

*Translation from Bulgarian language*

**ORDINANCE № 51 of 28.04.2016 on own funds and solvency capital requirements of insurance and reinsurance undertakings, and groups of insurance and reinsurance undertakings**

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**PART ONE  
GENERAL PROVISIONS**

**Chapter One  
SUBJECT MATTER, SCOPE AND GENERAL  
APPROVAL REGIME**

**Art. 1.** This Ordinance shall establish:

1. the qualitative and quantitative requirements to determine the own funds of insurance undertakings with the right of access to the single market and of reinsurance undertakings, as well as the requirements for the classification and eligibility of those own funds;
2. the standard formula and procedure for calculating by using the standard formula the solvency capital requirement in respect of insurance undertakings with the right of access to the single market and of reinsurance undertakings;
3. the additional requirements to internal models;
4. the items included in calculating the amount of own funds;
5. the solvency margin and methods according to which it is calculated in respect of insurance and reinsurance undertakings without a right to access to the single market;
6. the supervision of insurance and reinsurance undertakings that are part of a group, and the powers of the Financial Supervision Commission (the Commission) and of the Deputy Chairperson in charge of the Insurance Supervision Division (the Deputy Chairperson) in connection with the group supervision;
7. the method for carrying out additional supervision in respect of insurance undertakings that are part of a group of insurers without a right to access to the single market, and whose

parent undertaking is an insurance holding company or mixed-activity financial holding company.

**Art. 2.** This Ordinance shall also apply to insurance and reinsurance undertakings from third countries carrying out, pursuant to the Code on Insurance of the Republic of Bulgaria, insurance or reinsurance activities through a branch established on the territory of Republic of Bulgaria.

**Art. 3.** (1) Should a permission or approval under the Commission Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of insurance and reinsurance (Regulation (EU) 2015/35) (OJ, L 12/1 of 17 January 2015) be issued, an application shall be submitted to the Commission to which evidence for the compliance with relevant requirements shall be enclosed.

(2) Based on the submitted documents, the Commission, respectively the Deputy Chairperson, shall establish whether the requirements for the issuance of the requested permission or approval have been met. If the submitted data or documents are incomplete or irregular, or any additional information or evidence to prove the correctness of data is required, the Commission, respectively the Deputy Chairperson, shall notify the applicant about the identified deficiencies or non-conformities, or the requested additional information and documents, and shall determine the deadline for their removal.

(3) If the notification under paragraph 2 above is not received by the applicant at the address for correspondence submitted by him, the deadline for submission of data or documents shall be counted as of the date on which the notification has been put on a place in the building of the Commission especially determined for this purpose. The above circumstance shall be attested to by a protocol drawn up by officials determined by order of the Commission Chairperson.

(4) The Commission, respectively the Deputy Chairperson, shall decide on the application within 14 days from its receipt, and where some additional data and documents have been requested – from their receipt. The Deputy Chairperson shall notify in writing the applicant of the decision within 3 days after it was made.

(5) The provisions of this Article shall not apply in cases where the Ordinance provides for a special supervisory approval or permission regime in connection with Regulation 2015/35.

## **PART TWO OWN FUNDS**

### **TITLE ONE**

## **OWN FUNDS OF INSURANCE UNDERTAKINGS WITH RIGHT OF ACCESS TO THE SINGLE MARKET AND OF REINSURANCE UNDERTAKINGS**

## **Chapter Two**

# **GENERAL PROVISIONS**

**Art. 4.** (1) Own funds of the insurance or reinsurance undertakings, shall include the basic own funds and ancillary own funds.

(2) Each insurance or reinsurance undertaking shall have at any time at its disposal eligible own funds at least equal to the solvency capital requirement.

(3) Each insurance or reinsurance undertaking, shall have at any time at its disposal eligible basic own funds at least equal to the minimum capital requirement.

**Art. 5.** (1) Basic own funds shall include the following items:

1. the excess of assets over liabilities, valued in accordance with Chapter Eleven of the Code on Insurance;

2. subordinated liabilities.

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

**Art. 6.** (1) Ancillary own funds shall consist of items other than basic own funds, which may be used to cover losses arising.

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

1. letters of credit and guarantees;

2. any other legally binding commitments received by the insurance or reinsurance undertaking.

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

(4) Where ancillary own fund items have been paid in or called up, they shall be treated as assets and cease to form part of ancillary own fund items.

**Art. 7.** (1) Excess funds shall be deemed to be accumulated profits that have not been made available for distribution to policy-holders and beneficiaries.

(2) In compliance with the criteria referred to in art. 9, excess funds shall not be deemed to be insurance or reinsurance liabilities, unless otherwise provided by law.

## **Chapter Three**

# **CLASSIFICATION OF OWN FUNDS**

**Art. 8.** (1) Own fund items shall be classified into three tiers. The classification of own fund items shall depend upon whether they are basic own fund items or ancillary own fund items, and the extent to which they possess the following characteristics:

1. the item is available (at disposal) or, if necessary, it may be called up on demand, to fully cover losses arising both on a going concern basis and in the event of winding-up (permanent availability);

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

(2) When assessing the extent to which own fund items possess the characteristics set out in paragraph 1, points 1 and 2, currently and in the future, due consideration shall be given to the duration of the item, in particular whether the item is dated or not. Where an own fund item is dated, the relative duration of the item as compared to the duration of the insurance and reinsurance obligations of the undertaking shall be considered (sufficient duration).

(3) In addition to the requirements under art. 1 and 2, the following features shall be considered:

1. whether the item is free from requirements or incentives to redeem the nominal sum (absence of incentives to redeem);

2. whether the item is free from mandatory fixed charges (absence of mandatory servicing costs);

3. whether the item is clear of encumbrances (absence of encumbrances).

**Art. 9.** (1) Basic own fund items shall be classified as Tier 1 capital where they substantially possess the characteristics set out in art. 8, paragraph 1, points 1 and 2, taking into consideration the features set out in art. 8, paragraphs 2 and 3.

(2) Basic own fund items shall be classified as Tier 2 capital where they substantially possess the characteristics set out in art. 8, paragraph 1, point 2, taking into consideration the features set out in art. 8, paragraphs 2 and 3.

(3) Ancillary own fund items shall be classified as Tier 2 capital where they substantially

possess the characteristics set out in art. 8, paragraph 1, points 1 and 2, taking into consideration the features set out in art. 8, paragraphs 2 and 3.

(4) Any basic and ancillary own fund items which do not meet the requirements under paragraphs 1 to 3 above shall be classified as Tier 3 capital.

**Art. 10.** (1) Insurance or reinsurance undertakings shall classify their own fund items on the basis of the criteria laid down in art. 9.

(2) Classification of own fund items shall be determined, where applicable, in accordance with the lists under Regulation (EU) 2015/35 and in compliance with the Guidelines on classification of own funds (EIOPA-BoS-14/168 BG), as adopted by the European Insurance and Occupational Pensions Authority (the European Authority).

(3) Where an own fund item is not covered by the lists under paragraph 2, it shall be assessed and classified by insurance or reinsurance undertakings, in accordance with the first paragraph. This classification shall be subject to approval by the Commission, acting on a proposal from the Deputy Chairperson, pursuant to the provisions of Chapter Five, Section III.

**Art. 11.** (1) Without prejudice to the provisions laid down in art. 10, the following classifications shall be applied to own fund items specified below:

1. surplus funds falling under art. 7 shall be classified as Tier 1 capital;

2. letters of credit and guarantees which are opened with credit institutions and held in trust by an independent trustee (trusts), or similar relationships between trustees for the benefit of creditors having insurance claims against the insurance undertaking, shall be classified as Tier 2 capital;

3. any future claims which mutual associations or mutual-type associations of shipowners with variable contributions solely insuring risks listed in classes 6, 12 and 17 in Section II, letter "A" of Annex 1 to the Code on Insurance may have against their members by way of a call for supplementary contributions, within the next twelve months, shall be classified as Tier 2 capital.

(2) In accordance with art. 9, paragraph 3, any future claims which a mutual association may have against its members by way of a call for supplementary contributions, within the next twelve months, and not falling under point 3 of the preceding paragraph, shall be classified as Tier 2 capital where they substantially possess the characteristics set out in art. 8, paragraph 1, taking into consideration the features laid down in art. 8, paragraphs 2 and 3.

## **Chapter Four**

### **ELIGIBILITY OF OWN FUNDS**

**Art. 12.** (1) As far as the compliance with the solvency capital requirement is concerned, the eligible amounts of Tier 2 and Tier 3 own fund items shall be subject to quantitative limits, which to ensure that at least the following conditions are met:

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

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

(2) As far as the 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 as Tier 2 capital 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.

(3) The eligible amount of own funds to cover the solvency capital requirement shall be equal to the sum of the amount of Tier 1 capital, the eligible amount of Tier 2 capital and the eligible amount of Tier 3 capital.

(4) The eligible amount of basic own funds to cover the minimum capital requirement set out in art. 191 of the Code on Insurance shall be equal to the sum of the amount of Tier 1 capital and the eligible amount of basic own fund items classified as Tier 2 capital.

## **Chapter Five**

# **PROCEDURE FOR ISSUANCE OF PERMISSIONS AND APPROVALS**

## **Section I**

### **Supervisory approval of ancillary own funds**

**Art. 13.** Approvals of ancillary own funds under art. 167, paragraphs 1, 3 and 4 of the Code on Insurance shall be issued pursuant to the procedure set out in Commission Implementing Regulation (EU) 2015/499 of 24 March 2015 laying down implementing technical standards with regard to the procedures to be used for granting supervisory approval for the use of ancillary own-fund items in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ, L 79/12 of 25 March 2015) and art. 62 – 67 of Regulation (EU) 2015/35.

**Art. 14.** In order to apply the requirements under art. 62, paragraph 1, letter "d" of Regulation (EU) 2015/35, in assessment of whether the value of an ancillary own fund item continue to reflect its loss-absorbing capacity, the Commission based on the proposal of the Deputy Chairperson shall also take into account the following:

1. information obtained by means of on-the-spot verifications;
2. information received or obtained as part of the supervisory review process;
3. information provided by other competent authorities within the college of supervisors, if applicable;
4. other relevant information.

## **Section II**

### **Supervisory approvals issued in connection with the classification of own funds**

**Art. 15.** (1) To obtain supervisory approval for the repayment or redemption of any basic own fund item pursuant to art. 71, paragraph 1, letter "h", art. 73, paragraph 1, letter "d" and art. 77, paragraph 1, letter "d" of Regulation (EU) 2015/35 or any transaction that is not deemed to be a repayment or redemption pursuant to art. 71, paragraph 2, art. 73, paragraph 2 and art. 77, paragraph 2 of Regulation (EU) 2015/35, the insurance or reinsurance undertaking shall submit to the Commission an application, to which shall be enclosed an assessment of the said repayment, redemption or transaction, by taking into account:

1. the current impact, the impact in the short to medium term on the overall solvency of the insurance or reinsurance undertaking and the extent to which it is compatible with the medium-term plan for the undertaking's capital management, as well as its own risk and solvency assessment;

2. its ability to raise additional own funds, if necessary, by taking into consideration economic conditions and its access to capital markets and other sources of ancillary own funds.

(2) Where an insurance or reinsurance undertaking is proposing a series of repayments or redemptions over a short period of time, the Commission shall be notified thereof in the application under art. 1. The Commission shall examine this series of transactions as a whole and not separately.

(3) The insurance or reinsurance undertaking shall submit the application under art. 1 for the relevant supervisory approval three months prior to one of the following dates, whichever occurs earlier:

1. the required contractual notice of repayment or redemption to holders of the item;
2. the proposed repayment or redemption date.

(4) The Commission shall issue a decision on the application for repayment or redemption

within three months from the date of its receipt. The Commission shall notify the applicant in writing of the decision within 7 days from the date of its issuance.

(5) Article 3, paragraphs 2 and 3 shall apply respectively.

(6) After the supervisory approval has been issued by the Commission for the repayment or redemption, the insurance or reinsurance undertaking may:

1. exercise any request or other optional repayment or redemption in compliance with the conditions laid down in the contractual agreement, which governs the own fund item;

2. reduce the amount of the relevant category of own funds, without any adjustments or recalculation of the equalisation reserve (reconciliation reserve), where an item treated as repaid or redeemed is being excluded, as from the date of the notice given to its holders, or where such a notice is not required – as from the date of the supervisory approval issued by the Commission;

3. continue to monitoring its solvency for non-compliance or potential non-compliance with the solvency capital requirement, which would result in suspension of the repayment or redemption during that period up to the date of repayment or redemption;

4. suspend the repayment or redemption, in the case this would result in non-compliance with the solvency capital requirement, even if notice of repayment or redemption has been given to holders of the items.

(7) In cases referred to in Art. 6, point 4, where repayment or redemption is temporarily prohibited under these circumstances, the insurance or reinsurance undertaking may resume the item into available own funds, and the obtained supervisory approval for its repayment or redemption under paragraph 1 shall be cancelled.

**Art. 16.** In the case of an application for supervisory approval under Art. 15, paragraph 1 in conjunction with Art. 71, paragraph 1, letter "g" in conjunction with letter "h" of Regulation (EU) 2015/35, the Commission, on the proposal of the Deputy Chairperson, shall take into account:

1. the current and projected solvency of the insurance or reinsurance undertaking by taking into consideration the proposed repayment or redemption, as well as any other proposed repayments and redemptions or emissions;

2. the medium-term plan of the insurance or reinsurance undertaking in respect of capital management, as well as its own risk and solvency assessment;

3. the variability of own funds and capital solvency requirement of the insurance or reinsurance undertaking by taking into consideration the nature, size and complexity of the risks specific to its activities;



4. the extent to which the insurance or reinsurance undertaking has access to external sources of own funds, as well as the impact that market conditions have on the ability of the insurance or reinsurance undertaking to raise its own funds.

**Art. 17.** (1) Should an exceptional approval for repayment or redemption of basic own fund item be issued pursuant to Art. 71, paragraph 1, letter "κ", sub-point (i), Art. 73, paragraph 1, letter "j", sub-point (i) or Art. 77, paragraph 1, letter "h", sub-point (i) of Regulation (EU) 2015/35, the insurance or reinsurance undertaking shall submit to the Commission an application, where to:

1. describe the proposed exchange or reorganisation, as well as its impact on basic own funds, including how this exchange or reorganisation is regulated in line with the terms of the contractual agreement governing said own fund item;

2. demonstrate how the proposed exchange or reorganisation is or will be in compliance with the recovery plan under Art. 215, paragraph 1 of the Code on Insurance;

3. seek prior supervisory approval of the transaction in accordance with Art. 15.

(2) The Commission shall issue a decision on the application within 30 days from the date of its receipt, the insurance or reinsurance undertaking being notified in writing of the decision within 7 days from the date of its issuance.

(3) Article 3, paragraphs 2 and 3 shall apply respectively.

**Art. 18.** (1) Should an exceptional approval of distributions be issued pursuant to Art. 71, paragraph 1, letter m), sub-point (i) of Regulation (EU) 2015/35, respectively exceptional approval of distributions pursuant to Art. 73, paragraph 1, letter "h", sub-point (i) of Regulation (EU) 2015/35, the insurance or reinsurance undertaking shall submit to the Commission an application, accompanied by a justification, attached evidence included. By this justification the insurance or reinsurance undertaking shall prove that this distribution can be done without leading to a significant reduction in solvency, in compliance with the minimum capital requirement.

(2) The Commission, acting on a proposal from the Deputy Chairperson, shall issue a decision on the application within one month from the date of its receipt, the insurance or reinsurance undertaking being notified in writing of the decision within 7 days from the date of its issuance.

(3) Insurance or reinsurance undertaking requesting an exceptional approval of distributions in respect of a repayment through an alternative coupon payment method, shall take into consideration the amount of ordinary share capital subject to be issued, the extent to which re-establishing compliance of the level of own fund items with the solvency capital requirement requires the raising of new own funds, and the possible impact that the issuance of the share

capital for the purposes of this alternative coupon payment method will have on the ability of the insurance or reinsurance undertaking to raise these own funds, as well as to submit to the Commission such kind of information and analysis.

(4) Article 3, paragraphs 2 and 3 shall apply respectively.

### **Section III**

## **Approval of the assessment and classification of own fund items not covered by the lists**

**Art. 19.** In compliance with Art. 79 of Regulation (EU) 2015/35, to obtain an approval of the assessment and classification of any own fund item not covered by the lists under Art. 10, paragraph 2, the insurance or reinsurance undertaking shall submit to the Commission a written application for the approval of each own fund item. The application submitted shall be in Bulgarian language, in the form of a cover letter, and the following shall be enclosed thereto:

1. the decision of the management body of the insurance or reinsurance undertaking to approve the application;

2. accompanying evidence.

**Art. 20.** (1) In the application the insurance or reinsurance undertaking must confirm that the entity:

1. considers any legal or contractual terms governing the own fund item, or any other connected arrangement, as being unequivocal and clearly determined;

2. taking into account likely future developments as well as the circumstances at the date of the application, considers that, in terms of legal form and economic substance, the basic own fund item will be in compliance with the criteria laid down in Articles 8 and 9, and will possess the characteristics determining the classification under Art. 71, 73 and 77 of Regulation (EU) 2015/35;

3. no facts have been omitted which if known by the Commission could influence its decision regarding whether to approve the assessment and classification of an own fund item.

(2) In the application the insurance or reinsurance undertaking shall list other applications previously submitted by the undertaking or currently foreseen within the next six months for the approval of own fund items, including application dates, respectively.

**Art. 21.** (1) The insurance or reinsurance undertaking must provide a description of the manner in which the criteria under Articles 8 and 9 and the characteristics determining the classification under Art. 71, 73 and 77 of Regulation (EU) 2015/35 have been satisfied, including how the item will contribute to the existing capital structure of the insurance or reinsurance

undertaking, and how the item could enable the insurance or reinsurance undertaking to meet current or future capital requirements.

(2) The insurance or reinsurance undertaking must provide a description of the basic own fund item in sufficient depth, which to allow the Commission to make a conclusion on the ability of the item to cover losses, including the contractual terms of the agreement governing the own fund item, as well as the terms of any other connected agreement, together with supporting evidence, if relevant, that a counterparty has concluded the agreement and any other connected agreement and supporting evidence that the agreement and any other connected agreement are legally binding and enforceable in all relevant jurisdictions.

**Art. 22.** (1) In order for the application under Art. 19 to be considered complete, it should comply with the provisions of Art. 19 – 21.

(2) The Commission, acting on a proposal from the Deputy Chairperson, shall notify in writing the applicant within 30 days of receipt of the application whether the submitted application is considered complete.

(3) If the submitted application is incomplete or irregular, or any additional information or evidence supporting the correctness of data submitted is required, the Commission, within 30 days of receipt of the application, shall give notice and set a deadline to remedy the established incompleteness and inconsistency or to submit additional information and documents.

(4) The Commission, acting on a proposal from the Deputy Chairperson, shall make a decision within a reasonable time period, which cannot exceed three months from the date of receipt of the complete application, unless there are exceptional circumstances, in which case the Commission shall make a decision not later than six months from the date of receipt of the complete application.

(5) Exceptional circumstances shall be any circumstances of unexpected and irresistible nature that objectively impede the Commission to make a decision. Exceptional circumstances shall be communicated to the applicant in due time before the time limit under Art. 4 expires.

(6) If necessary for the assessment of the own fund item, the Commission shall request additional information from the insurance or reinsurance undertaking after have notified the applicant that the application is complete. The deadline set in Art. 4, respectively Art. 5, shall be suspended from the date of the request for additional information till the date of its receipt.

(7) The insurance or reinsurance undertaking shall notify the Deputy Chairperson of any changes which have occurred in the circumstances covered by the application.

(8) The change in the circumstances covered by the application under Art. 7 shall be considered as a new application, unless:

1. the change is related to a request from the Deputy Chairperson or the Commission for additional information; or

2. the Commission, acting on a proposal from the Deputy Chairperson, considers that the change has no significant impact on the examination of the application.

(9) The insurance or reinsurance undertaking may withdraw the application at any time by giving a written notice thereof before the Commission makes the decision. If subsequently the insurance or reinsurance undertaking submits again the same or an updated application, it shall be considered that a new application has been submitted.

(10) Article 3, paragraphs 2 and 3 shall apply respectively.

**Art. 23.** The decision on the applications together with the reasons thereof shall be notified to the insurance or reinsurance undertaking within 7 days.

## **Chapter Six**

### **SPECIFIC REQUIREMENTS CONCERNING CERTAIN CATEGORIES OF OWN FUNDS**

**Art. 24.** (1) With regard to ancillary own funds, the insurance or reinsurance undertakings shall apply the Guidelines on ancillary own funds (EIOPA-BoS-14/167 BG) adopted by the European Authority.

(2) With regard to the treatment of related undertakings, including participations, the insurance or reinsurance undertakings shall apply the Guidelines on treatment of related undertakings, including participations (EIOPA-BoS-14/170 BG), adopted by the European Authority.

(3) With regard to ring-fenced funds, the insurance or reinsurance undertakings shall apply the Guidelines on ring-fenced funds (EIOPA-BoS-14/169 BG) adopted by the European Authority.

**Art. 25.** (1) When the insurance or reinsurance undertaking is a participating undertaking within the meaning of Art. 233, paragraph 4 of the Code on Insurance, it should identify its related undertakings and participations on the basis of an assessment from its own point of view as a separate undertaking.

(2) The Commission, respectively the Deputy Chairperson, while identifying a related undertaking or participation in accordance with Art. 233, paragraph 6 of the Code on Insurance, shall also take into account:

1. when the insurance or reinsurance undertaking is a related undertaking, shareholdings held by it in the undertaking, and potential increases due to the holding of options, warrants or

other similar instruments;

2. when the insurance or reinsurance undertaking is a participating undertaking in a mutual or mutual-type undertaking, its membership rights, as well as potential increases in these membership rights;

3. when the insurance or reinsurance undertaking holds a shareholding in the undertaking, its representation in the administrative, management or supervisory bodies of the undertaking;

4. when the insurance or reinsurance undertaking is a participating undertaking, its involvement in policy-making processes of the undertaking, including decision-making about distribution of dividends or any other distributions;

5. when the insurance or reinsurance undertaking is a participating undertaking, material transactions between the participating undertaking and the other undertaking;

6. when the insurance or reinsurance undertaking is a participating undertaking, the simultaneous presence or shifting of the same persons effectively managing both the participating undertaking and the other undertaking;

7. the provision of essential technical information to the other undertaking;

8. when the insurance or reinsurance undertaking is a participating undertaking, the common management of the participating undertaking and the other undertaking.

(3) The Commission, respectively the Deputy Chairperson, shall consider each initial assessment under paragraph 1 of the participating insurance or reinsurance undertaking in compliance with paragraph 2, points 1 – 8.

## **TITLE TWO**

### **OWN FUNDS OF THE INSURANCE UNDERTAKINGS WITHOUT A RIGHT TO ACCESS TO THE SINGLE MARKET**

#### **Chapter Seven**

### **DETERMINING THE OWN FUNDS OF INSURANCE UNDERTAKINGS WITHOUT A RIGHT TO ACCESS TO THE SINGLE MARKET**

**Art. 26.** (1) The total amount of own funds of the insurance undertakings without a right to access to the single market, less any intangible assets, at any time shall be at least equal to the

solvency margin calculated in accordance with the provisions of this Ordinance, or the minimum amount of the guarantee capital, when it is higher than the solvency margin.

(2) Adjusted solvency of an insurance undertaking under Art. 212, paragraph 1 of the Code on Insurance should not be negative.

**Art. 27.** (1) The insurance undertakings without a right to access to the single market shall submit to the Commission, together with its annual financial statements, a statement of the amount of own funds and solvency margin.

(2) Insurance undertakings under Art. 212, paragraph 1 of the Code on Insurance shall submit, together with the consolidated financial statements, a statement of the adjusted solvency.

(3) The own funds and solvency margin shall be calculated on the basis of data provided in the reports, statements and enclosures thereto, prepared in compliance with the requirements provided for in the Ordinance under Art. 125, paragraph 2 of the Code on Insurance.

**Art. 28.** (1) Own funds shall be the assets of the insurance undertaking which are free from any foreseeable liabilities, and shall consist of the sum of the following items:

1. the capital:

(a) for public limited companies – the subscribed share capital;

(b) for mutual undertakings – the shareholdings;

2. the provisions and funds under Art. 118, par. 2 of the Code on Insurance;

3. the retained earnings of prior years, less the expected dividend payments and other deductions;

4. the revaluation provisions created in compliance with applicable accounting standards;

5. any amounts attracted by the insurance undertaking through debt capital (hybrids) instruments;

6. any amounts attracted as subordinated debt.

(2) The sum under par. 1 shall be reduced by:

1. not paid-up capital ;

2. the nominal value of treasury shares;

3. any losses from the current year and uncovered losses from prior years;

4. the carrying amount of participations within the meaning of § 1, point 18 of the Additional provisions to the Code on Insurance that the insurance undertaking holds in any insurance or reinsurance undertaking, pension insurance company, insurance holding company, mixed-activity insurance holding company, credit institution, financial institution under Art. 3, par. 1 of the Credit Institutions Act, auxiliary services company under Art. 2, par. 4 of the Credit Institutions Act, investment firm, management company, as well as the investments in debt capital (hybrid) instruments and in subordinated debt in such companies in which the insurance undertaking has participation, where they do not present consolidated financial statements;

5. the carrying amount of participations that exceed 50 percent of the capital of the related undertaking held by the insurance undertaking in trading companies other than the undertakings under point 4, as well as the investments in debt capital (hybrid) instruments and in subordinated debt in such companies in which the insurance undertaking has participation, where they do not present consolidated financial statements.

(3) The application of par. 2, point 4 may be excluded on decision of the Deputy Chairperson in cases, where the insurance undertaking has acquired the participation or share capital, or made the investment temporarily, and for the purpose to assist financially the undertaking in connection with its rescue and with a view to preventing its insolvency.

**Art. 29.** The profit under Art. 28, par. 1, point 3 may be included in the own funds, where the general meeting of shareholders or cooperative members has decided that no dividends will be distributed or no further deductions made in respect of this profit.

**Art. 30.** (1) The funds under Art. 28, par. 1, point 5 shall meet the following requirements:

1. these amounts are fully paid;
2. their redemption is not bound by any maturity;
3. their redemption is not secured in any form by the insurance undertaking;
4. in the event of winding up or insolvency of the insurance undertaking, these amounts may be redeemed only after all other creditors' claims have been satisfied in full;

5. the receivables under the above in relation to the principal (nominal value) may not become payable without the approval of the Commission, acting on a proposal from the Deputy Chairperson;

6. the conditions under which these funds have been attracted by the insurance undertaking entitle it to defer repayment of interest or dividend thereon;

7. these funds have been attracted under such conditions that even in case of non-repayment of the principal, respectively of the capital or interest, respectively of the dividend thereon, the insurance undertaking will be able to continue carrying on its activity.

(2) In order to obtain an approval under par. 1, point 5, the insurance undertaking shall submit a justified application, accompanied by supporting evidence. The Commission, acting on a proposal of the Deputy Chairperson, shall make a decision within one month from the date of receipt of the application, being entitled to request additional information or evidence within a time period not later than 14 days from the receipt of the application. The deadline for decision-making shall be suspended till the date of submission of the requested information or evidence. The Commission, acting on a proposal of the Deputy Chairperson, shall decide to refuse the approval, if it is found that the application is not justified or that the alleged facts and circumstances are not supported by the evidence provided.

**Art. 31.** (1) The subordinated debt under Art. 28, par. 1, point 6 shall satisfy the following requirements:

1. the amounts relating to the debt are fully paid;
2. its redemption is not secured in any form by the insurance undertaking;
3. the original maturity is not less than 5 years – as far as a subordinated debt with fixed maturity is concerned;
4. it becomes due for payment on 5-years notice, unless its repayment is made with the approval of the Commission, acting on a proposal of the Deputy Chairperson – as far as a subordinated debt with no fixed maturity is concerned;
5. its early repayment could not be made, if as a result therefrom the own funds will not be sufficient to cover the solvency margin;
6. it is not possible that the debt becomes due for early repayment;
7. where interest or other income have been agreed upon, these may not be paid up prior to the maturity of the debt;
8. in the event of winding up or insolvency of the insurance undertaking, these amounts may be redeemed only after all other creditors' claims have been satisfied in full;
9. conditions relating to the debt may only be changed after approval of the Commission, acting on a proposal from the Deputy Chairperson.

(2) In the last 5 years to maturity, the amount of subordinated debt with fixed maturity shall be included in the own funds of the insurance undertaking, less an annual reduction amounting to 20 per cent. After the debt has matured it shall be entirely excluded from the own funds calculation.

(3) Where the subordinated debt under par. 1 has no fixed maturity, its repayment shall be made after approval of the Commission, acting on a proposal of the Deputy Chairperson, based



on a written application submitted by the insurance undertaking at least 6 months earlier, provided that the requirement set out in Art. 26, par. 1 has been satisfied. The first sentence of the application shall state the repayment date of the debt and the total amount of own funds before and after its repayment.

(4) To obtain an approval under par. 1, points 4 or 9, or under par. 3, the procedure laid down in Art. 30, par. 2 shall apply.

(5) The insurance undertaking shall provide within 14 days of the occurrence of the relationship the relevant information to certify that the requirements under par. 1 are met.

**Art. 32.** (1) The amount of funds under Art. 28, par. 1, points 5 and 6 may not exceed 50 per cent of the lesser of the following two amounts:

1. the own funds;
2. the solvency margin.

(2) The portion of subordinated debt with fixed maturity included in the funds under par. 1 may not exceed 25 per cent.

**Art. 33.** (1) An insurance undertaking carrying on insurance activity covering insurances under Section I, points 1 and 2 of Annex № 1 to the Code on Insurance may include in its own funds 50 per cent of its future profits from these insurances, but their amount may not exceed 25 per cent of the lesser of the following two amounts:

1. the own funds;
2. the solvency margin.

(2) The amount of future profits shall be obtained by multiplying:

1. the estimated annual profit, which may not exceed the average of profits from insurances under par. 1 earned in the last 5 years, and

2. a multiplier equal to the remaining average period until the expiration of the contracts under these insurances, which cannot be more than 6.

(3) The inclusion of future profits from insurances under par. 1 in the own funds shall be approved by the Commission, acting on a proposal of the Deputy Chairperson, based on a written application accompanied by an actuarial report, in which the probability of occurrence of future profits is justified.

(4) The Commission, acting on a proposal of the Deputy Chairperson, shall make decision on the application within 14 days from the date of submission of all documents required, and shall immediately notify the applicant, a written notice being also given within 3 days of making

the decision.

(5) Shall not be included in own funds any future profits from insurances under par. 1 arising out from already reported or included in the own funds revaluations of assets.

**Art. 34.** An insurance undertaking carrying on insurance activity covering insurances under Section I of Annex № 1 to the Code on Insurance, where non-Zillmerized reserve is used or if a reserve is created, it is Zillmerized at a rate that is less than the loading for acquisition costs included to the net premium, upon approval of the Commission, acting on a proposal of the Deputy Chairperson, may include in its own funds the difference between the amounts of a non-Zillmerized or partially Zillmerized mathematical reserve and a reserve that will be the one Zillmerized at a rate equal to the loading for acquisition costs included to the premium. The amount under the first sentence may not exceed 3,5 per cent of the sum of the difference between the insurance sums and the relevant mathematical provisions under contracts for which Zillmerizing is possible. The difference shall be reduced by the amount of any undepreciated acquisitions costs entered in the balance sheet as an asset.

**Art. 35.** (1) An insurance undertaking carrying on insurance activity covering insurances under Section II of Annex № 1 to the Code on Insurance that discounts the outstanding claims reserve in accordance with the provisions set in Art. 7, par. 4 of the Ordinance № 27 of 2006 on the procedure and methodology of formation of technical provisions by insurers and reinsurers (prom., SG, iss. 36 of 2006; am. and suppl., iss. 65 of 2007) shall reduce the amount of its own funds by the difference between the amount of discounted and non-discounted outstanding claims reserve.

(2) The reduction under par. 1 shall not apply to insurances under Section II, points 1 and 2 of Annex № 1 to the Code on Insurance, as well as to claims with equal periodic payments already included in the reserve.

## **PART THREE**

### **CAPITAL REQUIREMENTS AT INDIVIDUAL LEVEL**

#### **TITLE ONE**

#### **SOLVENCY CAPITAL REQUIREMENT. STANDARD FORMULA**

#### **Chapter Eight**

#### **BASIC REQUIREMENTS**

**Art. 36.** The solvency capital requirement calculated on the basis of the standard formula shall be the sum of the following items:

1. the basic solvency capital requirement pursuant to Art. 37;

2. the capital requirement for operational risk pursuant to Art. 45;

3. the adjustment for loss-absorbing capacity of technical provisions and deferred taxed pursuant to Art. 46.

**Art. 37.** (1) The basic solvency capital requirement shall comprise individual risk modules, which are aggregated in accordance with point 1 of Annex № 1, and shall consist of at least the following risk modules:

1. non-life underwriting risk module;

2. life underwriting risk module;

3. health underwriting risk module;

4. market risk module;

5. counterparty default risk module.

(2) For the purposes of par. 1, points 1, 2 and 3 insurance and reinsurance operations shall be allocated to the underwriting risk module that best reflects the technical nature of the underlying (basic) risks.

(3) The correlation coefficients for the aggregation of the risk modules referred to in par. 1, as well as the calibration of the capital requirements for each risk module, shall result in an overall solvency capital requirement which complies with the principles set out in Art. 170 of the Code on Insurance.

(4) Each of the risk modules under par. 1 shall be calibrated using a method based on the "Value-at-Risk" (VaR) subject to a confidence level of 99,5% 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 shall be used for all insurance and reinsurance undertakings, both with respect to the basic solvency capital requirement and to any simplified calculations as laid down in Art. 47.

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

(7) Replacement of a subset of standard formula parameters by parameters which are specific to the insurance or reinsurance undertaking shall be carried out in compliance with the procedure laid down in Art. 173 of the Code on Insurance.

(8) The approval under Art. 173, par. 1 of the Code on Insurance shall follow the procedure set out in the Commission Implementing Regulation (EU) 2015/498 of 24 March 2015 laying down implementing technical standards with regard to the supervisory approval procedure to use undertaking-specific parameters in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ, L 79/8 of 25 March 2015).

**Art. 38.** The basic solvency capital requirement shall be calculated in accordance with Art. 39 – 43.

**Art. 39.** (1) The non-life underwriting risk module shall reflect the risk arising from the non-life insurance obligations, in relation to the perils covered and the processes used in the conduct of business.

(2) The module under par. 1 shall take into account the uncertainty in the results of insurance or reinsurance undertaking, relating to the existing insurance or reinsurance obligations, as well as to the new business expected to be written over the forthcoming 12 months.

(3) The module under par. 1 shall be calculated, in accordance with point 2 of Annex № 1, as a combination of the capital requirements for at least the following sub-modules:

1. the risk of loss or of adverse change in the value of the insurance liabilities, resulting from the fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements (non-life premium and reserve risk);

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

**Art. 40.** (1) The life underwriting risk module shall reflect the risk arising from the life insurance obligations, in relation to the perils covered and the processes used in the conduct of business.

(2) The module under par. 1 shall be calculated, in accordance with point 3 of Annex № 1, as a combination of the capital requirements for at least the following sub-modules:

1. the risk of loss or of adverse change in the value of the insurance liabilities, resulting from changes in the level, trend, or volatility of mortality rates, where an increase in the mortality rate leads to an increase in the value of insurance liabilities (mortality risk);

2. the risk of loss or of adverse change in the value of the insurance liabilities, resulting from changes in the level, trend, or volatility of mortality rates, where a decrease in the mortality rate leads to an increase in the value of insurance liabilities (longevity risk);

3. the risk of loss or of adverse change in the value of the insurance liabilities, resulting from changes in the level, trend, or volatility of disability, sickness and morbidity rates

(disability/morbidity risk);

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

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

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

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

**Art. 41.** (1) The health underwriting risk module shall reflect the risk arising from the underwriting of health insurance obligations, whether it is pursued on a similar technical basis to that of life insurance or not, following from both the perils covered and the processes used in the conduct of business.

(2) The module under par. 1 shall cover at least the following risks:

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

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

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

**Art. 42.** (1) 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 assets and liabilities of the undertaking. It shall properly reflect the structural mismatch between the assets and liabilities, in particular with respect to the duration thereof.

(2) The module under par. 1 shall be calculated, in accordance with point 4 of Annex № 1, as a combination of the capital requirements for at least the following sub-modules:

1. the sensitivity of the values of assets, liabilities and financial instruments to changes in the term structure of interest rates, or in the volatility of interest rates (interest rate risk);

2. the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of market prices of equities (equity risk);

3. the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of market prices of real estate (property risk);

4. the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of credit spreads over the risk-free interest rate term structure (spread risk);

5. the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of currency exchange rates (currency risk);

6. the additional risks to an insurance or reinsurance undertaking stemming, either from lack of diversification in the asset portfolio, or from large exposure to default risk by a single issuer of securities or a group of related issuers (market risk concentrations).

**Art. 43.** (1) The counterparty default risk module shall reflect possible losses due to unexpected default, or deterioration in the credit standing, of the counterparties or debtors of the insurance or reinsurance undertaking over the following 12 months. The counterparty default risk 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 in the spread risk sub-module. It shall properly take into account the collateral or any other security held by or for the account of the insurance or reinsurance undertaking, and the associated risks thereto.

(2) For each counterparty, the counterparty default risk module shall take account of the overall counterparty risk exposure of the insurance or reinsurance undertaking, irrespective of the legal form of its contractual obligations to that insurance or reinsurance undertaking.

**Art. 44.** (1) The equity risk sub-module, calculated in accordance with the standard formula, shall include a symmetric adjustment to the capital requirement for the equity risk applied to cover the risk arising from changes in the level of equity prices.

(2) The symmetric adjustment made to the standard capital requirement for the equity risk, calibrated in accordance with Art. 37, par. 4 to cover the risk arising from changes in the level of equity prices, shall be based on a function of the current level of an appropriate equity index and a weighted average level of that index. The weighted average shall be calculated over an appropriate period of time, which shall be the same for all insurance and reinsurance undertakings.

(3) The symmetric adjustment made to the standard capital requirement for equity risk to cover the risk arising from changes in the level of equity prices might not result in the application

of capital requirement for the equity risk, which is more than 10 percentage points lower or 10 percentage points higher than the standard capital requirement for equity risk.

**Art. 45.** (1) The capital requirement for operational risk shall reflect operational risks to the extent they are not already reflected in the risk modules under Art. 37. This requirement shall be calibrated in accordance with Art. 170, par. 3 of the Code on Insurance.

(2) With respect to life insurance contracts where the investment risk is borne by the policyholders, 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 par. 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 and reinsurance 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.

**Art. 46.** (1) Adjustment for loss-absorbing capacity of technical provisions and deferred taxes under Art. 36, point 3, made by the insurance or reinsurance undertaking, shall reflect potential compensation of unexpected losses through a decrease in technical provisions or deferred taxes, or a combination of the two.

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

(3) For the purposes of par. 2, the value of future discretionary benefits under adverse circumstances shall be compared to the value of the benefits for which the assumption is the same as the one used in the calculation of the best estimate.

**Art. 47.** The insurance or reinsurance undertaking may use a simplified calculation for specific risk modules or sub-modules where the nature, scale and complexity of the risks they face justify it, and where it would be disproportionate to require all insurance and reinsurance undertakings to apply the standardized calculation. The simplified calculation shall be calibrated in accordance with Art. 170, par. 2 of the Code on Insurance.

## **Chapter Nine**

# **SOLVENCY CAPITAL REQUIREMENT AND THE STANDARD FORMULA**

## **Section I**

### **Applicable guidelines on the solvency capital requirement and standard formula**

**Art. 48.** The insurance or reinsurance undertaking under Art.15, par. 1 of the Code on Insurance shall apply the Guidelines on application of outwards reinsurance arrangements to the non-life underwriting risk module (EIOPA-BoS-14/173 BG), as adopted by the European Authority.

**Art. 49.** In order to calculate their capital requirement for life underwriting risk, the insurance or reinsurance undertaking under Art. 15, par. 1 of the Code on Insurance shall apply the Guidelines on application of the life underwriting risk module (EIOPA-BoS-14/175 BG), as adopted by the European Authority.

**Art. 50.** To identify and compute the quantities involved in the calculation of the health catastrophe capital requirement in different possible cases and situations, the insurance or reinsurance undertaking under Art. 15, par. 1 of the Code on Insurance shall apply the Guidelines on health catastrophe risk sub-module (EIOPA-BoS-14/176 BG), as adopted by the European Authority.

**Art. 51.** The insurance or reinsurance undertaking under Art.15, par. 1 of the Code on Insurance, using the standard formula in calculating the market risk related to the solvency capital requirement based on the individual risk profile, shall apply the Guidelines on look-through approach (EIOPA-BoS-14/171 BG), as adopted by the European Authority.

**Art. 52.** With regard to market risk module and counterparty default module in the standard formula, the insurance or reinsurance undertaking under Art. 15, par. 1 of the Code on Insurance shall apply the Guidelines on the treatment of market and counterparty risk exposures in the standard formula (EIOPA-BoS-14/174 BG), as adopted by the European Authority.

**Art. 53.** With regard to the calculation of capital requirement for market risk, the insurance or reinsurance undertaking under Art. 15, par. 1 of the Code on Insurance shall apply the Guidelines on basis risk (EIOPA-BoS-14/172 BG), as adopted by the European Authority.

**Art. 54.** With regard to the calculation of the adjustments for the loss-absorbing capacity of technical provisions and deferred taxed to the solvency capital requirement, the insurance or reinsurance undertaking under Art. 15, par. 1 of the Code on Insurance shall apply the Guidelines on the loss-absorbing capacity of technical provisions and deferred taxes (EIOPA-BoS-14/177 BG), as adopted by the European Authority.

## **Section II**

### **Supervisory permissions in relation to the solvency capital requirement**

**Art. 55.** The Deputy Chairperson shall give permission the insurance or reinsurance undertaking, when determining the tax consequences of the loss under Art. 207, paragraph 1 of Regulation (EU) 2015/35, to use an approach based on average tax rates, provided that it may be



proved that the average tax rates are appropriate and avoid a material misstatement of the adjustment.

**Art. 56.** (1) The Deputy Chairperson shall give permission the insurance or reinsurance undertaking not to take account of contingent deferred tax assets when calculating the adjustment for loss-absorbing capacity in cases where it is too difficult for the insurance or reinsurance undertaking to prove their eligibility.

(2) Art. 3 shall apply to obtain a permission under par. 1.

## **Chapter Ten**

### **UNDERTAKING-SPECIFIC PARAMETERS**

**Art. 57.** With regard to the data quality criteria that should be taken into account during the process of calculating undertaking-specific parameters, the insurance or reinsurance undertaking shall apply the Guidelines on undertaking-specific parameters (EIOPA-BoS-14/178 BG), as adopted by the European Authority.

**Art. 58.** (1) The insurance or reinsurance undertaking shall comply with the requirements for the use of undertaking-specific parameters as part of the own risk and solvency assessment.

(2) The insurance or reinsurance undertaking, through the supervisory report on the assessment of own risk and solvency, shall inform the Commission about substantial changes to the information included in the application for approval under Art. 173 of the Code on Insurance, in conjunction with Art. 1 of Regulation 2015/498, and shall submit detailed data on all substantial changes.

(3) Should the use of new data produce any substantial changes in the information included in the application for approval under Art. 173 of the Code on Insurance, in conjunction with Art. 1 of Regulation 2015/498, the insurance or reinsurance undertaking shall submit to the Commission all data related to the performed calculation of undertaking-specific parameters.

(4) If the insurance or reinsurance undertaking becomes aware that another standardized method provides a more accurate result for the purpose of fulfilling the calibration requirements under Art. 170, par. 2 and 3 of the Code on Insurance, it shall submit a new application for approval under Art. 173 of the Code on Insurance, in conjunction with Art. 1 of Regulation 2015/498, to use this alternative standardized method.

**Art. 59.** (1) When the insurance or reinsurance undertaking failed to comply with the requirements for the use of undertaking-specific parameters, the Deputy Chairperson shall obligate the insurance or reinsurance undertaking to put an end to the infringement within a

period of three months.

(2) In the case under par. 1 the Deputy Chairperson shall take into account the degree and the scope of the non-compliance, the time needed to remedy it, as well as the actions which the insurance or reinsurance undertaking intends to take to restore the requirements for the use of undertaking-specific parameters.

(3) When the non-compliance cannot be restored within three months, the Commission, by a proposal of the Deputy Chairperson, shall withdraw the approval for the use of undertaking-specific parameters by the insurance or reinsurance undertaking pursuant to Art. 6 of Commission Implementing Regulation (EU) 2015/498 of 24 March 2015 laying down implementing technical standards with regard to the supervisory approval procedure to use undertaking-specific parameters in accordance with Directive 2009/138/EC of the European Parliament and of the Council.

(4) After the approval has been withdrawn, the insurance or reinsurance undertaking shall recalculate the solvency capital requirement by using standard parameters, and shall submit a new application for approval under Art. 173 of the Code on Insurance, in conjunction with Art. 1 of Regulation 2015/498, if the insurance or reinsurance undertaking intends to use again undertaking-specific parameters.

**Art. 60.** (1) If the Commission, by a proposal of the Deputy Chairperson, requires an insurance or reinsurance undertaking to use undertaking-specific parameters in compliance with Art. 174 of the Code on Insurance, it shall, by means of a decision, indicate to the insurance or reinsurance undertaking which parameters under Art. 218 of Regulation (EU) 2015/35 have to be replaced.

(2) The Commission, by a proposal of the Deputy Chairperson, shall obligate the insurance or reinsurance undertaking to submit an application under par. 1, within one month, and after having analyzed the available standardized methods.

**Art. 61.** (1) When assessing whether there is a significant deviation within the meaning of Art. 174 of the Code on Insurance, the Commission, by a proposal of the Deputy Chairperson, shall take into account significant factors, as follows:

1. the findings arising out of the supervisory review process;
2. the nature, type and size of the deviation;
3. the likelihood and severity of any adverse impact on policyholders and beneficiaries;
4. the level of sensitivity of the assumptions to which the deviation relates;
5. the expected duration and volatility of the deviation over the duration of the deviation.

(2) The Commission, by a proposal of the Deputy Chairperson, shall perform the assessment under Art. 1 at the level of each segment for which the use of undertaking-specific parameters by the insurance or reinsurance undertaking is possible.

**Art. 62.** (1) The application for approval of the use of group-specific parameters shall include as a minimum the information required in paragraphs 2, 3 and 4 of Article 1 of Implementing Regulation (EU) 2015/498, where any reference to "undertaking-specific parameters" shall be understood as a reference to "group-specific parameters".

(2) At request of the Commission, where it is a group supervisory authority, the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company shall provide additional information where necessary to assess the application.

**Art. 63.** (1) In the case of an application for approval of the use of undertaking-specific parameters by an individual insurance or reinsurance undertaking included in the scope of the group solvency calculation, the Commission, upon receipt of the application, shall inform the supervisory college of the receipt of the above and of its decision. Should it refused to grant an approval, the Commission shall inform the supervisory college of the reasons of its decision.

(2) Before making a final decision on the application for the use of group-specific parameters the Commission, where it is a group supervisory authority, must take into account the decisions of the supervisory authorities with regard to the applications submitted by individual insurance or reinsurance undertakings included in the scope of the group solvency calculation for the use of undertaking-specific parameters.

## **TITLE TWO**

### **SOLVENCY CAPITAL REQUIREMENT. INTERNAL MODELS**

#### **Chapter Eleven**

#### **GENERAL RULES**

##### **Section I**

##### **Implementation and interpretation rules. Preliminary application.**

**Art. 64.** (1) The insurance or reinsurance undertaking under Art. 15, par. 1 of the Code on

Insurance shall implement the Guidelines on the use of internal models (EIOPA-BoS-14/178 BG), adopted by the European Authority in relation to the use and assessment of internal models.

(2) The approval under Chapter Thirteen, Section III of the Code on Insurance shall be issued in accordance with Commission Implementing Regulation (EU) 2015/460 of 19 March 2015 laying down implementing technical standards with regard to the procedure concerning the approval of an internal model in accordance with Directive 2009/138/EC of the European Parliament and of the Council (Regulation (EU) 2015/460) (OJ L 76/13 of 20 March 2015).

(3) Commission Implementing Regulation (EU) 2015/461 of 19 March 2015 laying down implementing technical standards with regard to the process to reach a joint decision on the application to use a group internal model in accordance with Directive 2009/138/EI of the European Parliament and of the Council (OJ L 76/19 of 20 March 2015) shall apply for the approvals for the use of group internal models.

## **Section II**

### **Preliminary application for an internal model**

**Art. 65.** (1) An insurance or reinsurance undertaking who intends to submit an application (request) for approval of a full or partial internal model may submit a preliminary application, so that the commission may, on proposal of the Deputy Chairperson, form an opinion on how prepared an insurance or reinsurance undertaking is to use an internal model for calculation of the solvency capital requirement according to the Code on Insurance and to meet the other internal models requirements.

(2) The Guidelines on preliminary application for internal models (EIOPA CP 13/011/BG) adopted by the European Authority shall apply for the preliminary application under par. 1 hereto.

(3) The opinion under par. 1 should be formed within six months of the submission of the preliminary application.

## **Section III**

### **Requirements in relation to the application (request) for the use of group internal model**

**Art. 66.** (1) In the case of an application (request) for the use of a group internal model under Art. 252 of the Code on Insurance, the applicant shall include for each related undertaking that has applied to use the group internal model for the calculation of its solvency capital requirement the information under Art. 2 of Implementing Regulation (EU) 2015/460 which is specific to this related undertaking, unless this information has been already submitted by the insurance or reinsurance undertaking that is a participating undertaking.

(2) The applicant shall submit information for each related undertaking included in the application (request) under par. 1 to the extent to which the development, implementation or validation of the group internal model components which are necessary for the calculation of the solvency capital requirement of the related undertaking are performed by another related undertaking within the group.

**Art. 67.** (1) In the case of an application (request) for the use of a group internal model the request for additional information from a related undertaking by the respective supervisory authorities involved within the meaning of Art. 343 paragraph 2 of Regulation (EU) 2015/35 shall first be submitted to the Commission in the case it is a group supervisory authority. In the case the Commission is a group supervisory authority, it shall forward the request to the related undertaking, or provide the respective supervisory authority requesting the information with the relevant documents when they have already been provided to it.

(2) In the case of an application (request) for the use of a group internal model according to Art. 252 of the Code on Insurance, the Commission, in the event it is a supervisory authority of a related undertaking within the meaning of Art. 347, paragraph 3 of Regulation (EU) 2015/35, may directly request further information from the related undertaking it supervises in order to assess the compliance of the group internal model with the internal model requirements in respect of the solvency capital requirement of this related undertaking. The Commission shall duly inform the group supervisory authority about such request for information.

**Art. 68.** (1) In the case of an application (request) under Art. 252 of the Code on Insurance as part of the justification as per Art. 343, paragraph 5, or Art. 347, paragraph 6 of Regulation (EU) 2015/35, the applicant shall indicate the intention, if any, to extend the scope of the internal model in the future in order to include, for the purposes of calculation of the group solvency capital requirement, any of the related undertakings within the scope of the group supervision, but which are not included in the scope of the internal model in the application (request).

(2) In the case of an application (request) under Art. 252 of the Code on Insurance as part of the justification of the scope of the internal model the applicant shall describe the intention, if any, to extend in the future the scope of the internal model in order to include the calculation of the solvency capital requirement of any related undertaking which is not included in the scope of the calculation of its solvency capital requirement with the group internal model.

**Art. 69.** In an application (request) for the use of a group internal model under Art. 252 of the Code on Insurance the applicant shall explicitly state to what extent the technical specifications of the group internal model may differ when the internal model is used for the calculation of the group solvency capital requirement and the calculation of the solvency capital requirement of related undertakings, including:

1. treatment of the intra-group transactions for calculation of the solvency capital requirements of related undertakings and where applicable – the group solvency capital requirement;

2. list of parameters within the internal model that may be set differently for different calculations performed with the group internal model, for the purposes of the calculation of the group solvency capital requirement and the calculation of the individual solvency capital requirements; and

3. description of the group specific risks only relevant in the calculation of the group solvency capital requirement.

## **Section IV Model changes**

**Art. 70.** (1) The insurance or reinsurance undertaking shall notify the Commission about minor changes to the internal model at least once in a quarter, within 15 days after the end of the respective quarter. Minor changes to the internal model shall be included in a report describing the quantitative and the qualitative impacts of changes and the approximate cumulative quantitative and the qualitative effects of the changes on the approved internal model.

(2) The insurance or reinsurance undertaking shall use the latest internal model approved by the Commission as reference for evaluating whether a combination of minor changes is considered as a major change, unless otherwise approved by the Commission.

**Art. 71.** (1) Application for extension of the group internal model as per par. 2 shall be submitted by the applicant to the group supervisory authority following the procedure for a major change of the internal model as set out in Art. 7 of Implementing Regulation (EU) 2015/460.

(2) The extensions under par. 1 shall be:

1. the extension to calculate the solvency capital requirement of a related undertaking – insurance or reinsurance undertaking, currently included in the scope of the group internal model for the calculation of the group solvency capital requirement, but which is currently not using the group internal model for the calculation of its solvency capital requirement;

2. the extension to cover new elements at the level of the group; and

3. the extension to cover new element at the level of a related undertaking – insurance or reinsurance undertaking, currently using the group internal model for the calculation of its solvency capital requirement, including the extension related to elements already used at the level of the group or of other related undertakings.

## **Section V**

## **Probability distribution forecast**

**Art. 72.** In order to form an opinion pursuant to Art. 177, par. 2, sentence three of the Code on Insurance, the Deputy Chairperson shall take into account at least:

1. the risk profile of the insurance or reinsurance undertaking and to what extent it is reflected by the probability distribution forecast;

2. the current progress in actuarial science and the generally accepted market practice as per Art. 229, letter (a) of Regulation (EU) 2015/35;

3. with respect to the level of probability distribution forecast richness, any measures that the insurance or reinsurance undertaking puts in place to ensure compliance with each of the internal model tests and standards under Art. 176-182 of the Code on Insurance;

4. for a particular risk under consideration, the way in which the chosen techniques and the probability distribution forecast obtained by the insurance or reinsurance undertaking interact with other risks within the scope of the internal model as regards the level of probability distribution forecast richness as per Art. 232 of Regulation (EU) 2015/35;

5. The nature, the scale and the complexity of the risk under consideration as set out in Art. 577, par. 3 of the Code on Insurance .

## **Section VI**

### **Internal models for groups. Functioning of colleges**

**Art. 73.** (1) When assessing the appropriateness of the scope of the internal model, where the Commission is group supervisory authority, another supervisory authority involved within the meaning of Art. 343, paragraph 2 of Regulation (EU) 2015/35 or another supervisory authority determined by the college according to Art. 344, paragraph 2 of Regulation (EU) 2015/35 shall consider at least:

1. the significance of the related undertakings within the group with respect to the risk profile of the group;

2. the risk profile of the related undertakings within the group compared to the overall group risk profile;

3. a transitional plan by the group to extend the scope of the model at a later stage and respective timeframe, if applicable;

4. the appropriateness of the standard formula or another internal model approved, or in the process of approval, for calculation of the solvency capital requirement of any related

undertaking – insurance or reinsurance undertaking, included in the scope of the internal model;

5. the appropriateness of the standard formula or another internal model approved, or in the process of approval, for calculation of the solvency capital requirement of any related undertaking – insurance or reinsurance undertaking, within the group, but not included in the scope of the internal model for the group.

(2) When assessing the appropriateness of the exclusion of the related undertakings within the group from the scope of the internal model, the Commission, acting in its capacity as the authority under par. 1, shall assess whether the exclusion of the insurance or reinsurance undertaking could lead to:

1. an improper allocation of own funds based on the solvency capital requirements of the individual insurance or reinsurance undertaking rather than on its contribution to the risk profile of the group;

2. inconsistencies that would derive from the use of the internal model to calculate the group solvency capital requirement and the use of the standard formula, or a different internal model, approved or in the process of approval, by any related undertaking within the group to calculate its solvency capital requirement;

3. weaknesses in risk management of the group and the related undertakings within the group resulting from the limited scope of the internal model; or

4. an inadequate group solvency capital requirement in relation to the risk profile of the group.

**Art. 74.** (1) Where the commission is a supervisory authority of the group, in consultation with the other supervisory authorities involved it shall set up a work plan for assessment and approval of an internal model and communication rules to follow among these authorities during the process of assessment and approval of the group internal model.

(2) When necessary, the Commission, where it is a supervisory authority of the group, in consultation with the other supervisory authorities involved, shall update the internal model work plan.

(3) In relation to the assessment of the internal model the Commission, where it is a supervisory authority of the group, shall ensure that the work plan covers the timeline, the main steps and the results of this assessment. In the case of a group internal model under Art. 252 of the Code on Insurance, the Commission, where it is a supervisory authority of the group, or of another supervisory authority involved, shall consider including in the internal model work plan specific provisions between them. Where the Commission is the supervisory authority of the group, it shall ensure at least that the work plan:



1. establishes when and how to consult and involve in the assessment the other supervisory authorities involved as per Art. 343, paragraph 2 of Regulation (EU) 2015/35;

2. establishes when and how to allow the other supervisory authorities within the college of supervisors under Art. 344, paragraph 2 of Regulation (EU) 2015/35 to participate in the assessment;

3. identifies the priorities for the assessment, taking into account the scope of the internal model, the specificities of each related undertaking within the group, the risk profile of the group and the related undertakings within the group, and the available and relevant information about the internal model;

4. establishes when and how to report the results of the assessment made by the respective supervisory authorities to the other respective supervisory authorities involved.

(4) In relation to the decision on the application (request) under Art. 252 of the Code on Insurance the Commission, where it is the supervisory authority of the group, in consultation with the other supervisory authorities concerned, shall ensure that the internal model work plan covers the timeline for all steps and results for reaching a joint decision as set out in Implementing Regulation (EU) 2015/461.

**Art. 75.** Whenever the commission in its capacity as supervisory authority involved identifies a substantial point of concern regarding the approval process, it shall notify this to the group supervisory authority and the other involved authorities as soon as possible.

**Art. 76.** (1) The Commission, where it is a group supervisory authority or a supervisory authority involved, may request and discuss with other supervisory authorities involved the organization of joint on-site inspections to verify any information concerning the assessment of a group internal model with the aim of ensuring the effectiveness of the process.

(2) The Commission, where it is a group supervisory authority, shall notify the other respective supervisory authorities, the European Authority and, where relevant, the other members and participants of the college that may be affected or interested in the participation or in the result of the joint on-site inspection.

(3) When the commission participates in a joint on-site inspection, it shall discuss and agree with the other supervisory authorities the final scope, purpose, structure and allocation of the tasks and the leader of the inspection.

(4) The Commission, where it is not a supervisory authority of the group, shall inform that authority about the progress and the findings of the joint on-site inspection.

(5) When the Commission is leading the on-site inspection, and when it is not the supervisory authority of the group, it shall provide the relevant documentation to the group

supervisory authority. When the Commission is the supervisory authority of the group, it shall provide the relevant documentation available, received by the respective supervisory authorities, to the other supervisory authorities participating in the joint on-site examination and to the European Authority, and provide them with documents upon special request.

(6) On the basis of a report stating the main findings of the joint on-site inspection, the Commission, when it is the leading supervisory authority of the on-site inspection, shall discuss with the supervisory authorities involved the results thereof and the actions to be taken.

(7) The commission, where is the supervisory authority of the group, shall notify the other college members and the participants about the result and the action as part of the agreed communication within the college.

**Art. 77.** (1) The Commission, where it is a supervisory authority involved, shall share and discuss with the other supervisory authorities involved the main findings of the off-site and on-site activities.

(2) The Commission, where it is a supervisory authority involved, shall inform the supervisory authorities involved about the approach it is following in the review of the elements of the internal model with the group supervisory authority and the other supervisory authorities involved.

(3) If, as a result of the information under par. 2, the Commission, where it is a supervisory authority involved, identifies substantial differences in the approaches followed, it shall discuss and agree with the supervisory authorities involved on a process of development of consistent approaches when they consider such alignment as appropriate.

(4) When appropriate, the Commission, where it is supervisory authority involved, shall discuss the tools and techniques used for the review of the elements of the internal model with the other supervisory authorities involved.

**Art. 78.** (1) The Commission, where it is a supervisory authority of the group, together with the other supervisory authorities involved, shall decide whether and which third country supervisory authorities should be consulted.

(2) Before consulting a third country supervisory authority the commission, when it is a supervisory authority of the group, together with the other supervisory authorities involved shall take appropriate steps to ensure that the legislative provisions of the confidentiality of information of the jurisdiction where the third country supervisory authority is situated are equivalent to the professional secrecy requirements in compliance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance.

**Art. 79.** In relation to the assessment of the application (request) for approval of major

change to a group internal model under Art. 252 of the Code on Insurance, the Commission, where it is a supervisory authority of the group, together with the other supervisory authorities involved, shall jointly decide whether to delegate the assessment of changes to the supervisory authority of a related undertaking.

## **TITLE THREE**

### **SOLVENCY MARGINS OF INSURANCE UNDERTAKINGS WITHOUT A RIGHT OF ACCESS TO THE SINGLE MARKET**

#### **Chapter Twelve**

#### **SOLVENCY MARGIN**

##### **Section I**

##### **General provisions**

**Art. 80.** The solvency margin is the minimum amount of the own funds reduced by the intangible assets, which are required to ensure the fulfillment of the contractual obligations of an insurance undertaking on a long-term basis according to the total volume of the activities thereof.

##### **Section II**

#### **Methods of calculation of the solvency margin of an insurance undertaking carrying on insurance business covering insurances under Section I of Annex No 1 to the Code on Insurance**

**Art. 81.** (1) The solvency margin of an insurance undertaking carrying on insurance business covering insurances under Section I, point 1, letters (a) and (b), and point 2 of Annex No 1 to the Code on Insurance shall be determined as the sum of following results:

1. the calculations in respect of the mathematical provisions;
2. the calculation in respect of the capital at risk.

(2) The calculations in respect of the mathematical provisions referred to in par. 1, point 1 shall be performed in the following manner:

1. the gross mathematical provisions, including the distributed additional income according to Art. 15 of Ordinance 27 of 2006 on the procedure and methods for formation of the technical provisions of the insurance and reinsurance undertakings (SG, iss. 36 of 2006), the reserve for future income allocation, as well as the reinsurance acceptances reserve, shall be multiplied by 4 per cent;

2. the result under point 1 shall be adjusted by a ratio of the net and gross amount of the mathematical provisions; this ratio may not be less than 0,85.

(3) the calculations in respect of the capital at risk referred to in par. 1, point 2 shall be performed in the following manner:

1. for contracts on which the capital at risk is not negative – the sum insured due under the contracts upon occurrence of death, reduced by the mathematical provisions under the said contracts shall be multiplied by 0,3 per cent; the distributed additional income according to Article 15 of Ordinance 27 of 2006 on the procedure and methods for formation of the technical provisions of the insurance and reinsurance undertakings shall not be included in the mathematical provisions; for Term Life Insurance with cover of a death risk with validity of the contract not exceeding three years, the capital at risk shall be multiplied by 0,1 per cent, and when the term of the contract exceeds three years, but is not more than five years – by 0,15 per cent;

2. the result under point 1 shall be multiplied by a ratio of the total capital at risk net of reinsurance to the total capital at risk gross of reinsurance, determined for the last financial year; this ratio may not be less than 0,5.

(4) For the purposes of the calculations under par. 2 and 3, receivables on a special purpose vehicle for alternative transfer of insurance risk may be considered reinsurance, subject to the approval of the Commission, on proposal of the Deputy Chairperson, based on a reasoned request with written evidence attached about the reliability of the special purpose vehicle for alternative transfer of insurance risk. Art. 33, par. 4 shall apply.

**Art. 82.** The solvency margin of an insurance undertaking carrying on insurance business covering insurances under Section I, Point 3 of Annex No. 1 to the Code on Insurance shall be determined as the sum of:

1. four per cent of the unit-linked and index-linked life insurance gross provisions, multiplied by the ratio of the net and the gross provisions under unit-linked and index-linked life insurances - when the insurance undertaking bears an investment risk; this ratio may not be less than 0,85;

2. one per cent of the unit-linked and index-linked life insurance gross provisions, multiplied by the ratio of the net and the gross provisions under unit-linked and index-linked life insurances - when the insurance undertaking bears no investment risk and the allocation to cover

management expenses is fixed for a period exceeding five years; this ratio may not be less than 0,85;

3. twenty-five per cent of the net administrative expenses pertaining to this type of insurance for the last year - when the insurance undertaking bears no investment risk and the allocation to cover management expenses is not fixed for a period exceeding five years;

4. three tenths per cent of the capital at risk multiplied by the ratio of the capital at risk net of reinsurance to the capital at risk gross of reinsurance, determined for the last financial year - when the insurance undertaking covers a death risk; this ratio may not be less than 0,5.

**Art. 83.** The solvency margin of an insurance undertaking carrying on insurance business covering insurances under Section I, Point 4 of Annex No. 1 to the Code on Insurance, shall be determined pursuant to Art. 81, par. 1, point 1.

**Art. 84.** The solvency margin of an insurance undertaking carrying on insurance business covering insurances under Section I, Point 1, letter (c) of Annex No. 1 to the Code on Insurance, shall be determined pursuant to Art. 86.

**Art. 85.** (1) The solvency margin of an insurance undertaking carrying on insurance business covering insurances under Section I of Annex No. 1 to the Code on Insurance, shall be determined as the sum of the results under Art. 81, par.1, Art. 82, 83 and 84.

(2) The solvency margin of an insurance undertaking carrying on insurance business covering insurances under Section I, and Section II, letter "A", point 1 or 2, or point 1 and 2 of Annex No. 1 to the Code on Insurance, shall be determined as the sum of the results under par.1 and its solvency margin for the insurances under Section II, letter "A ", point 1 or 2, or point 1 and 2 of Annex No. 1 to the Code on Insurance, as laid down pursuant to provisions of Art. 86.

### **Section III**

## **Methods of calculation of the solvency margin of an insurance undertaking carrying on insurance business covering insurances under Section II of Annex No 1 to the IC**

**Art. 86.** (1) The solvency margin shall be determined using the following methods:

1. calculations on the basis of the premiums;
2. calculations on the basis of the average annual amount of claims.

(2) The calculations in respect of the premiums under par. 1 point 1 shall be performed according to Annex No. 2 hereto, taking as a basis the higher of:

1. the premium income for the latest financial year;
2. the earned premiums for the last financial year.

(3) The calculations on the basis of the average annual amount of the claims under par. 1 point 2 shall be performed according to Annex No. 3, using as a basis the claims under contracts for the last three financial years, respectively, for the last seven financial years where the insurance undertaking essentially underwrites one or more of the risks of storm, hail or frost.

(4) In respect to the insurance under Section II, Point 18 of Annex No 1 to the Code on Insurance, the amount of the paid up claims in the calculation of the solvency margin towards the average annual amount of claims shall be the amount of the expenses made by the insurance undertaking in providing travel assistance services.

(5) The solvency margin of an insurance undertaking carrying on insurances covered under Section II of Annex No. 1 to the Code on Insurance shall be equal to the higher of the two results of the calculations using the methods under par. 1.

**Art. 87.** (1) Upon a reasoned request of an insurance undertaking, with attached written evidence about the reliability of the special purpose vehicle for alternative transfer of insurance risk, the Deputy Chairperson may approve that receivables on such special purpose vehicle are considered reinsurance for the purposes of the calculations of the factors K1 under Annex No. 2 and K2 under Annex 3 in the indicators for the share of reinsurance undertakings in the effected payments on claims during the last three financial years, and for change in the share of reinsurance undertakings in the outstanding claims reserve in the last three financial years.

- (2) The procedure provided for in Art. 30, par. 2 shall apply for obtaining an approval.

**Art. 88.** If the solvency margin as determined according to the procedure provided for in Art. 287 is lower than the solvency margin for the preceding year, then the solvency margin shall be at least equal to the solvency margin for the preceding year, multiplied by the ratio of the net provisions for claims outstanding at the end of the financial year and the net provisions for claims outstanding at the beginning of the financial year. This ratio may not be higher than one.

## **PART FOUR GROUP SOLVENCY**

### **Chapter Thirteen SOLVENCY OF GROUP OF INSURANCE AND REINSURANCE UNDERTAKINGS WITH RIGHT OF**

## ACCESS TO THE SINGLE MARKET

**Art. 89.** The insurance or reinsurance undertaking under Art. 15, par. 1 of the Code on Insurance should apply the Guidelines on group solvency (EIOPA-BoS-14/181 BG) adopted by the European Authority in regard of some aspects of the requirements for calculation of the group solvency of insurance and reinsurance undertakings with right to access to the common market.

**Art. 90.** (1) According to Art. 236 of the Code on Insurance where a subgroup referred to in Art. 234, par. 1, point 1 and 2 of the Code on Insurance exists, the Commission, where it is a group supervisory authority under Art. 281, par. 2 of the Code on insurance, after consulting with the other supervisory authorities concerned shall perform the group supervision at the level of the ultimate parent undertaking in the European Union and in the European Economic Area (EEA).

(2) Should an insurance or reinsurance undertaking which is a parent undertaking, the insurance holding company or the mixed financial holding company, have its head office outside the EEA and is subject to equivalent third country group supervision, the Commission, where it is a group supervisory authority under Art. 281, par. 2 of the Code on Insurance, shall rely on the group supervision exercised by the third-country supervisory authorities, according to Art. 279 of the Code on Insurance and shall exempt the third-country group from group supervision at the ultimate level of the European Union on a case-by-case basis, provided that this would result in more efficient supervision on the group and would not impair the supervisory activities of the Commission and the supervisory authorities concerned.

(3) After consulting with the other supervisory authorities concerned, the Commission, when it is a group supervisory authority under Art. 281 of the Code on Insurance, shall consider that more efficient group supervision may be achieved when the following criteria are met:

1. the worldwide group supervision allows for a robust assessment of the risks to which the EEA subgroup and its entities are exposed, taking account on the structure of the group, the nature, scale and complexity of the risks and the capital allocation within the group;

2. the cooperation currently in place between the third-country group supervisory authority and EEA supervisory authorities for the group concerned is structured and well-managed through regular meetings and appropriate exchange of information within the college of supervisors;

3. an annual work plan, including joint on-site inspections, is agreed upon in these regular meetings of the supervisory authorities involved in the supervision of the group.

(4) Where the insurance or reinsurance undertaking which is a parent undertaking, the insurance holding company or the mixed-activity financial holding company has its head office outside the EEA and is not subject to an equivalent third country supervision, the group solvency supervision shall be applied at the level of the ultimate parent undertaking in the European Union where a group exists within the meaning of Art. 234, par. 1, point 1 and 2 of the Code on Insurance. Where such group does not exist, the Commission shall decide whether to require, by

virtue of Art. 280, par. 1, point 1 of the Code on Insurance, the establishment of an insurance holding company or a mixed-activity financial holding company which has its head office in the European Union and to subject this EEA group to group supervision and group solvency calculation.

**Art. 91.** Where a parent undertaking is a mixed-activity insurance holding company, the group solvency calculation should apply to any part of the group satisfying the criteria of Art 234, par. 1, point 1, 2 or 3 of the Code on Insurance, but shall not apply to the mixed-activity insurance holding company.

**Art. 92.** When deciding whether the exclusive application of method 1 is not appropriate according to Art. 328, par. 1, letter (e) of Regulation (EU) 2015/35, where the Deputy Chairperson performs the functions of a group supervisory authority, he/she shall take into account the presence of intra-group transactions between the related undertaking, which is assessed for deduction and aggregation, and all other entities within the scope of the group solvency calculation.

**Art. 93.** (1) Where a related undertaking is related with another undertaking as per Art. 12, par. 1 of Directive 83/349/EEC, the participating insurance or reinsurance undertaking, the insurance holding company or the mixed-activity financial holding company should determine the proportional share to be used when calculating the group solvency, irrespective of the choice of the calculation method.

(2) The proportional share to be used is 100%. Should the group declare to the Deputy Chairperson who performs the functions of a group supervisory authority the use of another percentage, then it should submit an application with explanation of the reasons for the appropriateness of the use of another proportional share. After consulting with the other supervisory authorities involved and with the group itself, the Deputy Chairperson shall decide on the appropriateness of the proportional share.

(3) When calculating the group solvency according to method 1, the participating insurance or reinsurance undertaking, the insurance holding company or the mixed-activity financial holding company shall determine the proportional share it holds in its related undertakings by taking:

1. 100% when including a subsidiary undertaking according to Art. 335, par. 1, letters (a) and (b) of Regulation 2015/35, unless otherwise decided according to Art. 94;

2. the percentage used for the establishment of the consolidated accounts, when including undertakings according to Art. 335, par. 1, letter (c) of Regulation (EU) 2015/35;

3. the proportional share of the subscribed capital that is held, directly or indirectly, by the participating insurance or reinsurance undertaking, the insurance holding company or the mixed-activity financial holding company, when including related undertakings according to Art. 335,



par. 1, letter (e) of Regulation (EU) 2015/35.

**Art. 94.** (1) In order to prove that the responsibility of the parent undertaking is strictly limited to the share of the capital of the insurance or reinsurance subsidiary undertaking as envisaged in Art. 242, par. 4 of the IC, the parent undertaking shall provide evidence to the Deputy Chairperson when he performs the functions of a group supervisory authority that the following criteria are met:

1. no profit and loss transfer agreement is concluded and no guarantees, net worth maintenance agreements or any other agreements of the parent undertaking or any other related undertaking providing financial support are in place;

2. the investment in the subsidiary undertaking is not considered as a strategic investment for the parent undertaking;

3. the parent undertaking does not benefit of any advantage from its participation in the subsidiary undertaking when concluding intra-group transactions, including loans, reinsurance agreements or service agreements;

4. the subsidiary undertaking is not a core component of the group's business model, in particular regarding product offering, client base, underwriting, distribution, investment strategy and management; furthermore, the subsidiary undertaking does not operate under the same name or brand, and there are no interlocking responsibilities at the level of the management or control bodies of the group;

5. a written agreement between the parent undertaking and the subsidiary undertaking explicitly limits the support of the parent undertaking in case of solvency deficit to the parent undertaking's share in the capital of that subsidiary undertaking; the subsidiary undertaking shall elaborate a strategy to resolve the solvency deficit, including guarantees from minority shareholders.

(2) Where the subsidiary undertaking is included in the scope of the internal model for calculation of the group solvency capital requirement, the Deputy Chairperson, when he/she performs the functions of a group supervisory authority, shall not allow the parent undertaking to take into account the solvency deficit of the subsidiary undertaking on a proportional basis.

(3) The Deputy Chairperson, when he/she performs the functions of a group supervisory authority, shall assess the criteria under par. 1 after consulting the other supervisory authorities concerned and the group itself, on a case-by-case basis, taking into account the specific features of the group.

(4) The status of strictly limited responsibility of the parent undertaking shall be subject to an annual review by the Deputy Chairperson when he/she performs the functions of group supervisory authority.

(5) The parent undertaking and the subsidiary undertaking shall disclose the permission to recognize the solvency deficit on a proportional basis in order to inform the policyholders and the investors as material information in the capital management section of the group and individual solvency and financial condition report.

(6) When preparing the consolidated data using method 1, the own funds and the solvency capital requirement of the subsidiary undertaking shall be calculated on a proportional basis instead of applying a full consolidation.

(7) When preparing the aggregated data using method 2, the own funds and the solvency capital requirement of the subsidiary undertaking shall be calculated using the proportional share of that subsidiary undertaking, also in the case of a solvency deficit.

**Art. 95.** (1) The participating insurance or reinsurance undertaking, the insurance holding company or the mixed-activity financial holding company shall assess the availability of own funds according to Art. 243, par. 3 and 4 of the Code on Insurance, and according to Art. 330 of Regulation (EU) 2015/35, of related insurance or reinsurance undertakings, intermediate insurance holding companies and intermediate mixed financial holding companies that are not related undertakings, and of third-countries related insurance or reinsurance undertakings, intermediate insurance holding companies and intermediate mixed financial holding companies that are not related undertakings, when the own-fund items of these undertakings materially affect the amount of group own funds or the group solvency. The entities mentioned in the first sentence shall inform the Deputy Chairperson, when he/she is a group supervisory authority, on how the assessment was made.

(2) When performing the function of a group supervisory authority, the Deputy Chairperson shall review, in close cooperation with the other supervisory authorities involved, the assessment made by the group.

**Art. 96.** The participating insurance or reinsurance undertaking, the insurance holding company or the mixed-activity financial holding company should calculate the amount of the minority interests in the eligible own funds, which should be deducted from the group own funds, for each subsidiary undertaking in the following order:

1. calculating the eligible own funds exceeding the contribution of the subsidiary undertaking to the group solvency capital requirement;

2. identifying and deducting the amount of non-available own funds exceeding the contribution of the subsidiary undertaking to the group solvency capital requirement from the eligible own funds calculated as defined in point 1;

3. calculating the part of minority interests to be deducted from the group own funds by multiplying the minority share by the result of point 2.

**Art. 97.** (1) In the case of a cross-border group, when the Commission is the group supervisory authority, the Deputy Chairperson shall discuss its assessment of non-available own funds with the other supervisory authorities concerned within the college, and with the participating insurance or reinsurance undertaking, the insurance holding company or the mixed-activity financial holding company.

(2) In its regular supervisory report, the participating insurance or reinsurance undertaking, the insurance holding company or the mixed-activity financial holding company shall provide the Commission, when it is a group supervisory authority, with assessment of the non-available own funds for all the undertakings included in the calculation of the group solvency. The entities mentioned in the first sentence shall explain the adjustments made in order to deduct non-available own funds.

(3) When the Commission is the group supervisory authority, the Deputy Chairperson shall discuss the assessment of the non-available own funds within the college, as well as with the group.

(4) The Deputy Chairperson shall assess at group level the available own funds of the supervised undertakings.

(5) When the Commission is the group supervisory authority, the Deputy Chairperson shall discuss with the other supervisory authorities concerned whether the available own funds change by assessment at individual or group level.

**Art. 98.** (1) In the case of a national group, the Deputy Chairperson shall discuss his/her assessment of the non-available own funds with the participating insurance or reinsurance undertaking, the insurance holding company and the mixed-activity financial holding company.

(2) In its regular supervisory report, the participating insurance or reinsurance undertaking, the insurance holding company or the mixed-activity financial holding company shall provide the Commission with assessment of the non-available own funds for all the undertakings included in the calculation of the group solvency. The entities mentioned in the first sentence shall explain the adjustments made in order to deduct non-available own funds.

(3) When the Commission is the group supervisory authority, the Deputy Chairperson shall discuss the assessment of non-available own funds with the group.

**Art. 99.** Where a risk profile capital add-on has been set on a related undertaking and that related undertaking is consolidated according to method 1, and the Commission is a group supervisory authority, it shall assess at group level the significance of the deviation of the risk profile from the assumptions underlying the solvency capital requirement, as calculated using the standard formula or an internal model, and shall consider the need for imposing a capital add-on on the group solvency capital requirement.

**Art. 100.** Where a governance capital add-on has been set on a related undertaking of a group, and that related undertaking is consolidated according to method 1, and when the Commission is a group supervisory authority, it shall assess at group level the significance of the deviation from the standards under Art. 76-79 and Art. 86-100 of the Code on Insurance and shall consider the need for imposing a capital add-on on the group solvency capital requirement.

**Art. 101.** (1) When a significant deviation according to Art. 76-79 and Art. 86-100 of the Code on Insurance has been identified at group level, the Commission, on proposal of the Deputy Chairperson, shall assess whether the deviation results from the risk profile or from the system of governance at the level of the related undertaking – insurance of reinsurance undertaking with its head office in the Republic of Bulgaria.

(2) In the cases stated in par. 1 the Commission, on proposal of the Deputy Chairperson, shall assess the significance of the deviation under Art. 76-79 and Art. 86-100 of the Code on Insurance from the risk profile or from the standards of the management system and shall consider the need for imposing a capital add-on at the level of the related undertaking – insurance of reinsurance undertaking with its head office in the Republic of Bulgaria.

## **Chapter Fourteen**

### **SUPPLEMENTARY SUPERVISION OF INSURANCE UNDERTAKINGS WITHOUT RIGHT OF ACCESS TO THE SINGLE MARKET, WHICH PARTICIPATE IN AN INSURANCE GROUP**

#### **Section I**

#### **General provisions**

**Art. 102.** The insurance undertaking without a right of access to the single market, which participate in an insurance group, should be subject to supplementary supervision to determine their solvency with respect to their links with other undertakings.

**Art. 103.** (1) An insurance undertaking without a right of access to the single market which has been licensed for activity under the Code on Insurance shall be subject to supplementary supervision:

1. when it is a participating undertaking in at least one insurance undertaking;
2. when its parent undertaking is an insurance holding company or a mixed-activity financial holding company;

3. when its parent undertaking is a mixed insurance holding company.

(2) When exercising the supervision under par. 1 shall be taken into consideration the activity of such companies that are:

1. related undertakings of the insurance undertaking;
2. participating undertakings in the insurance undertaking, and
3. related undertakings of a participating undertaking in the insurance undertaking.

(3) The insurance undertaking referred to in par. 1 shall provide to the commission information for the purpose of the supplementary supervision under the conditions and within the meaning of the Code on Insurance and the Financial Supervision Commission Act. Should this information be not provided pursuant to the first sentence, the Deputy Chairperson may request it from any of the undertakings referred to in par. 2, as well as carry out an on-the-spot examination in any of the undertakings referred to in par. 2, to determine or verify it.

(4) When performing the supplementary supervision under par. 1 the Commission may, on the proposal of the Deputy Chairperson, not take into consideration the condition of any of the undertakings referred to in par. 2, provided that it is situated in a third country where legal impediments to the transfer of the necessary information exist. In this case the rules for verification of the indicators of the insurance undertaking in the absence of information shall apply.

(5) When performing the supplementary supervision under par. 1 the Commission may decide, on a proposal of the Deputy Chairperson, in a particular case, not to take into consideration the condition of any undertaking referred to in par. 2, provided that the undertaking is of negligible interest with respect to the objectives of supplementary supervision, or the inclusion of its financial situation would be inappropriate or misleading with respect to the objectives of supplementary supervision.

(6) The supplementary supervision under par. 1 does not represent supervision of the insurance holding company, the mixed-activity financial holding company or the mixed activity insurance holding company taken individually.

(7) For the purpose of verification or confirmation of material information needed for the supplementary supervision under par. 1, which is in the possession of any undertaking referred to in par. 2 situated in a Member State, the Commission or the Deputy Chairperson may require the support of the competent authorities of that other Member State in compliance with the local legislation.

## **Section II**

### **Adjusted solvency of the insurance undertakings referred to**

## **in Art. 212, par. 1 of the Code on Insurance**

**Art. 104.** (1) The adjusted solvency of an insurance undertaking referred to in Art. 212 of the Code on Insurance shall be determined according to method 2 under Annex № 4.

(2) The adjusted solvency of the insurance undertakings under par. 1 may be determined according to method 1 under Annex № 4 by decision of the Deputy Chairperson.

**Art. 105.** (1) When determining the adjusted solvency of an insurance undertaking pursuant to Art. 212 of the Code on Insurance, the proportional share they hold in related undertakings shall be taken into account.

(2) Proportional share under par. 1 shall mean:

1. the proportion of the subscribed capital that the insurance undertaking holds directly or through related entities – in the case where method 1 under Annex № 6 is used, or

2. the percentage used for the establishment of the consolidated accounts – in the case where method 2 under Annex № 6 is used.

(3) Regardless of the used method under Annex № 6, where the related undertaking is a subsidiary undertaking and has a deficit in covering the solvency margin by own funds, the total deficit in covering the solvency margin shall be taken into account. Where in the opinion of the Deputy Chairperson the responsibility of the parent undertaking holding the share of the capital is limited strictly to that share of the capital, the Deputy Chairperson may give permission for the solvency deficit of the subsidiary undertaking to be taken into account on a proportional basis.

(4) Where there are no capital ties between some of the undertakings in the insurance group, the proportional share to be taken into account for calculation of the adjusted solvency shall be determined by the Deputy Chairperson.

(5) Art. 330, par. 4 of Regulation (EU) 2015/35 and Art. 96 of this Ordinance shall also apply for determination of the proportional share.

**Art. 106.** (1) Regardless of the method used under Annex № 6 for the calculation of the adjusted solvency of an insurance undertaking referred to in Art. 212 of the Code on Insurance, the double use of items included in the own funds of the insurance undertakings taken into account in the calculation of the adjusted solvency must be eliminated.

(2) For the purposes of par. 1, when calculating the adjusted solvency and where the method used under Annex № 6 does not provide for it, the following amounts shall be eliminated:

1. the value of the assets of the insurance undertaking referred to in Art. 212 of the Code on

Insurance which represents the financing of elements included in the own funds of an insurance undertaking which is its related undertaking;

2. the value of any asset of an insurance undertaking which is a related undertaking to the insurance undertaking referred to in Art. 212 of the Code on Insurance which represents the financing of elements included in the own funds of the insurance undertaking referred to in Art. 212 of the Code on Insurance;

3. the value of the assets of an insurance undertaking which is a related undertaking to the insurance undertaking referred to in Art. 212 of the Code on Insurance which represent the financing of elements included in the own funds of another insurance undertaking which is a related undertaking of the insurance undertaking referred to in Art. 212 of the Code on Insurance.

(3) Under observance of the provisions of par. 1 and 2, the future profits under Art. 33 which are expected to arise in an insurance undertaking carrying on insurance or reinsurance business including insurances under Section I of Annex № 1 of the Code on Insurance, which is a related undertaking to the insurance undertaking referred to in Art. 212 of the Code on Insurance, may be taken into account when calculating the adjusted solvency, provided that they are eligible for inclusion in the own funds of the related insurance undertaking.

(4) Under observance of the provisions of par. 1 and 2 the subscribed but not paid-up capital of an insurance undertaking which is related undertaking to the insurance undertaking referred to in Art. 212 of the Code on Insurance, may be taken into account when calculating the adjusted solvency, provided that it is eligible for inclusion in the own funds of the related insurance undertaking. The first sentence shall not apply when the subscribed but not paid-up capital represents a potential obligation of the participating undertaking.

(5) When calculating the adjusted solvency, no account shall be taken of the subscribed but not paid-up capital of an insurance undertaking – related undertaking to the insurance undertaking referred to in Art. 212 of the Code on Insurance, which represents a potential obligation of another insurance undertaking – related undertaking to the insurance undertaking referred to in Art. 212 of the Code on Insurance.

(6) Where the Commission, on a proposal of the Deputy Chairperson considers that certain elements of the own funds of the insurance undertaking which is a related undertaking to the insurance undertaking referred to in Art. 212 of the Code on Insurance, other than those listed in par. 3-5, which may be taken into account in the calculation of the adjusted solvency, but cannot effectively be made available to cover the solvency margin of the insurance undertaking referred to in Art. 212, par. 1 of the Code on Insurance, for which the adjusted solvency is calculated, those items may be included in the calculation only in so far as they are eligible for covering the solvency margin of the related undertaking.

(7) The sum of the items under par. 3-6 may not exceed the amount of the own funds of the related insurance undertaking.

**Art. 107.** (1) When calculating adjusted solvency, no account shall be taken of any element included in the own funds arising out of reciprocal financing between the insurance undertaking referred to in Art. 212 of the Code on Insurance and:

1. a related undertaking;
2. a participating undertaking;
3. a related undertaking with any of its participating undertakings.

(2) Furthermore, when calculating adjusted solvency, no account shall be taken of any element included in the own funds of an insurance undertaking which is a related undertaking to the insurance undertaking referred to in Art. 212 of the Code on Insurance, when this element arises out of reciprocal financing with any other related undertaking to the insurance undertaking referred to in Art. 212 of the Code on Insurance.

(3) Reciprocal financing exists when an insurance undertaking or any of its related undertakings holds shares in the capital or makes loans to another undertaking which, directly or through related undertakings, holds an element included in the own funds of the insurance undertaking or the related undertaking.

**Art. 108.** (1) Where an insurance undertaking referred to in Art. 212 of the Code on Insurance has more than one related undertaking which is an insurance undertaking, then all related undertakings which are insurance undertakings shall be integrated in the calculation of the adjusted solvency.

(2) In cases of successive participation the adjusted solvency calculation shall be carried out at the level of each participating undertaking which is an insurance undertaking which has at least one related insurance undertaking. Successive participation is in place where an insurance undertaking referred to in Art. 212 of the Code on Insurance is a participating undertaking in another insurance undertaking which is also a participating undertaking in at least one insurance undertaking.

**Art. 109.** Where an insurance undertaking referred to in Art. 212 of the Code on Insurance participates in another insurance undertaking through an insurance holding company or mixed-activity financial holding company, the solvency of the insurance holding company is taken into account when calculating adjusted solvency. The solvency of the insurance holding company or the mixed-activity financial holding company shall be determined according to the procedure established by Art. 111.

**Art. 110.** Where the information concerning a related undertaking, necessary for calculating the adjusted solvency of an insurance undertaking referred to in Art. 212 of the Code on Insurance, has not been submitted to the Commission, the book value of that undertaking in the balance sheet of the insurance undertaking referred to in Art. 212 of the Code on Insurance shall



be deducted from the elements included in the calculation of its adjusted solvency. In that case the unrealized gains connected with such participation shall not be taken into account in the calculation of the adjusted solvency.

### **Section III**

## **Supplementary supervision of insurance undertakings as referred to in Art. 213, par. 1 of the IC**

**Art. 111.** (1) The insurance undertakings as referred to in Art. 213 of the Code on Insurance shall be subject to supplementary supervision. For the insurance holding company or the mixed financial holding company section II shall apply accordingly.

(2) For the purposes of par. 1 the insurance holding company or the mixed financial holding company should be treated as insurance undertaking which has a zero solvency margin.

**Art. 112.** Where information concerning a relate undertaking, which is necessary for the exercise of the supplementary supervision under this section, has not been submitted to the Commission, the book value of that undertaking in the balance sheet of the insurance holding company or the mixed financial holding company shall be deducted from the elements included in the calculation of its solvency. In that case, the unrealized gains connected with such participation shall not be taken into account when applying the measures for exercise of supplementary supervision under this section.

## **ADDITIONAL PROVISIONS**

§ 1. Within the meaning given by this Ordinance:

1. “Zillmerised reserve” shall be the net premium reserve reduced by the unredeemed portion of the acquisition costs.

2. “Net amount of the mathematical provisions” shall be the gross amount of the mathematical provisions reduced by the portion of the reinsurance undertaking.

3. “Capital at risk” shall be the amount payable on death less the mathematical provisions.

4. unit-linked and index-linked life insurance net provisions shall be the unit-linked and index-linked life insurance gross provisions reduced by the portion of the reinsurance undertaking.

5. “Premium income” shall be the premium income recognized in the financial statement of an insurance undertaking.

6. “Net provisions for claims outstanding” shall be the gross amount of the provisions for

claims outstanding reduced by portion of the reinsurance undertaking.

7. “Credit institution” shall mean credit institution within the meaning of Art. 4, par. 1, point 1 of Regulation (EU) 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012.

**§ 2. The present Ordinance shall:**

1. Implement the requirements of Art. 93-96, Art. 98 and Art. 103-109 of Directive 2009/138/EC of the European Parliament and the of Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II) (OJ, L 335, p. 1, of 17 December 2009).

2. Implement the requirements of Art. 308b (9) and (10) of Directive 2009/138/EC, implemented by Art. 2 of Directive 2014/51/EU of the European parliament and of the Council on 16 April 2014 for amendment of Directive 2003/71/EC, Directive 2009/138/EC, Regulation (EC) 1060/2009, Regulation (EC) 1094/2010 and Regulation (EC) 1095/2010 relating to the powers of the European supervisory authority (the European Insurance and Occupational Pensions Authority) and the European supervisory authority (European Securities and Markets Authority) (OJ, L 153, p. 1, of 22 May 2014).

3. Implement the requirements of Art. 308b (12) of Directive 2009/138/EC, implemented by Art. 2 of Directive 2014/51/EU of the European parliament and of the Council on 16 April 2014 for amendment of Directive 2003/71/EC, Directive 2009/138/EC, Regulation (EC) 1060/2009, Regulation (EC) 1094/2010 and Regulation (EC) 1095/2010 relating to the powers of the European supervisory authority (the European Insurance and Occupational Pensions Authority) and the European supervisory authority (European Securities and Markets Authority) (OJ, L 153, p. 1, of 22 May 2014).

4. Aim at ensuring measures for the application of:

a) Commission Regulation (EU) 2015/35 of 10 October 2014 amending Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of insurance and reinsurance (OJ, L 12, p. 1, of 17 January 2015);

b) Commission Implementing Regulation (EU) 2015/499 of 24 March 2015 laying down implementing technical standards with regard to the procedures to be used for granting supervisory approval for the use of ancillary own-fund items in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ, L 79, p. 12, of 25 March 2015);

c) Commission Implementing Regulation (EU) 2015/498 of 24 March 2015 laying down implementing technical standards with regard to the procedures to use undertaking-specific parameters in accordance with Directive 2009/138/EC of the European Parliament and of the

Council (OJ, L 79, p. 8, of 25 March 2015);

d) Commission Implementing Regulation (EU) 2015/460 of 19 March 2015 laying down implementing technical standards with regard to the procedure concerning the approval of an internal model in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ, L 76, p. 13 of 20 March 2015);

e) Commission Implementing Regulation (EU) 2015/461 of 19 March 2015 laying down implementing technical standards with regard to the process to reach a joint decision on the application to use a group internal model in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ, L 76, p. 19 of 20 March 2015).

## **TRANSITIONAL AND FINAL PROVISIONS**

**§ 3.** Irrespective the provisions of Art. 9 basic own funds shall be included in Tier 1 basic own funds for a period of 10 years after 1 January 2016, provided that these funds:

1. have been issued before 18 January 2015;

2. they could be used on 31 December 2015 to reach the available solvency margin up to 50% of the solvency margin in accordance with the legal, regulatory and administrative provisions adopted pursuant to Art. 16, par. 3 of Directive 73/239/EEC, Art. 1 of Directive 2002/13/EC, Art. 27, par. 3 of Directive 2002/83/EC and Art. 36, par. 3 of Directive 2005/68/EC;

3. otherwise they could not be classified in Tier 1 or Tier 2 according to Art. 9.

**§ 4.** Without prejudice to the provisions of Art. 9, basic own funds shall be included in Tier 2 basic own funds for a period of 10 years after 1 January 2016, provided that these funds:

1. have been issued before 18 January 2015;

2. they could be used on 31 December 2015 to reach the available solvency margin up to 25% of the solvency margin in accordance with the legal, regulatory and administrative provisions adopted pursuant to Art. 16, par. 3 of Directive 73/239/EEC, Art. 1 of Directive 2002/13/EC, Art. 27, par. 3 of Directive 2002/83/EC and Art. 36, par. 3 of Directive 2005/68/EC.

**§ 5.** (1) Any insurance or reinsurance undertaking should make an assessment of all basic own-fund items issued before 18 January 2015 to define whether these items have the features determining their classification according to Art. 71 and 73 of Regulation (EU) 2015/35. If any such items have the specific features classifying them in Tier 1 or Tier 2, the insurance or reinsurance undertaking should classify them in this tier, even if the particular item could not be used as of 31 December 2015 to cover the solvency margin under Art. 81 of the repealed Insurance Act.

(2) If items that are available as basic own funds according to § 3 or 4, are exchanged or converted into another basic own-fund item after 18 January 2015, the insurance or reinsurance undertaking should consider the exchanged or converted item as new item which does not satisfy § 3, point 1 or § 4, point 1.

(3) The own-fund items under § 3 and 4 that have been ineligible as of 31.12.2015 due only to the application of limit according to the repealed Ordinance 21 of 16.03.2005 on the own funds and the solvency margin of the insurance and reinsurance undertaking, shall be considered eligible, if they satisfy the requirements set out in § 3, point 2, respectively § 4, point 2.

**§ 6.** Without prejudice to the provisions of Art. 164, par, 2, Art. 169 and Art. 170, par. 3 of the Code on Insurance and Art. 37 of the present Ordinance, the following shall apply:

1. Until 31 December 2017, the standard parameters used when calculating the concentration risk sub-module and the spread risk sub-module according to the standard formula in relation to exposures to central governments or central banks of the Member States, denominated and funded in the domestic currency of any Member State, shall be the same as these which should apply to these exposures, denominated and funded in their domestic currencies.

2. In 2018, the standard parameters used when calculating the concentration risk sub-module and the spread risk sub-module according to the standard formula shall be reduced by 80% in regard of exposures to central governments or central banks of the Member States, denominated and funded in the domestic currency of any other Member State.

3. In 2019, the standard parameters used when calculating the concentration risk sub-module and the spread risk sub-module according to the standard formula shall be reduced by 50% in regard of exposures to central governments or central banks of the Member States, denominated and funded in the domestic currency of any other Member State.

4. After 1 January 2020, the standard parameters used when calculating the concentration risk sub-module and the spread risk sub-module according to the standard formula shall not be reduced in regard of exposures to central governments or central banks of the Member States, denominated and funded in the domestic currency of any other Member State.

**§ 7.** This Ordinance is issued pursuant to Art. 168, Art. 172, par. 2, Art. 183, Art. 208, par. 2, Art. 209, par. 3, Art. 212, par. 1, Art. 213, par. 1 and Art. 232, par.5 of the Code on Insurance and was adopted by Decision No. 158-H of 28.04.2016 of the Financial Supervision Commission.

**§ 8.** This Ordinance shall enter into force on the day of its publication in the “State Gazette” and shall repeal Ordinance No. 21 of 16.03.2005 on the own funds and the solvency margin of the insurance and reinsurance undertakings.

**§ 9.** In Annex No. 1 to Art. 21, par. 1 of Ordinance No. 31 of 2006 on the terms and

conditions to hold an exam and recognize the qualifications of an actuary in charge, to recognize qualifications acquired outside the Republic of Bulgaria as well as the form of actuarial certificate, the form and content of the actuarial report and the schedules under the Code on Insurance which the actuary shall certify (State Gazette, issue 71 of 2006, am. and suppl. issue 51 of 2008, issue 66 of 2013, issue 54 of 2014) Section VII shall be amended as follows:

" Section VII

Solvency analysis of insurance undertakings without a right of access to the single market

The composition elements of actual solvency shall be described (own funds less intangible assets reported on the balance sheet) and the required solvency calculated using the methods set out in Ordinance No. 51 of 28.04.2016 on own funds and solvency capital requirements of insurance and reinsurance undertakings and groups of insurance and reinsurance undertakings shall be stated, by analyzing the result derived using the different methods."

§ 10. The Financial Supervision Commission shall give directions for the application of this Ordinance.

**Annex № 1**

To Art. 37, par. 1

**Standard formula for solvency capital requirement**

*1. Calculation of the basic solvency capital requirement*

The basic solvency capital requirement under Art. 88, par.1 shall be equal to:

$$\text{Basic SCR} = \sqrt{\sum_{i,j} \text{Corr}_{i,j} \times \text{SCR}_i \times \text{SCR}_j},$$

where SCR<sub>i</sub> denotes the risk module i, and SCR<sub>j</sub> denotes the risk module j, and where "i,j" means that the sum of the different modules covers all possible combinations of i and j. In the calculation, SCR<sub>i</sub> and SCR<sub>j</sub> shall be replaced by the following:

- SCR<sub>non-life</sub> – non-life underwriting risk module;
- SCR<sub>life</sub> – life underwriting risk module;
- SCR<sub>health</sub> – health underwriting risk module;
- SCR<sub>market</sub> – market risk module;
- SCR<sub>default</sub> – counterparty default risk module.

The multiplier Corri,j denotes the value stated in line i and column j in the following correlation matrix:

j	Market	Default	Life	Health	Non-life
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i					
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

The basic solvency capital requirement includes an additional risk module so that the specific risks are covered arising from intangible assets as they are accepted and assessed for the solvency purposes and which are not included anywhere else in the solvency capital requirement.

### 2. Calculation of the non-life underwriting risk module

The non-life underwriting risk module under Art. 90 shall be equal to:

$$SCR_{\text{non-life}} = \sqrt{\sum_{i,j} \text{Corr}_{i,j} \times SCR_i \times SCR_j},$$

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 modules covers all possible combinations of  $i$  and  $j$ . In the calculation,  $SCR_i$  and  $SCR_j$  shall be replaced by the following:

- $SCR_{nl}$  premium and reserve – non-life premium and reserve risk sub-module;
- $SCR_{nl}$  catastrophe – non-life catastrophe risk sub-module.

### 3. Calculation of the life underwriting risk module

The life underwriting risk module under Art. 91 shall be equal to:

$$SCR_{\text{life}} = \sqrt{\sum_{i,j} \text{Corr}_{i,j} \times SCR_i \times SCR_j},$$

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 modules covers all possible combinations of  $i$  and  $j$ . In the calculation,  $SCR_i$  and  $SCR_j$  shall be replaced by the following:

- SCRmortality – mortality risk sub-module;
- SCRlongevity – longevity risk sub-module;
- SCRdisability – disability-morbidity risk sub-module;
- SCRlife expense – life expense risk sub-module;
- SCRrevision – revision risk sub-module;
- SCRLapse – lapse risk sub-module;
- SCRlife catastrophe – life catastrophe risk sub-module.

#### 4. Calculation of the market risk module

Structure of the market risk module:

The market risk module under Art. 93 shall be equal to:

$$SCR_{\text{market}} = \sqrt{\sum_{i,j} \text{Corr}_{i,j} \times SCR_i \times SCR_j},$$

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 modules covers all possible combinations of  $i$  and  $j$ . In the calculation,  $SCR_i$  and  $SCR_j$  shall be replaced by the following:

- SCRinterest rate – interest rate sub-module;
- SCRequity – equity risk sub-module;
- SCRproperty – property risk sub-module;
- SCRspread – spread risk sub-module;
- SCRconcentration – market risk concentrations sub-module;
- SCRcurrency – currency risk sub-module.

#### **Annex № 2**

To Art. 86, par. 2

#### **Solvency margin calculated on the basis of premiums**

It is calculated on the basis of one the two formulae:

1.  $SM_p = (H - RP) \times 0.18 \times K1$  when  $(H - RP) (\Pi - B\Pi) < 106\,200\,000$ .

2.  $SM_p = [0.18 \times 106\,200\,000 + 0.16 \times (H - RP - 106\,200\,000)] \times K1$ ,

when  $(\Pi - B\Pi) > 106\,200\,000$ ,

where:

**SM<sub>p</sub>** denotes the solvency margin calculated on the basis of the premiums;

**H** denotes the higher of the following two values:

- a) **PI**, or
- b)  $PE = PI + PUP_b - PUP_e$ ,

where:

**PI** denotes the premium income for the financial year (including the inward reinsurance premiums);

**PE** denotes the premiums earned during the financial year;

**PUPb** denotes the provision for unearned premiums at the beginning of the financial year, formed according to the procedure established by Article 11 (3) of Ordinance No. 27 of 2006 on the Procedure and methods for establishment of technical provisions by insurance and reinsurance undertakings;

**PUPe** denotes the provision for unearned premiums at the end of the financial year, formed according to the procedure established by Article 11 (3) of Ordinance No. 27 of 2006 on the Procedure and methods for establishment of technical provisions by insurance and reinsurance undertakings;

**RP** denotes the portion of refunded premiums and written-off receivables on premiums in connection with early terminated contracts, which are included in the premium income, which portion corresponds to the period from the date of early termination until the end of the originally agreed insurance period, as well as taxes, contributions in funds and other statutorily established deductions.

$K1 = NCI/GCI$

$NCI = PM - RS + CPCO - CRPCO$

$GCI = PM + CPCO$

$CPCO = PCOe - PCOb$

$CRPCO = PCORe - PCORb$

The factor may not be less than 0.50, or  $K1 > 0.50$ ,

where:

**NCI** denotes the net claims incurred during the last three financial years;

**GCI** denotes the claims incurred during the last three financial years;

**PM** denotes the payments made on claims during the last three financial years;

**RS** denotes the reinsurers' share in payments made on claims during the last three financial years;

**CPCO** denotes the change in the provisions for claims outstanding for the last three financial years;

**PCOe** denotes the provisions for claims outstanding at the end of the financial year;

**PCOb** denotes the provisions for claims outstanding at the beginning of the first financial year;

**CRPCO** denotes the change in the reinsurers' share in the provisions for claims outstanding for the last three financial years;

**PCORe** denotes the reinsurers' share in the provisions for claims outstanding at the end of the financial year;

**PCORb** denotes the reinsurers' share in the provisions for claims outstanding at the beginning of the first financial year.

### **Annex № 3**

To Art. 86, par. 3

#### **Solvency margin calculated on the basis of the average annual burden of claims**

It is calculated on the basis of one the two formulae:

1. (am. – SG, iss. 2 of 2008)



$SMc = (PM + CPCO - IR) \times K1 \times 0.26 \times K2$ ,  
when  $(PM + CPCO - IR) \times K1 < 74\,400\,000$ .

2.  $SMc = \{0.26 \times 74\,400\,000 + 0.23 \times [(PM + CPCO - IR) \times K1 - 74\,400\,000]\} \times K2$ ,  
when  $(PM + CPCO - IR) \times K1 > 74\,400\,000$ ,  
where:

**SMc** denotes the solvency margin calculated on the basis of the average annual amount of claims;

**PM** denotes the total amount of the payments made on claims (including inward reinsurance claims) for the last three financial years or, respectively, for the last seven financial years where one or more of the risks of storm, hail or frost are essentially covered without deducting the compensations and amounts refunded by reinsurers;

**CPCO** denotes the change in the provisions for claims outstanding for the last three financial years or, respectively, for the last seven financial years, where one or more of the risks of storm, hail or frost or credit risks are essentially covered, whereas:

$CPCO = PCOe - PCOb$ ,  
where:

**PCOe** denotes the provisions for claims outstanding (including the provisions for claims outstanding on reinsurance acceptances) at the end of the financial year;

**PCOb** denotes the provisions for claims outstanding (including the provisions for claims outstanding on reinsurance acceptances) at the beginning of the first financial year;

**IR** denotes the income from recourses for the last three or, respectively, seven financial years;

$K1$  – is a factor equal to:

a)  $1/3$  – where the total amount of payments made under claims or, respectively, the change in the provisions for claims outstanding and the income from recourses is for the last three financial years;

b)  $1/7$  – where the total amount of payments made under claims or, respectively, the change in the provisions for claims outstanding and the income from recourses is for the last seven financial years;

$K2 = NCI/GCI$

$NCI = PM - RS + CPCO - CRPCO$

$GCI = PM + CPCO$

$CPCO = PCOe - PCOb$

$CRPCO = PCORe - PCORb$

The factor may not be less than 0.50, or  $K2 > 0,50$ ,

where:

**NCI** denotes the net claims incurred during the last three financial years;

**GCI** denotes the claims incurred during the last three financial years;

**PM** denotes the payments made on claims during the last three financial years;

**RS** denotes the reinsurers' share in payments made on claims during the last three financial years;

**CPCO** denotes the change in the provisions for claims outstanding for the last three

financial years;

**PCOe** denotes the provisions for claims outstanding at the end of the financial year;

**PCOb** denotes the provisions for claims outstanding at the beginning of the first financial year;

**CRPCO** denotes the change in the reinsurers' share in the provisions for claims outstanding for the last three financial years;

**PCORE** denotes the reinsurers' share in the provisions for claims outstanding at the end of the financial year;

**PCORb** denotes the reinsurers' share in the provisions for claims outstanding at the beginning of the first financial year.

#### **Annex № 4**

to Article 104

#### **Methods of calculation of adjusted solvency of insurance undertakings referred to in Article 212, par.1 of the Code on Insurance**

Method 1:

Deduction and Aggregation Method

The adjusted solvency of any insurance undertakings referred to in Article 212, par. 1 of the Code on Insurance is the difference between:

1. the sum of:

a) the own funds of the insurance undertakings, less any intangible assets, and

b) the proportional share of the insurance undertakings in the own funds of a related insurance undertaking, less any intangible assets, and

2. the sum of:

a) the solvency margin of the insurance undertakings;

b) the proportional share of the solvency margin of the related insurance undertaking.

Where the participation in a related insurance undertaking is, wholly or in part, through related entities, then point 1 (b) and point 2 (b) shall include the corresponding proportional shares in the own funds of the related insurance undertaking, less any intangible assets, respectively of the solvency margin of the related insurance undertaking.

Method 2:

Accounting Consolidation-Based Method

The calculation of the adjusted solvency of an insurance undertaking referred to in Article 212, par. 1 of the Code on Insurance shall be carried out on the basis of the consolidated accounts.

The adjusted solvency of an insurance undertaking referred to in Article 212, par. 1 of the Code on Insurance is the difference between:

1. the own funds of the insurance undertaking, less any intangible assets, calculated on the basis of consolidated data, and

2. one of the two values, either:

a) the solvency margin of the insurance undertaking and the proportional share of the

solvency margin of a related insurance undertaking, based on the percentage used for the establishment of the consolidated accounts, or

b) the solvency margin of the insurance undertaking, calculated on the basis of consolidated data.

*Note:* In the calculation of the adjusted solvency of an insurance undertaking referred to in Art. 212, par. 1 of the Code on Insurance, by any of the above indicated methods, where the amount of the minimum guarantee capital is higher than the solvency margin, then the minimum guarantee capital shall be included instead of the solvency margin.

*I, the undersigned **Emilia Veselinova Marinchevska**, certify that this is a true and accurate translation done by me from Bulgarian into English of the attached document: Certificate. The translation consists of 1 (one) page.*

*Translator: **Emilia Veselinova Marinchevska***