise in the event of a change in the policy conditions or amendment of the law applicable to the contract;

- annual notification on the state of bonuses.

3. Language

The information shall be provided in in writing in an official language of the State of the commitment or in a language desired by the policy holder.

Annex 5

Calculation methods for the supervision of group solvency

1. Method 1 (Default method): Accounting consolidation-based method

1) The calculation of the group solvency shall be carried out on the basis of the consolidated accounts.

2) The group solvency is determined by:

a) the own funds eligible to cover the Solvency Capital Requirement, calculated on the basis of consolidated data; and

b) the Solvency Capital Requirement at group level calculated on the basis of consolidated data.

3) Articles 43 et seq. shall apply for the calculation of the own funds eligible for the Solvency Capital Requirement and of the Solvency Capital Requirement at group level based on consolidated data.

4) The Solvency Capital Requirement at group level based on consolidated data (consolidated group Solvency Capital Requirement) shall be calculated on the basis of either the standard formula or an approved internal model, in a manner consistent with the principles contained in Articles 53 et seq.

5) The consolidated group Solvency Capital Requirement shall have as a minimum the sum of the following:

a) the Minimum Capital Requirement as referred to in Articles 49 et seq. of the participating insurance undertaking; and

b) the proportional share of the Minimum Capital Requirement of the related insurance undertakings.

6) That minimum shall be covered by eligible basic own funds.

7) For the purposes of determining whether such eligible own funds qualify to cover the minimum consolidated group Solvency Capital Requirement, the principles set out in Articles 207 et seq. shall apply *mutatis mutandis*. Article 84 shall apply *mutatis mutandis*.

2. Group internal model

1) In the case of a request to calculate the consolidated group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance undertakings in the group, on the basis of an internal model, submitted by an insurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company or mixed financial holding company, the FMA shall cooperate with the other supervisory authorities concerned to decide whether or not to grant that permission and to determine the terms and conditions, if any, to which such permission is subject. The application for permission shall be submitted to the FMA, if it is the group supervisor. The FMA shall inform the other supervisory authorities concerned without delay.

2) The FMA, together with the other supervisory authorities concerned, shall do everything within its power to reach a joint decision on the application within six months from the date of receipt of the complete application by the group supervisor. If the FMA is the group supervisor, it shall forward the complete application to the other supervisory authorities concerned without delay.

3) During the period referred to in paragraph 2, the FMA may consult EIOPA; EIOPA shall also be consulted where the participating undertaking so requests. Where EIOPA is consulted, the period referred to in paragraph 2 shall be extended by two months.

4) Where EIOPA has not been consulted and in the absence of a joint decision of the FMA and the other supervisory authorities concerned within six months from the date of receipt of the complete application by the group supervisor, the FMA, if it is the group supervisor, shall request EIOPA, within a further two months, to deliver advice to the FMA and the other supervisory authorities concerned. The FMA, if it is the group supervisor, shall take a decision within three weeks of the transmission of that advice, taking full account thereof.

5) Irrespective of whether EIOPA has been consulted, the FMA's decision, if the FMA is the group supervisor, shall state the full reasons and shall take into account the views expressed by the other supervisory authorities concerned. The FMA shall provide the

decision to the applicant and the other supervisory authorities concerned; the decision shall be binding.

6) In the absence of a joint decision within the periods set out in paragraphs 2 and 3 respectively, the FMA, if it is the group supervisor, shall make its own decision on the application. In making its decision, the FMA shall take due account of the views and reservations expressed by the other supervisory authorities concerned within the relevant time limit as well as of the recommendation of EIOPA when it has been consulted. The decision shall state the full reasons and shall contain an explanation of any significant deviation from the position adopted by EIOPA. The FMA shall notify the applicant and the other supervisory authorities concerned of its decision; this decision shall be binding.

7) Where the FMA considers that the risk profile of an insurance undertaking under its supervision deviates significantly from the assumptions underlying the internal model approved at group level, and as long as that undertaking has not properly addressed the concerns of the FMA, the FMA may, in accordance with Article 72, impose a capital add-on to the Solvency Capital Requirement of that insurance undertaking resulting from the application of such internal model. In exceptional circumstances, where such capital add-on would not be appropriate, the FMA may require the undertaking concerned to calculate its Solvency Capital Requirement on the basis of the standard formula. In accordance with Article 72(a) and (c), the FMA may impose a capital add-on to the Solvency Capital Requirement of that insurance undertaking resulting from the application of the standard formula. The FMA shall explain its decision to both the insurance undertaking and the group supervisor.

3. Group capital add-on

1) In determining whether the consolidated group Solvency Capital Requirement appropriately reflects the risk profile of the group, the FMA, if it is the group supervisor, shall pay particular attention to any situation where the circumstances referred to in Article 72(2) may arise at group level, in particular where:

a) a specific risk existing at group level would not be sufficiently covered by the standard formula or the internal model used, because it is difficult to quantify; or

b) a capital add-on to the Solvency Capital Requirement of the related insurance undertakings is imposed by the supervisory authorities concerned, in accordance with Article 72 and point 2(7) of this Annex.

2) Where the risk profile of the group is not adequately reflected, a capital add-on to the consolidated group Solvency Capital Requirement may be imposed.

3) Article 72 shall apply *mutatis mutandis*.

4. Method 2 (Alternative method): Deduction and aggregation method

1) The calculation of the group solvency shall be carried out on the basis of the individual accounts.

2) The group solvency is determined by:

a) the aggregated group eligible own funds in accordance with paragraph 3; and

b) the value in the participating insurance undertaking of the related insurance undertaking and the aggregated group Solvency Capital Requirement in accordance with paragraph 4.

3) The aggregated group eligible own funds are the sum of the following:

a) the own funds eligible for the Solvency Capital Requirement of the participating insurance undertaking; and

b) the proportional share of the participating insurance undertaking in the own funds eligible for the Solvency Capital Requirement of the related insurance undertakings.

4) The aggregated group Solvency Capital Requirement is the sum of the following:

a) the Solvency Capital Requirement of the participating insurance undertaking; and

b) the proportional share of the Solvency Capital Requirement of the related undertakings.

5) Where the participation in the related insurance undertaking consists, wholly or in part, of an indirect ownership, the value in the participating insurance undertaking of the related insurance undertaking shall incorporate the value of such indirect ownership, taking into account the relevant successive interests. This shall also be taken into account for the purposes of paragraph 3(b) and paragraph 4(b).

6) In the case of an application for permission to calculate the Solvency Capital Requirement of insurance undertakings in the group on the basis of an internal model, submitted by an insurance

undertaking and its related undertakings or by a mixed financial holding company, point 2 of this Annex shall apply *mutatis mutandis*.

7) In determining whether the aggregated group Solvency Capital Requirement, calculated as set out in paragraph 4, appropriately reflects the risk profile of the group, the FMA shall pay particular attention to any specific risks existing at group level which would not be sufficiently covered, because they are difficult to quantify.

8) Where the risk profile of the group deviates significantly from the assumptions underlying the aggregated group Solvency Capital Requirement, a capital add-on to the aggregated group Solvency Capital Requirement may be imposed.

9) Article 72 shall apply *mutatis mutandis*.

Transitional provisions

961.01 Insurance Supervision Act (VersAG)

Liechtenstein Law Gazette
Year 2016 No. 228 published on 7 July 2016

Law
of 11 May 2016
amending the Insurance Supervision Act

. . .

II.

Transitional provision

Lead auditors who do not hold a licence under the Law on Auditors and Audit Firms, but who have so far been recognised for auditing under this Act, may continue to perform their existing activities until 31 December 2016.

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