

THE CROATIAN PARLIAMENT

611

Pursuant to Article 89 of the Constitution of the Republic of Croatia I hereby issue the

DECISION

ON PROMULGATING THE INSURANCE ACT

I hereby promulgate the Insurance Act passed by the Croatian Parliament at its session on 6 March 2015.

Class: 011-01/15-01/17

Reg. No: 71-05-03/1-15-2

Zagreb, 11 March 2015

The President

of the Republic
of Croatia

**Kolinda
Grabar-
Kitarović, m. p.**

INSURANCE ACT

TITLE I

PRELIMINARY PROVISIONS

Subject Matter

Article 1

This Act lays down:

1. the conditions for the establishment, operations and discontinuation of insurance, reinsurance and mutual undertakings;
2. the conditions under which insurance and reinsurance undertakings from other Member States and third countries may pursue the insurance and reinsurance business in the Republic of Croatia;
3. the supervision of insurance and reinsurance undertakings in the group;

4. the supervision of supervised entities;
5. the representative, reorganisation, special management, liquidation and bankruptcy of insurance, reinsurance and mutual undertakings;
6. the manner of reporting to EIOPA and the European Commission and cooperation with other supervisory authorities;
7. consumer protection;
8. the operation of insurance and reinsurance pools and of the national insurers' bureau;
9. the conditions for the establishment, operations and discontinuation of insurance agents activities and insurance and reinsurance brokerage activities;
10. penal sanctions.

Acquis Communautaire

Article 2

(1) This Act transposes the following directives into the legal system of the Republic of Croatia:

1. Council Directive 91/371/EEC of 20 June 1991 on the implementation of the Agreement between the European Economic Community and the Swiss Confederation concerning direct insurance other than life assurance (OJ L 205, 27 July 1991)
2. Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (OJ L 374, 31 December 1991) as last amended by Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings (OJ L 224, 16 August 2006)
3. Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ L 9, 15 January 2003)
4. Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21 December 2004)
5. Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17 December 2009) as last amended by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European

Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (OJ L 153, 22 May 2014).

(2) This Act ensures the prerequisites for the implementation of:

1. Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15 December 2010)
2. Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15 December 2010)
3. Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15 December 2010)
4. Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15 December 2010)
5. Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17 January 2015).

Definitions

Article 3

For the purposes of this Act, the following definitions shall apply:

1. 'insurance undertaking' means a legal person with head office in the Republic of Croatia which pursues the life or non-life insurance business, which has received the authorisation from the Agency to pursue the insurance business and which is registered in the court register of the competent commercial court;
2. 'captive insurance undertaking' means an insurance undertaking, owned either by a financial undertaking other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of Article 297 of this Act or by a non-financial undertaking, the purpose of which is to provide insurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member, and 'captive reinsurance undertaking' means a reinsurance undertaking, owned either by a financial undertaking other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of Article 297, paragraph 1, subparagraph 3 of this Act or by a non-financial undertaking, the purpose of which is to provide reinsurance cover exclusively for the

risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member;

3. 'insurance undertaking from another Member State' means a legal person with head office in another Member State which is authorised by the competent supervisory authority to pursue the insurance business;

4. 'third-country insurance undertaking' means a legal person with head office outside the Republic of Croatia or another Member State which has received the authorisation from the Agency to pursue the insurance business in the territory of the Republic of Croatia under the right of establishment (branch);

5. 'insurance undertaking from the Swiss Confederation' means a legal person with head office in the Swiss Confederation which has received the authorisation from the Agency to pursue the insurance business in the territory of the Republic of Croatia under the right of establishment (branch);

6. 'reinsurance undertaking' means a legal person with head office in the Republic of Croatia which is authorised by the Agency to pursue the reinsurance business and which is registered in the court register of the competent commercial court;

7. 'reinsurance undertaking from another Member State' means a legal person with head office in another Member State which is authorised by the competent supervisory authority to pursue the reinsurance business;

8. 'third-country reinsurance undertaking' means a legal person with head office outside of the Republic of Croatia or any other Member State which is authorised by the competent supervisory authority to pursue the reinsurance business;

9. 'reinsurance undertaking from the Swiss Confederation' means a legal person with head office in the Swiss Confederation which is authorised by the competent supervisory authority to pursue the reinsurance business;

10. 'mutual undertaking' means a legal person with head office in the Republic of Croatia which is authorised by the Agency to pursue the insurance business and which is registered in the court register of the competent commercial court;

11. 'reinsurance' means either of the following:

- the activity consisting in accepting risks ceded by an insurance undertaking, an insurance undertaking from another Member State, a third-country insurance undertaking, or by another reinsurance undertaking, another reinsurance undertaking from another Member State or a third-country reinsurance undertaking; or

- in the case of the association of underwriters known as Lloyd's, the activity consisting in accepting risks, ceded by any member of Lloyd's, by an insurance or reinsurance undertaking other than the association of underwriters known as Lloyd's;

12. 'finite reinsurance' means reinsurance under which the explicit maximum loss potential, expressed as the maximum economic risk transferred, arising both from a significant

underwriting risk and timing risk transfer, exceeds the premium over the lifetime of the contract by a limited but significant amount, together with at least one of the following two features:

- explicit and material consideration of the time value of money;
- contractual provisions to moderate the balance of economic experience between the parties over time to achieve the target risk transfer;

13. 'Member State' means any Member State of the European Union and a signatory state to the Agreement on the European Economic Area;

14. 'third country' means any country other than the Republic of Croatia or a Member State;

15. 'home Member State' means any of the following:

- for non-life insurance, the Member State in which the head office of the insurance undertaking covering the risk is situated;
- for life insurance, the Member State in which the head office of the insurance undertaking covering the commitment is situated; or
- for reinsurance, the Member State in which the head office of the reinsurance undertaking is situated;

16. 'host Member State' means the Member State, other than the home Member State, in which an insurance or a reinsurance undertaking has a branch or provides services;

17. 'Member State in which services are provided' means a Member State of the commitment or the Member State in which the risk is situated, if this commitment or this risk is covered by the insurance undertaking or by the branch situated in another Member State;

18. 'Member State in which the risk is situated' means any of the following:

- (a) the Member State in which the property is situated, where the insurance relates either to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy;
- (b) the Member State of registration, where the insurance relates to vehicles of any type (car, plane, vessel, i.e. yacht);
- (c) the Member State where the policy holder took out the policy in the case of policies of a duration of four months or less covering travel or holiday risks, whatever the class concerned;
- (d) in all cases not explicitly covered by items (a), (b) or (c) above, the Member State in which either of the following is situated:
 - the habitual or permanent residence of the policy holder if the policy holder is a natural person; or

– if the policy holder is a legal person, that policy holder's establishment to which the contract relates;

19. 'Member State of the commitment' means the Member State in which either of the following is situated:

– the habitual or permanent residence of the policy holder;

– if the policy holder is a legal person, that policy holder's establishment, to which the contract relates;

20. 'Agency' means the Croatian Financial Services Supervisory Agency which was founded on the basis of the Act on the Croatian Financial Services Supervisory Agency and which is the supervisory authority entitled to perform supervision on the basis of this Act;

21. 'competent supervisory authority' means an authority from another Member State, third country or Swiss Confederation empowered by law or regulation to supervise the insurance and reinsurance business, the insurance and reinsurance brokerage activities and the insurance agents activities;

22. 'branch' means a branch of an insurance or reinsurance undertaking which is located in the territory of a Member State other than the home Member State;

23. 'establishment' of an insurance or reinsurance undertaking means its head office or any of its branches;

24. 'parent undertaking' means the undertaking which meets any of the following conditions with regard to the subsidiary undertaking:

– has a majority of the voting rights in a subsidiary undertaking; or

– has the right to appoint or remove a majority of the members of the management or supervisory board or executive directors of a subsidiary undertaking and is at the same time a shareholder in or member of that undertaking; or

– has the right to exercise dominant influence over a subsidiary undertaking pursuant to a contract entered into with that undertaking or to another contract or agreement;

– holds a participating interest in a subsidiary undertaking and exercises a dominant influence over it;

– is a shareholder in or member of an undertaking pursuant to an agreement with other shareholders in or members of that undertaking by controlling a majority of voting rights in that undertaking;

– holds a participating interest in a subsidiary undertaking and has entered into a contract on the management of its operations on the basis of which it manages the operations of the subsidiary undertaking; or

– it exercises a dominant influence over another undertaking according to the opinion of the supervisory body or manages another undertaking or a subsidiary undertaking on a unified basis;

25. 'subsidiary undertaking' means a legal person over which a parent undertaking effectively exercises a dominant influence as described in subparagraph 24 of this Article. All subsidiary undertakings shall be considered as subsidiary undertakings of parent undertakings.

26. 'close links' means a situation in which two or more natural or legal persons are linked by control or participation, or a situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship;

27. 'control' means the relationship between a parent undertaking and a subsidiary undertaking, as set out in subparagraphs 24 and 25 of this Article, or a similar relationship between any natural or legal person and an undertaking;

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

29. 'participation' means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;

30. 'qualifying holding' means a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking;

31. 'regulated market' means the market regulated by the act governing capital markets. In the case of a market situated in a third country, a financial market which fulfils the following conditions

– it is recognised by the home Member State of the insurance undertaking and fulfils requirements comparable to those governing the capital market; and

– the financial instruments dealt in on that market are of a quality comparable to that of the instruments dealt in on the regulated market or markets of the home Member State;

32. 'national insurers' bureau' means a professional organisation which is constituted in accordance with Recommendation No 5 adopted on 25 January 1949 by the Road Transport Sub-committee of the Inland Transport Committee of the United Nations Economic Commission for Europe and which groups together insurance undertakings which, in a State, are authorised to conduct the business of motor vehicle insurance against civil liability. In the Republic of Croatia, it is the Croatian Insurance Bureau;

33. 'national guarantee fund' is the property managed by the national insurers' bureau, i.e. the Guarantee Fund managed by the Croatian Insurance Bureau in the Republic of Croatia;

34. 'financial undertaking' means any of the following entities:

(a) a credit institution, a financial institution or an ancillary banking services undertaking within the meaning of the act governing credit institutions;

(b) an insurance undertaking, or a reinsurance undertaking or an insurance holding company within the meaning of this Act;

(c) an investment firm or a financial institution within the meaning of the act governing capital market;

(d) a mixed financial holding company within the meaning of the act governing supplementary supervision of financial conglomerates;

35. 'special purpose vehicle' means any legal person, other than an existing insurance or reinsurance undertaking, which assumes risks from insurance or reinsurance undertakings and which fully funds its exposure to such risks through the proceeds of a debt issuance or any other financing mechanism where the repayment rights of the providers of such debt or financing mechanism are subordinated to the reinsurance obligations of such an undertaking;

36. 'large risks' means:

1. risks classified under Article 7, paragraph 2, subparagraphs 4 – 7 and subparagraphs 11 and 12 of this Act;

2. risks classified under Article 7, paragraph 2, subparagraphs 14 and 15 of this Act where the policy holder is engaged professionally in an industrial or commercial activity and the risks relate to such activity;

3. risks classified under Article 7, paragraph 2, subparagraphs 3, 8, 9, 10, 13 and 16 of this Act in so far as the policy holder meets at least two of the following criteria:

– assets at year-end exceed the amount of HRK 48,360,000.00;

– net turnover exceeds the amount of HRK 99,840,000.00 during the financial year;

– the average number of employees during the financial year exceeds 250;

If the policy holder belongs to a group of undertakings for which consolidated accounts within the meaning of accounting regulations governing financial reports are drawn up, the criteria set out in the third indent of this subparagraph shall be applied on the basis of the consolidated accounts;

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

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

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

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

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

42. 'qualifying central counterparty' means a central counterparty authorised in accordance with Article 14 of Regulation (EU) No 648/2012 of the European Parliament and of the Council or recognised in accordance with Article 25 of that Regulation;

43. 'external credit assessment institution' means a credit rating agency registered or certified in accordance with Regulation (EC) No 1060/2009 of the European Parliament and of the Council or the central bank issuing credit ratings to which that Regulation does not apply;

44. 'operational risk' means the risk of loss arising from inadequate internal processes, personnel or systems, or from external events;

45. 'liquidity risk' means the risk that insurance and reinsurance undertakings are unable to realise investments and other assets in order to settle their financial obligations when they fall due;

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

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

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

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

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

51. 'EIOPA' means the European Supervisory Authority – European Insurance and Occupational Pensions Authority, established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council;

52. 'ESMA' means the European Supervisory Authority - European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council;

53. 'EBA' means the European Supervisory Authority - European Banking Authority established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council;

54. 'ESRB' means the European Systemic Risk Board founded by Regulation (EU) No 1092/2010 of the European Parliament and of the Council;

55. 'ESFS' means the European System of Financial Supervision (EIOPA, ESMA and EBA), also covering the ESRB;

56. 'ESA' is a common term for European Supervisory Authorities, namely: EIOPA, EBA and ESMA;

57. 'Joint Committee' means the Joint Committee of ESA established by Article 54 of the following regulations: Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010;

58. Regulation (EU) No 648/2012 means the Regulation of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27 July 2012)

59. Regulation (EC) No 1060/2009 means the Regulation of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17 November 2009)

60. Regulation (EU) No 593/2008 means the Regulation of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4 July 2008).

TITLE II

GENERAL PROVISIONS

Scope

Article 4

(1) This Act shall apply to legal persons that pursue the insurance and reinsurance business in the territory of the Republic of Croatia in accordance with this Act and to other persons in accordance with the provisions of this Act.

(2) Unless otherwise provided by this Act, the provisions of the act governing the compulsory insurance within the transport sector shall apply to compulsory insurance within the transport sector, and the provisions governing other compulsory insurance in the Republic of Croatia shall apply to other compulsory insurance.

(3) Unless otherwise provided by this Act, the provisions of the act governing voluntary health insurance shall apply to supplementary, additional and private health insurance.

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

1. capital redemption operations;
2. operations of provident and mutual benefit institutions whose benefits vary according to the resources available and in which the contributions of the members are determined on a flat-rate basis;
3. operations carried out by organisations not having a legal personality with the purpose of providing mutual cover for their members without there being any payment of premiums or constitution of technical provisions;
4. export credit insurance operations for the account of or guaranteed by the Republic of Croatia or any other Member State or where the aforementioned are the insurers;
5. an assistance activity which fulfils all the following conditions:
 - the assistance is provided in the event of an accident or breakdown involving a road vehicle when the accident or breakdown occurs in the territory of the Republic of Croatia or any other Member State of the undertaking providing the cover;
 - the liability for the assistance is limited to the following operations:
 - (a) an on-the-spot breakdown service for which the undertaking providing cover uses, in most circumstances, its own staff and equipment;
 - (b) the conveyance of the vehicle to the nearest or the most appropriate location at which repairs may be carried out and the possible accompaniment, normally by the same means of assistance, of the driver and passengers to the nearest location from where they may continue their journey by other means; and
 - (c) the conveyance of the vehicle, possibly accompanied by the driver and passengers, to their home, point of departure or original destination within the same State; and
 - the assistance is not carried out by an undertaking which is subject to the provisions of this Act;
6. mutual undertakings which pursue the non-life insurance business and which have concluded with other mutual undertakings an agreement which provides for the full reinsurance of the insurance policies issued by them or under which the accepting undertaking is to meet the liabilities arising under such policies in the place of the ceding undertaking. In such a case the accepting undertaking shall be subject to the rules of this Act.

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

1. operations of provident and mutual-benefit institutions whose benefits vary according to the resources available and which require each of their members to contribute at the appropriate flat rate;

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

3. organisations, associations and institutions which undertake to provide benefits solely in the event of death, where the amount of such benefits does not exceed the average funeral costs for a single death or where the benefits are provided in kind.

(6) In regard to reinsurance, this Act shall not apply to the reinsurance business pursued or fully guaranteed by the government of the Republic of Croatia.

Implementation of This Act on Insurance and Reinsurance Undertakings

Article 5

(1) Unless otherwise provided by this Act, the provisions of this Act relating to insurance undertakings shall also apply to reinsurance undertakings.

(2) The provisions of this Act related to reinsurance undertakings shall apply to insurance undertakings authorised to pursue the reinsurance business.

Exclusion from Scope Due to Size

Article 6

(1) A small insurance undertaking is an undertaking which fulfils all of the following conditions:

1. the undertaking's annual gross written premium income does not exceed HRK 39 million;
2. the total of the undertaking's technical provisions, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, does not exceed HRK 195 million;
3. where the undertaking belongs to a group, the total of the technical provisions of the group defined as gross of the amounts recoverable from reinsurance contracts and special purpose vehicles does not exceed HRK 195 million;
4. the business of the undertaking does not include the insurance or reinsurance business covering liability, credit and suretyship insurance risks, unless they constitute ancillary risks within the meaning of Article 25 of this Act;
5. the business of the undertaking does not include reinsurance operations exceeding HRK 3.9 million of its gross written premium income or HRK 19.5 million of its technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, or more than 10% of its gross written premium income or more than 10% of its technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles.

(2) An insurance undertaking which in all cases fulfils all of the following conditions shall be also considered as a small-sized insurance undertaking:

1. none of the thresholds set out in paragraph 1 of this Article has been exceeded over the three previous consecutive years;

2. none of the thresholds set out in paragraph 1 of this Article is expected to be exceeded in the following five years.

(3) An insurance undertaking which has exceeded the amounts set out in paragraph 1 of this Article for three consecutive years since the beginning of the fourth year shall not be considered as a small insurance undertaking.

(4) An insurance undertaking which conducts its activities under the freedom to provide services or the right of establishment shall not be regarded as a small insurance undertaking regardless of the conditions set out in paragraphs 1 and 2 of this Article.

(5) The following provisions of this Act shall not apply to small insurance undertakings:

1. Article 29 of this Act about the scheme of operations;

2. Article 92, paragraphs 2 – 4 of this Act concerning the general requirements for the system of governance;

3. Article 93 of this Act concerning the key functions within the system of governance other than the provisions relating to the internal audit function;

4. Article 94, paragraphs 3 – 10 of this Act concerning the risk management system;

5. Article 95 of this Act concerning the risk management function;

6. Article 97 of this Act concerning internal control and compliance functions;

7. Article 96 of this Act concerning own risk and solvency assessment;

8. Article 103 of this Act concerning the actuarial function;

9. Articles 168 – 171 of this Act concerning public disclosure;

10. Title IX of this Act - Provisions on the valuation of assets and liabilities, technical provisions, own funds, Solvency Capital Requirement, Minimum Capital Requirement and investments.

(6) The capital of small insurance undertakings shall amount to at least the solvency margin set out by the ordinance referred to in paragraph 11 of this Article.

(7) The guarantee capital of the small insurance undertaking shall not be lower than one third of the solvency referred to in paragraph 6 of this Article or the absolute floor of the Minimum Capital Requirement referred to in Article 158, paragraph 1, subparagraph 4 of this Act.

(8) The provisions of this Article shall also apply to insurance undertakings seeking authorisation to pursue the insurance and reinsurance business of which the annual gross written premium income or technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles are not expected to exceed any of the amounts set out in paragraph 1 of this Article within the following five years.

(9) The Agency shall issue a decision stipulating whether the conditions for the application of the provisions of paragraphs 5, 6 and 7 of this Article to an insurance undertaking, which is considered as a small undertaking in accordance with the provisions of this Article, have been fulfilled.

(10) The insurance undertaking which fulfils the conditions set out in paragraphs 1 and 2 of this Article may file a request with the Agency to be exempt from the provision of this Article and not to be considered as a small insurance undertaking.

(11) For the purposes of risk management in small insurance undertakings, the Agency shall adopt an ordinance stipulating the calculation of the capital, including basic capital, supplementary capital, deduction items in capital calculation, guarantee capital and capital adequacy, calculation of the solvency margin, liquidity management, qualitative and quantitative criteria for investments, contents of the business plan and reporting to the Agency.

Insurance Business

Article 7

(1) The insurance business includes the conclusion and performance of non-life and life insurance contracts, other than compulsory health, compulsory pension and compulsory social insurance.

(2) Non-life insurance shall be classified as follows:

1. Accident (including industrial injury and occupational diseases):

- fixed pecuniary benefits,
- benefits in a nature of indemnity,
- combinations of the first two indents of this subparagraph,
- injury to passengers.

2. Sickness:

- fixed pecuniary benefits,
- benefits in the nature of indemnity,
- combinations of the first two indents of this subparagraph,

3. Land vehicles (other than railway rolling stock). All damage to or loss of:

- land motor vehicles,
- land vehicles other than motor vehicles.

4. Railway rolling stock. All damage to or loss of railway rolling stock.

5. Aircraft. All damage to or loss of aircraft.

6. Ships (sea, lake and river and canal vessels). All damage to or loss of:

- river and canal vessels,
- lake vessels,
- sea vessels.

7. Goods in transit (including merchandise, baggage, and all other goods). All damage to or loss of goods in transit or baggage, irrespective of the form of transport.

8. Fire and natural forces. All damage to or loss of property (other than property included in classes under subparagraphs 3, 4, 5, 6 and 7 of this paragraph) due to:

- fire,
- explosion,
- storm,
- natural forces other than storm,
- nuclear energy,
- land subsidence and other ancillary risks.

9. Other damage to property. All damage to or loss of property (other than property included in classes under subparagraphs 3, 4, 5, 6 and 7 of this paragraph) due to any event such as theft, other than that included in class under subparagraph 8 of this paragraph.

10. Motor vehicle liability. All liability arising out of the use of motor vehicles operating on the land (including carrier's liability).

11. Aircraft liability. All liability arising out of the use of aircraft (including carrier's liability).

12. Liability for ships (sea, lake and river and canal vessels). All liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability).

13. General liability. All liability other than those referred to in classes under subparagraphs 10, 11 and 12 of this paragraph.

14. Credit:

- insolvency (general),
- export credit,
- instalment credit,
- mortgages,
- agricultural credit,
- other credits and loans.

15. Suretyship:

- suretyship (direct),
- suretyship (indirect).

16. Miscellaneous financial loss:

- employment risks,
- insufficiency of income (general),
- bad weather,
- loss of benefits,
- continuing general expenses,
- unforeseen trading expenses,
- loss of market value,
- loss of rent or revenue,
- other indirect trading loss,
- other non-trading financial loss,
- other forms of financial loss.

17. Legal expenses. Legal expenses and costs of litigation.

18. Assistance for persons who get into difficulties while travelling, while away from their home or their habitual residence.

Non-life insurance from subparagraph 18 of this paragraph shall include the activity which consists of assistance provided for persons who get into difficulties while travelling, while away from their home or their habitual residence. It shall comprise an undertaking, against prior payment of a premium, to make aid immediately available to the beneficiary under an assistance contract where that person is in difficulties following the occurrence of a chance event, in the cases and under the conditions set out in the contract. The aid may comprise the provision of benefits in cash or in kind. The provision of benefits in kind may also be effected by means of the staff and equipment of the person providing them. The assistance activity shall not cover servicing, maintenance, after-sales service or the mere indication or provision of aid as an intermediary.

(3) Life insurance is classified as follows:

1. Life insurance

(a) life insurance which comprises the following risks:

- assurance on survival to a stipulated age only,
- assurance on death only,
- assurance on survival to a stipulated age or on earlier death,
- life assurance with return of premiums,
- critical illness insurance,
- whole life insurance,
- and other life insurance;

(b) annuities;

(c) supplementary insurance underwritten in addition to life insurance, in particular, insurance against personal injury including incapacity for employment, insurance against death resulting from an accident and insurance against disability resulting from an accident or sickness.

2. marriage and life partnership insurance or birth assurance means the insurance which covers the risk of marriage or life time partnership or survival to a stipulated age or of birth;

3. life insurance and annuities where the policy holder assumes the investment risk is the insurance relating to the value of units of the UCITS fund as defined by the law governing the establishment and operation of open investment funds with public offering, with the value of the assets or with the equity index or another reference value;

4. operations whereby associations of subscribers are set up with a view to capitalising their contributions jointly and subsequently distributing the assets thus accumulated among the survivors or among the beneficiaries of the deceased (tontines);

5. capital redemption operations based on actuarial calculation whereby, in return for single or periodic payments agreed in advance, commitments of specified duration and amount are undertaken,

6. management of group pension funds, comprising the management of investments or payment of a minimum interest.

(4) The Agency shall specify risk types by group and class of insurance by way of an ordinance.

Use of Gender as a Risk Factor in the Calculation of Insurance Premium

Article 8

(1) When concluding a new insurance contract, the insurance undertaking shall not use gender as a determining factor in the calculation of premiums and benefits. Exceptionally, the use of gender as a risk factor is allowed for the calculation of premiums and benefits at an aggregate level, as long as this does not lead to differentiation at the individual level. The insurance undertaking may use gender as a determining factor for reserving and internal pricing, reinsurance pricing, marketing and the assessment of risks from the group of life insurance and insurance classes referred to in Article 7, paragraph 2, subparagraphs 1 and 2 of this Act, i.e. for accident and health insurance.

(2) For insurance contracts concluded before 1 July 2013, the differences in individual premiums and amounts insured may be allowed if the insurance undertaking used gender as a factor in the calculation of premiums and amounts insured.

(3) The Agency shall adopt an ordinance prescribing the method of application of paragraphs 1 and 2 of this Article.

Reinsurance Business

Article 9

(1) The reinsurance business includes the conclusion and performance of reinsurance contracts with risks ceded by the insurance undertaking and accepted by the reinsurance undertaking or the insurance undertaking authorised to pursue the reinsurance business.

(2) The provision of paragraph 1 of this Article shall apply *mutatis mutandis* to reinsurance and insurance undertakings that hold the authorisation to pursue the reinsurance business when they pursue the reinsurance business for the reinsurance undertaking from paragraph 1 of this Article.

Reinsurance Obligation

Article 10

(1) With regard to the reinsurance contracts, the insurance undertaking shall cover that portion of the risks accepted which, according to the table of maximum covers, exceed the shares in risk compensation. Exceptionally, in individual reinsurance contracts, the excess of the insurance undertaking may be lower than that in the table of maximum covers.

(2) The Agency shall adopt an ordinance prescribing the planned reinsurance programme.

Planned Reinsurance Programme

Article 11

(1) The insurance undertaking shall adopt a planned reinsurance programme for each financial year.

(2) The planned reinsurance programme shall cover:

1. calculation of excess by individual classes of insurance;
2. table of maximum covers prepared on the basis of the calculations referred to in subparagraph 1 of this paragraph;
3. procedures, bases and criteria for determining the probable maximum loss for certain accepted risks.

(3) In the case of calculation referred to in paragraph 2, subparagraph 1 of this Article, the insurance undertaking shall take into account at least:

1. own risk and solvency assessment, Solvency Capital Requirement and eligible own funds;
2. the total scope of business;
3. the amount of insurance premiums written by groups and classes of insurance;
4. shares of individual classes of insurance in the bases referred to in subparagraph 2 and 3 of this paragraph;
5. adjustments due to deviations under individual classes of insurance.

Co-Insurance

Article 12

1) The insurance undertaking may jointly, with one or several insurance undertakings, co-insure the risks falling under the classes for which it is authorised.

(2) The insurance undertaking shall not co-insure the risks exceeding the scope of its maximum cover by class of insurance in accordance with the maximum cover tables.

Community Co-Insurance

Article 13

(1) The Community co-insurance operations shall be those co-insurance operations which relate to the risks classified under Article 7, paragraph 2, subparagraphs 3 - 16 of this Act and which fulfil the following conditions:

1. the risk is a large risk;
2. the risk is covered by a single contract at an overall premium and for the same period by two or more insurance undertakings each for its own part as co-insurer, one of them being the leading insurance undertaking;
3. the risk is situated within the Community;
4. for the purpose of covering the risk, the leading insurance undertaking is treated as if it were the insurance undertaking covering the whole risk;
5. at least one of the co-insurers participates in the contract through a head office or a branch established in a Member State other than that of the leading insurance undertaking;
6. the leading insurance undertaking fully assumes the leader's role in co-insurance practice and in particular determines the terms and conditions of insurance and rating.

(2) The provisions of this Act relating to the freedom to provide services shall apply to the leading insurance undertaking.

(3) Co-insurance operations which do not satisfy the conditions set out in paragraph 1 of this Article shall remain subject to other provisions thereof.

(4) In the event of pursuing the co-insurance business, the insurance undertaking from the Republic of Croatia shall establish the technical provisions in accordance with this Act at least equal to those determined by the leading insurance undertaking according to the rules of its home Member State.

(5) The insurance undertaking shall keep statistical data indicating the extent of Community co-insurance business in which they participate.

(6) In the event of liquidation or bankruptcy of insurance undertakings acting as co-insurers, the provisions of Article 281 of this Act shall apply.

(7) The Agency and the supervisory authorities of other Member States of an individual co-insurer shall exchange information and closely cooperate with the Commission for the purposes of examining any difficulties and any practices which might indicate that the leading insurance undertaking does not assume the role of the leader in co-insurance practice or that the risks do not require the participation of two or more insurers for their coverage.

Special Purpose Vehicles

Article 14

(1) A special purpose vehicle may start its operation only if authorised by the Agency for underwriting the risk of insurance or reinsurance undertakings.

(2) The Agency shall grant authorisation to a special purpose vehicle for underwriting the risk of insurance or reinsurance undertakings in accordance with the provisions of this Act concerning the authorisation of the insurance or reinsurance business and in accordance with Regulation (EU) No 2015/35 and other regulations of the European Commission governing the procedures for granting the authorisations by the supervisory authority to establish special purpose vehicles and the procedures for the cooperation and exchange of information between the supervisory authorities.

(3) The provisions of this Act concerning the supervision of insurance and reinsurance undertakings and the provisions of the Companies Act shall apply to the special purpose vehicles.

Insurance and Reinsurance Undertakings

Article 15

(1) The insurance undertaking shall not be registered in the court register before receiving the authorisation from the Agency for pursuing the insurance business.

(2) The reinsurance undertaking shall not be registered in the court register before receiving the authorisation from the Agency for pursuing the reinsurance business.

(3) Before establishing a branch in a third country, insurance and reinsurance undertakings shall obtain the authorisation from the Agency.

(4) The head offices of insurance and reinsurance undertakings shall be situated in the same Member State as their registered offices.

Captive Insurance Undertaking and Captive Reinsurance Undertaking

Article 16

(1) The provisions of this Act applying to insurance undertakings shall also apply to captive insurance undertakings, unless such undertakings are governed by special provisions.

(2) The provisions of this Act applying to insurance undertakings and special provisions applying to reinsurance undertakings shall also apply to captive reinsurance undertakings, unless such undertakings are governed by special provisions.

Pursuit of Insurance and Reinsurance Business

Article 17

(1) The insurance business may be pursued in the Republic of Croatia by:

1. an insurance undertaking with head office in the Republic of Croatia which has been authorised by the Agency to pursue the insurance business;

2. a mutual undertaking with head office in the Republic of Croatia which has been authorised by the Agency to pursue the insurance business;

3. an insurance undertaking from another Member State which is, in accordance with this Act, entitled to pursue the insurance business under the right of establishment or the freedom to provide services;

4. an insurance undertaking from the Swiss Confederation which has been authorised by the competent supervisory authority to pursue the insurance business and which is, in accordance with this Act, entitled to pursue the insurance business under the freedom of establishment;

5. a branch of a third-country insurance undertaking which has been authorised by the Agency to pursue the insurance business under the right of establishment.

(2) The undertakings referred to in paragraph 1 of this Article may pursue the insurance business only in those classes of insurance for which they are authorised.

(3) The reinsurance business may be pursued in the Republic of Croatia by:

1. a reinsurance undertaking or an insurance undertaking with head office in the Republic of Croatia which has been authorised by the Agency to pursue the reinsurance business;

2. a reinsurance undertaking or an insurance undertaking with head office in another Member State which has been authorised by the competent supervisory authority to pursue the reinsurance business and which is, in accordance with this Act, entitled to pursue the reinsurance business under the right of establishment or the freedom to provide services;

3. a reinsurance undertaking from the Swiss Confederation which has been authorised by the competent supervisory authority to pursue the reinsurance business and which is entitled to pursue the reinsurance business under the freedom to provide services or the freedom of establishment;

4. a third-country reinsurance undertaking which has been authorised by the competent supervisory authority to pursue the reinsurance business and which is entitled to pursue the reinsurance business under the right of establishment or the freedom to provide services.

(4) Insurance and reinsurance business shall be pursued by the persons referred to in this Article only.

Application of Other Regulations

Article 18

(1) The provisions of the Companies Act shall apply to the insurance undertakings unless otherwise provided by this Act.

(2) The provisions of the Civil Obligations Act and other regulations governing the insurance contracts shall apply to insurance contracts.

Legal Form of the Undertaking

Article 19

(1) An insurance undertaking may be established only as a joint-stock company, *Societas Europea* (SE) or a mutual undertaking.

(2) A reinsurance undertaking may be established only as a joint-stock company or *Societas Europea* (SE).

Activities of Insurance and Reinsurance Undertakings

Article 20

(1) The insurance undertaking shall limit its objects to the business of insurance and operations arising directly therefrom, to the exclusion of all other commercial business other than the business of reinsurance if so authorised by the Agency.

(2) The reinsurance undertaking shall limit its objects to the business of reinsurance and related business and operations arising directly therefrom, to the exclusion of all other business other than a holding company function and activities with respect to the financial sector activities in accordance with the act governing the additional supervision of financial conglomerates.

(3) The insurance undertaking may pursue the insurance and reinsurance business in the class of insurance or reinsurance previously authorised by the Agency.

(4) Where a non-life insurance undertaking has financial, commercial or administrative links with a life insurance undertaking, the accounts of the insurance undertaking authorised to pursue the non-life insurance business and the insurance undertaking authorised to pursue the life insurance business shall not be distorted by agreements between those undertakings or by any arrangement which could affect the apportionment of expenses and income.

(5) The authorisation issued for a particular class of insurance shall cover the entire class, unless the application for the authorisation has been submitted to cover only some of the risks pertaining to that class and in this case the authorisation shall be issued for a particular risk.

(6) Within the scope of activities referred to in this Article, the insurance undertaking may also pursue the following business:

1. offer holdings in investment funds and offer pension schemes of voluntary pension funds and pension insurance undertakings in accordance with the provisions of the act governing the offer of holdings in investment funds and pension schemes;

2. insurance agents activities for other insurance undertakings in accordance with Article 399 of this Act;

3. activities which are directly or indirectly related to the insurance business.

(7) By way of derogation from paragraph 1 of this Article, the insurance undertaking may also pursue the business for other undertakings from the group of insurance undertakings, but only

if that does not increase the risk for the group and for the insurance undertaking and only those types of business which fall within the scope of its core business.

Separation of Life and Non-Life Insurance Management

Article 21

(1) The insurance undertaking which pursues both life and non-life insurance business in accordance with Article 453, paragraph 2 of this Act shall separately manage life insurance and non-life insurance businesses, whereby the interests of non-life and life policy holders, who may be entitled to profits from the insurance contract, shall not be prejudiced.

(2) The insurance undertaking which in accordance with Article 453, paragraph 2 of this Act simultaneously pursues both the life and the non-life insurance business shall:

1. draw up accounts so as to show the results of the life and non-life insurance businesses separately. All income, in particular premiums, payments by reinsurance undertakings and investment income, as well as expenditure, in particular claims, reinsurance premiums and operating expenses in respect of the insurance business, shall be broken down according to their origin. Items common to both businesses shall be entered in the accounts in accordance with methods of apportionment, of which the insurance undertaking shall notify the Agency in writing within 60 days of its implementation or changes;

2. calculate separately:

– a notional Minimum Capital Requirement with respect to its life insurance or reinsurance business, calculated as if the undertaking concerned only pursued that activity, on the basis of the separate accounts referred to in paragraph 2, subparagraph 1 of this Article; and

– a notional Minimum Capital Requirement with respect to its non-life insurance or reinsurance business, calculated as if the undertaking concerned only pursued that activity, on the basis of the separate accounts referred to in paragraph 2, subparagraph 1 of this Article;

3. ensure the appropriate amounts of eligible basic own funds to cover:

– the notional Minimum Capital Requirement for the life insurance business;

– the notional Minimum Capital Requirement for the non-life insurance business,

whereby the minimum financial obligations for the life insurance and non-life insurance business shall not be borne by the other activity, and prepare a statement on the basis of financial accounts where eligible own-fund items covering the notional Minimum Capital Requirement for life and non-life insurance are clearly defined in accordance with Article 129 of this Act.

(3) As long as minimum financial obligations referred to in paragraph 2, subparagraph 3 of this Article are fulfilled and provided that the Agency is informed, the insurance undertaking may use its eligible own-fund items still available for one or the other insurance business to cover the Solvency Capital Requirement referred to in Articles 130 and 131 of this Act.

(4) If the amount of eligible basic own-fund items with respect to one of the activities is insufficient to cover the minimum financial obligations referred to in paragraph 2, subparagraph 3 of this Article, the Agency may order supervisory measures to be taken in order to remedy irregularities for the concerned insurance business, regardless of the results achieved by the other insurance business. Exceptionally, these measures may involve the authorisation of the transfer of eligible basic own funds from one activity to the other.

(5) If the Agency establishes that the method of apportionment from paragraph 2, subparagraph 1 of this Article is not acceptable, it shall inform the insurance undertaking accordingly within 60 days of receiving the notification thereof.

(6) If the Agency does not inform the insurance undertaking within a deadline referred to in paragraph 5 of this Article, the Agency shall be deemed to agree with the concerned method of apportionment.

Share Capital

Article 22

(1) In the event of establishing an insurance or a reinsurance undertaking, or extending the authorisation, the share capital shall cover the absolute floor of the Minimum Capital Requirement provided for in Article 158 of this Act.

(2) The share capital of the insurance and reinsurance undertakings shall not originate from loans or credits or be encumbered in any manner.

Shares

Article 23

(1) The shares of the insurance undertakings shall be nominal shares.

(2) The shares of the insurance undertakings shall be fully paid in cash before the registration of the establishment or increase of the share capital of the insurance undertaking in the court register.

(3) Preferred shares of the insurance undertaking shall not amount to more than 25% of the total equity of the insurance undertaking referred to in paragraph 2 of this Article.

(4) The shares of the insurance undertaking shall be issued in book-entry form.

(5) The provision of paragraph 2 of this Article shall not apply in the case of merger or division of the insurance undertaking.

TITLE III

AUTHORISATION TO PURSUE THE INSURANCE AND REINSURANCE BUSINESS

Authorisation to Pursue the Insurance and Reinsurance Business

Article 24

(1) The Agency shall grant the authorisation to pursue the insurance and reinsurance business to the insurance undertaking, while the reinsurance undertaking shall be granted the authorisation to pursue the reinsurance business.

(2) The authorisation to pursue the insurance business may contain the authorisation to pursue the insurance business for:

1. the group of non-life insurance business; or
2. the group of life-insurance business;
3. a particular class of insurance within the group of non-life or life insurance;
4. risks belonging to a particular class of insurance;
5. subgroups of non-life insurance referred to in paragraph 3 of this Article.

(3) The authorisation which simultaneously covers the following classes of non-life insurance shall be issued under the following title:

1. accident and health insurance if it covers the classes of insurance referred to in Article 7, paragraph 2, subparagraphs 1 and 2 of this Act;
2. motor vehicle if it covers the classes of insurance referred to in Article 7, paragraph 2, subparagraph 1, fourth indent and subparagraphs 3, 7 and 10 of this Act;
3. marine and transport if it covers the classes of insurance referred to in Article 7, paragraph 2, subparagraph 1, fourth indent and subparagraphs 4, 6, 7 and 12 of this Act;
4. aviation if it covers the classes of insurance referred to in Article 7, paragraph 2, subparagraph 1, fourth indent and subparagraphs 5, 7 and 11 of this Act;
5. fire and other property if it covers the classes of insurance referred to in Article 7, paragraph 2, subparagraphs 8 and 9 of this Act;
6. if it covers the classes of insurance referred to in Article 7, paragraph 2, subparagraphs 10, 11, 12, and 13 of this Act;
7. credit and suretyship if it covers the classes of insurance referred to in Article 7, paragraph 2, subparagraphs 14 and 15 of this Act;
8. all classes of non-life insurance, i.e. the group of non-life insurance referred to in Article 7, paragraph 2 of this Act.

(4) The insurance undertaking shall not obtain the authorisation to simultaneously pursue the life and non-life insurance business.

(5) By way of derogation from paragraph 4 of this Article, the insurance undertaking which is authorised to pursue the life insurance business may also pursue the insurance business from the classes of insurance referred to in Article 7, paragraph 2, subparagraphs 1 and 2 of this Act if it was previously authorised by the Agency to pursue the insurance business from these classes of insurance.

(6) By way of derogation from paragraph 4 of this Article, the insurance undertaking which obtained authorisation to pursue the non-life insurance business exclusively for the risks listed in classes referred to in Article 7, paragraph 2, subparagraphs 1 and 2 of this Act may pursue the insurance business for the risks listed in the class of life insurance if it was previously authorised by the Agency to pursue the life insurance business.

(7) Along with the authorisation referred to in paragraph 2 of this Article, the Agency may also issue the authorisation to pursue the reinsurance business to the insurance undertaking.

(8) In the case referred to in paragraph 7 of this Article, the insurance undertaking shall not take over the risks taken under the insurance contract into the reinsurance contract.

(9) The reinsurance undertaking may obtain authorisation to pursue the reinsurance business for the group of non-life insurance, the group of life insurance or the group of life and non-life insurance.

(10) The reinsurance undertaking may not obtain the authorisation to pursue the insurance business.

(11) The insurance undertaking may pursue the insurance and reinsurance business only in the classes of insurance for which it has previously obtained the authorisation from the Agency to pursue the insurance business.

(12) By way of derogation from paragraph 11 of this Article, the insurance undertaking may cover ancillary risks in accordance with Article 25 of this Act.

(13) The Agency may restrict the authorisation to pursue the insurance business requested for one of the classes of insurance to the business listed in the scheme of operations referred to in Article 30 of this Act submitted with the application for the authorisation to pursue the insurance business.

(14) The insurance undertaking may pursue the insurance business for the classes of insurance referred to in Article 7, paragraph 2, subparagraph 18 of this Act, i.e. assistance, only if it is authorised by the Agency to pursue the business in that class of insurance.

(15) After it obtains the authorisation to pursue the insurance business, the insurance undertaking or the reinsurance undertaking may enter only the insurance or reinsurance business authorised by the Agency into the court register.

(16) The authorisation to pursue the insurance or reinsurance business issued by the Agency in accordance with the provisions of this Act shall be valid in the territory of all Member States and it shall include both the right of establishment and the freedom to provide services.

(17) In the case referred to in paragraphs 5 and 6 of this Article, the insurance undertaking shall separately manage the insurance business in accordance with Article 21 of this Act.

Ancillary Risks

Article 25

(1) The insurance undertaking which has obtained the authorisation for the principal risk belonging to one class or a group of classes as set out in Article 7 of this Act may also insure risks included in another class without the need to obtain authorisation in respect of such risks provided that the risks fulfil all the following conditions:

1. they are connected with the principal risk;
2. they concern the object which is covered against the principal risk; and
3. they are covered by the contract insuring the principal risk.

(2) By way of derogation from paragraph 1 of this Article, the risks included in classes referred to in Article 7, paragraph 2, subparagraphs 14, 15 and 17 of this Act shall not be regarded as risks ancillary to other classes.

(3) By way of derogation from paragraph 2 of this Article, legal expenses insurance may be considered as an ancillary risk with regard to the class of insurance referred to in Article 7, paragraph 2, subparagraph 18 of this Act, insurance of assistance if the conditions stipulated by paragraph 1 of this Article and any of the following conditions have been fulfilled:

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

Subsequent Authorisation for Pursuing the Insurance and Reinsurance Business

Article 26

(1) The insurance undertaking submitting the application for the authorisation to extend its business to other classes or to extend the authorisation covering only some of the risks pertaining to one class, or the reinsurance undertaking seeking authorisation to extend its business to other classes of insurance shall be required to submit a scheme of operations in accordance with Article 29 of this Act. It shall, in addition, be required to show proof that it possesses the eligible own funds to cover the Solvency Capital Requirement and the Minimum Capital Requirement provided for in Articles 130 and 157 of this Act.

2) If the insurance undertaking referred to in paragraph 1 of this Article is authorised for pursuing the life insurance business and submits the application for the authorisation to extend its business to non-life business listed in Article 7, paragraph 2, subparagraphs 1 and 2 of this Act, in accordance with Article 24, paragraph 5 of this Act, it shall demonstrate that it:

1. possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for life insurance undertakings and the absolute floor of the Minimum Capital Requirement for non-life insurance undertakings, as referred to in Article 158, paragraph 1, subparagraph 4 of this Act;

2. undertakes to cover the minimum financial obligations referred to in Article 21, paragraph 2, subparagraph 3 of this Act.

(3) If the insurance undertaking referred to in paragraph 1 of this Article, which is authorised for pursuing the non-life business referred to in Article 7, paragraph 2, subparagraphs 1 and 2 of this Act, submits the application for the authorisation to extend its business to the life insurance business, in accordance with Article 24, paragraph 6 of this Act, it shall demonstrate that it:

1. possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for life insurance undertakings and the absolute floor of the Minimum Capital Requirement for non-life insurance undertakings, as referred to in Article 158, paragraph 1, subparagraph 4 of this Act;

2. undertakes to cover the minimum financial obligations referred to in Article 21, paragraph 2, subparagraph 3 of this Act.

(4) The Agency shall refuse the application for the authorisation referred to in paragraph 1 of this Article if:

1. it establishes that pursuing the business in the class of insurance to which the application for authorisation refers would jeopardise the operations of the insurance undertaking in accordance with risk management rules;

2. the insurance undertaking does not meet the requirement for pursuing the insurance business in the class of insurance or the risk referring to a particular class of insurance for which the application for authorisation is submitted.

(5) All subsequent authorisations for pursuing the insurance and reinsurance business which the insurance and reinsurance undertakings receive on the basis of this Act shall be considered as integral parts of the authorisation for pursuing the insurance or reinsurance business that those undertakings received.

Application for the Authorisation to Pursue the Insurance and Reinsurance Business

Article 27

(1) The application for the authorisation to pursue the insurance or reinsurance business shall be submitted by the founders of the insurance or reinsurance undertaking.

(2) In accordance with Article 24 of this Act, the application for the authorisation of the insurance or reinsurance business shall include groups of insurance, classes of insurance or risks under individual insurance classes for which the authorisation is sought.

(3) The application shall be accompanied with:

1. the Articles of Association of the insurance undertaking, along with the document on the basis of which it was adopted (statement of the members), in the form of a notarial act;
2. the list of members of the insurance undertaking, along with the statement by each of them concerning the fulfilment of the requirements set out in Article 36, paragraph 8, subparagraphs 6 and 7 of this Act, the information about the natural persons with close links to the undertaking pursuant to the provisions of this Act and the nature of those links and the documents that attest the legal status and the origin of the funds earmarked for payment of the share capital of the insurance undertaking;
3. the list of appointed members of the supervisory board of the insurance undertaking together with the proof that they meet the requirements set out in Article 59 of this Act;
4. the names of the persons who will perform key functions and the proof that the insurance undertaking will be able to satisfy the conditions concerning the system of governance referred to in Article 92 of this Act;
5. the organisational structure and the scheme of operations of the insurance undertaking for the subsequent three business years which shall be drawn up in accordance with Article 29 of this Act;
6. a draft contract on the outsourcing of activities or functions when their outsourcing is planned and a draft contract on the performance of key functions, along with the documents which are submitted to the Agency before outsourcing of activities or functions in accordance with the provisions of this Act;
7. insurance conditions for compulsory insurance within the transport sector if the insurance undertaking intends to provide the service of compulsory insurance within the transport sector;
8. the proof that it possess eligible basic own funds required to cover the absolute floor of the Minimum Capital Requirement provided for in Article 158 of this Act;
9. the proof that the insurance undertaking will possess eligible basic own funds required to cover the absolute floor of the Minimum Capital Requirement provided for in Article 157 of this Act;
10. the proof that the insurance undertaking will be in a position to hold eligible basic own funds required to cover the Solvency Capital Requirement provided for in Articles 130 and 131 of this Act;
11. an application for the approval for the acquisition of the qualifying holding and documentation referred to in Article 36 of this Act, submitted by each of the members of the insurance undertaking who are acquirers of the qualifying holding in the insurance undertaking;
12. applications by the supervisory board for the approval to perform the function of the member of the insurance undertaking management board referred to in Article 52 of this Act;

13. the address of the person authorised to receive the documents in the Republic of Croatia, when the applicant has no permanent or habitual residence in the Republic of Croatia, and when the same application has been submitted by more than one person, the address of the common representative or the person authorised to receive the documents in the Republic of Croatia.

(4) If the authorisation for non-life activities for the insurance class referred to in Article 7, paragraph 2, subparagraph 10 of this Act is sought, i.e. motor vehicle liability insurance, excluding carrier's liability, the application shall be, in addition to the documents listed in paragraph 1 of this Article, supported with the name and the address of all claims representatives appointed in each Member State in which the authorisation to pursue the insurance business in the given class of insurance is sought.

(5) If the authorisation for non-life activities for the class of insurance referred to in Article 7, paragraph 2, subparagraph 18 of this Act is sought, i.e. assistance, the application shall, in addition to the documents listed in paragraph 1 of this Article, contain the list of direct or indirect resources in staff and equipment, including the qualification of their medical teams and the quality of the equipment available to such undertakings to meet their commitments from that class.

(6) As appropriate the Agency may request other information and documents proving that the undertaking meets the conditions for the authorisation, including the information prescribed by the act governing the prevention of money laundering and terrorist financing, gathered by the persons bound by that act.

(7) Before granting the authorisation referred to in paragraph 1 of this Article, the Agency shall consult the competent supervisory authority of the host Member State or a third country and exchange the information on the suitability of the acquirer of the qualifying holding, reputation and the appropriate capacities and experience of the members of management and supervisory boards.

Joining of Procedures When Deciding on the Application for the Authorisation

Article 28

When deciding on the application for the authorisation to pursue the insurance business, the Agency may at the same time decide on the following applications:

1. application for the issuance of the approval for the acquisition of a qualifying holding; and
2. application for the issuance of the approval to perform the function of the member of the insurance undertaking management board.

Scheme of Operations

Article 29

(1) The scheme of operations referred to in Article 27, paragraph 2, subparagraph 5 of this Act shall contain at least:

1. the basic business policies;
2. the nature of the risks which the insurance undertaking concerned proposes to cover;
3. the individual classes of insurance within which the insurance undertaking will pursue the insurance business;
4. the envisaged reinsurance programme with tables of maximum covers for all insurance classes and guiding reinsurance principles;
5. the basic own-fund items constituting the absolute floor of the Minimum Capital Requirement;
6. the estimates of the costs of establishment and the organisation for securing business and the financial resources intended to meet those costs.

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

1. a forecast of the report on the financial position for solvency purposes;
2. an estimate of the future Solvency Capital Requirement, as provided for by the provisions of Articles 130 – 132 of this Act on the basis of the forecast report on the financial position referred to in subparagraph 1 of this paragraph, as well as the calculation method used to derive those estimates;
3. an estimate of the future Minimum Capital Requirement, as provided for in Articles 157 and 158 of this Act, on the basis of the forecast report on the financial position referred to in subparagraph 1 of this Article, as well as the calculation method used to derive those estimates;
4. an estimate of the financial resources intended to cover technical provisions, the Minimum Capital Requirement and the Solvency Capital Requirement;
5. a forecast report on the financial position and statement on comprehensive income;
6. an outline of the expected business results, especially the expected premium income, expected claims, expected commissions and other costs.

(3) The application submitted by the reinsurance undertaking shall contain the information or proof referred to in paragraph 1, subparagraphs 1 – 3 of this Article, paragraph 2 of this Article and the information or proof on:

1. the type of reinsurance contracts which the reinsurance undertaking proposes to conclude with the ceding undertakings;
2. the guiding principles as to retrocession.

(4) If the insurance undertaking intends to pursue the insurance business in a class of insurance referred to in Article 7, paragraph 2, subparagraph 18 of this Act, the scheme of

operations shall also contain a description of the resources required to meet the obligations concerning this class of insurance.

Prior Consultation of the Competent Supervisory Authority

Article 30

(1) The Agency shall consult the competent supervisory authority prior to the granting an authorisation to:

1. a subsidiary undertaking of an insurance undertaking authorised in that Member State;
2. a subsidiary undertaking of the parent insurance undertaking authorised in that Member State; or
3. an undertaking controlled by the same natural or legal person controlling the insurance undertaking authorised in that Member State.

(2) The Agency shall consult the supervisory authorities of the Member State concerned which are responsible for the supervision of credit institutions or investment firms prior to granting the authorisation to an insurance undertaking which is:

1. a subsidiary undertaking of a credit institution or investment firm authorised in other Member States;
2. a subsidiary undertaking of the parent undertaking of a credit institution or investment firm authorised in other Member States; or
3. an undertaking controlled by the same natural or legal person controlling the credit institution or the investment firm authorised in other Member States.

(3) The Agency shall in particular consult the competent supervisory authorities referred to in paragraphs 1 and 2 of this Article when assessing the suitability and the good repute of the founders and the members of the supervisory board and when assessing professional qualifications, fit and proper requirements and the good repute of all members of the management board or persons who hold other key functions in the insurance or reinsurance undertaking and who are involved in the management of another entity of the same group. They shall inform each other of any information which is of relevance for issuing the authorisation as well as for the ongoing assessment of compliance with the operating conditions.

Deciding on the Authorisation to Pursue the Insurance and Reinsurance Business

Article 31

(1) The Agency shall adopt a decision on issuing the authorisation to pursue the insurance and reinsurance business in the procedure initiated against the application for the authorisation to pursue the insurance or reinsurance business.

(2) The Agency shall grant the authorisation to pursue the insurance or reinsurance business listed in the application referred to in Article 27, paragraph 2 of this Act if it establishes that the insurance undertaking or the reinsurance undertaking satisfies the conditions for pursuing the insurance or reinsurance business stipulated by this Act and the regulations adopted under this Act.

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

(4) In the case referred to in paragraph 3 of this Article, the insurance undertaking authorised by the Agency to pursue the insurance business shall be required to provide the Agency with the information it requires to monitor compliance with the conditions referred to in paragraph 3 of this Article on a continuous basis.

(5) The Agency shall adopt the decision on the application for the authorisation to pursue the insurance business within 60 days of receiving complete application, and in the case of joining the procedure initiated against this application with other applications in accordance with this Act, within 60 days of receiving the last complete application.

Taking-Up of the Insurance Business in an Individual Class of Insurance

Article 32

The insurance undertaking shall notify the Agency about taking-up or discontinuing the insurance business in an individual class of insurance for which it has been authorised within eight days from taking-up or discontinuing the insurance business in an individual class of insurance for which it has been authorised.

Refusal of the Application for the Authorisation to Pursue the Insurance or Reinsurance Business

Article 33

(1) The Agency shall refuse the application for the authorisation to pursue the insurance or reinsurance business:

1. if the acquirer or acquirers of the qualifying holdings in the insurance or reinsurance undertaking do not meet the requirements referred to in this Act for issuing the approval for the acquisition of a qualifying holding;
2. if the candidate or candidates for members of the management board of the insurance or reinsurance undertaking do not meet the requirements referred to in this Act concerning the authorisation to perform the function of the management board member;
3. if the person or persons appointed as members of the supervisory board do not meet the requirements referred to in this Act to perform the function of the supervisory board member;
4. if the insurance or reinsurance undertaking is not organised in accordance with this Act, or if the conditions for the operation of the insurance or reinsurance undertaking provided for by

this Act, the regulations adopted under this Act or the regulations of the European Union governing the operation of insurance and reinsurance undertakings have not been satisfied;

5. if the provisions of the Articles of Association of the insurance or reinsurance undertaking are in contravention of the provisions of this Act or the regulations adopted under this Act;

6. if the documentation supporting the application and other known facts indicate that the insurance or the reinsurance undertaking does not have staff, organisational or technical capacities to pursue the insurance or reinsurance business in the manner and scope given in its scheme of operations;

7. if the supervision of operation of the insurance or reinsurance undertaking in accordance with the provisions of this Act would be made difficult or prevented;

8. where close links exist between the insurance undertaking or reinsurance undertaking and other natural or legal persons which prevent the effective exercise of the supervision by the Agency;

9. if third-country laws and regulations prevent or make the effective supervision of natural or legal persons with close links to the insurance undertaking difficult;

10. if the application and the supporting documents show that the insurance or reinsurance undertaking does not meet other conditions for pursuing the insurance or reinsurance business to which the application pertains.

(2) The Agency shall not examine the application for the authorisation to pursue the insurance or reinsurance business in terms of the economic needs of the market.

(3) If in the procedure initiated relating to the application for the authorisation to pursue the insurance or reinsurance business the Agency establishes that the insurance undertaking satisfies the conditions for the authorisation to pursue the insurance or reinsurance business in a particular class or group of insurance or in a particular risk, it shall grant its authorisation for pursuing the insurance or reinsurance business.

(4) If in the procedure initiated relating to the application for the authorisation to pursue the insurance or reinsurance business the Agency establishes that the insurance undertaking does not satisfy the conditions for authorisation to pursue the insurance or reinsurance business in a particular class or group of insurance or in a particular risk, it shall grant its authorisation only for that insurance business for which the insurance undertaking or the reinsurance undertaking satisfies the conditions for authorisation, while it shall refuse to grant the authorisation for other business.

(5) The insurance undertaking may institute an administrative dispute if the Agency fails to decide on its application for authorisation to pursue the insurance business within the deadline referred to in Article 31, paragraph 5 of this Act.

*Expiry of the Validity of the Authorisation to Pursue the Insurance or Reinsurance
Business of the Insurance or Reinsurance Undertaking*

(1) The authorisation to pursue the insurance or reinsurance business of the insurance or reinsurance undertaking shall expire:

1. by operation of law, by conclusion of the liquidation procedure of the insurance or reinsurance undertaking;
2. by operation of law, on the date of initiating the bankruptcy proceedings over the insurance or reinsurance undertaking;
3. by operation of law, on the date of transferring all insurance contracts to another insurance undertaking or of all reinsurance contracts to another reinsurance undertaking authorised to pursue the insurance or reinsurance business;
4. by operation of law, on the date of the entry of change in the status in the court register on the basis of which the undertaking is dissolved;
5. by adopting the decision referred to in Article 263 of this Act on the dissolution of the insurance undertaking.

(2) If the authorisation to pursue the insurance or reinsurance business expires due to reasons referred to in paragraph 1, subparagraph 5 of this Article, the Agency shall adopt a decision on revoking the authorisation to pursue the insurance or reinsurance business and notify the competent commercial court accordingly.

(3) When the conditions for the expiry or revocation of the authorisation to pursue the insurance business in an individual group, class or risks are met, the Agency shall adopt a decision determining the expiry of the authorisation or the decision revoking the authorisation.

Legal Effects of the Decision on Revocation of the Authorisation to Pursue the Insurance or Reinsurance Business of the Insurance or Reinsurance Undertakings

Article 35

The revoked decision on the authorisation to pursue the insurance or reinsurance business of the insurance or reinsurance undertaking from another Member State which has its branch in the Republic of Croatia and which is authorised by the competent supervisory authority of the Member State shall have an indirect effect in the territory of the Republic of Croatia equal to that of the revocation of the authorisation to pursue the insurance or reinsurance business of the insurance or reinsurance undertaking under this Act, without any special recognition and execution procedure.

TITLE IV

QUALIFYING HOLDINGS

Approval to Acquire a Qualifying Holding

Article 36

(1) Prior approval from the Agency shall be required for the acquisition of shares in the insurance undertaking on the basis of which a person acquires, directly or indirectly, a qualifying holding in the insurance undertaking.

(2) Any natural and legal person or such persons acting in concert (the proposed acquirer) who have taken a decision to either acquire, directly or indirectly, a qualifying holding in an insurance undertaking or to further increase, directly or indirectly, such a qualifying holding in an insurance undertaking on the basis of which their voting rights or capital would account for 20% or more, or less than 10% if there is an influence on the management of the insurance undertaking, or equal to or greater than 20%, 30% or 50%, or such that the insurance undertaking becomes their subsidiary, shall acquire, before acquiring the qualifying holding, the approval of the Agency for the acquisition of a qualifying holding in the insurance undertaking.

(3) In the event of any further acquisition of shares in the insurance undertaking, whereby the person who has a qualifying holding would increase their holding so that the proportion of the voting rights or of the capital they hold would reach or exceed 20%, 30% or 50%, or so that the insurance undertaking would become their subsidiary, they shall obtain prior approval from the Agency.

(4) Where a holder of a qualifying holding intends to dispose of their shares, which would result in the holding being reduced below the threshold of which they notified the Agency, they shall inform the Agency thereof in advance.

(5) The approval to acquire the qualifying holding shall become invalid if the proposed acquirer, within six months of the date of enforceability of the decision to grant the approval, fails to acquire the holding to which the approval refers, unless the Agency determined the final deadline for the proposed acquisition in its decision approving the proposed acquisition. At the request of the proposed acquirer, the Agency may extend the deadline for the proposed acquisition of the qualifying holding.

(6) If the holdings of the holder of a qualifying holding increase due to a decrease in the capital of the insurance undertaking or similar actions so as to become equal to or exceed 10%, 20%, 30% or 50%, the holder of the qualifying holding shall submit a request to the Agency for any further acquisition of holdings in capital or voting rights within 30 days from the date they became or should have become aware of the increase in their holding due to the activities of the insurance undertaking. If they fail to do so and fail to procure the approval from the Agency for the acquisition of that holding for the part of the holding thus acquired, Article 44 of this Act shall apply.

(7) In exceptional circumstances, the holder of a qualifying holding from another Member State is not obliged to report reaching the 30% threshold in the case where they report the acquisition of 33% of the holding. Furthermore, the holder of a qualifying holding from another Member State is not obliged to report the reduction of the qualifying holding to the 30% threshold in the case where they have reported the reduction of the qualifying holding to 33% of the holding.

(8) The holder of a qualifying holding in an insurance undertaking may be:

1. a person who did not hold more than 10% in the share capital of the insurance or reinsurance undertaking, investment company or credit institution, pension undertaking, pension insurance undertaking or investment fund management company in the period of three years preceding the acquisition of membership in the insurance undertaking, at the time when the authorisations of these undertakings to pursue the insurance business were revoked;

2. a company, sole trader or craftsman in respect of whose assets no bankruptcy proceedings have been initiated or completed and no pre-bankruptcy settlement proceedings have been initiated;

3. a person who has not held a managing position in a company at the time when bankruptcy proceedings or pre-bankruptcy settlement proceedings were initiated, where a decision on liquidation has been issued or whose authorisation to pursue the insurance business has been withdrawn, unless the Agency finds that the person concerned has not contributed to such circumstance through their actions or failure to act;

4. a person who is not a civil servant or who does not exercise their duty in a local and regional self-government unit and who is not an officer of a state administration authority or a local and regional self-government unit or authorities accountable to the legislative and executive power in the Republic of Croatia, any other Member State or a third country;

5. a person whose appropriate authorisation or authorisation to pursue certain business in accordance with the acts under the competence of the Agency or the Croatian National Bank or related supervisory authorities of the Republic of Croatia, Member States and third countries have not been withdrawn due to non-compliance with relevant regulations;

6. a person who has not been convicted, on the basis of a judgement with final force and effect, of misdemeanour or criminal offence that represents a gross or permanent violation of the regulations within the competence of the Agency, the Croatian National Bank or other supervisory authorities of the Republic of Croatia, Member States or third countries, or of the following criminal offences provided for in the Companies Act and the Criminal Code (Official Gazette 125/11 and 144/12, as follows:

– Title IX – crime against humanity and human dignity

– Title XII – criminal offences against labour relations and social insurance

– Title XXIII – criminal offences against property (other than a criminal offence involving unauthorised use of other people's persons' movable property and a criminal offence involving damage to other persons' property), for which criminal proceedings are instituted *ex officio*;

– Title XXIV – criminal offences against the economy

– Title XXVI – criminal offences of forgery

– Title XXVIII – criminal offences against official duty

– Title XXIX – criminal offences against the judiciary

– or for criminal offences from the Criminal Code (Official Gazette 110/97, 27/98, 50/00, 129/00, 51/01, 111/03, 190/03 – Decision of the Constitutional Court of the Republic of Croatia, 105/04, 84/05, 71/06, 110/07, 152/08, 57/11 and 143/12), as follows:

– Title XIII – criminal offences against values protected by international law

– Title XVII – criminal offences against property (other than a criminal offence involving alienation of other persons' movable property and a criminal offence involving the destruction and damage of other persons' property), for which criminal proceedings are instituted *ex officio*;

– Title XXI – criminal offences against the safety of payment and business operations

– Title XXII – criminal offences against the judiciary

– Title XXIII – criminal offences against authenticity of documents

– Title XXV – criminal offences against official duty

– a criminal offence involving the violation of the right to work and other labour-related rights referred to in Article 114 and a criminal offence involving the violation of right to health care and disability protection referred to in Article 115.

7. a person who has not been convicted, on the basis of a judgement with final force and effect, of a criminal offence referred to in acts falling within the competence other Member States or third countries whose description corresponds to the criminal offences referred to in paragraph 8, subparagraph 6 of this Article.

(9) If the acquisition of a qualifying holding enables the proposed acquirer to exercise a significant influence or control over the insurance undertaking, they shall support their proposal for acquisition of the qualifying holding with:

1. the business strategy of the insurance undertaking where a qualifying holding is to be acquired;

2. the scheme of operations of the insurance undertaking for the next three financial years, including the forecast report on the financial position and the statement of comprehensive income;

3. the planned changes in the organisational, management and staff structure of the insurance undertaking;

4. the action plan for drafting new or amendments to current by-laws of the insurance undertaking; and

5. the action plan for changes in the current or the introduction of the new information technology of the insurance undertaking.

(10) In the assessment procedure, the Agency may require the proposed acquirer to provide other documents as appropriate, including the information stipulated by the Anti-Money

Laundrying and Terrorist Financing Act, which is gathered by the persons bound by that act, within the deadline stipulated by Article 39, paragraphs 5 or 6 of this Act, when there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundrying or terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

(11) The Agency shall adopt an ordinance defining the content of the proposal for the acquisition of a qualifying holding and the supporting documents to be submitted with the proposal which prove the fulfilment of the conditions for the acquisition of a qualifying holding.

(12) The provisions of this Act concerning the acquisition of the qualifying holding in the insurance undertaking shall also apply to the acquisition of the qualifying holding in the reinsurance undertaking.

Notifications and Exchange of Information with Other Competent Supervisory Authorities

Article 37

(1) The Agency shall, without delay and after receiving an application for the acquisition of a qualifying holding, inform the competent supervisory authority of the Member State if the qualified holder is:

1. a credit institution, insurance or reinsurance undertaking, investment firm or management company undertaking for collective investment in transferable securities (the UCITS management company)
2. the parent undertaking of a credit institution, insurance or reinsurance undertaking, investment firm or UCITS management company referred to in subparagraph 1 of this paragraph; or
3. a person controlled by that person or persons controlling a credit institution, insurance or reinsurance undertaking, investment firm or UCITS management company referred to in subparagraph 1 of this paragraph.

(2) The Agency shall notify and exchange information with the competent supervisory authority of another Member State on the suitability of the proposed acquirer of a qualifying holding.

Persons Acting in Concert

Article 38

(1) Persons acting in concert mean:

1. natural or legal persons cooperating mutually or with the insurance undertaking on the basis of an agreement, either express or implied, either oral or written, aimed either at acquiring the voting shares or concerted exercising of the voting rights; or

2. legal persons mutually connected pursuant to the provisions of the Companies Act.

(2) The following persons shall be deemed to act in concert:

1. persons connected only through circumstances related to the acquisition of shares, indicating concerted acquisition or concerted intention of persons;

2. management or supervisory board members of companies acting in concert;

3. management or supervisory board members with companies in which they are members of these bodies, or

4. a management company and all investment funds managed by that company.

(3) Legal persons and natural and/or legal persons shall act in concert, where one of them exercises direct or indirect control over another or other legal persons

(4) Natural persons shall act in concert if they are related by blood in direct line and in collateral line up to the first degree of kinship, and if they are spouses or extra-marital partners or life partners.

(5) Persons also act in concert if they are mutually connected pursuant to the provisions of the act governing the takeover of joint-stock companies.

Assessment of the Proposal for the Acquisition of a Qualifying Holding

Article 39

(1) The Agency shall, within two days after receiving the complete application for the acquisition of a qualifying holding, acknowledge the receipt thereof in writing to the proposed acquirer and inform them of the date of the expiry of the assessment period.

(2) The Agency shall have a maximum of 60 days from the date of submission of the complete proposal to perform the assessment of the proposal for the acquisition of the qualifying holding and to submit its decision to the proposed acquirer.

(3) If the Agency received two or more proposals to acquire a qualifying holding, it shall treat the proposed acquirers in a non-discriminatory manner.

(4) The Agency may, during the assessment period and no later than 50 days from the submission of the proposal referred to in paragraph 1 of this Article, send a written request to the proposed acquirer asking them to submit any further notifications, information and documents that are necessary to complete the assessment.

(5) The proposed acquirer shall submit the requested information and documents within the deadline stipulated by the Agency, which shall not exceed 20 days.

(6) In exceptional circumstances, the Agency may extend the deadline referred to in paragraph 5 of this Article to 30 days if the proposed acquirer is:

1. situated or has the head office in a third country or is subject to the legislation of a third country, or

2. a natural or legal person who is not subject to supervision under this Act or the regulations of a Member State where their residence or head office is situated.

(7) The person authorised by the Agency to acquire a qualifying holding in the insurance undertaking shall notify the Agency accordingly within eight days from the acquisition of the qualifying holding.

(8) The complete application referred to in paragraph 1 of this Article shall be the application accompanied by the documents set out by the ordinance referred to in Article 36 of this Act and additional information or documents referred to in paragraph 4 of this Article requested by the Agency.

(9) If the Agency does not adopt a decision on the acquisition of a qualifying holding within the deadline set out in this Article, the acquisition shall be deemed to have been approved.

(10) By way of derogation from paragraph 2 of this Article, the deadline for the assessment of the application for the authorisation to acquire a qualifying holding shall be 60 days following the acknowledgement of receipt of the last complete application when Article 28 of this Act was applied.

Assessment of Suitability of the Proposed Acquirer

Article 40

(1) In assessing the proposal to acquire a qualifying holding, the Agency shall appraise the suitability and the financial soundness of the proposed acquirer against the following criteria:

1. the reputation of the proposed acquirer;

2. the reputation, skills and experience of any person who will direct the business of the insurance undertaking as a result of the proposed acquisition;

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

4. whether the insurance undertaking will be able to comply and continue to comply with the provisions of this Act, in particular, whether the group of which it will become part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent supervisory authorities and determine the allocation of responsibilities among the competent supervisory authorities, and

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

(2) The Agency shall not impose any prior conditions in respect of the level of holding that shall be acquired or examine the proposed acquisition in terms of the economic needs of the market.

(3) During the assessment of the proposed acquirer, the Agency shall examine the suitability of the resources that the proposed acquirer intends to use to acquire a qualifying holding in the insurance undertaking.

(4) To gather the necessary information, the Agency may control the information submitted by the proposed acquirer of the qualifying holding.

Refusal of the Application to Acquire a Qualifying Holding

Article 41

(1) The Agency shall adopt a decision refusing the application to acquire a qualifying holding if:

1. it estimates that the suitability or the financial position of the acquirer of the qualifying holding do not meet the criteria referred to in Article 40 of this Act;
2. it ensues from the legal or the financial position of the proposed acquirer of the qualifying holding or from the activities or the business pursued by the proposed acquirer of the qualifying holding or by the persons closely linked to them or from the actions committed by the proposed acquirer of the qualifying holding that the operations of the insurance undertaking may be jeopardised;
3. the activities or the business performed by the proposed acquirer of the qualifying holding may render the supervision of the operations of the insurance undertaking impossible or significantly more difficult;
4. the acquirer of the qualifying holding has submitted inaccurate or incomplete or misleading information, and that information was significant for the assessment;
5. there are reasonable grounds to suspect money laundering or terrorist financing.

(2) The Agency shall adopt a decision on refusing the application for the acquisition of the qualifying holding to a person from a third country if, taking account of the regulations or practice of that country with regard to the implementation and execution of the regulations, the supervision in accordance with this Act may be prevented or rendered significantly difficult or due to the reasons set out in paragraph 1 of this Article.

(3) If the Agency, upon the completion of the assessment, decides to oppose the proposed acquisition, it shall, within two days, and not exceeding the assessment period, inform the proposed acquirer in writing stating the reasons. In this manner, and before issuing a decision on the basis of paragraphs 1 and 2 of this Article, it shall define a maximum period for the proposed acquirer to comment in writing on the reasons of the Agency to oppose their acquisition of the qualifying holding in the insurance undertaking.

Revocation or Annulment of the Decision on the Approval to Acquire a Qualifying Holding and Legal Consequences of Acquiring a Qualifying Holding without the Approval of the Supervisory Authority

Article 42

(1) The Agency may revoke or annul the decision on the approval to acquire a qualifying holding if:

1. the conditions stipulated by the provisions of this Act on the basis of which the acquisition of the qualifying holding was approved no longer exist;
2. the holder of the qualifying holding breaches their obligations or fails to act in accordance with the decision issued by the Agency or by a body of another Member State or a third country competent for supervision on consolidated grounds ordering them to remedy the illegalities or irregularities;
3. if the qualifying holder received the authorisation on the basis of false, inaccurate or misleading information or in some other inappropriate manner.

(2) The person who acquires a qualifying holding in the insurance undertaking without the approval from the Agency shall, within 30 days of becoming aware of the acquisition of a qualifying holding in the insurance undertaking, submit an application to the Agency for the approval of such an acquisition. Article 44 of this Act shall apply to such person until obtaining the approval by the Agency.

(3) Article 44 of this Act shall apply to the qualifying holder whose approval to acquire a qualifying holding has been revoked in accordance with paragraph 1 of this Article.

Prior Written Notification of the Proposed Acquisition of a Qualifying Holding in a Third-Country Financial Institution

Article 43

(1) Prior to the acquisition of the qualifying holding in another insurance undertaking or another financial institution with head office outside the territory of the Republic of Croatia or any other Member State (hereinafter: a third-country financial institution), the insurance undertaking shall notify the Agency in writing about this intention.

(2) Before any further acquisition as a result of which the proportion of the voting rights or of the capital held in a third-country financial institution would reach or exceed 20%, 30% or 50% or as a result of which the insurance undertaking would acquire the majority interest in a third-country financial institution, the insurance undertaking referred to in paragraph 1 of this Article shall inform the Agency in writing about its intention.

(3) If an insurance undertaking decides to dispose of its shares or interests by reducing its holding in a third-country financial institution below the threshold referred to in paragraphs 1 and 2 of this Article, it shall first notify the Agency in writing of its intention.

(4) The written notification referred to in paragraph 1 of this Article shall be supported with:

1. the list of the holders of qualifying holdings in a third-country financial institution, together with the information about their holdings, and the certified translation of the original excerpt from a court or another public register for each of them;
2. the translation of the certified excerpt from a court or another public register for a third-country financial institution;
3. accounts of a third-country financial institution for the last two financial years;
4. auditor's report, with the opinion on annual reports for the last two business years if a third-country financial institution is obliged to conduct the audit in accordance with the regulations of the country where its head office is situated;
5. the list of persons with close links to a third-country financial institution, along with a description of close links;
6. the management strategy of a third-country financial institution, along with the assessment of the economic efficiency of investments.

Legal Consequences of Acquisition Contrary to the Provisions of This Act

Article 44

- (1) The person who acquires or holds shares contrary to the provisions of this Act shall not be entitled to vote or participate in the management of the insurance undertaking on the basis of the shares acquired in this manner.
- (2) The voting rights referred to in paragraph 1 of this Article shall be, for the period during which the holder of the qualifying holding does not enjoy any voting rights arising from the shares acquired contrary to the provisions of this Act, added to the voting rights enjoyed by other members of the insurance undertaking in such proportion as their individual holdings bear to the share capital of the insurance undertaking, so that the holder may only participate in voting on the basis of shares which constitute no breach of the provisions of this Act on the acquisition of the qualifying holding.
- (3) The Agency may issue a decision ordering the person referred to in paragraph 1 of this Article to dispose of the shares in the insurance undertaking.

Qualifying Holdings: Powers of the Agency

Article 45

If the Agency has established that the influence exercised by the person who acquired a qualifying holding in an insurance or reinsurance undertaking or by the persons acting in concert acquired a qualifying holding in such an undertaking is likely to operate against the operating rules of such an insurance or reinsurance undertaking, it shall take appropriate measures to eliminate such situations, including the suspension of the exercise of the voting rights at the annual general meeting of the insurance or reinsurance undertaking or the sale of shares in the insurance or reinsurance undertaking held by the person or persons in question.

Voting Rights

Article 46

(1) For the purposes of Title IV of this Act, the provisions of the act governing the capital market and pertaining to the percentage of voting right shall apply *mutatis mutandis*.

(2) Voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of the acquisition, shall not be taken into account in the assessment of the amount of the qualifying holding or the holding referred to in paragraph 1 of this Article.

Indirect Acquisition

Article 47

1) The indirect holder of shares, participating interests or other rights that ensure the participation in governance or capital is a person for whose account another person – who is a direct holder – acquired these shares, participating interests or other rights that ensure participation in governance.

(2) A person is considered to be the indirect holder of shares, participating interests or other rights that ensure participation in governance, or of other securities whose direct holder is another person related to the indirect holder.

Merger and Division of Insurance Undertakings

Article 48

(1) The insurance undertaking shall procure prior approval from the Agency for any merger and division.

(2) The provisions of the Companies Act which govern the status changes of joint-stock companies shall apply to the changes in the status of the insurance undertaking referred to in paragraph 1 of this Article.

(3) The Agency shall reject the application for the approval of a merger if the competent authority prohibits the insurance undertaking from conducting the merger concerned in accordance with the Competition Act.

(4) If the insurance undertaking or another legal person from another Member State or from a third country is involved in the status change of the insurance undertaking, this status change shall be allowed only subject to approval by the competent supervisory authorities of all the participants in the status change.

(5) The status change of the insurance undertaking referred to in paragraph 1 of this Article which involves the transfer or the acceptance of insurance contracts concluded under the right of establishment or the freedom to provide services, as well as the merger of the insurance

undertakings which involve an insurance undertaking from another Member State or from a third country shall be governed by the provisions of this Act on the transfer of the insurance portfolio.

(6) In the case referred to in paragraphs 4 and 5 of this Article, the Agency shall request the opinion of the supervisory authorities on the status change from another Member State or from a third country prior to adopting a decision on the approval of the status change of the insurance undertaking. If the competent authority fails to submit its opinion or approval within three months from the date of receipt of the request by the Agency, it shall be considered as having given its implied approval for the status change concerned.

(7) The Agency shall adopt an ordinance defining the content of the application and the supporting documents to be submitted with the application for the approval of a status change of an insurance undertaking.

(8) The Agency shall issue a decision on the application for the approval of a status change of the insurance undertaking within 60 days of receipt of the complete application or the receipt of the approval from this Article or the expiry of the deadline from paragraph 6 of this Article.

(9) If the insurance undertaking is established due to a status change, that undertaking shall obtain the authorisation from the Agency to pursue the insurance business before it is entered in the court register.

Approval of the Merger and Division of the Insurance Undertaking

Article 49

(1) In adopting its decision on the application of the insurance undertaking for the approval of the merger with another insurance undertaking, the Agency shall consider the following:

1. maintenance of the financial stability of the undertaking with which the insurance undertaking or another legal person will merge;
2. business reputation of the insurance undertaking with which the insurance undertaking will merge;
3. professional qualifications and suitability of the persons who will manage the insurance undertaking with which the insurance undertaking will merge;
4. financial stability of the insurance undertaking with which another insurance undertaking or another legal person will merge;
5. whether the insurance undertaking with which the insurance undertaking or another legal person will merge will be able to continue to operate in accordance with the provisions of this Act and, in particular, whether the insurance group, of which the insurance undertaking will become a member, will have the structure that will make it possible for the insurance undertaking to exercise effective supervision, enable efficient exchange of information among the competent supervisory authorities and define the distribution of competences among the competent supervisory authorities;

6. any suspected money laundering or financing of terrorism.

(2) The Agency shall refuse the application for the merger referred to in paragraph 1 of this Article if the conditions laid down by paragraph 1 of this Article have not been fulfilled.

(3) In adopting its decision on the application of the insurance undertaking for the approval of the merger or division, the Agency shall duly apply paragraph 1 of this Article and refuse this application if the conditions referred to in paragraph 1 of this Article have not been fulfilled.

(4) Before issuing a decision referred to in paragraph 3 of this Article, the Agency shall enable the applicants to comment on the reasons for the refusal within a specified deadline.

(5) The decision referred to in paragraph 3 of this Article shall contain the reasons for its issuance and the instruction on the legal remedy.

TITLE V

THE MANAGEMENT AND SUPERVISORY BOARDS OF THE INSURANCE UNDERTAKING

CHAPTER I

MANAGEMENT BOARD OF THE INSURANCE UNDERTAKING

Members of the Insurance Undertaking Management Board

Article 50

(1) The insurance undertaking shall have at least two members of the management board who jointly manage its operations and jointly represent the undertaking. One of the management board members shall be appointed as the president of the management board.

(2) At least one member of the management board shall have command of the Croatian language, both in speech and writing, to be able to perform that function.

(3) The management board shall manage the operations of the insurance undertaking from the territory of the Republic of Croatia.

(4) The authorised representative shall represent the insurance undertaking only jointly with one member of the management board.

(5) The authorised representative shall not represent the insurance undertaking in proceedings before the Agency.

(6) The conditions to be fulfilled by the person having the power of attorney shall be determined by the Articles of Association of the insurance undertaking.

(7) The members of the insurance undertaking management board shall be full time employees of the insurance undertaking.

*Conditions for the Management Board Member and the Authorised Representative in
the Insurance Undertaking*

Article 51

(1) A member of the insurance undertaking management board may be a person who meets the following requirements at all times:

1. they possess professional qualifications, knowledge and experience adequate to enable sound and prudent management;
2. they are of good repute and integrity (fit);
3. they have not been a member of the supervisory board, a member of the management board or a person holding any other managing position in an insurance undertaking or a company at the time when bankruptcy proceedings or pre-bankruptcy settlement proceedings were initiated against these entities or which has been deleted from a court register *ex officio*, or whose authorisation to pursue the insurance business has been withdrawn, unless the Agency finds that the person concerned has not affected the initiation of the bankruptcy proceedings, the initiation of pre-bankruptcy settlement proceedings, the deletion from the court register *ex officio* or the withdrawal of authorisation through their misconduct or incompetent professional work;
4. a sole debtor (sole trader or craftsman) in respect of whose assets no bankruptcy proceedings have been initiated or completed and no pre-bankruptcy settlement proceedings have been initiated, unless the Agency finds that the person concerned has not affected the initiation of the bankruptcy proceedings or the initiation of pre-bankruptcy settlement proceedings through their misconduct or incompetent professional work;
5. they have not been relieved from duty of a member of the insurance undertaking management board by virtue of the decision adopted by the Agency referred to in Article 238, paragraph 5 of this Act;
6. to whom the Agency or another supervisory authority has not refused the approval to perform the function of the management board member, or if at least one year has passed from the date of enforceability of the decision refusing an application for approval to perform the function of the management board member;
7. they fulfil the conditions for the management board member of a joint-stock company set out by the Companies Act;
8. their former conduct has been such that it may be reasonably concluded that they will perform the duties of a member of the insurance undertaking management board honestly and with due care;
9. they are not a member of the management board or an authorised representative of another company or a member of the supervisory board in any of the following legal persons:
 - another insurance or reinsurance undertaking,

- pension insurance undertaking,
- pension undertaking,
- depositary,
- investment company,
- UCITS or alternative investment fund management company,
- credit institution,
- other legal persons operating under the authorisation or permit granted by the Agency;

10. they are not an authorised representative of the insurance undertaking branch from the Republic of Croatia, another Member State or a third country:

11. they have not been convicted, on the basis of a judgement with final force and effect, of misdemeanour or criminal offence which represents a gross or permanent violation of regulations falling within the competence of the Agency, the Croatian National Bank or related supervisory authorities of the Republic of Croatia, other Member States or third countries, or of the following criminal offences provided for in the Companies Act and the Criminal Code (Official Gazette 125/11 and 144/12, as follows:

- Title IX – crime against humanity and human dignity
- Title XII – criminal offences against labour relations and social insurance
- Title XXIV – criminal offences against the economy
- Title XXVI – criminal offences of forgery
- Title XXVIII – criminal offences against official duty
- Title XXIX – criminal offences against the judiciary
- Title XXIII – criminal offences against property (other than a criminal offence involving unauthorised use of other persons' movable property and a criminal offence involving damage to other persons' property) for which criminal proceedings are instituted *ex officio*;
- or for criminal offences from the Criminal Code (Official Gazette 110/97, 27/98, 50/00, 129/00, 51/01, 111/03, 190/03 – Decision of the Constitutional Court of the Republic of Croatia, 105/04, 84/05, 71/06, 110/07, 152/08, 57/11 and 143/12), as follows:
- Title XIII – criminal offences against values protected by international law
- Title XVII – criminal offences against property (other than a criminal offence involving alienation of other persons' movable property and a criminal offence involving the destruction and damage of other persons' property), for which criminal proceedings are instituted *ex officio*;

- Title XXI – criminal offences against the safety of payment and business operations
- Title XXII – criminal offences against the judiciary
- Title XXIII – criminal offences against authenticity of documents
- Title XXV – criminal offences against official duty
- a criminal offence involving the violation of the right to work and other labour-related rights referred to in Article 114 and a criminal offence involving the violation of right to health care and disability protection referred to in Article 115.

12. they have not been convicted, on the basis of a judgement with final force and effect, of misdemeanour or criminal offence of regulations falling within the competence of other Member States or third countries whose description corresponds to criminal offences and misdemeanours referred to in subparagraph 11 of this paragraph;

13. they are not in a conflict of interest with respect to the insurance undertaking, shareholders, supervisory board members or holders of key functions.

(2) The experience referred to in paragraph 1, subparagraph 1 of this Article shall be deemed to be the experience of at least three years at managing positions in an insurance undertaking or a reinsurance undertaking or a five-year experience in managing the business activities comparable to the activities of the insurance undertaking or the activities that the Agency assesses as such as to enable the person to gain the experience required to perform the function of a member of the management board of the insurance undertaking.

(3) The proof of fulfilment of the conditions set out in paragraph 1, subparagraphs 3, 4, and 6 – 14 of this Article shall include a court register excerpt or a document issued by the competent judiciary or administrative authority or a notarised statement by the candidate, not older than three months following the date of submission of the application referred to in Article 52 of this Act.

(4) The statements, documents and excerpts referred to in this Article shall not be older than three months as from the day of submission of the application referred to in Article 52 of this Act, except for the certificate referred to in paragraph 2 of this Act.

(5) The authorised representative of the insurance undertaking shall not be the authorised representative, member of the management board, member of the supervisory board or holder of a key function in any of the following legal persons:

- another insurance or reinsurance undertaking,
- pension insurance undertaking,
- pension undertaking,
- depositary,
- investment company,

- UCITS or alternative investment fund management company,
- credit institution,
- other legal persons operating on the basis of the authorisation granted by the Agency.

(6) By way of derogation from paragraph 1, subparagraph 9 and paragraph 5 of this Article, the member of the management board and the authorised representative of the insurance undertaking may be a member of the supervisory board in legal persons set out in those provisions only when this is in compliance with Article 58, paragraph 3 of this Act.

Approval of the Member of the Insurance Undertaking Management Board

Article 52

(1) The person who has received prior approval from the Agency to perform the function of a member of the insurance undertaking management board may be appointed to this position.

(2) The application for the approval to perform the function of the management board member shall be submitted to the supervisory board of the insurance undertaking for the candidate for the management board member.

(3) In adopting the decision on the application referred to in paragraph 2 of this Article, the Agency may invite the candidate for the management board member to present their programme for managing the operations of the insurance undertaking and to additionally present the programme as appropriate.

(4) The Agency shall base its prior approval referred to in paragraph 1 of this Article on:

1. the documents supporting the application referred to in paragraph 2 of this Article;
2. the presentation of the candidate's programme, and
3. other available data and information.

(5) The candidate shall procure prior approval from the Agency for each term of office as the management board member.

(6) In adopting the decision on the application referred to in paragraph 2 of this Article, the Agency shall issue the prior approval referred to in paragraph 1 of this Article for the term of office indicated in the application. Exceptionally, the Agency may, when it deems as justified, issue a prior approval for the period shorter than the period indicated in the application referred to in paragraph 2 of this Article.

(7) The Agency shall adopt an ordinance prescribing the contents of the application referred to in paragraph 2 of this Article, the conditions referred to in Article 51 of this Act and the supporting documents to be submitted to prove the compliance with the criteria for performing the function of a member of the management board.

*Refusal of the Application for the Approval to Perform the Function of the
Management Board Member*

Article 53

The Agency shall refuse the application for the approval to perform the function of the management board member if:

1. the proposed candidate does not meet the requirements laid down by the provisions of Article 51 of this Act, or
2. the Agency has objective and provable reasons to validly assume that the business or duties in which the person is or was engaged would represent a threat to managing the insurance undertaking in a sound and prudent manner and in accordance with the rules on the system of governance and those prescribed by this Act or
3. the information given in the application for the approval is incorrect, false or misleading or the information that is important for deciding on the application for approval has been withheld, or
4. the programme for running the operations of the insurance undertaking and its presentation have been assessed by the Agency as unsatisfactory.

Expiry of the Approval to Perform the Function of the Management Board Member

Article 54

(1) The approval to perform the function of the member of the insurance undertaking management board shall expire:

1. with the expiry of the six-month period after the decision on the prior approval of the appointment of the management board member became final if the person concerned is not appointed or assumes office of the management board member in that period;
2. on the date of expiry of the membership in the case of an early expiry of the person's membership in the management board;
3. on the date of termination of employment if the person concerned ceases to be employed by the insurance undertaking.

(2) The insurance undertaking shall without delay notify in writing the Agency about any circumstances referred to in paragraph 1 of this Article.

Obligations of the Member of the Insurance Undertaking Management Board

Article 55

(1) The members of the insurance undertaking management board shall make sure that the insurance undertaking operates in accordance with:

1. rules of trade and

2. this Act, the regulations adopted under this Act and other acts and regulations governing the operations of insurance undertakings.

(2) The members of the insurance undertaking management board shall establish and put in place an efficient and reliable system of governance in accordance with the provisions of this Act that ensures efficient and sound management of the insurance undertaking.

(3) In order to establish and put in place an efficient and reliable system of governance, the management board of the insurance undertaking shall:

1. adopt the business policy of the insurance undertaking;

2. approve and regularly examine the strategic goals and risk-management strategies and policies;

3. ensure the integrity of accounting and financial reporting systems and of financial and operating control;

4. regularly re-examine the correctness of the public disclosure procedures;

5. provide for the efficient supervision of senior management, and

6. establish precisely defined, clear and consistent internal relationships with regard to responsibility, with a clear allocation and appropriate segregation of roles and responsibilities in order to avoid a conflict of interest.

(4) In the event of any reappointment or termination of their term of office as members of supervisory or management boards of other legal persons, as well as in the event of an early termination of their term of office as members of the insurance undertaking supervisory board, the members of the insurance undertaking management board shall inform the Agency in writing within eight days thereof.

(5) The members of the insurance undertaking management board shall ensure the implementation of supervisory measures ordered by the Agency.

(6) The members of the insurance undertaking management board shall periodically, and at least once a year, re-examine the suitability of procedures and the efficiency of the internal control system. They shall document their conclusions and inform the supervisory board thereof.

(7) The members of the insurance undertaking management board shall be severally liable to the insurance undertaking for any damage resulting from their actions, failure to act and failure to exercise their duties, unless they prove that they employed the duty of a prudent businessman in the exercise of their duty of managing the insurance undertaking.

Revocation or Annulment of the Approval to Perform the Function of the Management Board Member

Article 56

(1) The Agency shall issue a decision on revoking or annulling the decision on the approval to perform the function of the management board member in the following cases:

1. if the management board member no longer meets the conditions under which the approval was granted;
2. if the approval was obtained due to material information being withheld, or on the basis of false, incorrect or misleading information, or in any other fraudulent manner;
3. if the management board member has severely or systematically violated the provisions of this Act, the regulations adopted under this Act or other legal provisions related to the operations of the insurance undertaking;
4. if the management board member has not ensured the implementation of or has failed to implement the measures ordered by the Agency;
5. if the management board member has not put in place an effective system of governance in accordance with this Act that provides for sound and prudent management of the business;
6. if it establishes that the management board member is in a conflict of interest due to which they can no longer fulfil their obligations and duties with due skill, care and diligence;
7. if the management board member fails to regularly and with due care fulfil the obligation to establish and review the effectiveness of the policies, measures or internal procedures put in place in order for the insurance undertaking to comply with the provisions of this Act and the regulations adopted under this Act or the obligation to take appropriate measures with the aim of rectifying the deficiencies or irregularities in the operations of the insurance undertaking;
8. if the management board member violates the provisions of the Companies Act concerning the duties of the management board, the consequence of which is their recall from duty;
9. if the Agency issues a decision on the appointment of special management.

(2) In the cases referred to in paragraph 1, subparagraphs 5 – 7 of this Article, the Agency may introduce a special supervisory measure temporarily prohibiting the performance of the function of the management board member until the illegalities or irregularities are remedied, but only for a period not exceeding six months. If due to this measure the number of the management board members does not comply with that stipulated by the Articles of Association, the supervisory board shall appoint a temporary deputy of the management board member. If the management board member or the insurance undertaking fails to remedy the illegalities or irregularities within a specified time, the Agency shall issue a decision revoking or annulling the decision on the approval to perform the function of the management board member granted to the member concerned.

(3) If the Agency issues a decision revoking the decision on the approval to perform the function of the management board member, the term of office of the member concerned shall expire with the date of enforceability of this decision.

Notification of the Supervisory Board

Article 57

(1) The management board shall without delay notify in writing the supervisory board of the insurance undertaking of the following:

1. if there is a threat to liquidity;
2. in the occurrence of the event for the expiry of validity of the authorisation for pursuing the insurance business, the reasons to revoke the authorisation or the reasons to revoke the authorisation for the provision of insurance services in their entirety or in individual classes of insurance;
3. the financial position of the insurance undertaking has changed so that the insurance undertaking no longer complies with the Solvency Capital Requirement or Minimum Capital Requirement or if there is a risk of such non-compliance within the following three months;
4. all measures taken by the Agency and other supervisory authorities in the procedure of supervising the insurance undertaking.

(2) The management board member shall without delay notify in writing the supervisory board of the following:

1. appointment or cessation of their function in supervisory and management boards of another legal person;
2. any legal transaction on the basis of which either the member of the management board or their immediate family member has acquired, directly or indirectly, shares or holdings in a legal person on the basis of which the management board member, together with their immediate family member(s), has a holding in that legal person reaching or exceeding the qualifying holding or if their holding has been reduced to a level below the qualifying holding threshold;
3. cessation of their function as the management board member, expiry of the conditions stipulated for the performance of the function of the management board member;
4. any conflict of interest in which they are involved.

(3) The member of the insurance undertaking management board shall without delay notify in writing the supervisory board of the insurance undertaking if they have knowledge or proof that another management board member does not meet the requirements to perform the function of the management board member or fails to fulfil their obligations or that their actions or failure to act may jeopardise the operations of the insurance undertaking.

(4) The supervisory board shall examine the notification referred to in paragraph 3 of this Article without any delay and take the appropriate measures within the scope of its competence.

(5) If the supervisory board fails to act in accordance with paragraph 4 of this Article, the management board member shall submit the notification referred to in paragraph 3 of this Article to the Agency.

CHAPTER II

SUPERVISORY BOARD OF THE INSURANCE UNDERTAKING

Members of the Insurance Undertaking Supervisory Board

Article 58

(1) The following persons shall not be appointed as members of the insurance undertaking supervisory board

1. a person related to legal persons in which the insurance undertaking holds more than 5% of voting rights or of their share capital;
2. a person who is a member of the supervisory or management board or the authorised representative in another insurance undertaking or another financial institution;
3. a person who holds a key function in the insurance undertaking or the undertaking which has close links with the insurance undertaking.

(2) The members of the supervisory board who are employee representatives shall not participate in the decision-making process of the supervisory board referred to in Article 60 of this Act.

(3) The prohibition referred to in paragraph 1, subparagraphs 1 and 2 of this Article shall not apply to the persons who are members of the supervisory board or the management board or who are authorised representatives of the parent insurance undertaking or another parent undertaking in the group of insurers or to the persons who are members of the supervisory board of the subsidiary of the same parent undertaking.

Requirements for Performing the Function of the Member of the Insurance Undertaking Supervisory Board

Article 59

(1) A person eligible for a member of the insurance undertaking supervisory board shall at all times have good repute, appropriate professional qualifications and the experience required to perform the obligations from the field of their competence. Furthermore, they shall not be in a conflict of interest with respect to the insurance undertaking, shareholders, other members of the supervisory board, holders of key functions and senior management of the insurance undertaking.

(2) A person shall be deemed to have the relevant experience to perform the function of a member of the supervisory board if they have experience in running, managing or supervising operations of an undertaking of comparable size and activities and of the insurance

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undertaking where they are a candidate for the supervisory board member or in the business where they could have gained the experience required to perform the function of the supervisory board member.

(3) The Agency may order the insurance undertaking to convene the general meeting to elect the supervisory board members if the insurance undertaking does not have a sufficient number of the supervisory board members in accordance with the provisions of the Articles of Association or the Companies Act or to convene the general meeting and propose to recall the member of the insurance undertaking supervisory board if:

1. the supervisory board member violates their duties defined by the Articles of Association of the insurance undertaking, this Act, the Companies Act and other acts and regulations adopted under those acts;

2. the member no longer fulfils the requirements for the supervisory board member.

(4) There is no requirement to appoint an employee representative to the supervisory board.

(5) The Agency shall adopt an ordinance defining in detail the requirements referred to in paragraphs 1 and 2 of this Article and the documents proving that the person fulfils the conditions to perform the function of the management board member.

Competences of the Insurance Undertaking Supervisory Board and Obligations of the Supervisory Board Members

Article 60

(1) In addition to the competences of the supervisory board pursuant to the Companies Act and the Articles of Association of the insurance undertaking, it shall also have the following competences:

1. give its consent to the management board for the business policy and strategic goals of the insurance undertaking;

2. give its consent to the management board for the financial plan of the insurance undertaking;

3. give its consent to the management board for the risk-management strategies and policies;

4. give its consent to the management board for own-risk and solvency assessments;

5. give its consent to the management board for the system of internal controls;

6. give its consent to the management board for the framework annual programme of operations of the internal audit;

7. adopt decisions on other activities.

(2) The members of the insurance undertaking supervisory board shall:

1. supervise the adequacy of procedures applied and the efficiency of the activities of the internal audit;
2. perform their duties taking account of the findings of the Agency, Tax Authority and other supervisory authorities in the course of the supervision of the insurance undertaking;
3. supervise the implementation and the efficiency of the system of governance;
4. supervise the implementation of the business policy of the insurance undertaking, its strategic goals and underwriting and risk management strategy and policy;
5. supervise the public disclosure;
6. review financial accounts of the insurance undertaking and draw up a written report to the annual general meeting thereof;
7. explain to the general meeting of shareholders their opinion about the annual report of the internal audit and about the annual report submitted by the management board.

(3) The members of the insurance undertaking supervisory board shall be severally liable to the insurance undertaking for any loss incurred as a result of non-compliance with their obligations referred to in paragraph 1 of this Article unless they can prove they have performed their duties with the care of a prudent businessman.

(4) The member of the insurance undertaking supervisory board shall without delay inform the Agency of the following:

1. their appointment and cessation of function in the insurance undertaking and as a member of the management or supervisory boards of other legal persons;

2. any legal transaction on the basis of which either the member of the supervisory board himself or his immediate family members has acquired, directly or indirectly, shares or holdings in a legal person on the basis of which the member of the supervisory board, together with his immediate family members, has a holding reaching or exceeding the qualifying holding or if their holding has been reduced to a level below the qualifying holding threshold.

(5) The supervisory board of the insurance undertaking shall without any delay notify the Agency in writing of all the information that could influence the revocation of the decision on approval to perform the function of the management board member as well as the termination and the reasons for termination of their term of office as the management board member.

TITLE VI

CROSS-BORDER PROVISION OF SERVICES

CHAPTER I

PURSUIT OF THE INSURANCE AND REINSURANCE BUSINESS OUTSIDE THE TERRITORY OF THE REPUBLIC OF CROATIA

Pursuit of the Insurance and Reinsurance Business in another Member State

Article 61

The insurance undertaking may pursue the insurance and reinsurance business for which it is authorised by the Agency in the territory of another Member State under the right of establishment or the freedom to provide services if it fulfils the requirements stipulated by the regulations of the Member State where services are provided or the Member State of the commitment.

Pursuing the Business in another Member State under the Right of Establishment

Article 62

(1) The insurance undertaking which intends to provide the insurance services under the right of establishment in the territory of another Member State shall first give written notice to the Agency about the Member State where the services are provided, or the Member State of the commitment, in the territory of which it intends to establish a branch, and submit the information and documents referred to in Article 66, paragraph 2, subparagraphs 1, 2 and 3 of this Act to the Agency.

(2) Unless the Agency has reasons to doubt the adequacy of the system of governance or the financial situation of the insurance undertaking or the fit and proper requirements, i.e. good business repute and experience of the authorised agent referred to in Article 66, paragraph 2 of this Act, it shall, within three months of receiving all the information referred to in paragraph 1 of this Article, communicate that information and documents referred to in Article 66, paragraph 2, subparagraphs 1, 2 and 3 of this Act to the competent supervisory authority of the Member State where it intends to establish its branch.

(3) In addition to the information referred to in paragraph 1 of this Article, the Agency shall also attest to the competent supervisory authority of the Member State that the insurance undertaking covers the Solvency Capital Requirement and the Minimum Capital Requirement calculated in accordance with Articles 130 and 157 of this Act.

(4) Where the Agency has reasons to doubt the adequacy of the system of governance or the financial situation of the insurance undertaking or the fit and proper requirements, i.e. good business repute and experience of the authorised agent referred to in Article 66, paragraph 2 of this Act, it shall, within three months of receiving all the information referred to in paragraph 1 of this Article, issue a decision refusing to communicate the information to the competent supervisory authority of another Member State and state the reasons for its refusal and the instruction on legal remedy to the insurance undertaking concerned.

(5) If the competent supervisory authority of the Member State within two months of receiving the information referred to in paragraph 2 of this Article informs the Agency of the conditions under which, in the interest of the general good, the insurance undertaking may operate via its branch in that Member State, the Agency shall communicate this information to the insurance undertaking concerned.

(6) The insurance undertaking may establish a branch and start the insurance business in another Member State via its branch as from the date on which the Agency received such a

communication from the competent supervisory authority referred to in paragraph 5 of this Article or, if no communication is received, after the expiry of a two-month period of delivery of the notification by the Agency that it submitted the information from paragraph 2 of this Article to the competent supervisory authority of that Member State.

(7) In the event of amendments to any of the particulars communicated under paragraph 2 of this Article, an insurance undertaking shall give written notice of the change to the Agency at least one month before performing the amendments. If the above amendment is related to the expansion of business operations, this expansion shall be allowed only a month after the insurance undertaking notified the Agency accordingly. The Agency shall send a written notice of these amendments to the competent supervisory authority of the Member State referred to in paragraph 2 of this Article.

(8) Where the insurance undertaking intends its branch to cover the risks in the classes of insurance referred to in Article 7, paragraph 2, subparagraph 10 of this Act, i.e. motor vehicle liability insurance, excluding the carrier's liability, it shall submit a statement that it has become a member of the national insurers' bureau and the national guarantee fund of the host Member State.

Pursuit of the Insurance Business by the Insurance Undertaking in another Member State under the Freedom to Provide Services

Article 63

(1) Any insurance undertaking that intends to pursue the insurance business for the first time in another Member State under the freedom to provide services shall first notify the Agency in writing, indicating the nature of the risks or commitments it proposes to cover.

(2) Within one month of the notification provided for in paragraph 1 of this Article, the Agency shall communicate the information and the documents referred to in Article 67, paragraph 2 of this Act to the competent supervisory authority of the Member State where an insurance undertaking intends to pursue the insurance business under the freedom to provide services and it shall inform the insurance undertaking accordingly.

(3) Where the Agency does not communicate the information referred to in paragraph 2 of this Article to the competent supervisory authority within the period laid down in paragraph 2 of this Article, it shall issue a decision refusing to communicate that information to the competent supervisory authority of the Member State where services are provided or the Member State of the commitment and it shall state the reasons for its refusal and the instruction on legal remedy.

(4) The insurance undertaking may start business as from the date on which it is informed of the communication provided for in paragraph 2 of this Article.

(5) In the event of a change in any of the particulars communicated under paragraph 2 of this Article, the insurance undertaking shall give written notice of the change to the Agency and to the competent supervisory authority of the Member State at least one month before making the change so that the competent supervisory authority of that Member State may fulfil its respective role under this Article.

(6) The insurance undertaking shall become a member of the national insurers' bureau or of the national guarantee fund of another Member State after it receives the notification from paragraph 2 of this Article and before it starts to directly pursue the insurance business of classes referred to in Article 7, paragraph 2, subparagraph 10 of this Act, i.e. motor vehicle liability, excluding carrier's liability.

Reporting on the Insurance Business in another Member State

Article 64

(1) Every insurance undertaking pursuing the insurance business in another Member State shall inform the Agency of these activities, separately in respect of transactions carried out under the right of establishment and those carried out under the freedom to provide services.

(2) The insurance undertaking shall submit the report referred to in paragraph 1 of this Article in accordance with Article 202 of this Act.

(3) The Agency shall forward the information referred to in paragraph 1 of this Article within a reasonable time and in aggregate form to the competent supervisory authority of the Member State where services are provided or the Member State of the commitment.

Pursuit of the Insurance Business in a Third Country

Article 65

(1) The insurance undertaking shall be allowed to pursue the insurance business in a third country via its branch, while respecting the laws and regulations of that country.

(2) The insurance undertaking shall obtain the approval from the Agency for establishing a branch in a third country.

(3) The Agency shall refuse the application for the approval to establish a branch in a third country if, taking account of the laws and regulations of that country and the practice of the country where the insurance undertaking intends to establish a branch with regard to the implementation and execution of these laws and regulations, the supervision in accordance with this Act would be prevented or made significantly difficult.

(4) The provisions of this Article shall not apply to reinsurance and insurance undertakings that pursue the business of reinsurance.

CHAPTER II

PURSUIT OF THE INSURANCE BUSINESS BY THE INSURANCE UNDERTAKING FROM ANOTHER MEMBER STATE

Pursuit of the Insurance Business under the Right of Establishment in the Republic of Croatia

Article 66

(1) Any permanent presence of an undertaking in the territory of the Republic of Croatia shall be treated in the same way as a branch, even where that presence does not take the form of a branch, but consists merely of an office managed by the own staff of the undertaking or by a person who is independent but has permanent authority to act for the undertaking as an agency would.

(2) The insurance undertaking with head office in another Member State which intends to operate for the first time in the Republic of Croatia under the right of establishment shall first inform the competent supervisory authority and provide the nature of the risks or commitments it intends to cover and the following information:

1. a scheme of operations of the insurance undertaking setting out, at least, the types of business envisaged and the structural organisation of the branch;

2. the name of a person who possesses sufficient powers to bind, in relation to third parties, the insurance undertaking or, in the case of Lloyd's, the underwriters concerned and to represent it or them in relations with the authorities and courts of the Republic of Croatia (the authorised agent);

3. the address in the Republic of Croatia where documents may be obtained and where they may be delivered, including all communications to the authorised agent;

4. a certificate proving that the insurance undertaking covers the Solvency Capital Requirement and the Minimum Capital Requirement calculated in accordance with the provisions of this Act.

(3) The competent supervisory authority of the insurance undertaking from another Member State that intends to pursue the insurance business in the Republic of Croatia via its branch shall within three months of receiving all the information referred to in paragraph 2 of this Article send it to the Agency if it has no reason to doubt the adequacy of the system of governance or the financial situation of the insurance undertaking or the fit and proper requirements, i.e. good business repute and experience of the authorised agent referred to in paragraph 2 of this Article. In addition to the above information, the competent supervisory authority of the insurance undertaking from another Member State shall also attest to the Agency that the insurance undertaking from another Member State covers the Solvency Capital Requirement and the Minimum Capital Requirement calculated in accordance with Articles 130 and 157 of this Act.

(4) The Agency shall systematically, or within two months of receiving the information referred to in paragraph 2 of this Article, inform the competent supervisory authorities of other Member States of the regulations to be followed by insurance undertakings which have head offices in those Member States, operate in the Republic of Croatia and whose compliance is subject to supervision by the Agency.

(5) When an insurance undertaking intends to offer insurance services prescribed by the Act on Compulsory Insurance within the Transport Sector, it shall, before starting to provide these services, send a statement to the Agency on becoming a member of the national insurers' bureau and the Guarantee Fund of the Republic of Croatia.

(6) In the event of a change in any of the particulars communicated under paragraph 2 of this Article, an insurance undertaking shall give written notice of the change to the Agency and the competent supervisory authority at least one month before making the change. If the above change is related to the expansion of business operations, this expansion shall be allowed only a month after the insurance undertaking notified the Agency accordingly.

(7) The insurance undertaking from another Member State which covers a risk from the classes referred to in Article 7, paragraph 2, subparagraph 2 of this Act, i.e. health insurance in the territory of the Republic of Croatia, shall submit the insurance conditions for these classes to the Agency before it starts to provide health insurance services.

(8) The insurance undertaking from another Member State may establish a branch in the territory of the Republic of Croatia and start business as from the date on which the competent supervisory authority receives the information referred to in paragraph 4 of this Article or, if it does not receive this information, within two months of receiving the documentation referred to in paragraph 2 of this Article.

*Pursuit of the Insurance Business in the Republic of Croatia under the Freedom to
Provide Services*

Article 67

(1) Any insurance undertaking with head office in another Member State that intends to pursue business for the first time in the Republic of Croatia under the freedom to provide services shall first notify the competent supervisory authority of the insurance undertaking from another Member State, indicating the nature of the risks or commitments it proposes to cover.

(2) Within one month of the notification provided for in paragraph 1 of this Article, the competent supervisory authority of the insurance undertaking from another Member State that intends to pursue business in the Republic of Croatia shall communicate the following to the Agency:

1. a certificate attesting that the insurance undertaking covers the Solvency Capital Requirement and Minimum Capital Requirement calculated in accordance with the provisions of this Act;
2. the classes of insurance which the insurance undertaking has been authorised to offer;
3. the nature of the risks or commitments which the insurance undertaking proposes to cover in the Republic of Croatia.

(3) In addition to the particulars referred to in paragraph 2 of this Article that the competent supervisory authority submits to the Agency, the insurance undertaking that intends to provide the services of compulsory insurance within the transport sector shall submit the following to the Agency beforehand:

1. the name and the address of the representative with regard to the provision of services of compulsory insurance within the transport sector and the address of the person in the Republic

of Croatia where documents can be obtained and where they could be delivered with regard to other insurance services that the insurance undertaking provides in the Republic of Croatia;

2. a statement of becoming a member of the national insurers' bureau and national guarantee fund of the Republic of Croatia;

3. the address in the Republic of Croatia where documents can be received.

(4) The insurance undertaking may start business as from the date on which it is informed by the competent supervisory authority that the communication provided for in paragraph 2 of this Article was delivered to the Agency or when it notifies the Agency in accordance with paragraph 3 of this Article.

(5) The competent supervisory authority of the insurance undertaking from another Member State shall notify the Agency of any changes in particulars referred to in paragraph 2 of this Article, and the insurance undertaking shall notify the Agency about any changes in particulars from paragraph 3 of this Article.

(6) The provisions of this Article shall not apply to reinsurance undertakings.

Compulsory Insurance on Third Party Motor Vehicle Liability

Article 68

(1) Where an insurance undertaking, through an establishment situated in one Member State, covers a risk, other than carrier's liability, classified under class referred to in Article 7, paragraph 2, subparagraph 10 of this Act which is situated in another Member State, the host Member State shall require that undertaking to become a member of and participate in the financing of its national insurers' bureau and its national guarantee fund.

(2) The financial contribution referred to in paragraph 1 of this Article shall be made only in relation to risks, other than carrier's liability, classified under class referred to in Article 7, paragraph 2, subparagraph 10 of this Act covered by way of provision of services. That contribution shall be calculated on the same basis as for non-life insurance undertakings covering those risks, through an establishment situated in that Member State. The calculation shall be made by reference to the insurance undertakings' premium income from that class in the host Member State or the number of risks in that class covered there.

(3) The host Member State may require an insurance undertaking providing services to comply with the rules in that Member State concerning the cover of aggravated risks, insofar as they apply to non-life insurance undertakings established in that State.

Non-Discrimination of Persons Pursuing Claims

Article 69

The insurance undertaking with head office in another Member State shall ensure that the persons pursuing claims arising out of events occurring in the territory of the Republic of Croatia are not placed in a less favourable position as a result of the fact that the undertaking

is covering the risks of compulsory insurance within the transport sector under the freedom to provide services rather than through an establishment situated in the Republic of Croatia.

Representative

Article 70

(1) The insurance undertaking shall appoint a representative resident or established in the territory of the Republic of Croatia who shall collect all necessary information in relation to claims, and shall possess sufficient powers to represent the undertaking in relation to persons suffering damage who could pursue claims, including the payment of such claims, and to represent it or, where necessary, to have it represented before the Agency, courts and authorities of the Republic of Croatia in relation to those claims.

(2) The representative referred to in paragraph 1 of this Article shall represent the insurance undertaking before the Agency with regard to checking the existence and validity of motor vehicle liability insurance policies. The appointment of the representative shall not in itself constitute the opening of a branch

(3) The representative referred to in paragraph 1 of this Article shall not be required to undertake activities on behalf of the insurance undertaking which appointed them other than those covered by that appointment.

(4) Where the insurance undertaking has failed to appoint a representative, the Agency may give its consent to the claims representative appointed in accordance with the provisions of the Act on Compulsory Insurance within the Transport Sector to assume the function of the representative referred to in paragraph 1 of this Article.

Language

Article 71

The Agency may require the information which they are authorised to request under this Act, with regard to the business of insurance undertakings operating in the territory of the Republic of Croatia to be delivered to it in the Croatian language.

Prior Notification and Prior Consent

Article 72

(1) At its request, the insurance undertaking that proposes to pursue the insurance business within the territory of the Republic of Croatia shall submit the notification of policy conditions and other documents for the purpose of verifying compliance with the national provisions of the Republic of Croatia concerning insurance contracts to the Agency, and that requirement shall not constitute a prior condition for the insurance undertaking to pursue its business in the Republic of Croatia.

(2) At its request, the insurance undertaking operating in the territory of the Republic of Croatia shall submit a prior notification of proposed increases in premium rates as part of general price-control systems to the Agency.

Insurance Undertakings Not Complying with the Legal Provisions

Article 73

- (1) Where the Agency establishes that an insurance undertaking from another Member State with a branch or pursuing business under the freedom to provide services in its territory is not complying with the legal provisions applicable to it in the Republic of Croatia, it shall require the insurance undertaking concerned to remedy such irregularity.
- (2) Where the insurance undertaking concerned fails to take the necessary action, the Agency shall inform the competent supervisory authority of the insurance undertaking from another Member State accordingly. That supervisory authority shall, at the earliest opportunity, take all appropriate measures to ensure that the insurance undertaking concerned remedies that irregular situation and shall inform the Agency of the measures taken.
- (3) Where, despite the measures taken by the supervisory authority of the insurance undertaking from another Member State or because those measures prove to be inadequate or are lacking in that Member State, the insurance undertaking persists in violating the legal provisions in force in the Republic of Croatia, the Agency may, after informing the supervisory authority of the insurance undertaking from another Member State, take appropriate measures to prevent or penalise further irregularities, including, in so far as is strictly necessary, preventing that undertaking from continuing to conclude new insurance contracts within the territory of the Republic of Croatia.
- (4) The Agency may refer the case to EIOPA and request its help in accordance with Article 19 of Regulation (EU) No 1094/2010 in the implementation of the appropriate measures.
- (5) Notwithstanding paragraphs 1, 2, 3 and 4 of this Article, the Agency may take appropriate emergency measures to prevent or penalise irregularities within the territory of the Republic of Croatia, including the possibility of preventing insurance undertakings from continuing to conclude new insurance contracts within the territory of the Republic of Croatia.
- (6) The Agency shall send a written notice about the measures taken to the insurance undertaking from another Member State.
- (7) At the Agency's request, the insurance undertaking from another Member State shall submit all notifications and documents requested of them for the purposes of the provisions of this Article.
- (8) The Agency shall inform the Commission and EIOPA about the measures taken in accordance with the provisions of this Article.

Advertising

Article 74

An insurance undertaking with head office in another Member State may advertise its services in the Republic of Croatia, through all available means of communication, subject to the provisions of this Act governing advertising and other rules governing the form and content of such advertising adopted in the interest of the general good.

Taxes on Premiums

Article 75

- (1) Without prejudice to any subsequent harmonisation, every insurance contract shall be subject exclusively to the indirect taxes and parafiscal charges on insurance premiums in the Member State in which the risk is situated or the Member State of the commitment.
- (2) For the purposes of paragraph 1 of this Article, movable property contained in a building situated within the territory of a Member State, except for goods in commercial transit, shall be considered as a risk situated in that Member State, even where the building and its contents are not covered by the same insurance policy.
- (3) The law applicable to the contract under Article 376, paragraph 3 of this Act shall not affect the fiscal arrangements applicable.
- (4) Each Member State shall apply its own national provisions to those insurance undertakings which cover risks or commitments situated within its territory for measures to ensure the collection of indirect taxes and parafiscal charges due under paragraph 1 of this Article.
- (5) The provisions of this Article shall also apply to third-country insurance undertakings operating in the Republic of Croatia through a branch.

Reinsurance Undertakings Not Complying with the Legal Provisions

Article 76

- (1) Where the Agency establishes that a reinsurance undertaking with a branch or pursuing business under the freedom to provide services in the territory of the Republic of Croatia is not complying with the legal provisions applicable to it in the Republic of Croatia, it shall require the insurance undertaking concerned to remedy such irregularity and shall inform its supervisory authority of the measures taken.
- (2) Where, despite the measures taken by the supervisory authority of the reinsurance undertaking from another Member State or because those measures prove to be inadequate or are lacking in that Member State, the insurance undertaking persists in violating the legal provisions applicable to it in force in the Republic of Croatia, the Agency may, after informing the supervisory authority of the reinsurance undertaking from another Member State, take appropriate measures to prevent or penalise further irregularities, including, in so far as is strictly necessary, preventing that reinsurance undertaking from continuing to conclude new reinsurance contracts within the territory of the Republic of Croatia.
- (3) The Agency may refer the case to EIOPA and request its help in accordance with Article 19 of Regulation (EU) No 1094/2010 in the implementation of the appropriate measures.
- (4) Before the reinsurance undertaking which pursues activities in accordance with the freedom to provide services in the Republic of Croatia starts business, it shall send a written notice to the Agency indicating the address in the Republic of Croatia where requests for

submitting notifications, documents, Agency's reasoned decision and legal documents required to take measures against the reinsurance undertaking may be delivered.

Regulations Applying to Insurance Undertakings from another Member State

Article 77

(1) The following shall apply to the insurance undertaking from another Member State which provides insurances and reinsurance services in the territory of the Republic of Croatia:

1. the provisions of legal and subordinate legislation of the Republic of Croatia concerning the compulsory insurance;
2. the provisions of this Act concerning professional secrecy;
3. the provisions of this Act and the regulations adopted under this Act concerning consumer protection;
4. the regulations in the Republic of Croatia governing the prevention of money laundering and terrorist financing;
5. other regulations applied in the territory of the Republic of Croatia to protect the general good;
6. the provisions of the acts of the Republic of Croatia regulating the payment of the insurance premium tax, and the regulations applying to insurance contracts shall have no effect on the obligation to pay insurance premium tax.

(2) In addition to the provisions of paragraph 1 of this Article, the following shall apply *mutatis mutandis* to the insurance undertaking from another Member State which provides insurance and reinsurance services in the territory of the Republic of Croatia via its branch:

1. the provisions of this Act and the regulations adopted under this Act concerning the reports and information that insurance undertakings must submit to the Agency referred to in Article 201 of this Act;
2. the regulations that the Agency adopts for the submission of statistical reports referred to in Article 202 of this Act;
3. the regulations related to the scope of information to be submitted by branches referred to in Article 192, paragraph 5 of this Act;
4. the provisions of Article 192, paragraph 6 of this Act on audited annual financial accounts, and
5. the provisions of Article 218 of this Act on the annual audit fee and the regulations adopted on the basis of that Article.

CHAPTER III

PURSUIT OF THE INSURANCE BUSINESS BY THIRD-COUNTRY INSURANCE UNDERTAKINGS

Authorisation to Establish a Branch

Article 78

(1) A third-country insurance undertaking may pursue the insurance business in the Republic of Croatia only via a branch established in the Republic of Croatia and subject to prior authorisation from the Agency for pursuing the insurance business.

(2) The Agency may grant an authorisation to a third-country insurance undertaking to pursue the insurance business via a branch established in the Republic of Croatia where the undertaking fulfils the following conditions:

1. it is entitled to pursue the insurance business under the law of the home Member State;
2. it undertakes to set up in the Republic of Croatia accounts specific to the business which it pursues, and to keep all the records relating to the business transacted;
3. it designates a general representative or a responsible person of the branch to be approved by the Agency and the competent supervisory authority of the insurance undertaking;
4. it possesses assets in the Republic of Croatia of an amount equal to at least one half of the absolute floor prescribed in Article 158, paragraph 4 of this Act in respect of the Minimum Capital Requirement and deposits one fourth of that absolute floor as security;
5. it undertakes to cover the Solvency Capital Requirement and the Minimum Capital Requirement in accordance with the requirements referred to in Articles 130 and 157 of this Act;
6. it informed the Agency about the name and the address of the claims representative appointed in each Member State other than the Member State in which the authorisation to provide insurance of owners or users of motor vehicle against third-party liability is sought;
7. it submits a scheme of operations in accordance with the provisions in Article 79 of this Act;
8. it fulfils the governance requirements laid down in Title VIII of this Act.

(3) In its application for authorisation to set up a branch, the third-country insurance undertaking shall indicate the classes of insurance and the nature of risks it shall cover, and it shall support its application with:

1. the instrument of incorporation of a branch;
2. an excerpt from the court or another appropriate register of the country of the head office of the parent insurance undertaking;

3. Articles of Association or another appropriate document of the parent insurance undertaking;

4. audited accounts of the parent insurance undertaking for the last three years;

5. if the excerpt referred to in subparagraph 2 of this paragraph does not show the data about the members of the parent insurance undertaking, the appropriate document that indicates in a credible manner the members of the undertaking and their holdings in management of the parent insurance undertaking;

6. an excerpt from the court or another appropriate register of the country of the head office for legal persons holding more than 20% in management of the parent insurance undertaking;

7. scheme of operations with contents laid down by Article 79 of this Act;

8. the statement that the branch, at its head office, shall keep all the records relating to the business transacted;

9. the proof on the fulfilment of conditions referred to in paragraph 2, subparagraphs 4 and 5 of this Article.

(4) The Agency shall refuse the application for authorisation to set up a branch of a third-country insurance undertaking if this would:

1. render the supervision in accordance with this Act impossible or significantly more difficult taking account of the regulations of the country where the head office of that insurance undertaking is situated and of the practice of that country in the implementation and execution of these regulations;

2. taking account of the regulations of that country, prevent the insurance undertakings with head office in the Republic of Croatia from pursuing the insurance business in that country or from pursuing the insurance business under the same conditions under which they are pursued by the insurance undertakings from that country.

(5) A third-country insurance undertaking which pursues the insurance business in the territory of the Republic of Croatia through a branch on the basis of the authorisation under this Article shall operate in accordance with the provisions of this Act and other regulations governing the operations of insurance undertakings.

(6) By way of derogation from paragraph 1 of this Article, a third-country insurance undertaking that pursues the insurance and reinsurance business may pursue the reinsurance business under the freedom to provide services in accordance with Article 83 of this Act.

Scheme of Operations of the Third-Country Insurance Undertaking Branch

Article 79

(1) The scheme of operations referred to in Article 78, paragraph 2, subparagraph 7 of this Act shall contain at least:

1. the nature of the risks which the insurance undertaking concerned proposes to cover;
2. the reinsurance programme with maximum cover tables for all classes of insurance and guiding principles as to reinsurance;
3. an estimate of the future Solvency Capital Requirement, as provided for by the provisions of Articles 130 -132 of this Act, on the basis of estimates of the financial resources referred to in paragraph 2, subparagraph 1 of this Article, as well as the calculation method used to derive those estimates;
4. estimates of the future Minimum Capital Requirement, as laid down in Articles 157 and 158 of this Act, on the basis of estimates of the financial resources referred to in paragraph 2, subparagraph 1 of this Article, as well as the calculation method used to derive those estimates;
5. the state of the eligible own funds and eligible basic own funds of the undertaking with respect to the Solvency Capital Requirement and Minimum Capital Requirement;
6. estimates of the cost of establishment and the organisation for securing the operation, and the financial resources intended to meet those costs;
7. information on the structure of the system of governance.

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

1. a forecast of the report on the financial position for solvency purposes;
2. an estimate of the financial resources intended to cover technical provisions, the Minimum Capital Requirement and the Solvency Capital Requirement;
3. an outline of the expected business results, especially the expected premium income, expected claims, expected commissions and other costs.

(3) If the branch intends to pursue the insurance business in the insurance class referred to in Article 7, paragraph 2, subparagraph 18 of this Act, i.e. assistance, a scheme of operations shall contain a description of resources necessary to fulfil obligations arising out of this class of insurance.

(4) A third-country insurance undertaking that intends to pursue the life insurance business in the Republic of Croatia via its branch shall inform the Agency of the technical bases used for calculating the scales of premiums, exclusively for the purpose of checking whether they comply with actuarial principles. Article 77 of this Act shall apply *mutatis mutandis* to third-country insurance undertakings.

(5) A third-country insurance undertaking that intends to provide the services of compulsory insurance within the transport sector in the Republic of Croatia via its branch shall, before the onset of its activities, become a member of the national insurers' bureau and the national guarantee fund.

Financial Requirements for Branches of Third-Country Insurance Undertakings

Article 80

- (1) A third-country insurance undertaking that pursues the insurance business via its branch in the Republic of Croatia shall establish adequate technical provisions to cover the insurance and reinsurance obligations assumed in the territory of the Republic of Croatia and calculated in accordance with Articles 106 –120 of this Act.
- (2) A third-country insurance undertaking that pursues the insurance business through its branch in the Republic of Croatia shall value assets and liabilities in accordance with Article 105 of this Act and determine its own funds in accordance with Articles 121 –129 of this Act.
- (3) A branch of a third-country insurance undertaking set up in the Republic of Croatia shall have an amount of eligible own funds consisting of the items referred to in Article 128, paragraph 1 of this Act.
- (4) A branch of a third-country insurance undertaking set up in the Republic of Croatia shall calculate the Solvency Capital Requirement in accordance with the provisions of Articles 130 –156 of this Act and the Minimum Capital Requirement in accordance with the provisions of Articles 157, 158 and 459 of this Act. However, for the purpose of calculating the Solvency Capital Requirement and the Minimum Capital Requirement, both for life and non-life insurance, account shall be taken only of the operations effected by the branch concerned.
- (5) The eligible amount of basic own funds required to cover the Minimum Capital Requirement and the absolute floor of that Minimum Capital Requirement shall be constituted in accordance with Article 129, paragraph 1 of this Act.
- (6) The eligible amount of basic own funds shall not be lower than half of the absolute floor required under Article 158, paragraph 1, subparagraph 4 of this Act.
- (7) The deposit lodged in accordance with Article 78, paragraph 2, subparagraph 4 of this Act shall be counted by a branch of a third-country insurance undertaking with regard to such eligible basic own funds to cover the Minimum Capital Requirement.
- (8) A branch of a third-country insurance undertaking shall keep its own funds in the Republic of Croatia at least up to the amount of the Minimum Capital Requirement, and it shall keep the excess funds up to the amount of the Solvency Capital Requirement in other Member States.

Advantages to Undertakings Authorised to Pursue the Insurance Business in More than One Member State

Article 81

- (1) A third-country insurance undertaking which is authorised to pursue the insurance business through its branch in more than one Member State may apply with the competent supervisory authorities of those Member States for the following advantages which may be granted only jointly:

1. the Solvency Capital Requirement referred to in Article 80 of this Act shall be calculated in relation to the entire business which it pursues in the Member States, taking into account only operations effected by all the branches established in the Member States;

2. the deposit required under Article 78, paragraph 2, subparagraph 4 of this Act shall be lodged in only one of those Member States;

3. the assets representing the Minimum Capital Requirement shall be localised in any one of the Member States in which it pursues its activities.

(2) The application for the advantages referred to in paragraph 1 of this Article shall be submitted to the competent supervisory authorities of the Member States where branches are established. The application shall indicate the competent supervisory authority of the Member State which in future is to supervise the solvency of the entire business of the branches established in the Member States. Reasons shall be given for the choice of authority made by the undertaking.

(3) The deposit referred to in Article 78, paragraph 2, subparagraph 4 of this Act shall be lodged by a third-country insurance undertaking with the Member State referred to in paragraph 2 of this Article.

(4) The advantages provided for in paragraph 1 of this Article may be granted only where the competent supervisory authorities of all Member States in which an application has been made agree to them.

(5) The advantages referred to in paragraph 1 of this Article shall take effect from the time when the selected competent supervisory authority informs the other competent supervisory authorities that it will supervise the state of solvency of the entire business of the branches in the Member States.

6) The Agency shall submit the information necessary for the supervision of the overall solvency of the branch established in the Republic of Croatia to the competent supervisory authority referred to in paragraph 2 of this Article.

(7) At the request of one or more of the Member States concerned, the advantages granted under the provisions of this Article shall be withdrawn simultaneously by all Member States concerned.

(8) In the case of a withdrawal of authorisation by the competent supervisory authority referred to in paragraph 2 of this Article, that authority shall notify the competent supervisory authorities of the other Member States where the third-country insurance undertaking operates through its branch and those authorities shall take the appropriate measures.

(9) Where the authorisation for pursuing the insurance business referred to in paragraph 8 of this Article is withdrawn due to the inadequacy of the overall state of solvency as fixed by the Member States where a third-country insurance undertaking operates through its branch and which agreed to the request for advantages referred to in this Article, the Agency shall withdraw its authorisations.

Separation of Non-Life and Life Business of the Third-Country Insurance Undertaking

Article 82

A third-country insurance undertaking shall not simultaneously pursue the life and non-life insurance business through the same branch established in the Republic of Croatia.

Third-Country Reinsurance Undertaking

Article 83

(1) A third-country reinsurance undertaking may pursue the reinsurance business in the territory of the Republic of Croatia under the right of establishment.

(2) The provisions of this Act concerning the third-country insurance undertaking which pursues the insurance business in the territory of the Republic of Croatia through its branch shall apply *mutatis mutandis* to a third-country reinsurance undertaking which pursues the reinsurance business.

(3) By way of derogation from paragraph 1 of this Article, the third-country reinsurance undertaking may pursue the reinsurance business in the territory of the Republic of Croatia under the freedom to provide services if the solvency regime of a third-country, determined by the European Commission in accordance with Regulation (EU) No 2015/35 and other regulations of the European Commission governing the equivalence with regard to third-country reinsurance undertakings, is equivalent to the solvency regime determined by this Act.

(4) The reinsurance contracts concluded with third-country reinsurance undertakings, provided that the solvency regime is equivalent or temporarily equivalent to the regime prescribed by this Act and referred to in paragraph 3 of this Article, shall be treated in the same manner as reinsurance contracts concluded with reinsurance undertakings from the Republic of Croatia or other Member States.

(5) The third-country reinsurance undertaking shall not be placed in a more favourable position with regard to reinsurance undertakings from the Republic of Croatia or other Member States.

(6) The reinsurance undertaking which concludes finite reinsurance contracts shall effectively identify, measure, monitor, manage, supervise and report the risks arising out of these contracts.

Revocation of Authorisation of the Third-Country Insurance Undertaking to Pursue the Insurance Business through Its Branch

Article 84

The provisions of this Act on the revocation and expiry of validity of the authorisation of the insurance undertaking to pursue the insurance business shall apply *mutatis mutandis* to the revocation and expiry of the validity of authorisation granted by the Agency to a third-country insurance undertaking to pursue the insurance business through a branch.

Special Provisions for the Branch of the Insurance Undertaking from the Swiss Confederation

Article 85

(1) An insurance undertaking with head office in the Swiss Confederation may pursue the non-life insurance business in the classes of insurance referred to in Article 7 of this Act only through the branch established in the Republic of Croatia and subject to prior approval from the Agency.

(2) The insurance undertaking from the Swiss Confederation may establish a branch in the territory of the Republic of Croatia only subject to the approval from the Agency. At least 60 days before submitting the application for the authorisation to establish a branch, the undertaking shall notify in writing the Agency of its intention to establish a branch, and it shall support its application with the following documents:

1. documentation referred to in Article 78, paragraph 3, subparagraphs 1 – 4 of this Act and the list of the management board members;

2. the certificate of the competent supervisory authority of the Swiss Confederation confirming:

(a) that the insurance undertaking does not pursue business other than the insurance business and the business arising from the insurance business;

(b) the classes of insurance for which the insurance undertaking is authorised;

(c) that the insurance undertaking covers the Solvency Capital Requirement and the Minimum Capital Requirement calculated in accordance with the provisions of this Act;

(d) the data about the risks covered by the insurance undertaking;

(e) the sufficient funds to cover the costs described in Article 79, paragraph 1, subparagraph 6 of this Act;

3. the scheme of operations drawn up in accordance with Article 79, paragraph 1, subparagraphs 1, 2, 5 and 6, paragraph 2, subparagraphs 1 and 3, and paragraph 3 of this Act;

4. the proof that it appointed or authorised the person with residence/head office in the territory of the Republic of Croatia by giving this person an unlimited power to bind the insurance undertaking with regard to third parties and to represent it before the competent state and judiciary authorities in the Republic of Croatia.

(3) The provisions of Article 78, paragraph 2, subparagraph 4 and paragraph 4 and of Article 80, paragraphs 7 and 8 of this Act shall not apply to the branch of the insurance undertaking from the Swiss Confederation in the Republic of Croatia.

(4) Before granting the authorisation to the insurance undertaking from the Swiss Confederation to establish a branch, the Agency shall notify the competent supervisory authority of the Swiss Confederation and request its opinion.

(5) If the competent supervisory authority fails to respond within three months of receiving the notification referred to in paragraph 4 of this Article, it shall be deemed not to oppose the establishment of the branch. The provisions of the Act on the General Administrative Procedure shall not apply to the exchange of information between the Agency and the competent supervisory authority.

(6) Before revoking the authorisation granted to the insurance undertaking from the Swiss Confederation to establish a branch, the Agency shall notify the competent supervisory authority of the Swiss Confederation and request its opinion.

(7) If the Agency prohibits the branch of the insurance undertaking from the Swiss Confederation to conclude insurance contracts before receiving the opinion referred to in paragraph 6 of this Article, it shall notify the competent supervisory authority of the Swiss Confederation without delay.

(8) Article 77 of this Act, provisions on the supervision of insurance undertakings, shall apply *mutatis mutandis* to the branch of the insurance undertaking from the Swiss Confederation in the Republic of Croatia.

(9) If the activities of the branch are expanded, a new authorisation shall be procured and the application shall be supported with documents referred to in paragraph 2, subparagraphs 2 and 3 of this Article.

(10) The insurance undertaking with head office in the Swiss Confederation may pursue the life insurance business only through a branch established in the Republic of Croatia under the conditions prescribed by this Act for authorisation to pursue the insurance business through a branch granted to a third-country insurance undertaking.

(11) The provisions of Article 34 of this Act shall apply *mutatis mutandis* to the revocation and expiry of validity of authorisation granted to the insurance undertaking referred to in paragraph 1 of this Article to pursue the insurance business.

(12) If the insurance undertaking fails to deliver the notification in accordance with paragraph 1 of this Article, the application shall be refused as having been submitted prematurely. The Agency shall adopt a decision on the application referred to in this Article within 60 days of receipt of the complete application.

TITLE VII

TRANSFER AND ACCEPTANCE OF PORTFOLIO

Transfer and Acceptance of Portfolio between Insurance Undertakings with Head Offices in the Republic of Croatia

Article 86

(1) The insurance undertaking (hereinafter: transferring insurance undertaking) may transfer all or part of their portfolios of contracts (hereinafter: insurance portfolio) to another insurance undertaking (hereinafter: accepting insurance undertaking) with the head office in the Republic of Croatia.

(2) The accepting insurance undertaking, which has its head office in the Republic of Croatia, shall procure prior approval from the Agency for acceptance of the insurance portfolio.

(3) The insurance undertaking shall, following the issuance of the approval by the Agency referred to in paragraph 2 of this Article and within eight days of the completed transfer of insurance portfolio, notify the Agency accordingly.

(4) The approval of the insured persons shall not be required for the transfer of insurance contracts, however the policy holders may cancel the contract within a specified deadline in line with the provisions of the applicable law which set out the right to cancellation of the contract due to a change in circumstances.

(5) After the acceptance of the insurance portfolio, the accepting insurance undertaking shall without delay notify each policy holder whose insurance contract has been transferred in the manner stipulated by the accepted insurance contract and by publishing the information on the portfolio transfer in the Official Gazette and two daily papers in the Republic of Croatia.

(6) When the insurance undertaking intends to accept the entire or a part of the insurance portfolio consisting of the insurance contracts concluded either under the right of establishment or the freedom to provide services, it shall notify in writing the Agency of the intended acceptance of the portfolio at least 60 days prior to submitting the application for the approval of portfolio acceptance, and the Agency shall consult the competent supervisory authority of the Member State where the contracts were concluded under the right of establishment or the freedom to provide services seeking its opinion or consent for this transfer of portfolio.

(7) If the competent supervisory authority of another Member State fails to deliver its opinion or consent to the Agency within three months of receiving the request from the Agency for consultation referred to in paragraph 6 of this Article, this shall be considered as its implied consent.

(8) The accepting insurance undertaking shall publish the transfer of the insurance portfolio in accordance with paragraph 5 of this Article, and in the Member State in which the risk is situated or the Member State of the commitment in accordance with their regulations on disclosure of insurance portfolio transfer.

(9) The application for the approval of the insurance portfolio transfer shall be valid only after receiving the opinion or the consent of the competent supervisory authority referred to in paragraph 6 of this Article, or with the expiry of the deadline referred to in paragraph 7 of this Article and if the valid application is delivered in accordance with paragraph 11 of this Article. Portfolio transfer shall not be allowed if the competent supervisory authority opposes this transfer within the deadline referred to in paragraph 7 of this Article.

(10) The provisions of paragraphs 4, 6 and 7 of this Article shall apply neither to reinsurance undertakings nor to reinsurance portfolios.

(11) The Agency shall adopt an ordinance stipulating the content of the application for the approval of insurance portfolio acceptance and the supporting documents referred to in this Article and Articles 87, 88 and 89 of this Act.

(12) If the insurance undertaking fails to deliver the notification in accordance with paragraph 6 of this Article, the application shall be refused as having been submitted prematurely. The Agency shall adopt a decision on the application referred to in this Article within 60 days of receipt of the complete application.

Transfer of Portfolio of the Insurance Undertaking with Head Office in the Republic of Croatia to the Insurance Undertaking from another Member State

Article 87

(1) The insurance undertaking shall have the approval from the Agency to transfer the entire or a part of its portfolio to the accepting insurance undertaking from another Member State. In order for the insurance undertaking to obtain the approval to transfer the entire or a part of its portfolio to the accepting insurance undertaking from another Member State, the competent supervisory authority of the accepting insurance undertaking from that Member State shall attest to the Agency that the accepting insurance undertaking has the requisite eligible own funds to cover the Solvency Capital Requirement referred to in Article 130 of this Act or such transfer shall not be allowed.

(2) If the transfer referred to in paragraph 1 of this Article includes contracts concluded under the right of establishment or the freedom to provide services in the territory of another Member State, the Agency shall procure the consent from the competent supervisory authority of the Member State where the contracts were concluded under the right of establishment or the freedom to provide services for this transfer to be authorised.

(3) If the competent supervisory authority of the Member State referred to in paragraph 2 of this Article fails to deliver its opinion or consent to the Agency within three months of receiving the request from the Agency referred to in paragraph 2 of this Article, it shall be considered to have given its tacit consent.

(4) After obtaining the approval for insurance portfolio transfer, the transferring insurance undertaking shall without delay notify each policy holder whose insurance contract has been transferred in accordance with Article 86, paragraph 5 of this Act and as laid down by the national law of the Member State in which the risk is situated, or of the Member State of the commitment.

(5) The consent of the insured persons shall not be required for transfer of insurance contracts, however the policy holders may cancel the contract within a specified deadline in accordance with the provisions of the applicable law which applies to their insurance contract.

(6) The insurance undertaking shall notify in writing the Agency of the intended portfolio transfer at least 60 days prior to submitting the application for the approval for the transfer, and the Agency shall require the opinion of the competent supervisory authority referred to in paragraphs 1 and 2 of this Article. The application for authorisation of insurance portfolio transfer shall be valid only after receiving the opinion or the consent of the competent supervisory authority from paragraph 2 of this Article, or with the fulfilment of the conditions referred to in paragraph 3 of this Article and if the valid application is delivered in accordance with paragraph 6 of this Article. Portfolio transfer shall not be allowed if the competent supervisory authority referred to in paragraph 2 of this Article opposes this transfer within the deadline referred to in paragraph 3 of this Article.

(7) If the insurance undertaking fails to deliver the notification in accordance with paragraph 6 of this Article, the application shall be refused as having been submitted prematurely. The Agency shall adopt a decision on the application referred to in this Article within 60 days of receipt of the complete application.

(8) Paragraphs 2 – 7 of this Article shall apply to reinsurance undertakings and the transfer of reinsurance portfolios.

Acceptance of the Insurance Portfolio of the Insurance Undertaking with Head Office in the Republic of Croatia by the Insurance Undertaking from another Member State

Article 88

(1) The insurance undertaking shall have the approval from the Agency to accept the entire or a part of the insurance portfolio of the transferring insurance undertaking from another Member State. In order for the insurance undertaking with head office in the Republic of Croatia to obtain the approval to accept the entire or a part of the portfolio of the transferring insurance undertaking from another Member State, this insurance undertaking shall have eligible own funds to cover the Solvency Capital Requirement referred to in Article 130 of this Act or such transfer shall not be allowed.

(2) In order for the insurance undertaking with head office in the Republic of Croatia to obtain the authorisation to accept the entire or a part of the portfolio of the insurance undertaking from another Member State where the contracts were concluded under the right of establishment or the freedom to provide services, the Agency shall require the consent from the competent supervisory authority of the Member State where the contracts were concluded under the right of establishment or the freedom to provide services to be able to grant the approval for acceptance of these contracts.

(3) If the competent supervisory authority of the Member State referred to in paragraph 2 of this Article fails to deliver its opinion or consent to the Agency within three months of receiving the request from the Agency referred to in paragraph 2 of this Article, it shall be considered to have given its tacit consent.

(4) After obtaining the approval for acceptance of the insurance portfolio, the accepting insurance undertaking shall without delay notify each policy holder whose insurance contract has been transferred in accordance with Article 86, paragraph 5 of this Act and as laid down by the national law of the Member State in which the risk is situated, or of the Member State of the commitment.

(5) The insurance undertaking shall give written notice to the Agency about the intended portfolio acceptance at least 60 days before submitting the application for authorisation of the acceptance, and the Agency shall require the opinion of the competent supervisory authority referred to in paragraphs 1 and 2 of this Article. The application for approval of insurance portfolio transfer shall be valid only after receiving the opinion or the consent of the competent supervisory authority from paragraph 2 of this Article, or with the fulfilment of the conditions referred to in paragraph 3 of this Article and if the valid application is delivered in accordance with Article 86, paragraph 11 of this Act. Portfolio transfer shall not be allowed if the competent supervisory authority referred to in paragraph 2 of this Article opposes this transfer within the deadline referred to in paragraph 3 of this Article.

(6) If the insurance undertaking fails to deliver the notification in accordance with paragraph 5 of this Article, the application shall be refused as having been submitted prematurely. The Agency shall adopt a decision on the application referred to in this Article within 60 days of receipt of the complete application.

(7) Paragraphs 2 – 6 of this Article shall not apply to the reinsurance undertaking or the transfer of the reinsurance portfolio.

Transfer of Portfolio of the Third-Country Insurance Undertaking Branch Established in the Republic of Croatia

Article 89

(1) The Agency shall adopt the decision on the application for the approval, submitted by the third-country insurance undertaking, of transfer of the entire or a part of the insurance contract portfolio of its branch established in the Republic of Croatia to the accepting undertaking established in the Republic of Croatia where the Agency or, where appropriate, the Member States where a third-country insurance undertaking has established its branches, certify that after taking the transfer into account the accepting undertaking possesses the required eligible own funds to cover the Solvency Capital Requirement referred to in Article 130 of this Act.

(2) The Agency shall adopt the decision on the application for the approval, submitted by the third-country insurance undertaking, of transfer of the entire or a part of the insurance contract portfolio of its branch established in the Republic of Croatia to the insurance undertaking established in another Member State after it receives the notification from the competent supervisory authority of a Member State of the accepting insurance undertaking that, after taking the transfer into account, the accepting undertaking possesses the required eligible own funds to cover the Solvency Capital Requirement referred to in Article 130 of this Act.

(3) The Agency shall adopt the decision on the application for the approval of transfer of the entire or a part of the portfolio of the third-country insurance undertaking branch established in the Republic of Croatia to a branch established in the territory of another Member State when the supervisory authorities of another Member State of the accepting undertaking or, as appropriate, of the Member State referred to in Article 81 of this Act, confirm that:

1. after taking the transfer into account the accepting undertaking possesses the required eligible own funds to cover the Solvency Capital Requirement;
2. the law of the Member State of the accepting undertaking permits such a transfer; and
3. that Member State has agreed to the transfer.

(4) In the circumstances referred to in paragraphs 1 – 3 the Agency shall authorise the transfer after obtaining the consent from the competent supervisory authorities of the Member State in which the risks are situated, or, in relation to life insurance, of the Member State of the commitment, where different from the Member State in which the transferring branch is situated.

(5) The third-country insurance undertaking shall at least 60 days before submitting the application for the approval of portfolio transfer inform the Agency in writing of the intended

portfolio transfer, and the Agency shall, in relation to portfolio transfer from paragraphs 1 – 3 of this Article, consult the competent supervisory authority requesting it to give its opinion or consent within three months of the day of receipt of the application. The absence of any response from the authorities consulted within that period shall be considered equivalent to a favourable opinion or implied consent. Portfolio transfer shall not be allowed if the competent supervisory authorities oppose this transfer within the deadline referred to in this paragraph.

(6) After obtaining the approval for insurance portfolio transfer or acceptance, the transferring insurance undertaking shall without delay notify the policy holders or insured persons of this transfer in accordance with the provisions of the accepted insurance contracts and by the publication of the completed transfer in two daily papers in the territory of the Republic of Croatia and as laid down by the national law of the Member State in which the risk is situated, or of the Member State of the commitment.

(7) The consent of the insured persons shall not be required for the transfer of insurance contracts, however the policy holders may cancel the contract within a specified deadline in line with the provisions of the applicable law which set out the right to cancellation of the contract due to a change in circumstances.

(8) Such transfers made in accordance with the provisions of this Article shall automatically be valid against policy holders, insured persons and any other persons having rights or obligations arising out of the contracts transferred.

(9) Paragraph 3 of this Article shall apply *mutatis mutandis* to the transfer of the insurance portfolio of the insurance undertaking branch from the Swiss Confederation established in the Republic of Croatia.

(10) The Agency shall stipulate, by way of the ordinance referred to in Article 86, paragraph 11 of this Act, the content of the application for approval of the transfer or acceptance of the insurance portfolio and the documents to be attached to the application for the approval of the insurance portfolio transfer under this Article.

(11) If the insurance undertaking fails to deliver the notification in accordance with paragraph 5 of this Article, the application shall be refused as having been submitted prematurely. The Agency shall adopt a decision on the application referred to in this Article within 60 days of receipt of the complete application.

Assessment of the Application for Approval of the Insurance Portfolio Transfer or Acceptance

Article 90

(1) The Agency shall adopt the decision approving the transfer and the acceptance of the insurance portfolio if the conditions for transfer set out by this Act and the ordinance referred to in Article 86 of this Act are fulfilled.

(2) The Agency shall oppose the approval of portfolio acceptance if the conditions for the transfer and acceptance of the insurance portfolio stipulated by this Act are not fulfilled or if there are any other reasons which would jeopardise the interests of the insured persons.

(3) The Agency shall refuse to grant the approval for portfolio acceptance to the insurance undertaking if there are underlying reasons set out by Article 167, paragraph 2 of this Act.

(4) If the insurance undertaking from another Member State transfers the insurance portfolio consisting of the insurance contracts concluded either under the right of establishment or the freedom to provide services in the Republic of Croatia, the Agency shall notify the competent supervisory authority of that insurance undertaking of any complaints against this transfer within three months of receiving a request for consultation. The absence of any response by the Agency shall be considered as tacit consent. The provisions of the Act on the General Administrative Procedure shall not apply to the exchange of information between the Agency and the competent supervisory authority.

TITLE VIII

SYSTEM OF GOVERNANCE

General Provisions

Article 91

(1) The insurance undertaking shall operate in such manner so that the risks to which it is exposed in individual or all classes of insurance do not exceed the values set out by this Act and the regulations adopted under this Act, or other regulations governing the operations of insurance undertakings, in particular those related to the sufficiency of premiums and technical provisions according to accounting regulations in individual or all classes of insurance.

(2) The insurance undertaking shall operate in such manner so that it is able to timely fulfil its due commitments and that it continuously fulfils all of its obligations.

General Governance Requirements

Article 92

(1) The insurance undertaking shall have in place an effective and reliable system of governance proportionate to the nature, scale and complexity of the operations of the insurance undertaking, which provides for sound and prudent management of the business. It shall include:

1. an adequate clear organisational structure with well defined, transparent and consistent lines of authority and responsibility, set up in such manner to avoid conflict of interest;
2. an efficient system for transmission of information;
3. strategies, written rules, procedures and policies for risk management;
4. reasonable steps to ensure continuity and regularity in the performance of its activities, including the development of contingency plans; To that end, the insurance undertaking shall employ appropriate and proportionate systems, resources and procedures.

(2) The insurance undertaking shall regularly update and review the system of governance and regularly conduct internal audits of that system.

(3) The insurance undertaking shall adhere to the provisions of Regulation (EU) No 2015/35.

(4) The management board of the insurance undertaking shall adopt written policies for risk management, internal control, internal audit and, where relevant, for outsourcing, subject to the prior approval by the supervisory board. It shall review these rules at least once a year and adjust them to significant changes in the system or in a specific area.

Key Functions and Holders of Key Functions

Article 93

(1) Within the system of governance, the insurance undertaking shall establish the following key functions with regard to the nature, scale and complexity of its operations:

1. risk management function;
2. compliance function;
3. internal audit function, and
4. actuarial function.

(2) The insurance undertaking shall appoint the holders of key functions referred to in paragraph 1 of this Article in accordance with the nature, scale and complexity of its operations. It can appoint one person to hold more key functions, taking account, however, to avoid any conflict of interest.

(3) The insurance undertaking may appoint several holders to any individual key function referred to in paragraph 1 of this Article if the activities assigned to individual holders of the key function do not overlap and if there is a clear and comprehensive allocation of responsibilities, which shall be proven by the insurance undertaking at the request submitted by the Agency.

(4) In cases referred to in paragraphs 2 and 3 of this Article, the insurance undertaking shall take effective measures to prevent or manage any conflict of interests.

(5) The holder of the key function referred to in paragraph 1 of this Article may be a person who meets the following requirements:

1. they have good command of the Croatian language;
2. they possess professional qualifications, knowledge and experience adequate to enable sound and prudent management;
3. they are of good repute and integrity (fit);

4. they have not been convicted, on the basis of a judgement with final force and effect, of criminal offences provided for in the Criminal Code (Official Gazette 125/11 and 144/12), namely:

- Title XXIII – criminal offences against property (other than a criminal offence involving unauthorised use of other persons' movable property and a criminal offence involving damage to other persons' property) for which criminal proceedings are instituted *ex officio*;

- Title XXIV – criminal offences against the economy

- Title XXVI – criminal offences of forgery

- criminal offences from the Criminal Code (Official Gazette 110/97, 27/98, 50/00, 129/00, 51/01, 111/03, 190/03 – Decision of the Constitutional Court of the Republic of Croatia, 105/04, 84/05, 71/06, 110/07, 152/08, 57/11 and 143/12), as follows:

- Title XVII – criminal offences against property (other than a criminal offence involving alienation of other persons' movable property and a criminal offence involving the destruction and damage of other persons' property), for which criminal proceedings are instituted *ex officio*;

- Title XXI – criminal offences against the safety of payment and business operations

- Title XXIII – criminal offences against authenticity of documents

5. they have not been convicted, on the basis of a judgement with final force and effect, of criminal offences under regulations of other Member States or third countries whose description corresponds to criminal offences referred to in subparagraph 4 of this Article;

6. they do not perform the function of the management board member or authorised representative or a member of the insurance undertaking supervisory board, i.e. a person who directly or indirectly does not have a holding in an insurance undertaking higher than 1%;

7. they meet the requirements set out by Article 51, paragraph 1, subparagraphs 3, 4, 5, 8 and 12 of this Act.

(6) The experience referred to in paragraph 5, subparagraph 2 of this Article means the experience of at least three years in an insurance undertaking or on appropriate positions with another legal person.

(7) The proof of fulfilment of the conditions set out in paragraph 5, subparagraphs 4 and 5 of this Article shall include a document issued by the competent authority that no judgement with final force and effect has been pronounced against the candidate or, where applicable, a notarised statement by the candidate, while the proof referred to in paragraph 5, subparagraph 7 of this Article means the proof referred to in Article 51, paragraph 4 of this Act.

(8) The statements and certificates referred to in this Article shall not be older than three months as from the date of their issuance.

(9) The insurance undertaking shall determine the existence of the conditions stipulated by this Act, and the Agency may control the excerpt from the appropriate records in the Republic of Croatia, as well as from those from other Member States or third countries.

(10) Within eight days, the insurance undertaking shall notify in writing the Agency of the appointment of the persons who are holders of key functions in the insurance undertaking and of any significant information affecting their business repute and experience, as well as of the termination and the reasons for termination of their performance of key functions.

(11) The Agency may impose appropriate supervisory measures referred to in Article 238 of this Act if it establishes that the holder of the key function no longer meets the requirements under this Act, frequently violates the provisions of this Act or other regulations governing the operations of insurance undertakings or the operations of the insurance undertaking have been jeopardised.

(12) The Agency shall adopt an ordinance stipulating in detail the conditions and the documents that prove that the conditions for performance of the key function have been fulfilled.

(13) The management board of the insurance undertaking shall enable the holders of key functions referred to in paragraph 1 of this Article to have access to all information of the insurance undertaking they need to perform their functions.

(14) The management board of the insurance undertaking shall take into account the reports, opinions and recommendations of holders of the key functions referred to in paragraph 1 of this Article, adopt necessary measures and ensure their implementation.

Risk Management System

Article 94

(1) The risk-management system shall comprise the strategies, processes and reporting procedures necessary to continuously identify, measure, monitor, manage and continuously report, at an individual and at an aggregated level, on risks to which the insurance undertaking is or could be exposed in its operations, and their interdependencies. This system shall be subject to regular internal control.

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

(3) The risk-management system shall cover the risks to be included in the calculation of the Solvency Capital Requirement as set out in Article 130 of this Act as well as the risks which are not or not fully included in the calculation thereof.

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

1. underwriting and reserving;
2. asset–liability management;

3. investment, in particular derivatives and similar commitments;
4. liquidity and concentration risk management;
5. operational risk management;
6. reinsurance and other risk-mitigation techniques.

(5) The insurance undertaking shall stipulate, implement, document and regularly update the appropriate, efficient and comprehensive policies and procedures for at least the areas referred to in paragraph 4 of this Article.

(6) The insurance undertaking shall put in place a liquidity plan, with the projections of incoming and outgoing cash flow with regard to the appropriate assets and liabilities in the event of application of the matching adjustment referred to in Article 111 of this Act or volatility adjustment to the relevant structure of risk-free interest rates referred to in Article 113 of this Act.

(7) In regard of asset-liability management, the insurance undertakings shall regularly assess:

1. the sensitivity of their technical provisions and eligible own funds to the assumptions underlying the extrapolation of the relevant risk-free interest rate term structure referred to in Article 110 of this Act;

2. where the matching adjustment referred to in Article 111 of this Act is applied:

- the sensitivity of their technical provisions and eligible own funds to the assumptions underlying the calculation of the matching adjustment, including the calculation of the fundamental spread referred to in Article 112, paragraph 1, subparagraph 2 of this Act and the possible effect of a forced sale of assets on their eligible own funds;

- the sensitivity of their technical provisions and eligible own funds to changes in the composition of the assigned portfolio of assets;

- the impact of the reduction of the matching adjustment to zero;

3. where the volatility adjustment to the relevant risk-free interest rate term structure referred to in Article 113 of this Act is applied:

- the sensitivity of their technical provisions and eligible own funds to the assumptions underlying the calculation of the volatility adjustment and the possible effect of a forced sale of assets on their eligible own funds;

- the impact of the reduction of the volatility adjustment to zero.

(8) The insurance undertakings shall, within their annual report, submit the assessments referred to in paragraph 7, subparagraphs 1 – 3 of this Article to the Agency pursuant to Articles 215 – 217 of this Act.

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

(10) Where the volatility adjustment to the relevant risk-free interest rate term structure referred to in Article 113 of this Act is applied, the written policy on risk management referred to in Article 92, paragraph 4 of this Act shall comprise a policy on the criteria for the application of the volatility adjustment.

Risk Management Function

Article 95

(1) The insurance undertaking shall establish an effective and independent risk-management function referred to in Article 94 of this Act which shall include the assessment of the suitability and efficiency, as well as of other components of the risk management system, in a sound and prudent manner.

(2) The risk-management function of the insurance undertaking shall be structured in such a manner as to facilitate the implementation of the risk-management system.

(3) In order to avoid over-reliance on external credit assessment institutions when they use the external credit rating assessment in the calculation of technical provisions and the Solvency Capital Requirement, the insurance undertaking shall assess the appropriateness of those external credit assessments as part of their risk management by using additional assessments wherever practicably possible in order to avoid any automatic dependence on external assessments.

(4) For the purpose of applying the provisions of paragraph 3 of this Article, the insurance undertaking shall apply the regulations of the European Commission governing the procedures for the assessment of external credit assessment institutions.

(5) For insurance undertakings using a partial or full internal model approved in accordance with Articles 143 and 144 of this Act, the risk-management function shall cover the following additional tasks:

1. to design and implement the internal model;
2. to test and validate the internal model;
3. to document the internal model and any subsequent changes made to it;
4. to analyse the performance of the internal model and to produce summary reports thereof;
5. to inform the management and supervisory boards about the performance of the internal model, suggesting areas needing improvement, and up-dating these boards on the status of efforts to improve previously identified weaknesses.

(6) The insurance undertaking shall without delay deliver the adopted risk-management strategy and policies to the Agency at its request.

(7) The management board of the insurance undertaking shall be responsible for the risk-management process. All employees of the insurance undertaking shall participate in this process in accordance with their individual roles and responsibilities.

Own Risk and Solvency Assessment

Article 96

(1) As part of its risk-management system, every insurance undertaking shall conduct its own risk and solvency assessment. That assessment shall include at least the following:

1. the overall solvency needs taking into account the specific risk profile, approved risk tolerance limits and the business strategy of the undertaking;

2. the compliance, on a continuous basis, with the capital requirements, as laid down in Title IV, Chapters IV and V of this Act and with the requirements regarding technical provisions, as laid down in Title IX, Chapter II of this Act;

3. the significance with which the risk profile of the undertaking concerned deviates from the assumptions underlying the Solvency Capital Requirement as laid down in Article 131, paragraph 3 of this Act, calculated with the standard formula in accordance with Title IX, Chapter IV, Section II of this Act or with its partial or full internal model in accordance with Title IX, Chapter IV, Section III of this Act.

(2) For the purposes of paragraph 1, subparagraph 1 of this Article, the insurance undertaking concerned shall have in place processes which are proportionate to the nature, scale and complexity of the risks inherent in its business and which enable it to properly identify and assess the risks it faces in the short and long term and to which it is or could be exposed. The undertaking shall demonstrate the methods used in that assessment.

(3) In the event of applying the matching adjustment referred to in Article 111 of this Act, the volatility adjustment referred to in Article 113 of this Act or the transitional measures referred to in Articles 455 and 456 of this Act, the insurance undertaking shall assess the compliance with the Minimum Capital Requirement referred to in paragraph 1, subparagraph 2 of this Article, both taking and not taking into account these adjustments and transitional measures.

(4) In the case referred to in paragraph 1, subparagraph 3 of this Article, when an internal model is used, the assessment shall be performed together with the recalibration that transforms the internal risk numbers into the Solvency Capital Requirement risk measure and calibration.

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

(6) Insurance undertakings shall perform the assessment referred to in paragraph 1 of this Article regularly and without any delay following any significant change in their risk profile.

(7) The insurance undertakings shall inform the Agency of the results of each own-risk and solvency assessment as part of the information reported under Article 201 of this Act.

(8) The own-risk and solvency assessment shall not serve to calculate a capital requirement. The Solvency Capital Requirement shall be adjusted only in accordance with Articles 239, 316, 318 and 322 of this Act.

(9) The insurance undertaking shall abide by the provisions of Regulation (EU) No 2015/35 defining in detail the elements of the assessment referred to in paragraph 1 of this Article.

Internal Control and Compliance Functions

Article 97

(1) Insurance undertakings shall have in place an effective internal control system. That system shall at least include administrative and accounting procedures, an internal control framework, appropriate reporting arrangements at all levels of the undertaking and a compliance function.

(2) Insurance undertakings shall have in place an effective compliance function, which shall include advising and reporting to the management and supervisory boards on compliance with this Act and other regulations governing the operations of insurance undertakings. It shall also include an assessment of the possible impact of any changes in the legal environment on the operations of the undertaking concerned and the identification and assessment of compliance risk.

Internal Audit Function

Article 98

(1) Insurance undertakings shall provide for an effective internal audit function. The internal audit function shall include an evaluation of the adequacy and effectiveness of the internal control system and other elements of the system of governance.

(2) The internal audit function shall be objective and independent from the operational functions in giving its expert opinions and it shall add value and improve the operations of the insurance undertaking.

(3) The persons carrying out the internal audit function shall notify the management and supervisory boards of any findings of the internal audit and recommendations as to the actions to be taken with respect to each of the internal audit findings and shall ensure that those actions are carried out.

(4) In addition to requirements set out by Article 93, paragraph 5 of this Act, the persons carrying out the internal audit function shall be certified auditors or certified internal auditors in accordance with the act governing audits, or in accordance with the rules and programmes of the competent trade organisation for professional training of internal auditors.

(5) The persons carrying out the internal audit function shall not assume any responsibility for any other function or assignment in the insurance undertaking or the undertaking having close links with the insurance undertaking.

Assignments of the Internal Audit Function

Article 99

(1) The person carrying out the internal audit function shall analyse and assess the activities of the insurance undertaking and give their expert opinions, recommendations and advice on controls so as to make sure that the insurance undertaking:

1. pursues the insurance business duly and in accordance with this Act and the regulations adopted under this Act, as well as in accordance with the by-laws governing the operations of the insurance undertaking;

2. keeps business books, documents business events on the basis of authentic book-keeping documents, values book-keeping items, and draws up financial and other reports in accordance with this Act and the regulations governing the operations of insurance undertakings;

3. systematically manages risks arising from the business activities of the insurance undertaking in accordance with the principles of stable business, including the management of resources pertaining to information technology and other related technologies.

(2) The internal audit of the insurance undertaking shall be carried out in accordance with internationally recognised standards for internal audit, code of conduct of internal auditors and internal audit rules which, in agreement with the supervisory board, are adopted by the management board of the insurance undertaking.

Internal Audit Plans

Article 100

(1) The activities of the internal audit shall be carried out in accordance with:

- the strategic plan
- the annual plan
- the individual audit plan.

(2) The strategic plan of the internal audit shall be adopted for a three-year period. It shall be based on risk assessment and harmonised on a yearly basis.

(3) The annual internal audit plan shall be drawn up on the basis of the strategic plan and it shall cover:

1. the priority areas of business with regard to risk assessment;

2. the list of planned audits;

3. the schedule of internal auditors.

(4) Strategic, annual and individual audit plans shall be proposed by the persons performing internal audit and adopted by the supervisory board subject to prior opinion by the management board of the insurance undertaking.

(5) The internal audit may be carried out both as ordered by a member of the management or supervisory board of the insurance undertaking and at the request of the Agency.

Internal Audit Report

Article 101

(1) The person carrying out the internal audit shall draw up a report on the work of the internal audit at least once a year. The internal audit report shall include:

1. the list of all audits performed;

2. the evaluation of the adequacy and efficiency of the internal control system and the recommendations for its upgrades;

3. illegalities and irregularities if found during the audit and the recommendations and proposals to eliminate such illegalities and irregularities,

4. the actions taken in respect of the given recommendations.

(2) The person carrying out the internal audit shall submit their reports on the work of the internal audit to management and supervisory boards of the insurance undertaking.

(3) Management and supervisory boards of the insurance undertaking shall carry out the activities in accordance with the internal audit findings and recommendations as appropriate.

Reporting to Management and Supervisory Boards of the Insurance Undertaking

Article 102

(1) If the internal audit function, during an audit of the activities and processes of the insurance undertaking, establishes the existence of unlawful business operations and violations of risk management rules, due to which the insurance undertaking faces non-liquidity or insolvency or due to which the safety of its operations or that of policy holders, insured persons or beneficiaries is jeopardised, the person carrying out the internal audit shall immediately inform the management and supervisory boards of the insurance undertaking accordingly.

(2) If the internal audit function, during an audit of the activities and processes of the insurance undertaking, establishes that the management board of the insurance undertaking violates risk-management rules, it shall forthwith inform the management board accordingly.

Actuarial Function

Article 103

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

1. coordinate the calculation of technical provisions;
2. ensure the appropriateness of the methodologies and underlying models used as well as the assumptions made in the calculation of technical provisions;
3. assess the sufficiency and quality of the data used in the calculation of technical provisions;
4. compare best estimates against experience;
5. inform the management and supervisory boards of the reliability and adequacy of the calculation of technical provisions;
6. oversee the calculation of technical provisions in the cases set out in Article 118 of this Act when there is the insufficiency of data of appropriate quality to apply a reliable actuarial method;
7. express an opinion on the overall underwriting policy;
8. express an opinion on the adequacy of reinsurance arrangements; and
9. contribute to the effective implementation of the risk-management system referred to in Articles 94 and 95 of this Act, in particular with respect to the risk modelling underlying the calculation of the capital requirements set out in Articles 130 – 156 and Articles 157, 158 and 459 of this Act, and to the own risk and solvency assessment referred to in Article 96 of this Act.

(2) The actuarial function shall be carried out by persons who, in addition to meeting the requirements referred to in Article 93, paragraph 5 of this Act, have knowledge of actuarial and financial mathematics, commensurate with the nature, scale and complexity of the risks inherent in the business of the insurance undertaking, and who are able to demonstrate their relevant experience with applicable professional and other standards.

(3) The additional conditions referred to in paragraph 2 of this Article are fulfilled if the person possesses the relevant documentation proving that they have the adequate knowledge of actuarial and financial mathematics acquired in accordance with the training programme of international or European actuarial associations and if they can prove the relevant experience in accordance with actuarial and other standards.

(4) By way of derogation from paragraph 3 of this Article, if the person is authorised to carry out the activities of the certified actuary referred to in Article 186, paragraph 1 of this Act, they shall be considered as satisfying the conditions set out in paragraph 3 of this Article.

Outsourcing of Activities or Functions

Article 104

- (1) The outsourcing of activities or functions means the contractual transfer of activities concerning the insurance business or the contractual transfer of critical and important functions of the insurance undertaking that it otherwise carries out itself within its registered activity, to service providers, in accordance with which service providers carry out, either directly or by sub-outsourcing, the activities or the functions of the insurance undertaking.
- (2) The insurance undertaking shall assume full responsibility for outsourced activities or functions.
- (3) The outsourcing of activities or functions shall be carried out because of the objective reasons and exclusively with an aim to increase the efficiency of these activities, taking account of the size of the insurance undertaking.
- (4) The service provider that carries out activities or functions of the insurance undertaking either directly or by sub-outsourcing shall have all the necessary resources for the correct, quality and efficient performance of activities or functions and the authorised persons of good repute, professional qualifications and experience necessary for the performance of activities or functions.
- (5) The insurance undertaking shall not outsource functions or activities in such a manner as to lead to any of the following:
 1. jeopardising the operations of the insurance undertaking;
 2. materially impairing the quality of the system of governance of the undertaking concerned;
 3. unduly increasing the operational risk;
 4. impairing the ability of the Agency to monitor the compliance of the undertaking with its obligations;
 5. not fulfilling the obligations towards insured persons, policy holders and beneficiaries of insurance contracts or jeopardising their interests;
 6. conflict of interests between a service provider and the insurance undertaking.
- (6) Before outsourcing activities or functions, the insurance undertaking shall notify the Agency of any subsequent material developments with respect to those functions or activities.
- (7) The insurance undertaking shall stop outsourcing activities or functions if this would lead to the consequences referred to in paragraph 5 of this Article.
- (8) The insurance undertaking shall be enabled to give further instructions or to terminate the outsourcing agreement with the service provider at any time when this is in the interest of the insurance undertaking.

(9) The Agency shall adopt an ordinance stipulating the documents which determine the existence of the conditions prescribed for the outsourcing of activities or functions as well as for notifying the Agency on outsourced activities or functions.

TITLE IX

PROVISIONS ON THE VALUATION OF ASSETS AND LIABILITIES, TECHNICAL PROVISIONS, OWN FUNDS, SOLVENCY CAPITAL REQUIREMENT, MINIMUM CAPITAL REQUIREMENT AND INVESTMENTS

CHAPTER I

VALUATION OF ASSETS AND LIABILITIES

Valuation of Assets and Liabilities for Solvency Purposes

Article 105

(1) The insurance undertaking shall value the assets and liabilities for solvency purposes as follows:

1. the assets shall be valued at the amount for which they could be exchanged between knowledgeable willing parties in an arm's length transaction;
2. the liabilities shall be valued at the amount for which they could be transferred, or settled, between knowledgeable willing parties in an arm's length transaction.

(2) When valuing liabilities under paragraph 1, subparagraph 2 of this Article, the insurance undertaking shall not take account of its own credit standing.

(3) The insurance undertaking shall apply the methods and assumptions to be used in the valuation of assets and liabilities in accordance with Regulation (EU) No 2015/35.

CHAPTER II

TECHNICAL PROVISIONS

Principles for the Calculation of Technical Provisions

Article 106

(1) The insurance undertaking shall establish technical provisions with respect to its obligations under insurance and reinsurance contracts.

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

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

(4) The insurance undertaking shall calculate the technical provisions in a prudent, reliable and objective manner.

(5) The insurance undertaking shall calculate the technical provisions following the principles set out in paragraphs 2, 3 and 4 of this Article, taking into account the principles set out in Article 105 of this Act and in accordance with the provisions of Articles 107 – 118 and Article 393 of this Act, and in accordance with Regulation (EU) No 2015/35 and other European Commission rules governing the procedures for approving the application of a matching adjustment.

Calculation of Technical Provisions

Article 107

(1) The value of technical provisions shall be equal to the sum of a best estimate referred to in Article 108 of this Act and a risk margin referred to in Article 109 of this Act.

(2) The insurance undertaking shall value the best estimate and the risk margin separately.

(3) By way of derogation from paragraphs 1 and 2 of this Article, where future cash flows associated with obligations under insurance and reinsurance contracts can be replicated reliably using financial instruments for which a reliable market value is observable, the value of technical provisions associated with those future cash flows shall be determined on the basis of the market value of those financial instruments. In this case, separate calculations of the best estimate and the risk margin shall not be required.

(4) The technical provisions referred to in paragraph 3 of this Article shall be calculated in accordance with Regulation (EU) No 2015/35.

Best Estimate

Article 108

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

(2) The cash-flow projection used in the calculation of the best estimate shall take account of all cash in- and out-flows resulting from obligations under insurance and reinsurance contracts over the lifetime of these obligations.

(3) The calculation of the best estimate shall be based upon up-to-date and credible information and realistic assumptions and be performed using adequate, applicable and relevant actuarial and statistical methods in accordance with Regulation (EU) No 2015/35.

(4) The best estimate shall be calculated gross, without deduction of the amounts recoverable from reinsurance contracts or special purpose vehicles, which shall be calculated separately in accordance with Article 117 of this Act.

(5) When calculating the best estimate referred to in paragraph 1 of this Article, the insurance undertaking shall use the technical information concerning the relevant risk-free interest rate term structure in accordance with the European Commission rules.

Risk Margin

Article 109

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

(2) The risk margin shall be calculated by determining the cost of providing an amount of eligible own funds equal to the Solvency Capital Requirement necessary to meet the obligations under insurance and reinsurance contracts over the lifetime of these obligations in accordance with Regulation (EU) No 2015/35.

(3) The rate used in the determination of the cost of providing an amount of eligible own funds, i.e. the Cost-of-Capital rate, shall be the same for all insurance undertakings. The Cost-of-Capital rate shall be equal to the additional rate, above the relevant risk-free interest rate, that the insurance undertaking would incur holding an amount of eligible own funds, as set out in Chapter III of this Title of the Act, equal to the Solvency Capital Requirement necessary to meet the obligations under insurance and reinsurance contracts over the lifetime of these obligations.

Extrapolation of the Relevant Risk-Free Interest Rate Term Structure

Article 110

(1) The determination of the relevant risk-free interest rate term structure referred to in Article 108, paragraph 1 of this Act shall make use of and be consistent with the information derived from the relevant financial instruments. This determination shall take into account relevant financial instruments of those maturities where the markets for those financial instruments, including bonds are deep, liquid and transparent.

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

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

Matching Adjustment to the Relevant Risk-Free Interest Rate Term Structure

Article 111

(1) The insurance undertaking may apply a matching adjustment to the relevant risk-free interest rate term structure to calculate the best estimate of obligations under insurance contracts with life insurance characteristics, including annuities stemming from non-life contracts, i.e. liabilities from reinsurance contracts, subject to prior approval by the Agency.

(2) The Agency, acting in accordance with the European Commission rules governing the procedures for approving the application of a matching adjustment, shall grant prior approval for the application of a matching adjustment if the following conditions are met:

1. the insurance undertaking has assigned a portfolio of assets, consisting of bonds and other assets with similar cash flow characteristics, to cover the best estimate of the portfolio of obligations under insurance and reinsurance contracts over the lifetime of these obligations, except where the expected cash flows of the assigned portfolio of assets have materially changed in relation to the expected cash flows of the portfolio of the obligations over the lifetime of those obligations;

2. the portfolio of obligations under insurance and reinsurance contracts to which the matching adjustment is applied and the assigned portfolio of assets are identified, organised and managed by the insurance undertaking separately from its other activities, and the assigned portfolio of assets cannot be used to cover losses arising from other activities of the undertaking;

3. the expected cash flows of the assigned portfolio of assets replicate each of the expected cash flows of the portfolio of obligations under insurance and reinsurance contracts in the same currency and any mismatch does not give rise to risks, which are material in relation to the risks inherent in the insurance or reinsurance business to which the matching adjustment is applied;

4. the insurance and reinsurance contracts underlying the portfolio of obligations do not give rise to future premium payments;

5. the only underwriting risks connected to the portfolio of obligations under insurance and reinsurance contracts are the longevity risk, the expense risk, the revision risk and the mortality risk

6. where the underwriting risk connected to the portfolio of obligations under insurance and reinsurance contracts includes the mortality risk, the best estimate of the portfolio of obligations under insurance and reinsurance contracts does not increase by more than 5% for an unfavourable deviation in mortality risk that is calibrated in accordance with Article 131, paragraphs 2 – 6 of this Act;

7. the insurance and reinsurance contracts underlying the portfolio of obligations include no options for the policy holder or only a surrender option where the surrender value does not exceed the value of the assets, valued in accordance with Article 105 of this Act, covering these obligations at the time the surrender option is exercised;

8. the cash flows of the assigned portfolio of assets are fixed and cannot be changed by the issuers of the assets or any third parties;

9. the obligations under the insurance or reinsurance contract are not split into different parts when composing the portfolio of obligations under insurance and reinsurance contracts for the purpose of this paragraph.

(3) The insurance undertaking shall meet the conditions specified in paragraph 2 of this Article in accordance with Regulation (EU) No 2015/35.

(4) Without prejudice to paragraph 2, subparagraph 8 of this Article, the insurance undertaking may use assets where the cash flows are fixed except for a dependence on inflation, provided that those assets replicate the cash flows of the portfolio of obligations under insurance and reinsurance contracts that depend on inflation.

(5) In the event that issuers or third parties have the right to change the cash flows of an asset in such a manner that the investor receives sufficient compensation to allow it to obtain the same cash flows by re-investing in assets of an equivalent or better credit quality, the right to change the cash flows shall not disqualify the asset for admissibility to the assigned portfolio in accordance with paragraph 2, subparagraph 8 of this Article.

(6) The insurance undertaking that applies the matching adjustment to a portfolio of obligations under insurance and reinsurance contracts shall not revert back to an approach that does not include a matching adjustment. Where the insurance undertaking that applies the matching adjustment is no longer able to comply with the conditions set out in paragraphs 2, 3 and 4 of this Article, it shall without delay inform the Agency and take the necessary measures to restore compliance with those conditions. Where the undertaking is not able to restore compliance with those conditions within two months of the date of non-compliance, it shall cease to apply the matching adjustment to any of its obligations under insurance and reinsurance contracts and shall not apply the matching adjustment for a period of a further 24 months.

(7) The matching adjustment shall not be applied with respect to obligations under insurance and reinsurance contracts where the relevant risk-free interest rate term structure to calculate the best estimate for those obligations includes a volatility adjustment referred to in Article 113 of this Act or transitional measures on the risk-free interest rates as referred to in Article 455 of this Act.

Calculation of the Matching Adjustment

Article 112

(1) For each currency, the matching adjustment referred to in Article 111 of this Act shall be calculated in accordance with the following principles and in accordance with Regulation (EU) No 2015/35:

1. the matching adjustment shall be equal to the difference of the following:

– the annual effective interest rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of obligations under insurance and reinsurance contracts, results in a value that is equal to the value of the portfolio of assigned assets valued in accordance with Article 105 of this Act,

– the annual effective interest rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of obligations under insurance and reinsurance contracts, results in a value that is equal to the value of the best estimate of the portfolio of obligations under insurance and reinsurance contracts, using the basic risk-free interest rate term structure;

2. the matching adjustment shall not include the fundamental spread reflecting the risks retained by the insurance undertaking;

3. without prejudice to subparagraph 1 of this paragraph, the fundamental spread shall be increased where necessary to ensure that the matching adjustment for assets with sub-investment grade credit quality does not exceed the matching adjustments for assets of investment grade credit quality and the same duration and asset class;

4. the use of external credit assessments in the calculation of the matching adjustment shall be in accordance with Regulation (EU) No 2015/35.

(2) For the purposes of paragraph 1, subparagraph 2 of this Article, the fundamental spread shall be:

1. equal to the sum of the following:

– the credit spread corresponding to the probability of default of the assets,

– the credit spread corresponding to the expected loss resulting from the downgrading of the credit quality of the assets;

2. for exposures to the Member States' central governments and central banks, not lower than 30% of the long-term average of the spread over the risk-free interest rate of assets of the same duration, credit quality and asset class, as observed in financial markets;

3. for assets other than exposures to the Member States' central governments and central banks, not lower than 35% of the long-term average of the spread over the risk-free interest rate of assets of the same duration, credit quality and asset class, as observed in financial markets.

(3) The probability of default by a counterparty in meeting its obligations as referred to in the first indent of paragraph 2, subparagraph 1 of this Article shall be based on long-term default statistics that are relevant for the asset in relation to its duration, credit quality and asset class.

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

(5) When calculating the matching adjustment, the insurance undertaking shall use the technical information concerning the fundamental spread for each relevant duration, credit quality and asset class in accordance with the European Commission rules.

Volatility Adjustment to the Relevant Risk-Free Interest Rate Term Structure

Article 113

- (1) The insurance undertaking may apply a volatility adjustment to the relevant risk-free interest rate term structure to calculate the best estimate referred to in Article 108 of this Act, subject to prior approval by the Agency.
- (2) For each currency, the volatility adjustment to the relevant risk-free interest rate term structure shall be based on the spread between the interest rate that could be earned from assets included in a reference portfolio for that currency and the rates of the relevant risk-free interest rate term structure for that currency in accordance with Regulation (EU) No 2015/35.
- (3) The reference portfolio for a currency shall represent the assets, which are denominated in that currency and which insurance undertakings have in order to cover the best estimate for obligations under insurance and reinsurance contracts denominated in that currency.
- (4) The amount of the volatility adjustment to risk-free interest rates shall correspond to 65% of the risk-corrected currency spread. The risk-corrected currency spread shall be calculated as the difference between the spread referred to in paragraph 2 of this Article and the portion of that spread that is attributable to a realistic assessment of expected losses or unexpected credit or other risk of the assets.
- (5) The volatility adjustment shall apply only to the relevant interest rates of the term structure that are not derived by means of extrapolation in accordance with Article 110 of this Act. The extrapolated part of the relevant risk-free interest rate term structure shall be based on those adjusted risk-free interest rates.
- (6) For each relevant country, the volatility adjustment to the risk-free interest rates referred to in paragraph 4 of this Article shall, before application of the 65% factor, be increased by the difference between the risk-corrected country spread and twice the risk-corrected currency spread, whenever that difference is positive and the risk-corrected country spread is higher than 100 basis points. The increased volatility adjustment shall be applied to the calculation of the best estimate for obligations under insurance and reinsurance contracts relating to products sold in the insurance market of that country. The risk-corrected country spread is calculated in the same manner as the risk-corrected currency spread for the currency of that country, but based on a reference portfolio that represents the assets, which the insurance undertaking has in order to cover the best estimate for obligations under insurance and reinsurance contracts relating to products sold in the insurance market of that country and denominated in the currency of that country.
- (7) The volatility adjustment shall not be applied with respect to the obligations under the insurance and reinsurance contracts where the relevant risk-free interest rate term structure to calculate the best estimate for those obligations includes a matching adjustment referred to in Article 111 of this Act.
- (8) By way of derogation from Article 131 of this Act, the Solvency Capital Requirement shall not cover the risk of loss of basic own funds resulting from changes of the volatility adjustment.
- (9) When applying the volatility adjustment to the relevant risk-free interest rate term structure, the insurance undertaking shall use the technical information in accordance with the

European Commission rules concerning the volatility adjustment for each relevant national insurance market. If, with respect to a particular currency and national market, this volatility adjustment is not published in the above-mentioned technical information, the insurance undertaking shall not apply it.

(10) The Agency shall grant prior approval for the use of the volatility adjustment to the relevant risk-free interest rate term structure to calculate the best estimate referred to in Article 108 of this Act if the insurance undertaking concerned has not committed any serious infringement of rules in the system of governance.

(11) The Agency shall issue an ordinance laying down detailed rules concerning the documents that shall accompany an application for approval referred to in paragraph 10 of this Article.

Other Elements in the Calculation of Technical Provisions

Article 114

When calculating the technical provisions, the insurance undertaking shall take account of the following elements:

1. all expenses that will be incurred in servicing obligations under insurance and reinsurance contracts;
2. inflation, including expenses and claims inflation;
3. all payments to the policy holders and beneficiaries, including future discretionary bonuses, which the insurance undertaking expects to make, whether or not those payments are contractually guaranteed, unless those payments fall under Article 127 of this Act.

Valuation of Financial Guarantees and Contractual Options Included in Insurance and Reinsurance Contracts

Article 115

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

(2) Any assumptions made by the insurance undertaking with respect to the likelihood that policy holders will exercise contractual options, including lapses and surrenders, shall be realistic and based on current and credible information. In its assumptions, the insurance undertaking shall take account, either explicitly or implicitly, of the impact that future changes in financial and non-financial conditions may have on the exercise of those options.

Segmentation

Article 116

When calculating its technical provisions, the insurance undertaking shall segment its obligations under insurance and reinsurance contracts into homogeneous risk groups, and as a minimum by lines of business in accordance with Regulation (EU) No 2015/35.

Recoverables from Reinsurance Contracts and Special Purpose Vehicles

Article 117

(1) The calculation by the insurance undertaking of amounts recoverable from reinsurance contracts and special purpose vehicles shall comply with the provisions of Articles 105 – 116 of this Act.

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

(3) The insurance undertaking shall adjust the result from the calculation of recoverable amounts to take account of expected losses due to default of the counterparty. That adjustment shall be based on an assessment of the probability of default of the counterparty and the average loss resulting from such default, in accordance with Regulation (EU) No 2015/35.

Data Quality and Application of Approximations, Including Case-By-Case Approaches, in the Calculation of Technical Provisions

Article 118

(1) The insurance undertaking shall have internal processes and procedures in place to ensure the appropriateness, completeness and accuracy of the data used in the calculation of its technical provisions, in accordance with Regulation (EU) No 2015/35.

(2) Where, in specific circumstances, the insurance undertaking has insufficient data of appropriate quality to apply a reliable actuarial method for the calculation of its obligations under the insurance and reinsurance contracts, or amounts recoverable from reinsurance contracts and special purpose vehicles, the insurance undertaking may use appropriate approximations, including case-by-case approaches, in the calculation of the best estimate, in accordance with Regulation (EU) No 2015/35.

Comparison against Experience

Article 119

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

(2) Where the comparison identifies systematic deviation between experience and the best estimate calculations, the insurance undertaking concerned shall make appropriate adjustments to the actuarial methods and the assumptions used in the calculations.

Appropriateness of the Level of Technical Provisions

Article 120

Upon request from the Agency, the insurance undertaking shall demonstrate the appropriateness of the level of its technical provisions, as well as the applicability and relevance of the methods applied, and the adequacy of the underlying statistical data used in the calculation of its technical provisions.

CHAPTER III

OWN FUNDS

SECTION I

DETERMINATION OF OWN FUNDS

Own Funds

Article 121

(1) Own funds of the insurance undertaking shall comprise the sum of basic own funds referred to in Article 122 of this Act and ancillary own funds referred to in Article 123 of this Act.

(2) When determining and classifying own funds and setting their eligibility, the insurance undertaking shall act in accordance with this Chapter and Regulation (EU) No 2015/35.

Basic Own Funds

Article 122

(1) When determining basic own funds, the insurance undertaking shall take into account the following items:

1. the excess of the insurance undertaking's assets over liabilities, valued in accordance with Articles 105 – 120 of this Act;

2. subordinated liabilities of the insurance undertaking.

(2) The excess of assets over liabilities as referred to in paragraph 1, subparagraph 1 of this Article shall be reduced by the amount of own shares held by the insurance undertaking.

Ancillary Own Funds

Article 123

(1) When determining ancillary own funds, the insurance undertaking shall take into account items other than basic own funds, which can be called up to absorb losses.

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

1. letters of credit and guarantees;
2. other legally binding commitments of third parties towards the insurance undertaking.

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

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

Approval of Ancillary Own Funds

Article 124

(1) Ancillary own-fund items may be taken into account when determining own funds of the insurance undertaking, but only subject to prior approval being given by the Agency.

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

(3) The insurance undertaking shall obtain prior approval from the Agency for the following:

1. a monetary amount for each ancillary own-fund item and/or
2. a method by which to determine the amount of each ancillary own-fund item, in which case the Agency's approval of the amount determined in accordance with that method shall be granted for a specified period of time.

(4) For each ancillary own-fund item that the insurance undertaking intends to include in its own funds, the Agency shall grant prior approval on the basis of an assessment of the following:

1. the counterparties' ability and willingness to pay;
2. the recoverability of the funds, taking account of the legal form of the item, as well as conditions which would prevent the item from being successfully paid in or called up;
3. any information on the outcome of past calls which the insurance undertaking has made for such ancillary own funds, to the extent that information can be reliably used to assess the expected outcome of future calls.

(5) The prior approval referred to in this Article shall be granted by the Agency in accordance with Regulation (EU) No 2015/35.

SECTION II

CLASSIFICATION OF OWN FUNDS

Classification of Own Funds into Tiers

Article 125

(1) The insurance undertaking shall classify its own-fund items into three tiers on the basis of the criteria laid down in Article 126 of this Act and the list of own-fund items laid down in Regulation (EU) No 2015/35.

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

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

2. in the case of bankruptcy or winding-up of the insurance undertaking, the total amount of the item is fully available to absorb losses and is paid to its holder only after all other obligations, including insurance and reinsurance obligations towards policy holders and beneficiaries of insurance and reinsurance contracts are met (subordination).

(3) When assessing the extent to which own-fund items possess the characteristics set out in paragraph 2, subparagraphs 1 and 2 of this Article, currently and in the future, the insurance undertaking shall give due consideration to the duration of the item. Where an own-fund item is dated, the duration of the item as compared to the duration of the insurance and reinsurance obligations of the insurance undertaking shall be considered (sufficient duration).

(4) Except as provided in paragraph 3 of this Article, the insurance undertaking shall also take into account the following characteristics of an individual item:

1. no possibility to redeem the nominal sum (whether the item is free from requirements or incentives to redeem the nominal sum)

2. absence of mandatory servicing costs

3. absence of encumbrances.

(5) When own-fund items are not included in the list referred to in paragraph 1 of this Article, the insurance undertaking shall classify its own-fund items in accordance with the criteria laid down in Article 126 of this Act, and shall submit to the Agency an application for approval of such classification of own-fund items.

Criteria for the Classification of Own-Fund Items into Tiers

Article 126

- (1) The insurance undertaking shall classify basic own-fund items in Tier 1 where they substantially possess the characteristics set out in Article 125, paragraph 2, subparagraphs 1 and 2 of this Act, taking into consideration the characteristics set out in Article 125, paragraphs 3 and 4 of this Act.
- (2) The insurance undertaking shall classify basic own-fund items in Tier 2 where they substantially possess the characteristics set out in Article 125, paragraph 2, subparagraph 2 of this Act, taking into consideration the characteristics set out in Article 125, paragraphs 3 and 4 of this Act.
- (3) The insurance undertaking shall classify ancillary own-fund items in Tier 2 where they substantially possess the characteristics set out in Article 125, paragraph 2, subparagraphs 1 and 2 of this Act, taking into consideration the characteristics set out in Article 125, paragraphs 3 and 4 of this Act.
- (4) The insurance undertaking shall classify in Tier 3 any basic and ancillary own-fund items, which do not fall under paragraphs 1, 2 and 3 of this Article.

Surplus Funds and Classification of Specific Own-Fund Items

Article 127

- (1) Surplus funds shall be deemed to be accumulated profits, which have not been made available for distribution to policy holders and beneficiaries.
- (2) The insurance undertaking shall classify in Tier 1 surplus funds, which have not been distributed to policy holders and beneficiaries and are not subject to payment, in accordance with the criteria laid down in Article 126, paragraph 1 of this Act.
- (3) The insurance undertaking shall classify in Tier 2 the letters of credit and guarantees, which are held in trust for the benefit of the insurance undertaking's creditors by an independent trustee and provided by credit institutions authorised in accordance with the legislation governing the taking up and pursuit of the business of credit institutions.
- (4) Mutual insurance undertakings with variable contributions shall classify in Tier 2 any future claims, which these undertakings may have against their members by way of a call for supplementary contributions, within the following 12 months, where they substantially possess the characteristics set out in Article 125, paragraph 2 of this Act, taking into consideration the characteristics set out in Article 125, paragraphs 3 and 4 of this Act.

SECTION III

ELIGIBILITY OF OWN FUNDS

Own Funds Eligible to Cover the Solvency Capital Requirement

Article 128

(1) The eligible amount of own funds to cover the Solvency Capital Requirement of the insurance undertaking shall be equal to the sum of the amount of own funds classified in Tier 1 and the eligible amounts of own funds classified in Tier 2 and Tier 3.

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

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.

Own Funds Eligible to Cover the Minimum Capital Requirement

Article 129

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

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

CHAPTER IV

SOLVENCY CAPITAL REQUIREMENT

SECTION I

GENERAL PROVISIONS CONCERNING THE CALCULATION OF THE SOLVENCY CAPITAL REQUIREMENT

General Provisions

Article 130

Insurance undertakings shall hold eligible own funds covering the Solvency Capital Requirement referred to in this Chapter.

Calculation of the Solvency Capital Requirement

Article 131

(1) The Solvency Capital Requirement shall be calculated using the standard formula in accordance with Articles 133 –142 of this Act or using an internal model in accordance with Articles 143 – 156 of this Act.

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

(3) The Solvency Capital Requirement shall be calibrated so as to take into account all quantifiable risks to which the insurance undertaking is exposed, and it shall cover existing business, as well as the new business expected to be written over the following 12 months. With respect to existing business, the Solvency Capital Requirement shall cover only unexpected losses. The Solvency Capital Requirement shall correspond to the Value-at-Risk of the basic own funds of the insurance undertaking subject to a confidence level of 99.5% over a one-year period.

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

1. non-life underwriting risk;
2. life underwriting risk;
3. health underwriting risk;
4. market risk;
5. credit risk;
6. operational risk.

(5) Operational risk as referred to in paragraph 4, subparagraph 6 of this Article shall include legal risks, and exclude risks arising from strategic decisions, as well as reputation risks.

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

Frequency of Calculation

Article 132

(1) The insurance undertaking shall calculate the Solvency Capital Requirement at least once a year and report the result of that calculation to the Agency.

(2) The insurance undertaking shall hold eligible own funds, which cover the last reported Solvency Capital Requirement.

(3) The insurance undertaking shall monitor the amount of eligible own funds and the Solvency Capital Requirement on an ongoing basis.

(4) If the risk profile of the insurance undertaking deviates significantly from the assumptions underlying the last Solvency Capital Requirement that the insurance undertaking reported to the Agency, the undertaking shall recalculate the Solvency Capital Requirement without delay and report the result of that calculation to the Agency.

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

SECTION II

CALCULATION OF THE SOLVENCY CAPITAL REQUIREMENT USING THE STANDARD FORMULA

General Provisions

Article 133

The insurance undertaking shall calculate the Solvency Capital Requirement using the standard formula in accordance with Articles 134 – 141 of this Act, Regulation (EU) No 2015/35 and other European Commission legislation governing:

- uniform conditions for the calculation of the capital requirements using the standard formula, the calculation of the market risk module, the calculation of the counterparty default risk module, the evaluation of risk mitigation techniques, the calculation of technical provisions, technical information concerning the symmetric adjustment to the equity capital charge, the calculation of the health underwriting risk module,
- the methods and parameters used when assessing the capital requirement for counterparty default risk in the case of exposures to qualifying central counterparties,
- quantitative limits and asset eligibility criteria where those risks are not adequately covered by the standard formula.

Structure of the Standard Formula

Article 134

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

1. the Basic Solvency Capital Requirement;
2. the capital requirement for operational risk;
3. the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes.

Design of the Basic Solvency Capital Requirement

Article 135

(1) The Basic Solvency Capital Requirement shall comprise at least the following risk modules:

1. non-life underwriting risk;
2. life underwriting risk;
3. health underwriting risk;
4. market risk;
5. counterparty default risk,

which are aggregated in accordance with the regulations referred to in Article 142, paragraph 1 of this Act.

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

(3) The correlation coefficients for the aggregation of the risk modules referred to in paragraph 1 of this Article, 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 Article 131, paragraphs 2 – 5 of this Act.

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

(5) All insurance undertakings shall use the same design and specifications for the risk modules, both with respect to the Basic Solvency Capital Requirement and to any simplified calculations as laid down in Article 140 of this Act.

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

(7) Subject to approval by the Agency and in accordance with the European Commission regulations governing the procedures for the approval of specific parameters, the insurance undertaking may, within the design of the standard formula, replace a subset of its parameters with parameters specific to the undertaking concerned when calculating the life, non-life and health underwriting risk modules. Such parameters shall be calibrated on the basis of the internal data of the undertaking concerned, or of data which is directly relevant for the operations of that undertaking using standardised methods.

(8) When granting the approval referred to in paragraph 7 of this Article, the Agency shall verify the completeness, accuracy and appropriateness of the data used.

Calculation of the Basic Solvency Capital Requirement

Article 136

(1) The non-life underwriting risk module shall reflect the risk arising from obligations under insurance contracts with non-life insurance characteristics, in relation to the perils covered and the processes used in the conduct of business. The non-life underwriting risk module shall take account of the uncertainty in the results of the insurance undertaking related to the existing obligations under insurance and reinsurance contracts as well as to the new business expected to be written over the following 12 months. It shall be calculated in accordance with Article 142, paragraph 2 of this Act as a combination of the capital requirements for at least the following risk sub-modules:

1. the risk of loss, or of adverse change in the value of liabilities under insurance contracts, resulting from fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements, i.e. non-life premium and reserve risk;
2. the risk of loss, or of adverse change in the value of liabilities under insurance contracts, resulting from significant uncertainty of pricing and provisioning assumptions related to extreme or exceptional events, i.e. non-life catastrophe risk.

(2) The life underwriting risk module shall reflect the risk arising from obligations under insurance contracts with life insurance characteristics in relation to the perils covered and the processes used in the conduct of business. It shall be calculated in accordance with Article 142, paragraph 3 of this Act as a combination of the capital requirements for at least the following risk sub-modules:

1. the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of mortality rates, where an increase in the mortality rate leads to an increase in the value of insurance liabilities, i.e. mortality risk;
2. the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of mortality rates, where a decrease in the mortality rate leads to an increase in the value of insurance liabilities, i.e. longevity risk;
3. the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend or volatility of disability and morbidity rates, i.e. disability – morbidity risk;
4. the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of the expenses incurred in servicing insurance or reinsurance contracts, i.e. life-expense risk;
5. the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the level, trend, or volatility of the revision rates applied to annuities, due to changes in the legal environment or in the state of health of the person insured, i.e. revision risk;

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

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

(3) 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. It shall cover at least the following risks:

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

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

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

(4) The market risk module shall reflect the risk arising from the level or volatility of market prices of financial instruments, which have an impact upon the value of the assets and liabilities of the insurance undertaking. The market risk module shall properly reflect the structural mismatch between assets and liabilities, in particular with respect to the duration thereof. It shall be calculated in accordance with Article 142, paragraph 4 of this Act as a combination of the capital requirements for at least the following risk 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, i.e. 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, i.e. 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, i.e. 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, i.e. 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, i.e. currency risk;

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

(5) The counterparty default risk module shall reflect possible losses due to unexpected default, or deterioration in the credit standing, of the counterparties and debtors of the insurance undertaking over the following 12 months.

(6) The counterparty default risk module shall cover risk-mitigating contracts, such as reinsurance contracts, securitisations and derivatives, and receivables from representatives and intermediaries, as well as any other credit exposures which are not covered in the spread risk sub-module. It shall take appropriate account of collateral or other security held by or for the account of the insurance undertaking and the risks associated therewith.

(7) The counterparty default risk module shall take account of the overall counterparty risk exposure of the insurance undertaking to that counterparty, irrespective of the legal form of its contractual obligations to that insurance undertaking.

Calculation of the Equity Risk Sub-Module: Symmetric Adjustment Mechanism

Article 137

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

(2) The symmetric adjustment made to the standard equity capital charge, calibrated in accordance with Article 135, paragraph 4 of this Act, covering the risk arising from changes in the level of equity prices shall be based on a function of the current level of an appropriate equity index and a weighted average level of that index. The weighted average shall be calculated over an appropriate period of time which shall be the same for all insurance undertakings.

(3) The symmetric adjustment made to the standard equity capital charge may result in an increase or decrease in the equity capital charge by not more than 10 percentage points.

Capital Requirement for Operational Risk

Article 138

(1) The capital requirement for operational risk shall reflect operational risks to the extent they are not reflected in the risk modules referred to in Article 135, paragraph 1 of this Act. This requirement shall be calibrated in accordance with Article 131, paragraph 3 of this Act.

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

(3) With respect to insurance and reinsurance operations other than those referred to in paragraph 2 of this Article, 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 obligations under those insurance and reinsurance contracts. 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.

Adjustment for the Loss-Absorbing Capacity of Technical Provisions and Deferred Taxes

Article 139

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

(2) The adjustment referred to in paragraph 1 of this Article shall take account of the risk mitigating effect provided by future discretionary benefits of insurance contracts, to the extent the insurance undertaking can establish that a reduction in such benefits may be used to cover unexpected losses when they arise. The risk mitigating effect provided by future discretionary benefits shall be no higher than the sum of technical provisions and deferred taxes relating to those future discretionary benefits.

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

Simplifications in the Standard Formula

Article 140

The insurance undertaking may, in accordance with Regulation (EU) No 2015/35, use a simplified calculation for a specific sub-module or risk module where the nature, scale and complexity of the risks it faces justify it and where it would be disproportionate to require the insurance undertaking to apply the standardised calculation. Simplified calculations shall be calibrated in accordance with Article 131, paragraph 3 of this Act.

Significant Deviations from the Assumptions Underlying the Standard Formula Calculation

Article 141

(1) Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula because the risk profile of the insurance undertaking deviates significantly from the assumptions underlying the standard formula calculation, the Agency may require the insurance undertaking concerned to replace a subset of the parameters used in the standard formula calculation by parameters specific to that undertaking when calculating the life, non-life and health underwriting risk modules.

(2) The specific parameters of the insurance undertaking, as referred to in paragraph 1 of this Article, shall be calculated in such a manner as to ensure that the undertaking concerned complies with Article 131, paragraph 3 and Article 135, paragraphs 7 and 8 of this Act.

Formulas for the Calculation of the Basic Solvency Capital Requirement

Article 142

(1) The Basic Solvency Capital Requirement referred to in Article 135, paragraph 1 of this Act shall be calculated using the following formula:

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

where SCR_i denotes the risk module i and SCR_j denotes the risk module j , and where « i,j » means that the sum covers all possible combinations of i and j . In the calculation, SCR_i and SCR_j are replaced by at least the following:

$\text{SCR}_{\text{non-life}}$ denotes the non-life underwriting risk module,

SCR_{life} denotes the life underwriting risk module,

$\text{SCR}_{\text{health}}$ denotes the health underwriting risk module,

$\text{SCR}_{\text{market}}$ denotes the market risk module,

$\text{SCR}_{\text{default}}$ denotes the counterparty default risk module.

The factor $\text{Corr}_{i,j}$, defined in accordance with Regulation (EU) No 2015/35, denotes the item set out in row i and in column j of the following correlation matrix:

$i \backslash j$	Market	Default	Life	Health	Non-life
Market	1	0.25	0.25	0.25	0.25
Default	0.25	1	0.25	0.25	0.5
Life	0.25	0.25	1	0.25	0
Health	0.25	0.25	0.25	1	0
Non-life	0.25	0.5	0	0	1

(2) The non-life underwriting risk module referred to in Article 136, paragraph 1 of this Act shall be calculated using the following formula:

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

where SCR_i denotes the sub-module i and SCR_j denotes the sub-module j , and where « i,j » means that the sum covers all possible combinations of i and j . In the calculation, SCR_i and SCR_j are replaced by at least the following:

$SCR_{non-life - premium and reserve}$ denotes the non-life premium and reserve risk sub-module,

$SCR_{non-life - catastrophe}$ denotes the non-life catastrophe risk sub-module.

The factor $Corr_{i,j}$ denotes the item defined in accordance with Regulation (EU) No 2015/35.

(3) The life underwriting risk module referred to in Article 136, paragraph 2 of this Act shall be calculated using the following formula:

$$SCR_{life} = \sqrt{\sum_{i,j} Corr_{i,j} \times SCR_i \times SCR_j}$$

where SCR_i denotes the sub-module i and SCR_j denotes the sub-module j , and where « i,j » means that the sum covers all possible combinations of i and j . In the calculation, SCR_i and SCR_j are replaced by at least the following:

$SCR_{mortality}$ denotes the mortality risk sub-module,

$SCR_{longevity}$ denotes the longevity risk sub-module,

$SCR_{disability}$ denotes the disability - morbidity risk sub-module,

$SCR_{life expense}$ denotes the life expense risk sub-module,

$SCR_{revision}$ denotes the revision risk sub-module,

SCR_{lapse} denotes the lapse risk sub-module,

$SCR_{life-catastrophe}$ denotes the life catastrophe risk sub-module.

The factor $Corr_{i,j}$ denotes the item defined in accordance with Regulation (EU) No 2015/35.

(4) The market risk module referred to in Article 136, paragraph 4 of this Act shall be calculated using the following formula:

$$SCR_{market} = \sqrt{\sum_{i,j} Corr_{i,j} \times SCR_i \times SCR_j}$$

where SCR_i denotes the sub-module i and SCR_j denotes the sub-module i , and where « i,j » means that the sum covers all possible combinations of i and j . In the calculation, SCR_i and SCR_j are replaced by at least the following:

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$SCR_{interest\ rate}$ denotes the interest rate risk sub-module,

SCR_{equity} denotes the equity risk sub-module,

$SCR_{property}$ denotes the property risk sub-module,

SCR_{spread} denotes the spread risk sub-module,

$SCR_{concentration}$ denotes the market risk concentrations sub-module,

$SCR_{currency}$ denotes the currency risk sub-module.

The factor $Corr_{i,j}$ denotes the item defined in accordance with Regulation (EU) No 2015/35.

SECTION III

CALCULATION OF THE SOLVENCY CAPITAL REQUIREMENT USING FULL AND PARTIAL INTERNAL MODELS

General Provisions for the Approval of Full and Partial Internal Models

Article 143

(1) The insurance undertaking may calculate the Solvency Capital Requirement using a full or partial internal model as approved by the Agency, in accordance with the European Commission regulations governing the procedures for the approval of internal models.

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

1. one or more risk modules, or sub-modules, of the Basic Solvency Capital Requirement, as set out in the provisions of Articles 135 and 136 of this Act;
2. the capital requirement for operational risk as set out in Article 138 of this Act;
3. the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes as referred to in Article 139 of this Act.

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

(3) In any application for approval to use an internal model, the insurance undertaking shall submit, as a minimum, documentary evidence that the internal model fulfils the requirements set out in Articles 150 – 155 of this Act, in accordance with Regulation (EU) No 2015/35. Where the application for the approval relates to a partial internal model, the requirements set out in Articles 150 – 155 of this Act shall be adapted to take account of the limited scope of the application of the model in accordance with Regulation (EU) No 2015/35.

(4) The Agency shall decide on the application within six months from the receipt of the complete application.

(5) The Agency shall give approval to the application only if it is satisfied that the systems of the insurance undertaking for identifying, measuring, monitoring, managing and reporting risk are adequate and in particular, that the internal model fulfils the requirements referred to in paragraph 3 of this Article.

(6) A decision by the Agency to reject the application for the use of an internal model shall state the reasons on which the rejection is based.

(7) After having issued approval for the use of an internal model, the Agency may, by means of a decision, require the insurance undertaking to provide the Agency with an estimate of the Solvency Capital Requirement determined in accordance with the standard formula, as set out in Articles 133 – 142 of this Act.

Specific Provisions for the Approval of Partial Internal Models

Article 144

(1) In the case of a partial internal model, the Agency's approval shall be given only where that model fulfils the requirements set out in Article 143 of this Act and the following additional conditions:

1. the reason for the limited scope of application of the model is properly justified by the insurance undertaking;
2. the resulting Solvency Capital Requirement reflects more appropriately the risk profile of the insurance undertaking and in particular complies with the principles referred to in Articles 130 – 132 of this Act;
3. its design is consistent with the principles referred to in Articles 130 – 132 of this Act so as to allow the partial internal model to be fully integrated into the Solvency Capital Requirement standard formula, in accordance with Regulation (EU) No 2015/35.

(2) When assessing an application for approval to use a partial internal model which only covers certain sub-modules of a specific risk module, or some of the business units of the insurance undertaking with respect to a specific risk module, or parts of both, the Agency may require the insurance undertaking concerned to submit a realistic transitional plan to extend the scope of the model.

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

Policy for Changing the Full and Partial Internal Models

Article 145

(1) As part of the initial approval process of an internal model, the Agency shall approve the policy for changing the model of the insurance undertaking, which shall include a

specification of minor and major changes to the internal model. The insurance undertaking may change its internal model in accordance with that policy.

(2) Major changes to the internal model, as well as changes to that policy, shall be subject to prior approval by the Agency as referred to in Article 143 of this Act, which shall be issued in accordance with the European Commission regulations governing the procedures for approving major changes to the internal model. Minor changes to the internal model shall not be subject to prior approval by the Agency, insofar as they are introduced in accordance with that policy.

Responsibilities of the Management and Supervisory Board of the Insurance Undertaking

Article 146

(1) The management board of the insurance undertaking shall, with the consent of the supervisory board, submit to the Agency an application for approval to use an internal model referred to in Article 143 of this Act, as well as an application for approval of any subsequent major changes made to that model.

(2) The management board of the insurance undertaking shall be responsible for putting in place a system, which ensures that the internal model operates properly on a continuous basis, and the supervisory board shall be responsible for supervising this system.

Reversion to the Standard Formula

Article 147

After having received approval in accordance with Article 143 of this Act, the insurance undertaking shall not revert to calculating the whole or any part of the Solvency Capital Requirement in accordance with the standard formula, except in duly justified circumstances and subject to the approval of the Agency.

Non-Compliance of the Internal Model

Article 148

(1) If, after having received approval from the Agency to use an internal model, the insurance undertaking ceases to comply with the requirements set out in Articles 150 –155 of this Act, it shall, without delay, either present to the Agency a plan to restore compliance with these requirements within a reasonable period of time, or demonstrate that the effect of non-compliance is immaterial.

(2) In the event that the insurance undertaking fails to implement the plan referred to in paragraph 1 of this Article, the Agency may require the insurance undertaking to revert to calculating the Solvency Capital Requirement in accordance with the standard formula.

Significant Deviations from the Assumptions Underlying the Standard Formula Calculation

Article 149

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

Use Test

Article 150

(1) The insurance undertaking shall demonstrate that its internal model is widely used in and plays an important role in its system of governance, in accordance with the provisions of this Act, in particular in:

1. the risk-management system referred to in Article 94 of this Act and decision-making processes;
2. economic and solvency capital assessment and allocation processes, including the assessment referred to in Article 96 of this Act.

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

(3) The management board of the insurance undertaking shall be responsible for ensuring, and the supervisory board shall be responsible for supervising the ongoing appropriateness of the design and operations of the internal model, and that the internal model continues to appropriately reflect the risk profile of the insurance undertaking concerned.

Statistical Quality Standards

Article 151

(1) The methods used to calculate the probability distribution forecast shall be based on adequate, applicable and relevant actuarial and statistical techniques and shall be consistent with the methods used to calculate technical provisions. These methods shall be based upon current and credible information and realistic assumptions.

(2) The insurance undertaking shall be able to justify the assumptions underlying their internal model to the Agency.

(3) Data used for the internal model shall be accurate, complete and appropriate. The insurance undertaking shall update the data used in the calculation of the probability distribution forecast at least annually.

(4) No particular method for the calculation of the probability distribution forecast shall be prescribed. Regardless of the calculation method chosen, the ability of the internal model to

rank risk shall be sufficient to ensure that it is widely used in and plays an important role in the system of governance of the insurance undertaking, in particular its risk-management system and decision-making processes, and capital allocation in accordance with Article 150 of this Act.

(5) The internal model shall cover all of the material risks to which the insurance undertaking is exposed and shall cover at least the risks referred to in Article 131, paragraph 4 of this Act.

(6) As regards diversification effects, the insurance undertaking may take account in its internal model of dependencies within and across risk categories, provided that it demonstrates to the Agency that the system used for measuring those diversification effects is adequate.

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

(8) The insurance undertaking shall accurately assess the particular risks associated with financial guarantees and any contractual options in its internal model, where material. The insurance undertaking shall assess the risks associated with both insurance contract options and contractual options for the insurance undertaking in its internal model. For that purpose, the undertaking concerned shall take account of the impact that future changes in financial and non-financial conditions may have on the exercise of those options.

(9) In its internal model, the insurance undertaking may take account of future management actions that it would reasonably expect to carry out in specific circumstances. In this case, the insurance undertaking concerned shall take into account the time necessary to implement such actions.

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

Calibration Standards

Article 152

(1) The insurance undertaking may use a different time period or risk measure than that set out in Article 131, paragraph 3 of this Act for internal modelling purposes as long as the Solvency Capital Requirement calculated using the internal model provides policy holders and beneficiaries with a level of protection equivalent to that set out in Article 131 of this Act.

(2) Where practicable, the insurance undertaking shall derive the Solvency Capital Requirement directly from the probability distribution forecast generated by the internal model of the undertaking concerned, using the Value-at-Risk measure referred to in Article 131, paragraph 3 of this Act.

(3) Where the insurance undertaking cannot derive the Solvency Capital Requirement directly from the probability distribution forecast generated by the internal model, the Agency may allow approximations to be used in the process to calculate the Solvency Capital

Requirement, as long as the undertaking concerned can demonstrate to the Agency that policy holders and beneficiaries are provided with a level of protection equivalent to that referred to in Article 131 of this Act.

(4) The Agency may require insurance undertakings to apply their internal model to relevant benchmark portfolios and using assumptions based on external rather than internal data in order to verify the calibration of the internal model and to check that its specifications are in line with generally accepted market practice.

Profit and Loss Attribution

Article 153

(1) The insurance undertaking shall review, at least annually, the causes and sources of profits and losses for each major business unit.

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

Validation Standards

Article 154

(1) The insurance undertaking shall regularly carry out the model validation process, which includes monitoring the performance of the internal model, reviewing the ongoing appropriateness of its specifications, and testing its results against experience.

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

(3) The model validation process shall include:

- an analysis of the stability of the internal model and in particular the testing of the sensitivity of the results of the internal model to changes in key underlying assumptions,
- an assessment of the accuracy, completeness and appropriateness of the data used by the internal model,
- an effective statistical process for validating the internal model, which enables the insurance undertaking to demonstrate to the Agency that the resulting capital requirements are appropriate.

Documentation Standards

Article 155

(1) The insurance undertaking shall document the design and operational details of its internal model. This documentation shall demonstrate compliance with the provisions of Articles 150 – 155 of this Act.

(2) The documentation referred to in paragraph 1 of this Article shall provide a detailed outline of the theory, assumptions, and mathematical and empirical bases underlying the internal model and shall indicate any circumstances under which the internal model does not work effectively.

(3) The insurance undertaking shall document all major changes to its internal model, as set out in Article 145 of this Act.

External Models and Data

Article 156

The use of a model or data obtained from a third party shall not be considered to be a justification for exemption from any of the requirements for the internal model set out in Articles 150 – 155 of this Act and Regulation (EU) No 2015/35.

CHAPTER V

MINIMUM CAPITAL REQUIREMENT

General Provisions

Article 157

(1) The insurance undertaking shall hold eligible basic own funds to cover the Minimum Capital Requirement.

(2) The insurance undertaking shall calculate the Minimum Capital Requirement in accordance with Article 158 of this Act and Regulation (EU) No 2015/35.

Calculation of the Minimum Capital Requirement

Article 158

(1) The insurance undertaking shall calculate the Minimum Capital Requirement in accordance with the following principles:

1. in a clear and simple manner, and in such a way as to ensure that the calculation can be audited;
2. in such a manner as to ensure that the Minimum Capital Requirement corresponds to an amount of eligible basic own funds below which policy holders and beneficiaries are exposed to an unacceptable level of risk were the insurance undertaking allowed to continue their operations;

3. subject to the conditions set out in paragraph 2 of this Article, the Minimum Capital Requirement shall be calculated as a linear function of a set or subset of the following variables: the insurance undertaking's technical provisions, written premiums, capital-at-risk, deferred tax and administrative expenses, with the variables used being measured net of reinsurance. The linear function for the calculation of the Minimum Capital Requirement shall be calibrated to the Value-at-Risk of the basic own funds of the insurance undertaking subject to a confidence level of 85% over a one-year period;

4. the Minimum Capital Requirement shall be equal to at least the absolute floor of the Minimum Capital Requirement, which amounts to:

- HRK 19,500,000.00 for non-life insurance undertakings, including captive insurance undertakings, save in the case where all or some of the risks included in one of the insurance classes listed in Article 7, paragraph 2, subparagraphs 10 – 15 of this Act are covered, in which case the absolute floor of the Minimum Capital Requirement shall amount to HRK 28 860 000.00,

- HRK 28,860,000.00 for life insurance undertakings, including captive insurance undertakings;

- HRK 28,080,000.00 for reinsurance undertakings, except in the case of captive reinsurance undertakings, in which case the absolute floor of the Minimum Capital Requirement shall amount to HRK 9,360,000.00,

- the sum of the amounts set out in subparagraphs 1 and 2 of this paragraph for insurance undertakings, which pursue simultaneously both the life and the non-life insurance business.

(2) Without prejudice to paragraph 1, subparagraph 4 of this Article, the Minimum Capital Requirement shall neither fall below 25% nor exceed 45% of the insurance undertaking's Solvency Capital Requirement, calculated using the standard formula or a full or partial internal model as referred to in Chapter IV of this Title on the Solvency Capital Requirement, and including any capital add-on imposed in accordance with Article 239 of this Act. In the period ending on 31 December 2017, the insurance undertaking shall apply the above-mentioned percentages exclusively to the insurance undertaking's Solvency Capital Requirement calculated using the standard formula.

(3) The insurance undertaking shall calculate the Minimum Capital Requirement at least quarterly and report the results of that calculation to the Agency. For the purposes of calculating the limits referred to in paragraph 2 of this Article, undertakings shall not be required to calculate the Solvency Capital Requirement on a quarterly basis.

(4) Where either of the limits referred to in paragraph 2 of this Article determines the insurance undertaking's Minimum Capital Requirement, the insurance undertaking shall provide to the Agency information allowing a proper understanding of the reasons therefore.

CHAPTER VI

INVESTMENTS

General Provisions

Article 159

(1) The insurance undertaking shall invest its assets in accordance with this Chapter, Regulation (EU) No 2015/35 and other European Commission regulations concerning qualitative requirements for the identification, measurement, monitoring and managing of risks arising from investments, and in particular in accordance with the prudent person principle.

(2) The insurance undertaking may only invest in assets and financial instruments whose risks the undertaking can properly identify, measure, monitor, manage, control and report, and appropriately take into account in the assessment of its overall solvency needs in accordance with Article 96, paragraph 1, subparagraph 1 of this Act.

(3) The insurance undertaking shall invest all assets, in particular those covering the Minimum Capital Requirement and the Solvency Capital Requirement, in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole, and the localisation of those assets shall be such as to ensure their availability.

Additional Provisions Concerning Investments

Article 160

(1) The insurance undertaking may invest in derivative financial instruments only if these instruments contribute to a reduction of risks or facilitate efficient portfolio management.

(2) The insurance undertaking shall keep investment in assets which are not admitted to trading on a regulated financial market to prudent levels.

(3) Assets shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of issuers, or geographical area and excessive accumulation of risk in the portfolio as a whole.

(4) Investments in assets issued by the same issuer, or by issuers belonging to the same group, shall not expose the insurance undertaking to excessive risk concentration.

Investment of Assets Held to Cover the Technical Provisions

Article 161

(1) The insurance undertaking shall invest assets held to cover the technical provisions in a manner appropriate to the nature and duration of the insurance and reinsurance liabilities, and in the best interest of the policy holders, insured persons and insurance beneficiaries and in accordance with the investment policy if it is disclosed.

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

Special Provisions for Insurance Where the Investment Risk is Borne by the Policy Holders

Article 162

(1) In addition to the provisions of Articles 159 and 161 of this Act, the provisions of this Article shall apply to insurance where the investment risk is borne by the policy holders.

(2) Where the policy holders' benefits provided by the insurance contract are directly linked to the value of units in an UCITS as defined in the act governing the establishment and operation of open-end investment funds with a public offering, or to the value of assets contained in an internal fund held by the insurance undertakings, usually divided into units, the value of assets to cover the technical provisions established by the insurance undertaking in respect of those benefits shall correspond as closely as possible to the total value of those units or, in the case where units are not established, to the value of those assets.

(3) Where the policy holders' benefits provided by the insurance contract are directly linked to a share index or some other reference value other than those referred to in paragraph 2 of this Article, the value of assets to cover the technical provisions established by the insurance undertaking in respect of those benefits shall correspond as closely as possible either to the value of the units representing the reference value or, in the case where units are not established, to the value of assets of appropriate security and marketability which correspond as closely as possible with those on which the index or some other reference value is based.

(4) Where the insurance contract referred to in paragraphs 2 and 3 of this Article includes a guarantee of investment performance or some other payments to be made to the policy holder or beneficiary, the assets held to cover the corresponding additional technical provisions established by the insurance undertaking to cover the guaranteed payments in respect of such insurance shall be subject to the provisions of Article 160 of this Act.

(5) In the case referred to in paragraph 2 of this Article, where the insurance contract is linked to the value of assets contained in an internal fund, the insurance undertaking shall adopt the internal fund rules, which shall contain at least:

- the investment policy,
- the method of calculation of the net value of the internal fund assets,
- the method of calculation of the value of the units in the internal fund,
- the means and timing of publication of the value of the units in the internal fund,
- costs borne by premiums,
- costs borne by the internal fund assets,
- costs incurred as a result of the termination of the insurance contract.

TITLE X

DIFFICULTIES AND IRREGULARITIES IN THE OPERATIONS OF INSURANCE UNDERTAKINGS

Identification and Notification of Deteriorating Financial Conditions by the Insurance Undertaking

Article 163

- (1) The insurance undertaking shall put in place procedures to identify deteriorating financial conditions.
- (2) The insurance undertaking shall, without delay, notify the Agency when deteriorating financial conditions occur.

Prohibition of Profit Distribution

Article 164

The insurance undertaking shall not distribute the profits in the form of interim profit or dividends or in the form of payments based on participation in the profit of the undertaking management board, supervisory board or employees if:

1. the level of eligible own funds is below the Solvency Capital Requirement or the level of eligible own funds would be reduced, as a result of profit distribution, to the level below the Solvency Capital Requirement;
2. the level of eligible basic own funds is below the Minimum Capital Requirement or the level of eligible basic own funds would be reduced, as a result of profit distribution, to the level below the Minimum Capital Requirement;
3. the insurance undertaking does not satisfy the minimum liquidity requirement or would no longer satisfy the minimum liquidity requirement as a result of distribution of profits;
4. the Agency has instructed the insurance undertaking to remedy the illegalities and irregularities in relation to the misstatement of on- and off-balance sheet items and operating results of the insurance undertaking and the insurance undertaking has failed to comply with the Agency's measures to remedy the illegalities and irregularities.

Non-Compliance with the Solvency Capital Requirement

Article 165

- (1) The insurance undertaking shall without delay inform the Agency as soon as it observes that the Solvency Capital Requirement is no longer complied with, or where there is a risk of non-compliance in the following three months.
- (2) In the case of the non-compliance referred to in paragraph 1 of this Article, the management board of the insurance undertaking shall without delay take measures to achieve the amount of the Solvency Capital Requirement and shall prepare a proposal for measures for which other competent authorities of that insurance undertaking shall be responsible.

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

(4) The insurance undertaking shall take the necessary measures to remedy the non-compliance referred to in paragraph 1 of this Article, within six months from the observation of non-compliance with the Solvency Capital Requirement, in such a way as to:

1. increase the level of eligible own funds covering the Solvency Capital Requirement, or
2. reduce its risk profile to ensure compliance with the Solvency Capital Requirement.

(5) The Agency may, at the request of the insurance undertaking, extend the period referred to in paragraph 4 of this Article by three months in order to ensure compliance with the Solvency Capital Requirement.

(6) If one or more insurance undertakings do not comply with the Solvency Capital Requirement due to an exceptional adverse situation affecting one or more insurance undertakings representing a significant share of the market or of the affected lines of insurance business, the Agency may request EIOPA to issue a decision, pursuant to Article 18 of Regulation (EU) No 1094/2010, declaring the existence of an exceptional adverse situation.

(7) If EIOPA issues a decision declaring the existence of an exceptional adverse situation, the Agency may, *ex officio*, in accordance with Regulation (EU) No 2015/35 and other European Commission legislation governing the recovery plan and finance scheme, issue a decision extending, for the affected undertakings, the period set out in paragraph 5 of this Article to a maximum period of seven years, taking into account all relevant factors including the average duration of liabilities for which technical provisions were established.

(8) An exceptional adverse situation exists where the financial situation of one or more insurance undertakings representing a significant share of the market or of the affected lines of insurance business are seriously or adversely affected by one or more of the following conditions:

1. a fall in financial markets which is unforeseen, sharp and steep;
2. a persistent low interest rate environment;
3. a high-impact catastrophic event.

(9) If the Agency issues a decision on the extension of the period referred to in paragraph 7 of this Article, the insurance undertaking concerned shall, on a quarterly basis, submit a progress report to the Agency setting out the measures taken and the progress made to re-establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile to ensure compliance with the Solvency Capital Requirement.

(10) If the Agency finds, on the basis of the progress report, that there was no significant progress in achieving the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of the risk profile to ensure compliance with

the Solvency Capital Requirement, the Agency shall withdraw its decision on the extension of the period referred to in paragraph 7 of this Article.

(11) When the Agency considers that an exceptional adverse situation has ceased to exist, it shall inform EIOPA thereof.

(12) In exceptional circumstances, where the Agency considers that the financial situation of the insurance undertaking concerned will deteriorate further, it may restrict or prohibit the free disposal of the assets of that undertaking. The Agency shall inform the supervisory authorities of the Member State in which the insurance undertaking performs the insurance business either directly or through a branch of any measures it has taken, and those authorities shall, at the request of the Agency, take the same measures. The Agency shall designate the assets to be covered by such measures.

Non-Compliance with the Minimum Capital Requirement

Article 166

(1) The insurance undertaking shall without delay inform the Agency where it observes that the Minimum Capital Requirement is no longer complied with, or where there is a risk of non-compliance in the following three months.

(2) In the case of the non-compliance referred to in paragraph 1 of this Article, the management board of the insurance undertaking shall without delay take measures to achieve the necessary level of capital and shall prepare a proposal for measures for which other competent authorities of that insurance undertaking shall be responsible.

(3) Within one month from observation of the non-compliance with the Minimum Capital Requirement, the insurance undertaking shall submit, for approval by the Agency, a short-term realistic finance scheme.

(4) The insurance undertaking shall take the necessary measures to remedy the non-compliance referred to in paragraph 1 of this Article, within three months from observation of the non-compliance with the Minimum Capital Requirement, in such a way as to:

- increase the level of eligible basic own funds to the level of the Minimum Capital Requirement, or
- reduce its risk profile to ensure compliance with the Minimum Capital Requirement.

(5) The Agency may restrict or prohibit the free disposal of the assets of the insurance undertaking. The Agency shall inform the supervisory authorities of the Member State in which the insurance undertaking performs the insurance business either directly or through a branch of any measures it has taken, and those authorities shall, at the request of the Agency, take the same measures. The Agency shall designate the assets to be covered by such measures.

Recovery Plan and Finance Scheme

Article 167

(1) The recovery plan referred to in Article 165, paragraph 3 of this Act and the finance scheme referred to in 166, paragraph 3 of this Act shall, at least include particulars or evidence concerning the following:

1. estimates of management expenses, in particular current general expenses and commissions;
2. estimates of income and expenditure in respect of direct insurance business, reinsurance acceptances and reinsurance cessions;
3. forecast statements of the financial position for solvency purposes;
4. estimates of the financial resources intended to cover the technical provisions and the Solvency Capital Requirement and the Minimum Capital Requirement;
5. a forecast report on the financial position and statement on comprehensive income;
6. the overall reinsurance policy.

(2) In the period in which the measures referred to in Articles 164 and 165 of this Act are implemented, the Agency shall refrain from issuing to the insurance undertaking a decision authorising the transfer of portfolio for as long as it considers that the rights of the policy holders, or the contractual obligations of the reinsurance undertaking are threatened.

TITLE XI

PUBLIC DISCLOSURE

Content of the Report on Solvency and Financial Condition

Article 168

(1) Each year, the insurance undertaking shall prepare and publish on its website a report on solvency and financial condition in accordance with information referred to in paragraph 4 and the principles referred to in Article 215, paragraph 5 of this Act and Regulation (EU) No 2015/35.

(2) The report on solvency and financial condition shall contain the following information:

1. a description of the business and the performance of the undertaking;
2. a description of the system of governance and an assessment of its adequacy for the risk profile of the undertaking;
3. a description, separately for each category of risk, of the risk exposure, concentration, mitigation and sensitivity;
4. a description, separately for assets, technical provisions, and other liabilities, of the bases and methods used for their valuation for solvency purposes, together with an explanation of any major differences in the bases and methods used for their valuation in the accounts

5. a description of the capital management, including at least the following:

- the structure and amount of own funds, and their quality,
- the amounts of the Solvency Capital Requirement and of the Minimum Capital Requirement,
- information allowing a proper understanding of the main differences between the underlying assumptions of the standard formula and those of the internal model used by the undertaking for the calculation of its Solvency Capital Requirement,
- the amount of any non-compliance with the Minimum Capital Requirement or any significant non-compliance with the Solvency Capital Requirement during the reporting period, even if subsequently resolved, with an explanation of its origin and consequences as well as any remedial measures taken.

(3) Where the matching adjustment referred to in Article 111 of this Act is applied, the description of assets, technical provisions and other liabilities referred to in paragraph 2, subparagraph 4 of this Article shall include a description of the matching adjustment and of the portfolio of obligations and assigned assets to which the matching adjustment is applied, as well as a quantification of the impact of a change to zero of the matching adjustment on the insurance undertaking's financial position.

(4) The description of assets, technical provisions and other liabilities referred to in paragraph 2, subparagraph 4 of this Article shall also include a statement on whether the volatility adjustment referred to in Article 113 of this Act is used by the insurance undertaking and a quantification of the impact of a change to zero of the volatility adjustment on the insurance undertaking's financial position.

(5) The description of the structure, amount and quality of own funds referred to in paragraph 2, subparagraph 5, first indent of this Article shall include an analysis of any significant changes as compared to the previous reporting period and an explanation of any major differences in relation to the value of such elements in the accounts for solvency purposes, and a brief description of the capital transferability.

(6) The disclosure of the Solvency Capital Requirement referred to in paragraph 2, subparagraph 5, second indent of this Article shall show separately the amount of the Solvency Capital Requirement calculated using the standard formula or an internal model in accordance with the provisions of this Act and any capital add-on imposed in accordance with Article 239 of this Act or the impact of other specific parameters the insurance undertaking is required to use in accordance with Article 141 of this Act, together with concise information on its justification by the Agency.

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

Applicable Principles

(1) The Agency may, at the request of the insurance undertaking, permit the insurance undertaking not to disclose all or a part of the information concerning the report on solvency and financial condition where:

1. by disclosing such information, the competitors of the undertaking would gain significant undue advantage;

2. there are obligations to policy holders or other counterparty relationships binding the insurance undertaking to secrecy or confidentiality.

(2) In its report on solvency and financial condition, the insurance undertaking shall make a statement on the non-disclosure of information in accordance with paragraph 1 of this Article and shall state the reasons for such non-disclosure.

(3) The provisions of paragraphs 1 and 2 of this Article shall not apply to the information referred to in Article 168, paragraph 2, subparagraph 5 of this Act.

(4) The Agency shall permit insurance undertakings to make use of, or refer to, public disclosures made under other legal or regulatory requirements, to the extent that those disclosures are equivalent to the information required under Article 168 of this Act in both their nature and scope.

Updates and Additional Voluntary Information

Article 170

(1) In the event of any major development affecting significantly the relevance of the information disclosed in accordance with the provisions of Articles 168 and 169 of this Act, the insurance undertaking shall disclose appropriate information on the nature and effects of that major development.

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

1. non-compliance with the Minimum Capital Requirement is observed and the Agency either considers that the insurance undertaking will not be able to submit a realistic short-term finance scheme or does not obtain such a scheme within one month of the date when non-compliance was observed;

2. significant non-compliance with the Solvency Capital Requirement is observed and the Agency does not obtain a realistic recovery plan within two months of the date when non-compliance was observed.

(3) The Agency shall require the insurance undertaking, in the case of non-compliance:

1. referred to in paragraph 2 of this Article, to disclose immediately the amount of non-compliance, together with an explanation of its origin and consequences, including any remedial measure taken;

2. with the Minimum Capital Requirement referred to in paragraph 2, subparagraph 1 of this Article, where in spite of a short-term finance scheme initially considered to be realistic, the non-compliance has not been resolved three months after its observation, to disclose this non-compliance at the end of that period, together with an explanation of its origin and consequences, including any remedial measures taken as well as any further remedial measures planned

3. with the Solvency Capital Requirement referred to in paragraph 2, subparagraph 2 of this Article, where in spite of the recovery plan initially considered to be realistic, a significant non-compliance has not been resolved six months after its observation, to disclose this non-compliance at the end of that period, together with an explanation of its origin and consequences, including any remedial measures taken as well as any further remedial measures planned.

(4) The insurance undertaking may disclose, on a voluntary basis, any information or explanation related to its solvency and financial condition which is not required to be disclosed in accordance with paragraphs 1 – 3 of this Article and Articles 168 and 169 of this Act.

Appropriate System for Public Disclosure Purposes

Article 171

(1) The insurance undertaking shall have appropriate systems and structures in place to fulfil the requirements laid down in Articles 168 and 169 and Article 170, paragraphs 1 – 3 of this Act, as well as written policy ensuring the ongoing appropriateness of any information disclosed in accordance with Articles 168 – 170 of this Act.

(2) The solvency and financial condition report shall be subject to approval granted by the management body with the consent of the supervisory board, and shall be published after that approval.

TITLE XII

ACCOUNTING TECHNICAL PROVISIONS, ASSETS COVERING ACCOUNTING TECHNICAL PROVISIONS, AND CERTIFIED ACTUARY

CHAPTER I

ACCOUNTING TECHNICAL PROVISIONS

Definition

Article 172

Accounting technical provisions means technical provisions established for the purposes of financial reporting in accordance with this Act and other legislation.

General Provisions

Article 173

(1) The insurance undertaking shall establish adequate accounting technical provisions in respect of all its insurance or reinsurance business to cover its obligations under insurance or reinsurance contracts and any losses due to risks arising from its insurance or reinsurance business.

(2) The insurance undertaking shall establish the following types of accounting technical provisions, depending on the type of the insurance or reinsurance business it performs:

1. provisions for unearned premiums;
2. provisions for bonuses and rebates;
3. provisions for claims outstanding;
4. mathematical provisions;
5. special provisions;
6. equalisation provisions;
7. other accounting technical provisions.

(3) The insurance undertaking shall establish equalisation provisions if it performs the insurance business referred to in Article 7, paragraph 2, subparagraph 14 of this Act.

(4) Mathematical provisions shall be established by insurance undertakings that pursue the life insurance business or the insurance business where premiums are accumulated in the form of savings or assets used to cover risks in later years of insurance of long-term nature, subject to similar probability tables and calculations to that of life insurance.

(5) The insurance undertaking pursuing life insurance business where the investment risk is borne by policy holders shall also establish special provisions to meet liabilities arising out of insurance contracts where the investment risk is borne by the policy holders, which are directly linked to the value of investment.

(6) The Agency shall issue an ordinance laying down the criteria and method for the calculation of accounting technical provisions.

Provisions for Unearned Premiums

Article 174

For each insurance contract, the provision for unearned premiums shall be established in the amount of the portion of the premium written that relates to the insurance cover for the insurance period following the account period in respect of which the provision is calculated.

Provisions for Bonuses and Rebates

Article 175

Provisions for bonuses and rebates shall be established in the amount of payments to which insured persons, policy holders or beneficiaries are entitled to receive on the basis of their right to:

1. participate in profits arising from their insurance or other rights on the basis of the insurance contract (bonuses), unless a mathematical provision is established in respect of such insurances;
2. a reduction of future premiums (bonuses)
3. a partial refund of premiums for the unused insurance period on account of an early termination of the insurance contract (cancellation).

Provisions for Claims Outstanding

Article 176

(1) Provisions for claims outstanding shall be established in the amount of the estimated liabilities that the insurance undertaking is obliged to settle under those insurance contracts where the insured event occurred before the end of the accounting period, including any expenses payable by the insurance undertaking under these insurance contracts.

(2) In addition to estimated liabilities in respect of claims which have been reported but have not yet been settled, the provision for claims outstanding shall also comprise estimated liabilities in respect of claims arising from events which have occurred but have not yet been reported.

Mathematical Provisions

Article 177

(1) Mathematical provisions shall be established in the amount of the present value of estimated future liabilities of the insurance undertaking under the concluded insurance contracts after deduction of the present estimated value of future premiums payable under such insurance contracts.

(2) Mathematical provisions shall be calculated by an adequate actuarial valuation, taking account of all future liabilities of the insurance undertaking under individual insurance contracts, including:

1. guaranteed benefits;
2. bonuses, regardless of how they are described;
3. other options available under the insurance contract;
4. expenses, including commissions.

(3) When choosing an actuarial valuation method, the insurance undertaking shall duly take into account the methods applied for the valuation of assets covering mathematical provisions.

(4) The insurance undertaking shall calculate mathematical provisions separately for each insurance contract. The use of appropriate approximations or generalisations shall only be permitted if they are likely to give approximately the same result as individual calculations.

(5) When the policy holder is entitled, under the insurance contract, to payment of a surrender value, the mathematical provisions established in respect of that contract shall not be lower than the surrender value.

(6) If life insurance contracts where the investment risk is borne by the policy holders include a guarantee of investment performance or other benefits payable to the policy holders or beneficiaries, the insurance undertaking shall establish mathematical provisions to cover guaranteed benefits in respect of those contracts.

Equalisation Provisions

Article 178

(1) The equalisation provisions are intended to equalise fluctuations in occurrence of loss events.

(2) The insurance undertaking may establish equalisation provisions in those lines of insurance in respect of which significant deviations from customary amounts of claims on an annual basis can be expected on the basis of statistical data.

(3) The equalisation provisions shall be established on the basis of a deviation of the claim ratios for the accounting period from the average claim ratio for the reference period.

Other Accounting Technical Provisions

Article 179

The insurance undertaking shall establish other accounting technical provisions with regard to the expected future liabilities and the risks of large claims arising from contracts of insurance or reinsurance against liability in respect of nuclear risks, manufacturer's liability in respect of pharmaceutical products, earthquake insurance, flood insurance, and other liabilities and risks in respect of which it does not establish the provisions referred to in Article 173, paragraph 2, subparagraphs 1 – 6 of this Act.

CHAPTER II

ASSETS HELD TO COVER ACCOUNTING TECHNICAL PROVISIONS

SECTION I

GENERAL PROVISIONS

Assets Held to Cover Accounting Technical Provisions

Article 180

(1) Assets held to cover accounting technical provisions are those assets of the insurance undertaking that are held for the purpose of meeting liabilities under the policies written by the insurance undertaking and covering any losses due to the risks arising from the insurance business performed by the insurance undertaking in respect of which the insurance undertaking is obliged to establish accounting technical provisions.

(2) Assets held to cover mathematical provisions are the assets held for the purpose of meeting liabilities under life insurance contracts and other insurance contracts which are subject to probability tables and calculations similar to those applied for life insurance in respect of which the insurance undertaking is obliged to establish mathematical provisions.

(3) The value of the assets held to cover mathematical provisions shall be at all times at least equal to the amount of the accounting technical provisions held for the purpose of meeting liabilities under life insurance contracts and other insurance contracts which are subject to probability tables and calculations similar to those applied for life insurance in respect of which the insurance undertaking is obliged to establish mathematical provisions.

(4) The value of the assets held to cover accounting technical provisions, other than mathematical provisions, held for the purpose of meeting liabilities under insurance contracts for which the insurance undertaking is obliged to establish accounting technical provisions, other than mathematical provisions, shall be at all times at least equal to the value of those technical provisions.

(5) The value of the assets referred to in paragraphs 3 and 4 of this Article shall be determined in accordance with accounting rules.

(6) Where an asset held to cover accounting technical provisions which is entered in the register referred to in Article 181 of this Act is subject to a right *in rem* in favour of a creditor or a third party, with the result that part of the value of the asset is not available for the purpose of covering commitments, the insurance undertaking shall record that fact in the register, and the amount not available shall not be included in the total value of the assets covering technical provisions.

(7) Execution on assets held to cover accounting technical provisions shall not be permitted, unless execution is carried out to satisfy the insured person's claims under the insurance contract in respect of which these assets were established or is carried out in favour of a creditor or a third party that has rights *in rem* on these assets.

(8) Execution on assets covering mathematical provisions shall be limited to that portion of the assets covering mathematical provisions whose value:

1. is in the same ratio to the accounting technical provisions intended to cover the liabilities for which the insurance undertaking is obliged to establish mathematical provisions in respect of the insurance contract giving rise to the claim, as is the ratio between the total value of the assets covering mathematical provisions and accounting technical provisions intended to

cover all the liabilities of the insurance undertaking in respect of which the undertaking is obliged to establish mathematical provisions, and

2. does not exceed the accounting technical provisions intended to cover the liabilities for which the insurance undertaking is obliged to establish mathematical provisions in respect of the insurance contract giving rise to the claim.

Register of Assets Held to Cover the Accounting Technical Provisions

Article 181

(1) The insurance undertaking shall keep a special register of the assets held to cover the accounting technical provisions.

(2) The insurance undertaking shall, depending on the insurance business it carries on, keep separate registers for the assets held to cover mathematical provisions referred to in Article 180, paragraph 3 of this Act and for the assets covering technical provisions, other than mathematical provisions, referred to in Article 180, paragraph 4 of this Act.

(3) The Agency shall issue an ordinance laying down detailed rules concerning the content of the register of assets and the scope, method and timing of reporting.

SECTION II

SPECIAL PROVISIONS CONCERNING THE ASSETS HELD TO COVER MATHEMATICAL PROVISIONS

Separating the Assets Held to Cover Mathematical Provisions from Other Assets of the Insurance Undertaking

Article 182

The insurance undertaking shall separate the assets held to cover mathematical provisions referred to in Article 180, paragraph 3 of this Act from its other assets in the manner stipulated in Articles 183 – 185 of this Act.

Account of the Assets Held to Cover Mathematical Provisions

Article 183

The insurance undertaking shall open an account with a credit institution authorised to carry out payment operations, which shall be only used to receive and make payments in transactions involving the assets held to cover the mathematical provisions, and the funds held on this account may neither be subject to execution or security, nor may they form a part of the assets or the bankruptcy or liquidation estate of this credit institution or the bankruptcy or liquidation estate of the insurance undertaking.

Separating Investments in Securities

Article 184

(1) The insurance undertaking shall ensure that the central depository and clearing company opens a separate securities account containing information about securities forming part of the assets covering mathematical provisions.

(2) The insurance undertaking may entrust the safekeeping and administration of financial instruments to a credit institution authorised for providing the services of safekeeping and administration of financial instruments in accordance with the legislation governing the capital market, and it shall ensure that the assets covering mathematical provisions are recorded in a separate custodial account.

(3) The insurance undertaking shall entrust the safekeeping and administration of paper-form securities not admitted to trading on a regulated market to a credit institution authorised for providing the services of safekeeping and administration of financial instruments in accordance with the legislation governing the capital market.

(4) The credit institution referred to in paragraphs 2 and 3 of this Article shall provide the Agency, at the Agency's request, with information about the financial instruments that have been entrusted to it for safekeeping and administration.

Investment of Assets Held to Cover Mathematical Provisions in Deposits and Loans

Article 185

(1) When assets held to cover mathematical provisions are invested in deposits with a credit institution or in loans to borrowers, the insurance undertaking shall conclude a contract with the credit institution or the borrower clearly showing that it relates to the assets covering mathematical provisions.

(2) If the loan referred to in paragraph 1 of this Article is secured by the credit institution guarantee or by securities or in some other manner, the insurance undertaking shall ensure that the collateral is booked in favour of the assets covering mathematical provisions.

CHAPTER III

CERTIFIED ACTUARY

Certified Actuary

Article 186

(1) A certified actuary is a person to whom the Agency has issued an authorisation to perform the duties of a certified actuary. Exceptionally, a person authorised by the minister of finance to perform the duties of a certified actuary shall be deemed to have an authorisation to perform the duties of a certified actuary issued in accordance with this Act.

(2) The Agency shall issue an authorisation to perform the duties of a certified actuary to a person who meets the following requirements:

1. they have good command of the Croatian language;
 2. expertise, i.e. they have successfully passed an examination testing the technical knowledge required for the performance of the duties of a certified actuary in accordance with the training programme of international or European actuarial associations;
 3. adequacy, i.e. they have a good reputation, legal capacity and at least three years of work experience in carrying out actuarial tasks;
 4. they have not been convicted for criminal offences pursuant to the Criminal Code (Official Gazette 125/11 and 144/12), namely:
 - Title XXIII – criminal offences against property (other than a criminal offence involving unauthorised use of other persons' movable property and a criminal offence involving damage to other persons' property) for which criminal proceedings are instituted *ex officio*;
 - Title XXIV – criminal offences against the economy
 - Title XXVI – criminal offences of forgery
 - criminal offences from the Criminal Code (Official Gazette 110/97, 27/98, 50/00, 129/00, 51/01, 111/03, 190/03 – Decision of the Constitutional Court of the Republic of Croatia, 105/04, 84/05, 71/06, 110/07, 152/08, 57/11 and 143/12), as follows:
 - Title XVII – criminal offences against property (other than a criminal offence involving alienation of other persons' movable property and a criminal offence involving the destruction and damage of other persons' property), for which criminal proceedings are instituted *ex officio*;
 - Title XXI – criminal offences against the safety of payment and business operations
 - Title XXIII – criminal offences against authenticity of documents
 5. they have not been convicted, on the basis of a judgement with final force and effect, of criminal offences under regulations of other Member States or third countries whose description corresponds to criminal offences referred to in subparagraph 4 of this Article;
 6. they have no past record of a revoked authorisation to perform the duties of a certified actuary.
- (3) The Agency may conclude an agreement with the competent supervisory authorities of another Member State concerning mutual recognition of authorisations to perform the duties of a certified actuary.
- (4) The Agency shall lay down the requirements for professional training and examination of technical knowledge needed for the performance of the duties of a certified actuary.
- (5) The Agency shall withdraw or revoke the decision granting authorisation to perform the duties of a certified actuary if:

1. the authorisation was obtained by providing false information;
 2. the certified actuary commits a serious violation of the rules of the actuarial profession;
 3. the certified actuary no longer fulfils the requirements set out in paragraph 2, subparagraphs 3 – 5 of this Article.
- (6) The insurance undertaking in which the duties of an appointed certified actuary are performed by the person whose authorisation to perform the duties of a certified actuary has been withdrawn shall be informed by the Agency about the withdrawal or revocation of the decision granting authorisation to perform the duties of a certified actuary.
- (7) By way of derogation from paragraph 5 of this Article, if a certified actuary commits a serious violation of the rules of actuarial profession the Agency may temporarily prohibit them from performing the duties of a certified actuary for a period of one to three years.

Appointment of the Certified Actuary

Article 187

- (1) Prior to commencing its insurance or reinsurance business, the insurance undertaking shall appoint a certified actuary and enable them to carry out the duties referred to in Article 188 of this Act.
- (2) The appointed certified actuary shall not be a person holding in the insurance undertaking the position of a member of the management board, member of the supervisory board, or an executive director or procurator, or the person who has a direct or indirect holding in the insurance undertaking in excess of 1 %.
- (3) The insurance undertaking shall notify the Agency of the appointment of a certified actuary within eight days.
- (4) If the insurance undertaking fails to designate an appointed certified actuary within two months or designates a person who is not a certified actuary to perform the duties of an appointed certified actuary, an appointed certified actuary shall be designated by the Agency.

Duties of the Appointed Certified Actuary

Article 188

- (1) When verifying whether the calculation of accounting technical provisions is correct, the appointed certified actuary shall:
1. check whether the insurance undertaking keeps the relevant data for the calculation of accounting technical provisions, as well as their credibility;
 2. check whether the methods and bases for the calculation of accounting technical provisions are in accordance with the rules of the actuarial profession and the legislation in force;

3. check whether accounting technical provisions are established in such a manner as to enable the insurance undertaking to meet all its obligations under insurance or reinsurance contracts on an ongoing basis.

(2) The appointed certified actuary shall verify whether premiums are formed in accordance with the actuarial profession and the legislation in force and whether the contractual premiums are such as to enable the insurance undertaking to meet all its obligations under insurance or reinsurance contracts on an ongoing basis.

(3) The management board shall ensure that conditions are in place to enable the appointed certified actuary to efficiently perform their duties, and shall provide them with all the data needed for the performance of the duties referred to in paragraphs 1 and 2 of this Article.

(4) The appointed certified actuary shall present to the supervisory and management boards, together with the opinion enclosed with the annual report referred to in Article 193 of this Act, a report on the findings with regard to the supervision they performed in the preceding business year pursuant to paragraphs 1 and 2 of this Article. The report shall primarily cover the reasons for issue of an unqualified opinion, a qualified opinion or an adverse opinion of the appointed certified actuary that is enclosed with the annual report.

(5) If, in the course of the duties referred to in paragraphs 1 and 2 of this Article, the appointed certified actuary finds irregularities, they shall without delay inform thereof the management board of the insurance undertaking.

(6) The management board of the insurance undertaking shall take measures to bring the business operations into line with the report of the appointed certified actuary.

(7) If the management board of the insurance undertaking fails to take measures in accordance with the report referred to in paragraph 4 of this Article, the appointed certified actuary shall inform thereof the Agency without delay and not later than 30 days after having given a written recommendation to the management board of the insurance undertaking.

(8) If the appointed certified actuary ceases to perform that function at the insurance undertaking, they shall inform the Agency within eight days thereof.

Dismissal of the Appointed Certified Actuary

Article 189

(1) If, following appointment of the certified actuary, the Agency withdraws from the appointed person the authorisation to perform the duties of the certified actuary, or if the circumstances referred to in Article 187, paragraph 2 of this Act or other circumstances giving rise to the fact that the insurance undertaking does not have an appointed certified actuary occur, the insurance undertaking shall designate another appointed certified actuary within 30 days of the date of enforceability of a decision withdrawing from the appointed person the authorisation to perform the duties of the certified actuary or of the moment when the insurance undertaking becomes aware that the circumstances referred to in Article 187 of this Act, or other circumstances have occurred due to which the insurance undertaking does not have an appointed certified actuary.

(2) If, in the case referred to in paragraph 1 of this Article, the insurance undertaking fails to designate a new appointed certified actuary, the Agency shall require that illegalities and irregularities be removed within a period of not less than 30 days.

(3) If, in the case referred to in paragraph 2 of this Article, the insurance undertaking fails to designate a new appointed certified actuary, the appointed certified actuary shall be designated by the Agency.

(4) Where the appointed certified actuary is dismissed, the insurance undertaking shall inform thereof the Agency within eight days of the date of dismissal.

TITLE XIII

ACCOUNTS, AUDITING AND REPORTING TO THE AGENCY

CHAPTER I

BUSINESS BOOKS AND ACCOUNTS

Application of Other Regulations and Standards

Article 190

(1) The insurance undertaking shall keep business books and other business documents and records, value assets and liabilities, and draw up and publish annual accounts and annual reports in accordance with the Companies Act, the Accounting Act, this Act and other valid regulations and professional standards.

(2) The insurance undertaking shall keep business books and other business documents and records in such a manner as to enable, at any time, examination of whether the insurance undertaking operates in accordance with valid regulations and professional standards.

Regulations Concerning Reports

Article 191

The Agency shall adopt an ordinance prescribing the following in more detail:

1. the form and content of accounts and other reports that the insurance undertaking is required to prepare for the needs of the Agency, and the manner and timing of their submission to the Agency;

2. the form and content of an annual report and a consolidated annual report, and the periods for their publication and submission to the Agency.

Submission of Reports to the Agency and Their Publication

Article 192

(1) Within 15 days of receipt of an audit report, but not later than four months after the expiry of the business year to which the annual accounts refer, the insurance undertaking shall submit to the Agency the following reports:

1. the audit report on the annual accounts referred to in Article 194 of this Act, accompanied by these accounts, and

2. the annual report and the consolidated annual report in accordance with the legislation governing the content of these reports.

(2) For the purposes of paragraph 1 of this Article, the business year shall be the calendar year.

(3) The insurance undertaking shall publish on its website and make publicly available its audited nonconsolidated separate accounts, together with its annual report, not later than five months after the end of the business year to which they relate.

(4) The parent insurance undertaking shall publish its audited consolidated annual accounts and a consolidated annual report for a group determined in accordance with the Accounting Act, in the manner and within the time limit specified in paragraph 3 of this Article.

(5) The insurance undertaking branch from another Member State, or a third-country insurance undertaking branch shall publish on its website, in the Croatian language, the audited annual accounts and audited consolidated annual accounts of the undertaking that established the branch, as well as an annual report of the undertaking that established the branch, including an audit report, not later than 15 days from the expiry of the period set for the publication of these statements and reports in the country where the undertaking that established the branch has its registered head office.

(6) The reports referred to in paragraph 5 of this Article shall be drawn up and audited in accordance with the laws of the country where the undertaking establishing the branch has its registered head office.

(7) The insurance undertaking, the parent insurance undertaking, the insurance undertaking branch from another Member State and a third-country insurance undertaking branch shall have published on its website the annual accounts referred to in paragraphs 3 –5 of this Article in respect of at least the last five business years, or in respect of a shorter period if the insurance undertaking, the parent insurance undertaking, the insurance undertaking branch from another Member State or the third-country insurance undertaking branch operates less than five years.

Opinion of the Appointed Certified Actuary Accompanying the Annual Report

Article 193

The insurance undertaking shall, within the period specified in Article 192, paragraph 1 of this Act, also submit to the Agency a report of the appointed certified actuary referred to in Article 188, paragraph 4 of this Act, together with an opinion of the appointed certified actuary on the establishment and adequacy of premiums and accounting technical provisions in accordance with the provisions of this Act and regulations adopted under this Act.

CHAPTER II

EXTERNAL AUDIT

Auditing Obligation

Article 194

(1) The annual accounts of the insurance undertaking, the consolidated annual accounts of the insurance group in the Republic of Croatia, the consolidated accounts of the insurance holding company and of a mixed-activity insurance holding company, and consolidated annual accounts of the entire group where members of the group are also non-financial institutions, shall be audited for each business year.

(2) The audit referred to in paragraph 1 of this Article shall be carried out in accordance with the laws governing accounting and auditing activities, unless otherwise provided for in this Act and regulations made under it.

Appointment of the Audit Firm

Article 195

(1) At the general meeting of the insurance undertaking, an audit firm shall be appointed to audit the accounts for the business year in respect of which the audit shall be carried out, and such appointment shall occur not later than 30 September of the business year in question.

(2) The management board of the insurance undertaking shall submit to the Agency a decision appointing an audit firm within eight days of the adoption of the decision.

(3) The audit firm shall, by 31 October of the current year, submit to the Agency an audit plan for the business year in question for each insurance undertaking which has entrusted it with the carrying out of audit, indicating the areas of operation which shall be subjected to audit, a description of the content of the audits planned by individual area, as well as the envisaged duration of the audits.

Restrictions Concerning the Auditing

Article 196

(1) The audit firm may audit the accounts of a particular insurance undertaking no more than seven consecutive years.

(2) The audit of the accounts of the insurance undertaking shall be carried out by two or more natural persons employed with the audit firm and certified for carrying out audits (hereinafter: certified auditors).

(3) The audit firm may neither carry out nor be entrusted by the insurance undertaking with auditing the accounts of the insurance undertaking if in the preceding year the audit firm in question derived more than half of its total income from auditing the accounts of that

insurance undertaking or the insurance group of which that insurance undertaking is a member.

(4) The audit of the accounts and the audit for the purposes of the Agency shall be carried out by the same audit firm, unless otherwise provided for in this Act or regulations adopted under this Act.

Protection of Auditor Independence

Article 197

(1) In the event of terminating the contract on the audit of the accounts of the insurance undertaking, the insurance undertaking concerned or the audit firm shall provide to the Agency a written explanation of the reasons for termination.

(2) The audit firm may not carry out an audit of the accounts of the insurance undertaking if, in the year to which these statements relate, it provided services to the insurance undertaking in question in the field of finance, accounting, internal audit, valuation of the insurance undertaking, its assets and liabilities, tax-related and other business consulting services or expert opinion services.

(3) The prohibition of the provision of audit services referred to in paragraph 2 of this Article shall refer to all undertakings connected with the insurance undertaking or audit firm in question.

Obligations of the Audit Firm

Article 198

(1) Following the audit, the audit firm shall prepare a letter of recommendations to the management board and shall deliver it to the management board of the insurance undertaking and to the Agency.

(2) The audit firm shall notify the Agency in writing and without delay of any facts, or decisions of which it became aware while carrying out the audit, which could:

1. result in a serious breach of the acts, regulations or provisions based on which an authorisation to pursue the insurance business has been granted to the insurance undertaking;
2. jeopardise further operations of the insurance undertaking;
3. result in a qualified opinion, an adverse opinion or a disclaimer of opinion on the accounts;
4. lead to non-compliance with the Solvency Capital Requirement;
5. lead to non-compliance with the Minimum Capital Requirement.

(3) The audit firm shall notify the Agency in writing of any of the facts referred to in paragraph 2 of this Article of which it becomes aware in the course of the audit of the accounts of the undertaking controlled by the insurance undertaking.

(4) The disclosure by the audit firm of any fact within the meaning of paragraphs 2 and 3 of this Article shall not constitute a breach of legislation or of the provisions of the contract between the audit firm and the insurance undertaking concerning the restriction of disclosure of information and shall not involve the audit firm in liability of any kind which would normally be incurred in other cases.

Refusal of the Audit Report

Article 199

(1) Where the audit firm carries out an audit of the accounts of the insurance undertaking contrary to Article 196 or 197 of this Act, the Agency shall not accept the report on the audit of the accounts of the insurance undertaking for that year.

(2) If the Agency establishes that the audit of the accounts has not been carried out or that the audit report has not been prepared in accordance with this Act, the regulations adopted under this Act, the act governing the auditing activities and the rules of the auditing profession, or if it establishes, on the basis of supervision of the operations of the insurance undertaking or otherwise, that the audit opinion on the accounts of the insurance undertaking referred to in Article 194 of this Act is not based on true and objective facts, it may refuse the audit report and require the insurance undertaking to have the audit carried out by certified auditors from another audit firm at the expense of the insurance undertaking.

(3) The refusal of the audit report on the accounts of the insurance undertaking shall result in the refusal of the assessment referred to in Article 200 of this Act.

(4) In the case referred to in paragraph 3 of this Article, the Agency shall not accept, in the next two years, audit reports on the accounts from the audit firm in question.

(5) The Agency shall issue an ordinance specifying the reasons for which an audit report may be refused as referred to in paragraph 2 of this Article.

Audit for Agency Purposes

Article 200

(1) For Agency purposes, the audit firm shall give its assessment of:

1. the level of, and changes in, accounting technical provisions;
2. the level and structure of investments of assets covering accounting technical provisions;
3. the compliance with risk management rules;
4. the operations of the key functions;
5. the state of the information system and the adequacy of information system management;
6. the regularity, accuracy and completeness of the reports submitted to the Agency;

7. the accuracy and completeness of reports on solvency and financial condition referred to in Article 168 of this Act.

(2) The assessment referred to in paragraph 1 of this Article shall be descriptive and range from completely satisfactory to completely unsatisfactory (completely satisfactory, satisfactory, unsatisfactory, and completely unsatisfactory).

(3) The Agency may require the audit firm to provide additional information concerning the audit carried out.

(4) If the Agency establishes that the assessment has not been made in accordance with this Act, the regulations adopted under this Act, the act governing the auditing activities and the rules of the auditing profession, or if it establishes, on the basis of supervision of the operations of the insurance undertaking or otherwise, that the assessment is not based on true and objective facts, it may:

1. require the auditor to correct or supplement the assessment; or

2. refuse the assessment and require the insurance undertaking to obtain another assessment from certified auditors from another audit firm at the expense of the insurance undertaking.

(5) The refusal of the assessment referred to in paragraph 1 of this Article shall not result in the refusal of the audit report on the accounts of the insurance undertaking for that year if the audit report on the accounts has been accepted by the Agency.

(6) The Agency shall issue an ordinance further specifying the content of the audit performed for the purposes of the Agency, the method and the periods for giving the assessment and the reasons for refusing the assessment referred to in paragraph 1 of this Article.

CHAPTER III

REPORTING TO THE AGENCY

Regular Reporting and Reporting at the Request of the Agency

Article 201

(1) The insurance undertaking shall report to the Agency on the following facts and circumstances:

1. registration of and changes in the information registered in the court register;

2. convening of the general meeting and all the decisions adopted by the general meeting;

3. shareholders of the insurance undertaking and acquisition of or changes in the qualifying holdings referred to in Article 36 of this Act, at least once a year;

4. appointment and dismissal of members of the management and supervisory boards;

5. appointment and dismissal of persons holding key functions in the insurance undertaking;

6. planned opening, relocation, closing or temporary cessation of operations of a branch or representative office, or changes in the types of operations performed by a branch;
7. investments on the basis of which the insurance undertaking has acquired, directly or indirectly, a qualifying holding in another legal person, and on any further investment in that legal person;
8. significant changes in the capital structure;
9. discontinuation of certain insurance business;
10. results of each own risk and solvency assessment as part of the information reported to the Agency under Articles 215 – 217 of this Act;
11. complaints by policy holders, insured persons or beneficiaries under insurance contracts;
12. statistical data referred to in Article 202 of this Act.

(2) The insurance undertaking performing the life insurance business, or other types of insurance business that are subject to probability tables and calculations similar to those applied for life insurance in respect of which the insurance undertaking shall establish mathematical provisions, shall inform the Agency of the technical bases used for calculating the scales of premiums, for the sole purpose of verifying compliance with the actuarial principles.

(3) The management body of the insurance undertaking shall, without delay, notify the Agency of the following events:

1. when the undertaking's liquidity is jeopardised;
2. when it observes that the insurance undertaking no longer complies with the Solvency Capital Requirement or with the Minimum Capital Requirement, or where there is a risk of non-compliance in the following three months;
3. when reasons arise for terminating or revoking authorisation to pursue the insurance business.

(4) The insurance undertaking shall submit, at the request of the Agency, reports and information on all matters relevant to the exercise of competence and performance of tasks by the Agency pursuant to this Act or the act governing the establishment and operation of the Agency and regulations adopted under these acts.

(5) In addition to the reports and information referred to in paragraph 4 of this Article, the insurance undertaking shall submit, at the request of the Agency, the terms and conditions of insurance and other documents, for the sole purpose of verifying compliance with the provisions of this Act and other regulations governing the insurance contracts.

(6) The Agency shall issue an ordinance laying down detailed rules concerning the content of the reports referred to on paragraphs 1 and 2 of this Article, and the time limits for submitting reports or information.

Statistical Insurance Data

Article 202

(1) The insurance undertaking shall keep and process statistical data on the insurance or reinsurance operations, the risks covered by insurance, insured events and claims.

(2) The statistical standards for the processing of the data referred to in paragraph 1 of this Article shall be prescribed by the Agency by way of an ordinance.

(3) The insurance undertaking shall inform the Agency of the statistical data, separately in respect of cross-border insurance business carried out under the right of establishment and those carried out under the freedom to provide services, on the insurance business, the risks covered by insurance, the amount of the premiums, claims and commissions, without deduction of reinsurance, by Member State, and by classes of life and non-life insurance as referred to in Article 7 of this Act.

(4) The data concerning cross-border insurance business pursued under the right of establishment and those carried out under the freedom to provide services as referred to in paragraph 3 of this Article, which concern non-life insurance, shall be kept by the insurance undertaking according to the following sub-groups:

1. accident and health insurance (the classes of insurance referred to in Article 7, paragraph 2, subparagraphs 1 and 2 of this Act);

2. motor insurance (the classes of insurance referred to in Article 7, paragraph 2, subparagraphs 3, 7 and 10 of this Act; data for the class of insurance referred to in Article 7, paragraph 2, subparagraph 10 of this Act, excluding carrier's liability, shall be indicated separately);

3. insurance against fire and other damage to property (the classes of insurance referred to in Article 7, paragraph 2, subparagraphs 8 and 9 of this Act);

4. aviation, marine and transport insurance (the classes of insurance referred to in Article 7, paragraph 2, subparagraphs 4, 5, 6, 7, 11 and 12 of this Act);

5. liability insurance (the class of insurance referred to in Article 7, paragraph 2, subparagraph 13 of this Act);

6. credit and suretyship insurance (the classes of insurance referred to in Article 7, paragraph 2, subparagraphs 14 and 15 of this Act);

7. other classes of insurance (the classes of insurance referred to in Article 7, paragraph 2, subparagraphs 16, 17 and 18 of this Act).

(5) As regards insurance against liability arising out of the use of motor vehicles referred to in Article 7, paragraph 2 of this Act, excluding carrier's liability, the insurance undertaking shall also inform the Agency, at the Agency's request, of the frequency and average cost of claims.

TITLE XIV

SUPERVISION

CHAPTER I

GENERAL PROVISIONS

Entities Subject to Supervision

Article 203

(1) The entities subject to supervision shall be supervised by the Agency in accordance with the act governing the establishment and operation of the Agency, this Act and other regulations governing the business operations of the insurance undertakings.

(2) The provisions of this Title shall apply to the supervision procedures performed by the Agency within the scope of its competence, unless stipulated otherwise.

(3) The provisions of the General Administrative Procedure Act and this Act shall apply to the procedures referred to in paragraph 1 of this Article.

(4) For the purposes of supervision the Agency shall have the right of access to all information and documentation kept by the supervised entities.

(5) The following entities shall be subject to supervision by the Agency in accordance with this Act:

1. insurance and reinsurance undertakings with head offices in the Republic of Croatia, and their branches in the Republic of Croatia and outside the Republic of Croatia;

2. mutual insurance undertakings with head offices in the Republic of Croatia, and their branches in the Republic of Croatia and outside the Republic of Croatia;

3. insurance representation undertakings, insurance and reinsurance mediation undertakings, insurance representation crafts, authorised insurance agents and authorised insurance and reinsurance brokers in the Republic of Croatia and their branches in the Republic of Croatia and outside the Republic of Croatia;

4. insurance or reinsurance group;

5. insurance or reinsurance pool;

6. the national insurance bureau;

7. holders of qualifying holdings in the insurance undertaking and persons having close links to the insurance undertaking or persons performing outsourced activities or key functions for the insurance undertaking, and these persons are required to submit to the Agency, at its request and for the purposes of supervision, the relevant reports and information;

8. third-country insurance undertakings, which conduct insurance business in the Republic of Croatia through a branch;

9. certified actuary;

10. service provider performing outsourced activities or a function;

11. other legal and natural persons, which the Agency has the right to supervise pursuant to this Act.

(6) The following entities shall also be subject to supervision by the Agency to the extent that they carry out insurance agents activities: the Financial Agency, the Croatian Post Office (HP-Hrvatska pošta d. d.) and investment companies authorised by the Agency to carry out the insurance agents activities, as well as credit institutions that have obtained the consent from the Agency and an authorisation from the Croatian National Bank for carrying out the insurance agents activities.

(7) The following entities shall also be subject to supervision by the Agency: insurance and reinsurance undertakings from other Member States that pursue the insurance business under the right of establishment or the freedom to provide services in the territory of the Republic of Croatia, as well as legal and natural persons performing the insurance agents activities or insurance and reinsurance brokerage activities under the right of establishment or the freedom to provide services in the territory of the Republic of Croatia.

(8) Supervision of the insurance undertaking operations may also be exercised by other institutions and supervisory authorities in accordance with the powers conferred upon them by an act within the scope of their business activities.

(9) Where another supervisory body or authority is responsible for supervising an entity referred to in this Article, the Agency may participate in the supervision of the operations of that entity together with the respective supervisory authority or may require the supervisory authority concerned to provide the data and information necessary for the supervision of the undertaking in question.

Supervision of the Insurance Undertaking Operations

Article 204

(1) Supervision shall be based on a prospective (forward-looking) and risk-based approach.

(2) The Agency shall apply its supervisory powers in a timely and proportionate manner in accordance with the risks to which the insurance undertaking is exposed.

(3) For the purposes of this Act, supervision means the verification on a continuous basis of whether the insurance undertaking operates in accordance with this Act and other regulations, risk management rules, internal by-laws and standards, professional rules and whether it operates, in general, in a manner that ensures the proper functioning of the insurance undertaking and the implementation of measures and activities to remove the identified illegalities and irregularities.

(4) The main objectives of supervision shall be to verify whether the insurance undertaking operates in accordance with law and to assess the safety and stability of the business operations of the insurance undertaking, in order to protect the interests of insured persons, policy holders and beneficiaries under insurance contracts and public interest and to contribute to the stability of the financial system and to promote and maintain confidence in the insurance market.

(5) The Agency shall also supervise the persons having close links to the insurance undertaking if this is necessary for the purposes of supervising the operations of the insurance undertaking.

(6) The Agency and other supervisory authorities of the Republic of Croatia which are responsible for supervision, or for the control of the aforementioned or other institutions, shall, at the request of an individual supervisory authority, exchange any information necessary for the performance of supervision or control of insurance undertakings and other institutions, during the procedure for the issuance of the authorisation to conduct insurance business or during other procedures.

(7) The Agency and the competent supervisory authorities shall inform each other of irregularities or other circumstances they have identified if such findings are relevant for the operation of other supervisory authorities.

(8) In addition to supervisory measures, the Agency may make written recommendations to entities subject to supervision (on an individual or group basis) for improvement of their business operations and financial stability and position or to reduce the risks to which they are or may be exposed. The Agency may request additional explanations regarding the application of, or failure to apply, the recommendations. The Agency may disclose to the public the recommendations made to groups of entities subject to supervision.

(9) The provisions concerning supervision of insurance undertakings shall apply *mutatis mutandis* to other entities subject to supervision, unless otherwise provided for in this Act.

(10) The Agency shall be empowered to publish various materials (instructions, guidelines and similar) to provide certain groups of entities subject to supervision and other addressees with clarifications or guidance about the application of certain regulations falling within its remit or general legal acts related to such regulations.

Supervision of Insurance Business Pursued by the Insurance Undertaking in another Member State

Article 205

(1) The supervision of insurance undertakings, including that of the business they pursue either through branches or under the freedom to provide services in another Member State, shall be carried out by the Agency in accordance with the provisions of this Title.

(2) With regard to the supervision referred to in paragraph 1 of this Article which concerns the business pursued by the insurance undertaking in another Member State, the Agency may perform such supervision in cooperation with the competent supervisory authority.

(3) The Agency shall without delay inform the competent supervisory authority about the measures it adopted during the supervision of the insurance undertaking.

Supervision of Activities of the Insurance Undertaking Branch in another Member State

Article 206

(1) The on-site supervision of the financial operations of the insurance undertaking branch in another Member State shall be carried out, in the territory of that Member State, by the Agency itself or through the intermediary of the person appointed for that purpose. The competent supervisory authority of that Member State may participate in this supervision.

(2) The Agency shall communicate its intention to perform the on-site supervision of the financial operations of an insurance undertaking branch in another Member State pursuant to paragraph 1 of this Article to the competent supervisory authority of that Member State.

(3) Where the Agency has informed the competent supervisory authority of the Member State in which the insurance undertaking branch is located that it intends to carry out an on-site supervision in accordance with paragraph 1 of this Article and where the Agency is prohibited from exercising its right to carry out this on-site supervision or where the competent supervisory authority of the Member State is unable to participate in this on-site supervision, the Agency and the competent supervisory authority of the Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

Supervision of Activities of the Insurance Undertaking Branch from another Member State

Article 207

(1) The on-site supervision of the financial operations of the insurance undertaking branch from another Member State shall be carried out, in the territory of the Republic of Croatia, by the competent supervisory authority of that Member State, either by itself or through the intermediary of a person appointed for that purpose. The Agency may participate in this supervision.

(2) The intention to perform the on-site supervision of the financial operations of the insurance undertaking branch from another Member State pursuant to paragraph 1 of this Article shall be communicated by the competent supervisory authority of that Member State to the Agency.

Supervision of Activities of Third-Country Insurance Undertaking Branches

Article 208

(1) The provisions on supervision that apply to insurance undertakings from the Republic of Croatia, as well as the provisions that apply to insurance undertakings in difficulty or in an irregular situation shall also apply to third-country insurance undertakings which perform the insurance business in the Republic of Croatia through a branch.

(2) As regards the application of Articles 164 – 166 of this Act, where a third-country insurance undertaking has been granted the advantages provided for in Article 81 of this Act, the competent supervisory authority referred to in Article 81, paragraph 2 of this Act shall have the same powers as the supervisory authority of the Member State in which the third-country insurance undertaking has its branch.

Supervision of Certified Actuaries

Article 209

Supervision of certified actuaries shall be carried out by the Agency and the provisions of Article 201, paragraph 6 and Articles 203, 204, 221, 235, 237 and 247 of this Act shall apply accordingly to this supervision.

Supervision of Outsourced Activities or Functions

Article 210

(1) The provisions of this Title shall apply accordingly to the supervision of service providers performing outsourced activities or functions.

(2) The insurance undertaking shall take all necessary measures to ensure that the following conditions are satisfied:

1. the service provider shall cooperate with the Agency in connection with the outsourced activity or function;

2. the insurance undertaking, the audit firm and the Agency shall have effective access to data related to the outsourced activities or functions;

3. the Agency shall have effective access to the business premises of the service provider and shall be able to exercise this right of access.

(3) The insurance undertaking shall, at the request of the Agency, submit to the Agency all data on the legal status, financial position and business operations of the service provider and shall prove that the service provider has been selected by conducting due diligence and that the insurance undertaking can supervise, at all times, the performance of the outsourced activities or functions.

(4) If the insurance undertaking with the head office in another Member State has outsourced activities or functions to a service provider located in the territory of the Republic of Croatia, the competent supervisory authority of that Member State may:

1. carry out itself, or through the intermediary of a person it appointed for that purpose, on-site supervision of the service provider at the premises of the service provider, after having informed the Agency thereof, or

2. request the Agency to carry out on-site supervision of the service provider.

(5) If the insurance undertaking with head office in the Republic of Croatia has outsourced activities or functions to a service provider located in the territory of another Member State, the Agency may:

1. carry out itself, or through the intermediary of a person it appointed for that purpose, on-site supervision of the service provider at the premises of the service provider in the territory of that Member State, after having informed the competent supervisory authority of that Member State in which the service provider is located, or

2. request the competent supervisory authority of the Member State in which the service provider is located to carry out on-site supervision of the service provider.

(6) Where the Agency has informed the competent supervisory authority of the Member State of the service provider that it intends to carry out on-site supervision in accordance with paragraph 5, subparagraph 1 of this Article, or where it carries out on-site supervision in accordance with paragraph 5, subparagraph 1 of this Article and where the Agency is unable to carry out that on-site supervision or is prohibited from exercising its right to carry out this on-site supervision, the Agency may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

Supervision of Persons Carrying Out Insurance Agents Activities or Insurance and Reinsurance Brokerage Activities

Article 211

(1) The provisions of this Title, with the exception of Article 238 and Articles 240 – 245 of this Act, shall apply *mutatis mutandis* to the supervision of persons carrying out insurance agents activities or insurance and reinsurance brokerage activities.

(2) The Agency shall supervise other persons referred to in Article 418 of this Act in accordance with this Act, to the extent that they perform insurance agents activities.

Financial Stability and Pro-Cyclicality

Article 212

(1) Without prejudice to the main objective of supervision as set out in Article 204 of this Act, the Agency shall, in the exercise of its powers, in particular in emergency situations, duly consider the potential impact of its decisions on the stability of the financial systems in the European Union, taking into account the available information.

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

Disclosure of General Information Concerning Supervision

Article 213

(1) The Agency shall publish and regularly update the following information on its website:

1. the texts of laws, regulations and administrative provisions and general guidance concerning the insurance business in the Republic of Croatia;
2. the general criteria and methods used in supervision, including the quantitative tools referred to in Article 214, paragraph 6 of this Act;
3. aggregate statistical data on key aspects of supervision and risk management for insurance undertakings in the Republic of Croatia;
4. the manner of exercise of the supervision and risk management options provided for in this Act and other legislation;
5. the objectives of the supervision and its main functions and control activities.

(2) The disclosure of the information referred to in paragraph 1 of this Article shall be sufficient to enable a comprehensive comparison of the supervisory approaches adopted by the supervisory authorities of the different Member States.

(3) The information referred to in paragraph 1 of this Article shall be disclosed in accordance with Regulation (EU) No 2015/35 and other European Commission regulations governing the forms and structure of disclosure of information.

Scope of Supervision

Article 214

(1) During supervision, the Agency shall in particular:

1. verify the system of governance, the strategies, policies, processes and reporting procedures which are established by the insurance undertaking to comply with the provisions of this Act and other regulations;
2. verify and assess the financial stability and the financial position of the insurance undertaking and the risks to which the undertaking is or could be exposed in its business operations;
3. verify the state of solvency of the insurance undertaking, the establishment of technical provisions, its assets and the eligible own funds, in accordance with the provisions of this Act and other legislation;
4. verify the adequacy of the methods and practices of the insurance undertaking designed to identify possible events or future changes in economic conditions that could have adverse effects on the overall financial position of the undertaking concerned;
5. verify the establishment of accounting technical provisions and assets held to cover accounting technical provisions in accordance with the provisions of this Act and other regulations.

(2) When verifying and assessing the financial stability and financial position and when assessing the risks to which the insurance undertaking is or could be exposed, the Agency

shall take into account the nature, scale and complexity of the risks inherent in the business of the insurance undertaking concerned.

(3) The verification referred to in paragraph 1 of this Article shall in particular include the reviews and assessments of:

1. the system of governance, including the own-risk and solvency assessment;
2. the technical provisions;
3. the Solvency Capital Requirement and the Minimum Capital Requirement;
4. the investment rules;
5. the quality and quantity of own funds;
6. the on-going compliance of the internal model with the requirements of this Act and the risk management rules;
7. the ability of the insurance undertaking to withstand possible events or future changes in economic conditions referred to in paragraph 1, subparagraph 4 of this Article.

(4) The Agency shall determine, on the basis of the supervision, verifications and assessments referred to in paragraph 1 of this Article, whether the insurance undertaking operates in accordance with the laws and regulations with which it must comply in its business operations, and whether the insurance undertaking has set up an adequate organisational structure and a stable system of governance, as well as the capital to ensure an appropriate system of governance and coverage of risks to which the insurance undertaking is exposed or could be exposed in its business operations.

(5) The Agency shall assess, on the basis of the supervision, verifications and assessments referred to in paragraph 1 of this Article, the qualitative requirements relating to the system of governance, the assessment of the risks, which the insurance undertaking concerned faces or may face and the assessment of the ability of the insurance undertaking to assess those risks taking into account the environment in which it is operating.

(6) The Agency may, where necessary, develop appropriate quantitative tools under the supervisory process to assess the ability of the insurance undertakings to cope with possible events or future changes in economic conditions that could have unfavourable effects on their overall financial position. The Agency may require that corresponding tests are performed by the insurance undertakings.

(7) When determining the frequency and intensity of supervision, the Agency shall take into account the size and significance of the insurance undertaking concerned, as well as the scale, nature and complexity of the risks inherent in the business of the insurance undertaking.

Information to be Provided for Supervisory Purposes

(1) At the request of the Agency, the insurance undertaking shall submit the information which is necessary for the purposes of supervision and which shall include at least the information necessary for the following:

1. to assess the system of governance applied by the insurance undertaking, the business it is pursuing, the valuation principles applied for solvency purposes, the risks faced and the risk-management system, and its capital structure;

2. to make appropriate decisions by the Agency resulting from the exercise of its supervisory rights and duties.

(2) At the request of the Agency, the insurance undertaking shall submit, for the purposes of supervision, information regarding contracts that the insurance undertaking has concluded with persons carrying out insurance agents activities or insurance and reinsurance brokerage activities or regarding contracts that the insurance undertaking has concluded with third parties.

(3) For the purposes of supervision, the Agency may require information from external experts, such as auditors and actuaries.

(4) The information referred to in paragraphs 1 – 3 of this Article shall contain:

1. qualitative or quantitative elements, or any appropriate combination thereof;
2. historic, current or prospective elements, or any appropriate combination thereof;
3. data from internal and external sources, or any appropriate combination thereof.

(5) The information referred to in paragraphs 1 – 3 of this Article shall comply with the following principles:

1. it shall reflect the nature, scale and complexity of the business of the insurance undertaking, and in particular the risks inherent in that business;
2. it shall be accessible, complete, comparable and consistent over time;
3. it shall be relevant, reliable and comprehensible.

(6) Insurance undertakings shall submit information to the Agency in accordance with Title XI of this Act, Regulation (EU) No 2015/35 and other European Commission legislation governing regular supervisory reporting.

(7) The Agency may, in appropriate cases, determine the nature, the scope and the format of the information referred to in paragraph 1 which it requires the insurance undertaking to submit at the following points in time:

- at predefined periods,
- upon occurrence of predefined events,

– during the supervision of the insurance undertaking.

Reporting System

Article 216

- (1) The insurance undertaking shall put in place an appropriate reporting system to fulfil the requirements laid down in this Title of the Act.
- (2) The insurance undertaking shall adopt a written policy ensuring the ongoing credibility and completeness of the information submitted.

Limits on Reporting

Article 217

(1) Without prejudice to Article 131 and Article 215, paragraphs 1 – 5 of this Act, where the predefined periods for regular reporting to the Agency in accordance with Article 215, paragraph 7 of this Act are shorter than one year, the Agency concerned may limit regular supervisory reporting:

1. where submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the insurance undertaking;

2. where the information is reported at least annually.

(2) The Agency shall not limit regular supervisory reporting with a frequency shorter than one year in the case of insurance undertakings that are part of a group within the meaning of Article 297, paragraph 1, subparagraph 3 of this Act, unless the insurance undertaking can demonstrate to the satisfaction of the Agency that regular supervisory reporting with a frequency shorter than one year is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group.

(3) The limitation to regular supervisory reporting shall be granted only to insurance undertakings that do not represent more than 20% of a Member State life and non-life insurance respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions. The Agency shall give priority to smaller undertakings when determining the eligibility of the undertakings for those limitations.

(4) The Agency may limit regular supervisory reporting or exempt insurance undertakings from reporting on an item-by-item basis, where:

1. the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the insurance undertaking;

2. the submission of that information is not necessary for the effective supervision of the insurance undertaking;

3. the exemption does not undermine the stability of the financial systems in the European Union;

4. the insurance undertaking is able to provide the information at any time at the request of the Agency.

(5) The Agency shall not exempt from the reporting referred to in paragraph 4 of this Article insurance undertakings that are part of a group within the meaning of Article 297, paragraph 1, subparagraph 3 of this Act, unless the insurance undertaking can demonstrate to the satisfaction of the Agency that reporting on an item-by-item basis is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group and taking into account the objective of financial stability.

(6) The exemption from reporting referred to in paragraph 4 of this Article shall be granted only to insurance undertakings that do not represent more than 20% of a Member State life and non-life insurance respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions. Supervisory authorities shall give priority to smaller undertakings when determining the eligibility of the undertakings for those exemptions.

(7) For the purposes of paragraphs 1 and 4 of this Article, as part of the supervisory process, the Agency shall assess whether the submission of information would be overly burdensome in relation to the nature, scale and complexity of the risks of the insurance undertaking, taking into account, at least:

1. the volume of premiums, technical provisions and assets of the insurance undertaking;
2. the volatility of the claims and benefits covered by the insurance undertaking;
3. the market risks that the investments of the insurance undertaking give rise to;
4. the level of risk concentration;
5. the total number of classes of life and non-life insurance for which authorisation is granted;
6. possible effects of the management of the insurance undertaking's assets on the financial stability;
7. the systems and structures of the insurance undertaking to provide information for supervisory purposes and the written rules ensuring the ongoing appropriateness of the information submitted to the Agency;
8. the appropriateness of the system of governance of the insurance undertaking;
9. the level of own funds covering the Solvency Capital Requirement and the Minimum Capital Requirement;
10. whether the insurance undertaking is a captive insurance undertaking only covering the risks associated with the industrial or commercial group to which it belongs.

Supervisory Fee

Article 218

- (1) The entities subject to supervision referred to in Article 203 of this Act, with the exception of the entities subject to supervision referred to in Article 203, paragraph 5, subparagraphs 9 and 11 of this Act shall pay to the Agency a supervisory fee.
- (2) The Agency shall issue an ordinance laying down the level, method of calculation and method of payment of the supervisory fee referred to in paragraph 1 of this Article.

CHAPTER II

PROCEDURE OF CONDUCTING SUPERVISION

Method of Conducting Supervision

Article 219

- (1) The Agency shall conduct supervision *ex officio*:

1. through on-site supervision at the premises of the insurance undertaking or a legal person to which the supervised entity has close links or a legal person linked to the supervised entity in the manner specified in Article 297, paragraph 1, subparagraph 1, point (a) or (b) of this Act, by examining the original documents, examining and assessing the overall operation, conducting interviews with the members of the management and supervisory boards and with the persons performing key functions and persons with close links to them, or at the Agency premises;

2. through off-site supervision at the Agency premises, by verifying on a continuous basis the proper performance of the insurance business and the compliance of the insurance undertaking with the supervisory provisions on the basis of an analysis of the reports that insurance undertakings are required to submit to the Agency within the prescribed periods, and by collecting and examining the documents, information and data obtained at a specific request of the Agency, as well as by collecting and checking data and information from other sources, and by the examination and assessment of the business operations on the basis of the submitted reports and collected information, by conducting interviews with members of the management and supervisory boards and with other responsible persons.

- (2) Supervision of insurance undertakings shall comprise an appropriate combination of off-site and on-site supervisory activities.

- (3) The on-site supervision referred to in paragraph 1, subparagraph 1 of this Article may be regular or special.

Persons Authorised to Perform Supervision

Article 220

(1) The supervision shall be performed by the Agency employees (hereinafter: authorised persons of the Agency).

(2) By way of derogation from paragraph 1 of this Article, the Agency may request professional services of an auditor, an audit firm or other professionally qualified persons for the performance of tasks related to supervision.

(3) The regulations concerning the exemption of an official and the confidentiality of data that applies to the Agency employees shall apply *mutatis mutandis* to persons referred to in paragraph 2 of this Article.

Provision of Information at the Request of the Agency

Article 221

(1) At the request of the Agency, the insurance undertaking shall provide or make available the documents, reports and information about all the circumstances that are relevant to the supervision referred to in Article 219 of this Act.

(2) The documents, reports and information referred to in paragraph 1 of this Article shall be provided to the Agency by the management board members, supervisory board members, persons performing key functions in the insurance undertaking or persons with close links to them.

(3) The Agency shall have the power to request the persons referred to in paragraph 2 of this Article to submit a written statement on the circumstances referred to in paragraph 1 of this Article or may invite them to make an oral statement on these circumstances, of which minutes shall be compiled.

(4) The authorised person of the Agency may conduct interviews with the persons referred to in paragraph 2 of this Article in order to obtain information necessary to conduct the supervision and to achieve the objectives of supervision.

Notification of On-Site Supervision

Article 222

(1) Before the beginning of an on-site supervision, the insurance undertaking shall receive a written notification of the on-site supervision containing at least the following information:

1. the subject of the supervision;
2. information about the authorised persons of the Agency;
3. an indication of the location of the supervision;
4. the date of the commencement of the supervision;
5. the period to be covered by the supervision.

(2) The notification referred to in paragraph 1 of this Article may also specify what information the insurance undertaking is required to prepare for the authorised persons of the Agency for the purpose of carrying out the on-site supervision.

(3) During the supervision, the Agency may supplement the notification of the on-site supervision. The provisions of paragraph 1 of this Article shall apply *mutatis mutandis* to the supplement to the notification of the on-site inspection.

(4) The notification of an on-site supervision shall be delivered to the insurance undertaking within a period of not less than three days before the beginning of supervision.

(5) By way of derogation from paragraph 4 of this Article, the authorised person of the Agency may deliver the notification of an on-site supervision on the date of the commencement of the on-site supervision if the supervision must be urgently carried out or if the purpose of supervision cannot be otherwise achieved.

On-Site Supervision of Business Operations

Article 223

(1) After having received the notification of an on-site supervision, the insurance undertaking shall enable the authorised person of the Agency to carry out the on-site supervision at the head office of the insurance undertaking and at other premises where the insurance undertaking itself, or any other entity authorised by it, performs the activities and operations in relation to which the Agency is carrying out the supervision.

(2) The insurance undertaking shall allow the authorised person of the Agency performing the supervision to examine the business books, business documents and administrative or business records and to inspect the IT system and its supporting technologies, to the extent necessary to carry out the supervision.

(3) The insurance undertaking shall produce to the authorised person of the Agency performing supervision all the requested business documents, computer print-outs including electronic mail print-outs, copies of the business books, fax records and administrative or business records, in paper form or in the form of an electronic record in the medium and format required by the authorised person. The insurance undertaking shall provide the authorised person with a standard interface allowing access to the database management system it uses, for the purpose of conducting computer-aided supervision.

(4) The authorised persons of the Agency may, on giving a receipt, temporarily seize from the insurance undertaking the documents, print-outs and records referred to in paragraph 3 of this Article, the financial instruments, cash or objects, which can be used as evidence in criminal or misdemeanour proceedings, but only until the initiation of these proceedings, when they shall deliver them to the authority responsible for conducting these proceedings.

(5) The responsible persons of the insurance undertaking shall cooperate with the authorised person of the Agency, attend an interview with that person at their request and give them any information that is important for the performance of the supervision and for achieving the objectives of the supervision.

Conditions for Carrying Out On-Site Supervision

Article 224

- (1) The insurance undertaking shall provide an authorised person of the Agency with adequate premises where they can carry out on-site supervision without disturbance and without the presence of other persons.
- (2) At the request of an authorised person of the Agency, the insurance undertaking shall provide professional and technical support, give necessary clarifications and provide other conditions that are needed to carry out the supervision.
- (3) The supervision of business operations referred to in paragraphs 1 and 2 of this Article shall be conducted by the authorised person of the Agency during the business hours of the insurance undertaking. If it is necessary due to the extent or nature of operations, the insurance undertaking shall enable the authorised person of the Agency to carry out supervision also outside the business hours.

IT System Inspection

Article 225

- (1) The insurance undertaking that uses an IT system in its operations shall, at the request of the authorised person of the Agency, provide conditions for the inspection of the IT system and make it possible to check whether the data processed using the information technology are processed in an appropriate manner.
- (2) The insurance undertaking shall, at the request of the authorised person of the Agency, submit documentation that provides a complete description of the functioning of the IT system. The documentation shall provide a clear view of the components of the IT system. The documentation shall enable the authorised person to gain an insight into:
 1. software solutions;
 2. procedures for data processing using IT technology;
 3. controls ensuring appropriate data processing; and
 4. controls ensuring data confidentiality, integrity and availability.

Completion of On-Site Supervision

Article 226

- (1) After on-site supervision is completed, a supervision report containing a detailed description of the established facts shall be prepared and delivered to the insurance undertaking. The management board of the insurance undertaking shall, without delay, submit the supervision report to the supervisory board or other appropriate supervisory body of the insurance undertaking.

(2) The insurance undertaking shall be entitled to file a complaint against the received report within eight days from the day of receipt of the report.

(3) If supervision reveals no illegalities or irregularities that would require the imposition of an appropriate supervisory measure, or if they have been identified, but corrected by the time the report is prepared, these findings shall be entered in the report and a decision declaring that the supervision procedure has been completed shall be issued.

Amendment to the Report

Article 227

(1) If the report identifies illegalities or irregularities, which would require the imposition of an appropriate supervisory measure, but which are partially corrected before the decision imposing the appropriate supervisory measure has been issued, the Agency shall include this information in an amendment to the report.

(2) If the report identifies illegalities or irregularities, which would require the imposition of an appropriate supervisory measure, but which are completely corrected before the decision imposing an appropriate supervisory measure has been issued, the Agency shall issue a decision confirming that the illegalities and/or irregularities identified in the report have been corrected and that the supervision has been completed.

Objection to the Report and to the Amendment to the Report

Article 228

(1) An objection to the report shall include statements of circumstances from which it follows that the report is wrong in concluding that there are certain deficiencies, illegalities or irregularities. The objection to the report shall be accompanied by appropriate evidence if such evidence is available to the insurance undertaking concerned.

(2) If the Agency considers that some or all the statements contained in the objection to the report are well-founded, it shall draw up an amendment to the report and submit it to the insurance undertaking.

(3) The provisions of paragraphs 1 and 2 of this Article and Article 226, paragraph 2 of this Act shall apply *mutatis mutandis* to an amendment to the report.

(4) If the Agency establishes that the objection of the insurance undertaking to the report or to the amendment to the report is unfounded, it shall issue a decision deciding on an administrative matter.

Off-Site Supervision of Business Operations

Article 229

(1) During an off-site supervision, the authorised person of the Agency shall:

1. verify whether the prescribed reports and other information have been submitted to the Agency within the prescribed period and in the prescribed format;
 2. verify whether the information contained in the reports and in other required documents is true, accurate and correct;
 3. verify whether the insurance undertaking operates in accordance with the risk management legislation, other regulations adopted under this Act, and other regulations governing the business operations of insurance undertakings;
 4. examine and assess the financial stability and position of the insurance undertaking and the risks to which the insurance undertaking is exposed or could be exposed in its operation;
 5. by using appropriate tools, identify deteriorating financial conditions in the insurance undertaking and monitor how that deterioration is remedied.
- (2) In examining and assessing the financial stability and position and in assessing the risks to which the insurance undertaking is exposed or could be exposed, the Agency shall take into account the nature, scale and complexity of the risks inherent in the business of the insurance undertaking.

Off-Site Supervision Report

Article 230

- (1) If deficiencies, illegalities and irregularities are identified in the operation of the insurance undertaking during an off-site supervision, the authorised person of the Agency shall prepare a report to that effect.
- (2) The supervision report, containing a detailed description of the facts established during the supervision, shall be delivered to the insurance undertaking.
- (3) The provisions of Articles 226 – 228 of this Act shall apply *mutatis mutandis* to off-site supervision reports.

CHAPTER III

SUPERVISORY MEASURES

SECTION I

GENERAL PROVISIONS

Supervisory Measures

Article 231

- (1) On the basis of the performed on-site or off-site supervision, the Agency may impose on the insurance undertaking the supervisory measures provided for in this Act.

(2) For the purposes of this Act, illegalities shall mean situations and procedures that do not comply with this Act and other regulations governing the business operations of insurance undertakings.

(3) For the purposes of this Act, irregularities shall mean situations and procedures that do not comply with the business policies and internal rules of the insurance undertaking and the standards and rules of the profession, or these are not applied consistently, thus threatening business operations, especially as regards organisational requirements and risk management.

(4) When the Agency establishes that there are reasonable grounds to suspect that a criminal offence or misdemeanour has been committed, it shall report it, as appropriate, to the competent authority if it considers it justified and meaningful.

(5) The Agency may issue a misdemeanour order to the insurance undertaking if it establishes a misdemeanour:

1. by direct observation or upon completion of a supervisory task performed by its authorised persons while carrying out inspectional or other type of supervision falling within their competence, who have drawn up an official note or report thereon;

2. on the basis of authentic documentation, including an investigation report drawn up by the competent authority;

3. through use of prescribed technical devices or performance of appropriate laboratory analyses and surveys prescribed.

(6) The Agency may issue the misdemeanour order referred to in paragraph 1 of this Article only for the committed misdemeanours specified by the provisions of this Act.

(7) The provisions of the Misdemeanour Act concerning misdemeanour orders issued by a state administration authority as an authorised prosecutor shall apply to the content of, the procedure for issuing, and objections to the misdemeanour order.

Inappropriate Influence by Shareholders of the Insurance Undertaking

Article 232

(1) Where, due to inappropriate influence exercised by the shareholders of the insurance undertaking, the insurance undertaking is likely to operate against the sound and prudent management, the Agency is authorised to take appropriate measures to prevent such influence.

(2) The measures referred to in paragraph 1 of this Article shall include, in addition to appropriate supervisory measures, the submission of a request to the competent court for the imposition of interim measures related to the suspension of voting rights attaching to the shares held by the insurance undertaking shareholders referred to in paragraph 1 of this Article.

Types of Supervisory Measures

Article 233

The Agency may impose the following supervisory measures, under the conditions prescribed by this Act:

1. a warning;
2. elimination of illegalities and irregularities;
3. additional supervisory measures;
4. appointment of a trustee;
5. revocation or withdrawal of the authorisation to perform the insurance business;
6. revocation or withdrawal of the authorisation to acquire a qualifying holding;
7. revocation or withdrawal of a decision granting the authorisation to perform the duties of a management board member;
8. revocation or withdrawal of the decision granting authorisation to perform the duties of a certified actuary or temporarily prohibiting the performance of the duties of a certified actuary;
9. reorganisation of the undertaking and appointment of special administration;
10. winding-up of the insurance undertaking;
11. submission of a proposal to initiate the bankruptcy proceedings.

SECTION II

WARNING

Warning

Article 234

(1) Where, in the course of supervision, the Agency identifies illegalities or irregularities, and the nature and scope of the identified illegalities or irregularities do not have a material impact and consequences on business operations of the insurance undertaking, on the market and/or on insured persons, policy holders and beneficiaries under insurance contracts, the Agency may issue a warning to the insurance undertaking.

(2) The Agency may publicly disclose the warning.

(3) The warning issued by the Agency may also contain an order to the insurance undertaking to remedy the identified illegalities or irregularities, the period within which the insurance undertaking is required to comply, and the frequency of reporting to the Agency on the actions and activities carried out.

(4) If the insurance undertaking fails to comply with the order of the Agency referred to in paragraph 3 of this Article within the period set in paragraph 3 of this Article, the Agency shall issue a decision to remedy the identified illegalities and irregularities.

(5) The Agency shall be authorised to perform another supervision of the insurance undertaking to the extent necessary to determine whether the insurance undertaking has acted in accordance with the order of the Agency referred to in paragraph 3 of this Article and whether the identified illegalities and irregularities have been corrected in the appropriate manner and to the appropriate extent.

SECTION III

ELIMINATION OF ILLEGALITIES AND IRREGULARITIES

Decision Requiring the Elimination of Illegalities and Irregularities

Article 235

(1) The Agency shall issue a decision ordering the insurance undertaking to eliminate the illegalities and irregularities where, in the course of supervision of the insurance undertaking, it establishes that:

1. a member of the management board does not have the approval referred to in Article 52 of this Act;
2. the insurance undertaking does not meet the conditions for pursuing the insurance business;
3. the insurance undertaking performs activities, which it is not allowed to perform under this Act;
4. the insurance undertaking violates the risk management rules;
5. the insurance undertaking violates the rules concerning the keeping of business books and those concerning annual reports, internal audit or audit of annual accounts;
6. the insurance undertaking breaches the obligation of reporting and notification;
7. the insurance undertaking violates the rules concerning the appointment of a certified actuary;
8. the insurance undertaking violates other provisions of this Act or the regulations made under this Act, or the provisions of other acts governing the business operations of the insurance undertakings.

(2) In the decision referred to in paragraph 1 of this Article, the Agency shall specify the time limit for correcting the illegalities and irregularities.

Certified Auditor Report on the Elimination of Irregularities

Article 236

Where the Agency identifies illegalities or irregularities concerning the keeping of business books or administrative and other records that the insurance undertaking is required to keep, or where it finds other major illegalities and irregularities in the operations of the insurance undertaking, it may order the insurance undertaking to submit a report accompanied by a favourable opinion of a certified auditor indicating that the illegalities and irregularities have been eliminated.

Report on the Elimination of Illegalities and Irregularities

Article 237

(1) The insurance undertaking shall, within the period specified in Article 235, paragraph 2 of this Act, eliminate the identified illegalities and irregularities and submit to the Agency, within the same period, unless otherwise provided for in the relevant decision, a report describing the measures taken to eliminate the illegalities and irregularities. The report shall be accompanied by documents and other evidence showing that the identified illegalities and irregularities have been eliminated. In the case referred to in Article 236 of this Act, the insurance undertaking shall also attach to the report on the elimination of illegalities and irregularities a certified auditor report.

(2) If the report referred to in paragraph 1 of this Article and the enclosed evidence indicate that the illegalities and irregularities have been eliminated, the Agency shall issue a decision confirming that the illegalities or irregularities have been eliminated. Before issuing this decision, the Agency may perform another supervision to the extent necessary to determine whether the illegalities or irregularities have been eliminated.

(3) If the report is incomplete, or the report and the enclosed evidence do not indicate that the identified illegalities and irregularities have been eliminated, the Agency shall order the insurance undertaking to supplement the report and shall specify the period within which the report shall be supplemented. The Agency may extend the time limit specified in the relevant decision for correcting illegalities and irregularities, upon a justified request by the insurance undertaking and when there are proper grounds for the aforementioned.

(4) The Agency shall issue the decision referred to in paragraph 2 of this Article within 30 days from the date of submission of the report referred to in paragraph 1 of this Article, otherwise it shall be considered that the illegalities and irregularities have been eliminated. If, within 30 days from the date of submission of the report referred to in paragraph 1 of this Article, the Agency does not order that the report be supplemented as referred to in paragraph 3 of this Article, it shall be considered that the illegalities and irregularities have been eliminated.

(5) If the decision imposes additional measures referred to in Article 238 of this Act, the provisions of this Article concerning the elimination of illegalities and irregularities and the report on the elimination of illegalities and irregularities shall also apply to the implementation of these additional measures and to the notification of the implementation of the additional measures.

SECTION IV

ADDITIONAL SUPERVISORY MEASURES

Additional Supervisory Measures for the Purpose of Implementing Risk Management Rules

Article 238

(1) If during the supervision the Agency finds that the insurance undertaking seriously violates risk management rules, it may, in its decision requiring the elimination of illegalities and irregularities, also impose the following additional measures:

1. order the management board of the insurance undertaking to adopt a plan of measures to establish the necessary amount of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile of the insurance undertaking in order to ensure compliance with the Solvency Capital Requirement, or to restore eligible basic own funds, at least to the level of the Minimum Capital Requirement or to reduce the risk profile of the insurance undertaking in order to ensure compliance with the Minimum Capital Requirement;
2. order the management and supervisory boards of the insurance undertaking to convene a general meeting of the insurance undertaking and to propose appropriate decisions;
3. prohibit the insurance undertaking from concluding new insurance contracts in some or all classes of insurance;
4. prohibit the insurance undertaking from performing certain types of payments or from performing payments to certain persons;
5. prohibit the insurance undertaking from entering into transactions with certain shareholders, management board members, supervisory board members, persons with close links to the insurance undertaking;
6. order the management board of the insurance undertaking to adopt or implement measures to:
 - improve the system of governance,
 - change the scope of activities of the insurance undertaking,
 - restrict the granting of loans,
 - improve the procedure for the collection of due claims,
 - ensure the correct valuation of on- and off-balance sheet items,
 - improve the IT system,
 - improve the internal control and internal audit procedures,
 - other measures necessary for the implementation of risk management rules;
7. prohibit or restrict the free disposal of the assets of the insurance undertaking;

8. order the insurance undertaking to dismiss a key function holder and to appoint a new one;

9. impose a capital add-on for the insurance undertaking;

10. order the insurance undertaking to increase the amount of technical provisions so that they correspond to the level determined pursuant to the provisions of Articles 106 – 120 of this Act;

11. impose other measures on the insurance undertaking.

(2) The insurance undertaking shall be deemed to be seriously violating the risk management rules if it:

1. has not calculated the Solvency Capital Requirement and the Minimum Capital Requirement, or fails to reach the amount of eligible own funds to cover the Solvency Capital Requirement, or does not comply with the Minimum Capital Requirement referred to in this Act, or has not implemented the measures referred to in Articles 165 and 166 of this Act;

2. has not organised its operations or fails to keep the business books, business documents and other administrative and business records in a manner, which makes it possible to verify at any time whether it operates in accordance with risk mitigation rules;

3. fails to adopt measures and establish rules for the adequate valuation of on- and off-balance sheet items for the purposes of financial reporting, or if it values these items contrary to this Act and other regulations;

4. pursues the business, which is not permitted under this Act;

5. has not put in place, does not implement or fails to regularly update the system of governance prescribed by this Act;

6. does not have systems and structures in place for the provision of information for supervisory purposes, and the written rules required by Article 216 of this Act;

7. fails to act in accordance with the requirements of this Act and the regulations governing the risk management systems;

8. fails to conduct its own risk and solvency assessment required by the provisions of this Act;

9. pays out dividends contrary to the provisions of Article 164 of this Act;

10. repeatedly breaches the obligation of timely and true reporting prescribed by this Act or regulations made under this Act;

11. enters into fictitious transactions with the intention of misstating the financial position of the insurance undertaking;

12. performs other operations, which may jeopardise its liquidity or solvency.

(3) The Agency shall impose the measures referred to in paragraph 1, subparagraph 7 of this Article in particular:

1. when the insurance undertaking concerned does not comply with the provisions of Articles 106 – 120 of this Act concerning the technical provisions
2. when the insurance undertaking does not comply with the Minimum Capital Requirement prescribed by the provisions of this Act;
3. in exceptional circumstances, where it is of the opinion that the financial situation of the insurance undertaking concerned will deteriorate further despite the measures referred to in Article 166, paragraph 4 of this Act having been taken;
4. if the authorisation to conduct the insurance business is withdrawn or expires.

(4) The imposition of the measure referred to in paragraph 1, subparagraph 7 of this Article and its effects shall be communicated by the Agency to the supervisory authorities of the Member States in which the insurance undertaking on which the measure has been imposed has a branch.

(5) The Agency may issue a decision ordering the supervisory board of the insurance undertaking to dismiss the chair of the management board or members of the management board and to appoint a new chair or new members of the management board:

1. if the insurance undertaking does not comply, or only partially complies, with the decision requiring the elimination of illegalities and irregularities, or
2. if the management board of the insurance undertaking fails to implement additional measures referred to in paragraph 1 of this Article imposed by the Agency, or
3. if the insurance undertaking repeatedly breaches the obligation of timely and true reporting or of providing information to the Agency, or obstructs the supervision by the Agency.

Capital Add-On

Article 239

(1) The Agency may in exceptional circumstances, in accordance with Regulation (EU) No 2015/35, issue a decision imposing a capital add-on on the insurance undertaking.

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

(3) The circumstances referred to in paragraph 1 of this Article shall exist only in the following cases:

1. the risk profile of the insurance undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using the standard formula in accordance with the provisions of this Act and:

– the requirement to use an internal model under Article 149 of this Act is inappropriate or has been ineffective; or

– while a partial or full internal model is being developed in accordance with Article 149 of this Act;

2. the risk profile of the insurance undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using an internal model or partial internal model in accordance with the provisions of this Act due to certain quantifiable risks being captured insufficiently and the adaptation of the model to better reflect the given risk profile has failed within an appropriate timeframe;

3. the system of governance of the insurance undertaking deviates significantly from the standards laid down in this Act, and those deviations prevent the risks to which the undertaking is or could be exposed from being properly identified, measured, monitored, managed and reported, and the application of other measures is in itself unlikely to improve the deficiencies sufficiently within an appropriate timeframe;

4. the insurance undertaking applies the matching adjustment referred to in Article 111 of this Act, the volatility adjustment referred to in Article 113 of this Act or the transitional measures referred to in Articles 455 and 456 of this Act and the Agency concludes that the risk profile of that undertaking deviates significantly from the assumptions underlying those adjustments and transitional measures.

(4) In the circumstances referred to in paragraph 3, subparagraphs 1 and 2 of this Article, the capital add-on shall be calculated in accordance with Regulation (EU) No 2015/35 in such a manner as to ensure that the undertaking complies with Article 131, paragraph 3 of this Act.

(5) In the circumstances referred to in paragraph 3, subparagraph 3 of this Article, the capital add-on shall be proportionate to the major risks arising from the deficiencies, which gave rise to the decision of the Agency to impose the add-on.

(6) In the circumstances referred to in paragraph 3, subparagraph 4 of this Article, the capital add-on shall be proportionate to the material risks arising from the deviation referred to in paragraph 4 of this Article.

(7) In the cases referred to in paragraph 3, subparagraphs 2 and 3 of this Article, the Agency shall ensure that the insurance undertaking makes every effort to remedy the deficiencies that led to the imposition of the capital add-on.

(8) The Agency shall review the capital add-on referred to in paragraph 1 of this Article at least once a year, and it shall be removed when the undertaking has remedied the deficiencies which led to its imposition.

(9) Without prejudice to paragraph 2 of this Act, the Solvency Capital Requirement shall not include the capital add-on imposed in accordance with paragraph 3, subparagraph 3 of this Article for the purposes of the calculation of the risk margin referred to in Article 109, paragraphs 2 and 3 of this Act.

SECTION V

APPOINTMENT OF A TRUSTEE

Agency Trustee to the Insurance Undertaking

Article 240

- (1) The Agency may appoint a trustee to the insurance undertaking where it deems that a more detailed assessment and monitoring of the financial position and operating conditions of the insurance undertaking is necessary.
- (2) In its decision on appointing the trustee, the Agency may appoint one or more assistants to the trustee, one of which shall be appointed deputy trustee.
- (3) An employee of the Agency or another person may be appointed as the trustee.
- (4) The trustee and assistant trustees shall be entitled to receive remuneration for their work, which shall be paid by the Agency.
- (5) In its decision on appointing a trustee, the Agency shall specify the content of the report that the trustee is required to prepare.
- (6) The decision on appointing a trustee and their assistants shall specify their term of office, which shall not exceed 12 months. During the term of office of the trustee and their assistants, the Agency may dismiss the trustee or their assistant and appoint another trustee or another assistant.

Trustee's Powers

Article 241

- (1) The insurance undertaking shall invite the trustee to the meetings of the management and supervisory boards and meetings of their bodies and shall deliver to the trustee in a timely manner all documentation relevant to follow the meetings, and the trustee shall have the right to be present at the meetings and participate in their work, but without the right to vote.
- (2) The trustee shall have the right to convene meetings of the management and supervisory boards of the insurance undertaking, propose items on the agenda and submit proposals for decisions, and members of these bodies shall be obligated to attend.
- (3) The trustee or assistant trustee may not transfer their powers to other persons and shall be accountable for their work to the Agency.
- (4) The insurance undertaking shall make available to the trustee and their assistants all relevant documentation and shall provide them access to its business books.
- (5) The trustee shall act in accordance with the provisions of this Act concerning professional secrecy.

Trustee's Report on the Financial Position of the Insurance Undertaking

Article 242

(1) Within 30 days of appointment, the trustee shall prepare a report on the financial position and operating conditions of the insurance undertaking, including an assessment of its financial stability and prospects for its continued operation (hereinafter: the report on the financial position) and submit it to the Agency.

(2) The Agency shall submit the report referred to in paragraph 1 of this Article to the insurance undertaking for comments.

(3) The insurance undertaking shall submit its comments on the report referred to in paragraph 1 of this Article within five days of its receipt.

(4) The trustee shall without delay notify the Agency in writing of circumstances which, according to their assessment, may result in the non-implementation of supervisory measures imposed by the Agency or contribute to the deterioration of the financial position of the insurance undertaking.

Trustee's Responsibility Concerning Additional Reporting

Article 243

The trustee shall without delay notify the Agency of all circumstances which, according to their assessment, may result in the non-implementation of the imposed supervisory measures and of all circumstances which, according to their assessment, may contribute to the deterioration of the financial position of the insurance undertaking.

Actions of the Agency Based on the Trustee's Report on the Financial Position of the Insurance Undertaking

Article 244

On the basis of the trustee's report on the financial position, the Agency may impose on the insurance undertaking a supervisory measure provided for in this Act or appoint a special administration of the insurance undertaking.

Termination of Trustee's Powers

Article 245

The trustee's or assistant trustee's powers shall terminate on the date:

1. of expiry of the period specified in the decision on appointment;
2. of revocation of their appointment;
3. of the appointment of special administration;
4. of the appointment of a liquidator; or

5. of the opening of bankruptcy proceedings in respect of the insurance undertaking.

SECTION VI

WITHDRAWAL OR REVOCATION OF THE DECISION GRANTING AUTHORISATION TO PURSUE THE INSURANCE BUSINESS

Withdrawal or Revocation of the Decision Granting Authorisation to Pursue the Insurance Business

Article 246

(1) The Agency shall withdraw the decision granting authorisation to pursue the insurance business if the insurance undertaking concerned does not comply with the Minimum Capital Requirement and the Agency considers that the finance scheme submitted is manifestly inadequate or the insurance undertaking concerned fails to comply with the approved scheme within three months from the observation of non-compliance with the Minimum Capital Requirement.

(2) The Agency may withdraw or revoke the authorisation to pursue the insurance business granted to the insurance undertaking if:

1. the insurance undertaking does not make use of the authorisation within 12 months or ceases to pursue the insurance business for more than six months;
2. the insurance undertaking no longer fulfils the conditions for authorisation to pursue the insurance business;
3. the undertaking fails seriously in its obligations under the regulations to which it is subject;
4. the authorisation decision was issued on the basis of false or inaccurate documentation or false presentation of data provided during the procedure for the granting of the authorisation to pursue the insurance business, which are relevant to making a decision on that authorisation.

(3) Upon the expiry of the authorisation of the insurance undertaking to pursue the insurance business, the Agency shall withdraw all other authorisations granted to that undertaking.

(4) In the event of the withdrawal, revocation or lapse of authorisation to pursue the insurance business, the Agency shall notify the competent supervisory authorities of the other Member States accordingly, and those authorities shall take appropriate measures to prevent the insurance undertaking from commencing new operations in their territories.

(5) The Agency shall, in cooperation with the competent supervisory authorities referred to in paragraph 4 of this Article, take all measures necessary to safeguard the interests of the insured persons, in particular with regard to the disposal of the assets of the insurance undertaking.

(6) When the authorisation of the insurance undertaking to pursue the insurance business is withdrawn or revoked, the Agency shall without delay notify thereof the competent supervisory authority of the Member State in which the insurance undertaking has a branch.

(7) By way of derogation from paragraph 2 of this Article, the Agency shall withdraw the authorisation to pursue the insurance business in respect of particular classes of insurance or risks if the reason specified in paragraph 2 of this Article relates only to the insurance business in those particular classes of insurance or to those particular risks.

(8) From the date of submission of the decision referred to in paragraphs 1 and 2 of this Article, the insurance undertaking may not conclude new insurance contracts or enter into transactions concerning the insurance business, with the exception of contracts and transactions the objective of which is the transfer of insurance portfolio or which ensure the dissolution of the insurance undertaking in the manner provided for in this Act.

Conditional Withdrawal of the Decision Granting Authorisation to Pursue the Insurance Business

Article 247

(1) With the decision to withdraw the authorisation to pursue the insurance business, the Agency may specify that the authorisation to pursue the insurance business shall not be withdrawn if the insurance undertaking remedies the grounds for withdrawal of the authorisation within the period specified by the Agency or if it does not commit new illegalities or irregularities for which the authorisation to pursue the insurance business may be withdrawn.

(2) The Agency shall withdraw the decision referred to in paragraph 1 of this Article if the insurance undertaking fails to remedy the grounds for withdrawal of the authorisation within the period specified in the decision or if it commits new illegalities or irregularities for which authorisation may be withdrawn, and shall issue a decision withdrawing the authorisation to pursue the insurance business.

SECTION VII

REORGANISATION AND SPECIAL ADMINISTRATION

Application of Other Regulations

Article 248

The provisions of this Act and the provisions of the Companies Act shall apply to the reorganisation procedure unless otherwise provided for in the provisions of this Act.

Reorganisation of the Insurance Undertaking

Article 249

(1) Reorganisation measures are measures which are intended to preserve or restore the financial stability of the insurance undertaking.

(2) The Agency may issue a decision on the reorganisation measures with respect to the insurance undertaking that has its head office in the Republic of Croatia and has been granted the authorisation by the Agency to pursue the insurance business, including its branches.

(3) The reorganisation measures shall not preclude the opening of winding-up or bankruptcy proceedings with regard to the insurance undertaking referred to in paragraph 1 of this Article.

(4) The reorganisation measures referred to in paragraph 1 of this Article shall be fully effective throughout the territories of the Member States without any restriction, including against third parties in other Member States, even where the legislation of those other Member States does not provide for such reorganisation measures or makes their implementation subject to conditions which are not fulfilled.

(5) The reorganisation measures referred to in paragraph 1 of this Article shall be effective throughout the territories of the Member States once they become effective in the Republic of Croatia.

(6) The Agency shall appoint a special administration of the insurance undertaking, which shall implement the reorganisation measures in accordance with the provisions of this Act.

Notification of the Supervisory Authorities of Other Member States

Article 250

The Agency shall, without delay, inform the supervisory authorities of other Member States of the reorganisation measures it has adopted, including the possible practical effects of such measures.

Publication of Decisions on Reorganisation Measures

Article 251

(1) The Agency shall publish on its website, in the Official Gazette and in the Official Journal of the European Union the operative part of the decision on a reorganisation measure and on the appointment of a special administration of the insurance undertaking.

(2) In the decision referred to in paragraph 1 of this Article, the Agency shall appoint a special administration to implement the reorganisation measures adopted by the Agency.

(3) The reorganisation measures shall apply regardless of the provisions concerning the publication set out in paragraphs 1 and 2 of this Article and shall be fully effective as against creditors, unless the Agency's decision provides otherwise.

(4) Where reorganisation measures affect exclusively the rights of shareholders or employees of the insurance undertaking, the provisions of paragraphs 1, 2 and 3 of this Article shall not apply.

Conditions for the Appointment of the Special Administration of the Insurance Undertaking

Article 252

(1) The Agency shall adopt a decision to appoint the special administration of the insurance undertaking in the following cases:

1. if it considers that the liquidity or solvency of the insurance undertaking is jeopardised or that the continuation of the insurance undertaking operation could jeopardise its liquidity or solvency;
2. if the insurance undertaking does not have as many members of the management board as prescribed by the Articles of Association or this Act, and the supervisory board has not appointed one of its members to serve as a temporary replacement for a member of the management board or if the period for which they were appointed to perform the duties of the management board member has expired and the missing management board member has not been appointed;
3. if the insurance undertaking obstructs in any manner the supervision of its operations; or
4. if the insurance undertaking does not implement the supervisory measures imposed by the decision of the Agency.

(2) In the decision referred to in paragraph 1 of this Article, the Agency shall appoint one or several administrators to be members of the special administration, and shall withdraw from the members of the insurance undertaking management board the decision granting them approval to perform the function of the management board members.

(3) The former management and supervisory boards of the insurance undertaking shall be entitled to file an action with the competent administrative court against the Agency's decision referred to in paragraph 1 of this Article within 30 days of the date of receipt of that decision.

(4) The Agency shall submit the decision referred to in paragraph 1 of this Article to the competent court for the purpose of entering the insurance undertaking administrator in the court register.

(5) The rights and obligations of the members of the special administration shall begin on the date of enforceability of the decision to appoint the special administration regardless of the entry in the court register.

Administrators and Assistant Administrators

Article 253

(1) The administrator shall only be a person who meets the conditions laid down in Article 51, paragraph 1 of this Act.

(2) The administrators shall be entitled to exercise in the territory of all Member States all the powers which they are entitled to exercise in the territory of the Republic of Croatia and, in

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exercising their powers according to the regulations of the Republic of Croatia, they shall comply with the regulations of the Member States in which they wish to perform their activity, in particular with regard to the procedures for the realisation of assets and the informing of employees. Those powers shall not include the use of force or the right to rule on legal proceedings or disputes.

(3) In its decision to appoint the special administration, the Agency may also appoint assistant administrators who shall carry out assistant, administrative and technical tasks as instructed by the administrator. The assistant administrators shall not be members of the special administration.

(4) The administrators and assistant administrators shall be appointed for a period of not more than one year.

(5) The Agency shall issue a decision determining the remuneration and costs to which the administrators and assistant administrators are entitled.

(6) The remuneration and costs referred to in paragraph 5 of this Article shall be covered by the insurance undertaking to which the special administration is appointed.

Termination of the Function of the Administrator and Assistant Administrator

Article 254

(1) During the period of the special administration, the Agency may remove from office an appointed administrator or assistant administrator who does not perform, or performs improperly, their duties, or for any other justified reason, and may appoint a new administrator or assistant administrator whose term of office may only last until the expiry of the original term of office of the administrator or assistant administrator who was removed from office.

(2) The term of office of the special administration shall be terminated on the date of:

1. expiry of the period for which they were appointed;
2. the appointment of a liquidator of the insurance undertaking;
3. the opening of bankruptcy proceedings against the insurance undertaking;
4. the appointment of the members or deputy members of the management board referred to in Article 261 of this Act.

(3) The term of office of the assistant administrators shall be terminated on the date of termination of the term of office of the administrators.

Legal Consequences of the Appointment of the Special Administration

Article 255

(1) The decision on appointing the special administration shall repeal the decisions granting the approval for the performance of the function of the management board member in respect of the persons serving as management board members until the appointment of the special administration, and all rights and duties of the former management and supervisory board members shall cease, and contracts pursuant to which the former management and supervisory board members performed their functions shall be terminated.

(2) If the special administration is appointed for the reasons referred to in Article 252, paragraph 1, subparagraphs 1, 3 and 4 of this Act, the former management board members referred to in paragraph 1 of this Article shall not be entitled to severance allowance and variable remuneration, regardless of whether the exercise of such rights has been agreed with the insurance undertaking or results from other act of the insurance undertaking.

(3) The administrators and assistant administrators shall be liable for and required to compensate only for damage which they caused, intentionally or by gross negligence, during the performance of their duties under this Act.

(4) During the term of office of the special administration, the responsibilities of the supervisory board shall be assumed by the Agency.

(5) By way of derogation from the provisions of paragraph 4 of this Article, the Agency shall be entitled to issue binding orders and instructions to the administrator regarding the reorganisation and management of the business performed by the insurance undertaking.

(6) The administrators shall assume the responsibilities of members of the insurance undertaking management board and shall act in accordance with orders and instructions given by the Agency.

Duty to Cooperate with the Special Administration

Article 256

(1) The persons who performed the function of the member of the insurance undertaking management board and other persons with special powers and responsibilities in the insurance undertaking shall without delay provide the special administration and its assistants access to all business and other documentation of the insurance undertaking and prepare a report on the handover of duties.

(2) The persons referred to in paragraph 1 of this Article shall, upon request by the administrator or their assistant, provide all explanations or additional reports on the operations of the insurance undertaking.

(3) The administrators shall be entitled to dismiss a person who obstructs their work and, as appropriate, request the assistance of the competent authority in charge of internal affairs.

Activities of the Special Administration

Article 257

(1) The special administration shall manage the business of the insurance undertaking.

(2) The Agency shall be empowered to issue written orders and instructions to the special administration.

Duties of the Special Administration

Article 258

(1) After its appointment, the special administration shall, at least every three months, prepare and deliver to the Agency a report on the financial position and operating conditions of the insurance undertaking, including an assessment of its financial stability and the prospects for its further operation.

(2) Within nine months from the appointment of the special administration, the special administration shall submit to the Agency a report on the financial position and operating conditions of the insurance undertaking placed under special administration, together with an evaluation of the stability and of the prospects for further operation of the insurance undertaking, which shall include:

1. an evaluation and the consequences of the takeover of the losses of the insurance undertaking by its shareholders;

2. the possibilities of allocation and spread of other losses of the insurance undertaking;

3. any contingencies which may have an impact on the liabilities of the insurance undertaking;

4. an evaluation of possible measures for eliminating financial difficulties of the insurance undertaking, including the transfer of insurance contracts along with an assessment of the costs arising from the implementation of these measures;

5. an assessment of the conditions for initiating the winding-up or bankruptcy of the insurance undertaking.

(3) At the request of the Agency, the special administration shall submit additional reports and information on all matters relevant for performing the supervision or for assessing the financial position of the insurance undertaking and the prospects for its continued operation.

(4) The special administration shall without delay notify the Agency of all circumstances which may contribute to the deterioration of the financial position of the insurance undertaking.

(5) The special administration shall act on the orders and instructions of the Agency and regularly report to the Agency on the execution of these orders and instructions.

(6) The Agency may order the special administration to convene a general meeting of shareholders of the insurance undertaking with a set agenda and proposals of decisions.

(7) The special administration shall convene the general meeting at the latest within eight days of receipt of the Agency's order referred to in paragraph 6 of this Article, and the general meeting shall be convened at least 30 days before it is held. This time limit shall not include the day of publication of the call.

Increasing the Share Capital for the Purpose of Ensuring the Financial Stability of the Insurance Undertaking

Article 259

(1) If the Agency assesses, on the basis of the report prepared by the special administration, that, for the purpose of ensuring compliance with the Solvency Capital Requirement of the insurance undertaking or for the purpose of eliminating the causes of non-compliance with the Solvency Capital Requirement of the insurance undertaking, the share capital of the insurance undertaking should be increased, it shall order the special administration to convene a general meeting of the insurance undertaking and propose the adoption of a decision on such an increase in the share capital.

(2) The special administration shall convene the general meeting for the purpose of deciding on the increase in the share capital in accordance with paragraph 1 of this Article no later than eight days following the receipt of the Agency's order referred to in paragraph 1 of this Article.

(3) In the invitation to the general meeting, the shareholders shall be made aware of the legal consequences referred to in Article 273, paragraph 2, subparagraph 2 of this Act.

Evaluation of the Results of the Special Administration

Article 260

(1) If the Agency assesses that the financial position of the insurance undertaking has improved during the term of office of the special administration to such an extent that the insurance undertaking has reached the Solvency Capital Requirement or that it is capable of settling its due liabilities, the Agency shall issue a decision ordering the special administration to convene, within eight days of delivery of the decision, a general meeting of the insurance undertaking for the purpose of appointing members of the supervisory board, and this general meeting shall be held not later than two months of delivery of that decision.

(2) In the case referred to in paragraph 1 of this Article, the general meeting shall elect the new supervisory board members, whereby the powers of the Agency referred to in Article 255, paragraph 4 of this Act shall be terminated. After obtaining the Agency's approval to appoint the management board members in accordance with this Act, the supervisory board shall appoint the members of the insurance undertaking management board. The term of office of the special administration shall terminate on the date of the appointment of the members or deputy members of the insurance undertaking management board in accordance with Article 261 of this Act.

(3) If the Agency assesses that during the term of office of the special administration the financial position of the insurance undertaking has not improved sufficiently for the insurance undertaking to reach Solvency Capital Requirement or to be capable of settling its due liabilities, the Agency may issue a decision extending the term of office of the special administration by a maximum period of six months if the reasons for filing a proposal for the opening of bankruptcy proceedings against the insurance undertaking do not exist and if the Agency assesses that the insurance undertaking will be able to reach the Solvency Capital Requirement within the next six months.

(4) If the Agency assesses that during the term of office of the special administration the position of the insurance undertaking has not changed sufficiently for the capital of the undertaking to reach the Solvency Capital Requirement or for the insurance undertaking to be capable of settling its due liabilities, the Agency shall adopt a decision on the opening of winding-up proceedings or, if the conditions for the submission of a proposal for the opening of bankruptcy proceedings have been fulfilled, it shall file a proposal for the opening of bankruptcy proceedings.

Appointment of Deputy Management Board Members from among the Supervisory Board Members

Article 261

(1) Where the general meeting of the insurance undertaking has adopted a decision to select or appoint new supervisory board members, until the appointment of the new management board members but not longer than three months, the rights and duties of the insurance undertaking management board shall be given to two supervisory board members appointed by the supervisory board as deputy members of the management board. The supervisory board shall appoint deputy members of the management board within two working days of the date of its appointment and shall without delay notify the Agency thereof.

(2) Where the Articles of Association of the insurance undertaking provide for the supervisory board to have three members, the general meeting shall select or appoint to the new supervisory board five members of which two with the term of office until the appointment of new members of the management board.

Special Administration of the Mutual Insurance Undertaking

Article 262

The provisions of this Act concerning a special administration in insurance undertakings shall apply *mutatis mutandis* to mutual insurance undertakings.

SECTION VIII

WINDING-UP OF THE INSURANCE UNDERTAKING

Opening of Winding-Up Proceedings by the Decision of the Insurance Undertaking

Article 263

(1) The general meeting of the insurance undertaking may adopt a decision on the dissolution of the insurance undertaking, including its branches in other Member States, and on the winding-up of the insurance undertaking.

(2) At least 30 days prior to the adoption of the decision referred to in paragraph 1 of this Article, the insurance undertaking management and supervisory boards shall notify the Agency in writing of this intention.

(3) The insurance undertaking management board or liquidators shall notify the Agency of the adopted decision referred to in paragraph 1 of this Article on the first working day after its adoption.

(4) The Agency shall inform the supervisory authorities of all other Member States and third countries if the decision referred to in paragraph 1 of this Article was adopted by the insurance undertaking with branches in those third countries, as well as of the possible practical effects of such proceedings.

(5) The information referred to in paragraph 4 of this Article shall include legal consequences and actual effects of the adopted decision.

Liquidators

Article 264

(1) The insurance undertaking shall have at least two liquidators who shall jointly represent it.

(2) Only a natural person who meets the requirements to be eligible to be appointed as a member of the management board of the insurance undertaking, as laid down in Article 51, paragraphs 1 – 6 of this Act may be appointed liquidator of the insurance undertaking.

(3) Liquidators of the insurance undertaking shall finalise the pending activities, collect the claims, realise assets of the insurance undertaking and settle its obligations.

(4) To the extent necessary for carrying out the winding-up proceedings, the liquidators may enter into new transactions, other than those which are necessary for the realisation of the liquidation estate.

(5) At the request of the Agency, the liquidators shall submit a report on the progress of the winding-up.

(6) The liquidators shall prove their appointment by a certified copy of the appointment decision or by any other certificate issued by the competent authority of the Republic of Croatia.

(7) The liquidators shall be entitled to exercise in the territory of all Member States all the powers which they are entitled to exercise in the territory of the Republic of Croatia, and, in exercising their powers according to the regulations of the Republic of Croatia, they shall comply with the regulations of the Member States within which they wish to perform their activity, in particular with regard to the procedures for the realisation of assets and the informing of employees. Those powers shall not include the use of force or the right to rule on legal proceedings or disputes.

(8) If the liquidators have established the existence of the reasons for bankruptcy, they shall without delay file a proposal for the opening of bankruptcy proceedings against the insurance undertaking concerned and shall forthwith notify the Agency thereof.

(9) The insurance undertaking shall submit the decision on appointing the liquidator to the competent court for the purpose of entering the insurance undertaking liquidator in the court register.

Application of Other Regulations

Article 265

The provisions of this Act and the provisions of the Companies Act concerning the winding-up of companies shall apply to the winding-up proceedings and effects, unless otherwise provided for in the provisions of this Act.

Activities of the Insurance Undertaking Undergoing the Winding-Up Proceedings

Article 266

Once the winding-up proceedings have been opened, the insurance undertaking may only pursue the insurance business that is necessary or appropriate for the purposes of finalising the winding-up, and the activities referred to in Article 264, paragraph 4 of this Act.

Publication of Decisions

Article 267

(1) The insurance undertaking shall publish the decision to open the winding-up proceedings in the Official Gazette and in the Official Journal of the European Union in the Croatian language or in one of the official languages of the Member States.

(2) The insurance undertaking pursuing the insurance business in a third country through a branch shall publish a summary of the decision to open the winding-up proceedings in the Official Gazette and in the official journal of the third country in which it has a branch.

(3) The publication referred to in paragraphs 1 and 2 of this Article shall specify the competent supervisory authority, the applicable regulations and the liquidators appointed.

Information to Known Creditors on the Opening of the Winding-Up Proceedings and on the Lodging of Claims

Article 268

(1) When the winding-up proceedings are opened, the liquidator shall without delay individually inform by written notice each known creditor whose tax residence, habitual residence or head office is situated in the Republic of Croatia or other Member States.

(2) The notice referred to in paragraph 1 of this Article shall indicate:

1. the name and address of the authority which shall conduct the winding-up proceedings and of the authority to which claims are to be lodged;

2. the time limit for lodging claims and legal consequences of a failure on the part of the creditor to lodge claims;

3. the rights and duties of the creditors in the course of winding-up proceedings, in particular, the indication as to whether the creditors whose claims are preferential or secured *in rem* need to lodge their claims;

4. the general effects of the winding-up proceedings on the insurance contracts and operations, in particular, the date on which the insurance contracts or the operations shall cease to produce effects and the rights and duties of insured persons with regard to the contract or operation.

(3) A creditor shall send copies of any supporting documents to the liquidators and shall indicate the following:

1. the nature and the amount of the claim;

2. the date on which the claim arose;

3. whether he alleges preference, security *in rem* or reservation of title in respect of the claim;

4. where appropriate, what assets are covered by its security.

(4) The information and notices referred to in paragraphs 1 and 2 of this Article shall be provided in the Croatian language. Exceptionally, where a known creditor is the holder of an insurance claim, the information and notices referred to in paragraph 2 of this Article shall be provided in the official language or one of the official languages of the Member State in which the habitual residence, tax residence or head office of the creditor is situated.

(5) The liquidators of the insurance undertaking that has its head office in a Member State and a branch in the Republic of Croatia shall also comply with the provisions of this Article.

(6) The creditor shall lodge their claims against the insurance undertaking undergoing the winding-up proceedings in the official language of the Member State in which the creditor has their residence or head office.

(7) The creditors whose habitual residence, tax residence or head office is situated in another Member State may lodge their claims or submit observations relating to claims in the official language or one of the official languages of that other Member State. In that case, the lodging of their claims or the submission of observations on their claims, as appropriate, shall bear the heading 'Lodgement of claim' or 'Submission of observations relating to claims', as appropriate, in the official language of the Republic of Croatia.

Commitments Arising out of Contracts Concluded under the Right of Establishment or under the Freedom to Provide Services

Article 269

Where the insurance undertaking is wound up, the commitments arising out of contracts concluded under the right of establishment or under the freedom to provide services shall be

fulfilled in the same manner as those arising out of the other insurance contracts of that undertaking, without distinction as to nationality as far as the persons insured and the beneficiaries are concerned.

Regular Information to the Creditors

Article 270

(1) The liquidators of the insurance undertaking shall, in an appropriate manner, keep the creditors regularly informed on the progress of the winding-up, and the Agency at its request.

(2) The Agency shall inform the supervisory authorities of other Member States on developments in the winding-up proceedings, at their request.

Renewal of Authorisation to Pursue the Insurance Business

Article 271

(1) The insurance undertaking that has opened winding-up proceedings or against which winding-up proceedings have been opened, or the insurance undertaking against which bankruptcy proceedings have been opened, may not change its business activity in such a manner as to cease to provide insurance services and continue its business, but it shall finalise the winding-up or bankruptcy proceedings and perform the removal from the court register.

(2) Article 167 of this Act shall not apply to insurance undertakings undergoing winding-up or bankruptcy proceedings.

Winding-Up of Reinsurance Undertakings

Article 272

(1) The provisions concerning the winding-up of insurance undertaking shall apply *mutatis mutandis* to reinsurance undertakings, unless otherwise provided for in the provisions of this Act.

(2) Where the reinsurance undertaking is wound up, the commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of the other reinsurance contracts of that undertaking.

Opening of Winding-Up Proceedings by the Decision of the Agency

Article 273

(1) Only the Agency may take a decision concerning the opening of winding-up proceedings with regard to the insurance undertaking, including its branches in other Member States.

(2) The Agency shall adopt the decision referred to in paragraph 1 of this Article in the cases specified in Article 246 of this Act and in the following cases:

1. if, on the basis of the report prepared by the special administration, it assesses that, during the term of office of the special administration, the financial position of the insurance undertaking has not improved or that it continues to deteriorate to the extent that the undertaking shall not comply with the Solvency Capital Requirement or the Minimum Capital Requirement as prescribed by this Act and that there are no reasons for the submission of a proposal for the opening of bankruptcy proceedings;

2. if the general meeting of the insurance undertaking does not adopt or refuses to adopt a decision referred to in Article 258, paragraph 6 of this Act concerning an increase in the share capital of the insurance undertaking, or if it adopts it, but the first sale of shares is not successful, or if it does not adopt or refuses to adopt a decision selecting or appointing members of the supervisory or management boards in accordance with Article 260, paragraph 3 of this Act;

3. if the authorisation of the insurance undertaking to pursue the insurance business is withdrawn or revoked so that it is no longer allowed to pursue the insurance business;

4. if the general meeting has adopted a decision changing the activity of the insurance undertaking so that the undertaking shall cease to provide insurance services, unless the insurance undertaking had previously transferred its total insurance portfolio to another insurance undertaking in accordance with the provisions of this Act.

(3) The Agency shall adopt the decision referred to in paragraph 1 of this Article within a period of 30 days, which shall run:

1. in the case referred to in paragraph 2, subparagraph 1 of this Article, not later than from the date of submission of the report prepared by the special administration referred to in Article 258 of this Act;

2. in the case referred to in paragraph 2, subparagraph 2 of this Article, from the day when the general meeting should have adopted a decision to increase the share capital of the insurance undertaking, but refused to adopt it, or from the date of expiry of the time limit for the subscription and payment of shares on the basis of the unsuccessful first sale;

3. in the case referred to in paragraph 2, subparagraph 3 of this Article, the Agency shall adopt a decision to open winding-up proceedings at the same time when adopting a decision to withdraw the authorisation to pursue the insurance business;

4. in the case referred to in paragraph 2, subparagraph 4 of this Article, after the end of the day when the general meeting took place.

(4) The Agency shall inform the supervisory authorities of all other Member States about the adoption of the decision referred to in paragraph 1 of this Article, and shall also provide such information to the supervisory authorities of third countries if the decision concerns the insurance undertaking that has branches in those third countries, including the possible practical effects of such proceedings.

(5) If, for the protection of the interests of the clients of the insurance undertaking or for other public interests, it is not possible to delay the adoption of the decision referred to in paragraph

1 of this Article, the Agency shall inform the supervisory authorities referred to in paragraph 4 of this Article immediately after its adoption.

Liquidators Appointed by the Decision of the Agency

Article 274

(1) When the Agency adopts the decision referred to in Article 273, paragraph 1 of this Act, it shall appoint, in the same decision, at least two liquidators of the insurance undertaking and shall specify the nature and scope of the tasks to be performed by each liquidator.

(2) The provisions of Article 264, paragraphs 1 – 8 of this Act shall apply to liquidators referred to in paragraph 1 of this Article.

(3) On the date of appointment of the liquidators, all the powers of the members of the insurance undertaking management board shall be terminated, and the powers of the general meeting and of the supervisory board shall be exercised subject to the prior consent from the Agency, with the exception of the power to file an action before the competent court against the Agency's decision referred to in paragraph 1 of this Article.

(4) The liquidators shall inform the Agency in writing about the progress of the winding-up proceedings and shall prepare and submit to the Agency, within 30 days from the date of settlement of all liabilities and payment of the remaining assets to the undertaking shareholders, the final liquidation reports and a report on the completed winding-up of the insurance undertaking, and shall be responsible for the preparation of these reports.

(5) The liquidators shall be entitled to appropriate compensation for costs and to remuneration for their work, which shall be paid by the insurance undertaking in respect of which winding-up proceedings have been opened.

(6) The Agency shall submit the decision appointing a liquidator to the competent court for the purpose of entering the insurance undertaking liquidator in the court register.

Activities of the Insurance Undertaking Undergoing the Winding-Up Proceedings

Article 275

Once the winding-up proceedings have been opened, the insurance undertaking may only pursue the insurance business that is necessary and appropriate for the purposes of finalising the winding-up, and the activities that are necessary for the transfer of the insurance contracts to another insurance undertaking.

Publication in the Official Journal of the European Union of a Decision to Open the Winding-Up Proceedings

Article 276

(1) The Agency shall publish on its website and in the Official Gazette the decision on withdrawing the authorisation to pursue the insurance business and opening the winding-up proceedings against the insurance undertaking that has its head office in the Republic of

Croatia, and the operative part of the decision shall be published in the Official Journal of the European Union. The supervisory authority of another Member State shall do the same in the case of the withdrawal of authorisation to pursue the insurance business in respect of the insurance undertaking that has its head office in that Member State and a branch in the Republic of Croatia.

(2) The regulations of the Republic of Croatia shall apply to the winding-up of the insurance undertaking that has its head office in the Republic of Croatia and a branch in another Member State.

Effects of the Decision to Open the Winding-Up Proceedings

Article 277

(1) The decision concerning the opening of the winding-up proceedings of the insurance undertaking, including its branches, shall be recognised without further formality throughout the territories of the Member States and shall be effective there as soon as the decision is effective in the Republic of Croatia.

(2) The Agency shall inform EIOPA and the supervisory authorities of the Member States in which the insurance undertaking has its branch of the decision to open the winding-up proceedings of the insurance undertaking, including the possible practical effects of such proceedings, where possible before the adoption of the decision referred to in Article 273 of this Act and failing that immediately thereafter.

Effects of the Decision to Dissolve the Insurance Undertaking from another Member State

Article 278

The decision on withdrawing the authorisation to pursue the insurance business in respect of the insurance undertaking from another Member State that has its branch in the Republic of Croatia, which is issued by the competent supervisory authority of the Member State and has the same legal effect as a decision on withdrawing the authorisation to pursue the insurance business in respect of the insurance undertaking in accordance with this Act, shall have immediate effect in the territory of the Republic of Croatia, without any particular recognition and enforcement procedure.

Application of Other Regulations

Article 279

(1) The provisions of the Companies Act concerning the winding-up of joint stock companies shall apply to the winding-up proceedings of insurance undertakings opened by a decision of the Agency, unless otherwise provided for in the provisions of this Act.

(2) The provisions of Articles 268 – 272 of this Act shall apply to the insurance undertaking undergoing winding-up proceedings referred to in paragraph 1 of this Article.

(3) The provisions concerning the winding-up of insurance undertaking shall apply *mutatis mutandis* to reinsurance undertakings, unless otherwise provided for in the provisions of this Act.

Winding-up of a Third-Country Insurance Undertaking Branch Established in the Republic of Croatia

Article 280

(1) Where a third-country insurance undertaking has branches established in more than one Member State, each branch shall be treated independently with regard to the application of the provision concerning the winding-up proceedings.

(2) The provisions of this Act concerning the winding-up proceedings which are contained in Article 273 of this Act shall apply *mutatis mutandis* to a third-country insurance undertaking branch undergoing the winding-up proceedings.

(3) Prior to adopting a decision to revoke from a third-country insurance undertaking the authorisation to pursue the insurance business through a branch established in the Republic of Croatia, the Agency shall inform the supervisory authorities of all other Member States in which the branches of the insurance undertaking whose branch is undergoing winding-up proceedings are located.

(4) The information referred to in paragraph 3 of this Article shall contain information about actual effects of these proceedings.

(5) By way of derogation from the provision of paragraph 3 of this Article, if, for the protection of insured persons, it is not possible to delay the beginning of the winding-up proceedings, the Agency shall inform the supervisory authorities of other Member States immediately after the adoption of the decision.

(6) During the winding-up proceedings referred to in paragraph 3 of this Article, the Agency shall cooperate with the supervisory authorities of other Member States.

(7) During the winding-up proceedings referred to in paragraph 3 of this Article, the liquidators shall cooperate and shall provide each other with all legally permitted information that may be of relevance in conducting the winding-up proceedings.

Co-Insurance in the Winding-Up Proceedings

Article 281

In the event of the insurance undertaking being wound up, the commitments arising from participation in co-insurance contracts at European Union level shall be met in the same way as those arising under the other insurance contracts of that undertaking without distinction as to the nationality of the insured and of the beneficiaries.

Opening of Winding-Up Proceedings by a Decision of the Mutual Insurance Undertaking

Article 282

- (1) The winding-up of the mutual insurance undertaking shall be carried out on the basis of a decision to dissolve the undertaking adopted by the general meeting of the mutual insurance undertaking.
- (2) The paid amounts of the share capital may be returned to the members of the undertaking only after all other liabilities of the undertaking have been paid, including those towards the members under the insurance contracts.
- (3) The assets remaining after the payment of liabilities shall be distributed to the persons who were members of the mutual insurance undertaking at the time of adoption of the decision to dissolve the undertaking. The distribution shall be carried out in accordance with the criteria for the distribution of profit to the members as determined by the Articles of Association.
- (4) The provisions concerning liquidators of insurance undertakings shall apply to the liquidators of mutual insurance undertakings.
- (5) If not otherwise provided for in this Act, the provisions of the Companies Act concerning the winding-up of limited liability companies shall apply to the winding-up of mutual insurance undertakings.

Adoption of the Decision to Open Winding-Up Proceedings in Respect of the Mutual Insurance Undertaking

Article 283

- (1) Only the Agency may adopt a decision to open the winding-up proceedings of the mutual insurance undertaking.
- (2) The provisions of this Act concerning the winding-up of the insurance undertaking initiated by the decision of the Agency shall apply *mutatis mutandis* to the proceedings referred to in paragraph 1 of this Article.

SECTION IX

BANKRUPTCY OF THE INSURANCE UNDERTAKING

Applicable Provisions

Article 284

- (1) Only the competent court in the Republic of Croatia may adopt a decision on opening the bankruptcy proceedings against the insurance undertaking, including its branches.
- (2) The provisions of the Bankruptcy Act shall apply *mutatis mutandis* to the bankruptcy proceedings against the insurance undertaking, unless otherwise provided for in this Act.
- (3) The provisions of this Act concerning bankruptcy of the insurance undertaking shall apply *mutatis mutandis* to the reinsurance undertaking and to the mutual insurance undertaking.

(4) The court referred to in paragraph 1 of this Article shall without delay notify the Agency of the adoption of the decision on opening the bankruptcy proceedings against the insurance undertaking, where possible before the opening of these proceedings and failing that immediately thereafter.

(5) After having received the notification referred to in paragraph 4 of this Article, the Agency shall issue a decision withdrawing authorisation to pursue the insurance business granted to the insurance undertaking undergoing bankruptcy proceedings.

(6) The Agency shall inform the supervisory authorities of all other Member States of the adoption of the decision referred to in paragraphs 4 and 5 of this Article, including possible practical effects of such measure.

Insurance Contracts

Article 285

(1) In the case of bankruptcy proceedings against the insurance undertaking, the insurance contracts in which that undertaking is the insurer shall terminate upon the expiry of the period of 30 days after the opening of the bankruptcy proceedings.

(2) The provisions of Article 268 of this Act and the provisions of the Bankruptcy Act which are not contrary to those provisions shall apply accordingly to the notification of the opening of bankruptcy proceedings and on the lodging of claims.

(3) The creditor's claims shall be lodged with the bankruptcy trustee within three months from the date of opening bankruptcy proceedings against the insurance undertaking concerned.

Bankruptcy trustee

Article 286

(1) The person who, in addition to meeting the requirements laid down in the Bankruptcy Act, also has knowledge and experience in the field of insurance shall be eligible to be appointed bankruptcy trustee in the insurance undertaking.

(2) Before appointing the bankruptcy trustee, the court shall consult the Agency.

Information

Article 287

(1) The competent court shall notify the Agency of opening the bankruptcy proceedings against the insurance undertaking, the appointment of the bankruptcy trustee, the appointment of a creditors' custodian, the suspension of the bankruptcy proceedings, and on the termination of the bankruptcy proceedings against the insurance undertaking.

(2) The competent court shall publish the operative part of the decision opening bankruptcy proceedings against the insurance undertaking, including its branches, in the Official Journal of the European Union.

Creditors' Custodian

Article 288

- (1) The bankruptcy court shall appoint a custodian for the creditors referred to in Article 290, paragraph 1 and Article 291 of this Act in order to safeguard their rights.
- (2) The creditors' custodian referred to in paragraph 1 of this Article may only be a natural person who has knowledge and experience in the field of the insurance business.
- (3) Prior to appointing the creditors' custodian, the Agency shall be consulted.
- (4) The creditors' custodian shall determine the volume of the existing assets to cover the claims of the creditors referred to in Articles 290 and 291 of this Act and shall determine and lodge the claims of these insured persons.
- (5) Where possible, the creditors' custodian shall hear the creditors before lodging their claims, inform them about the claims lodged, and provide them, at their request, with other information about the facts relevant to their claims, which shall not exclude the right of any individual creditor to lodge his claims himself. If the claim lodged by the insured person is different from that lodged by the creditors' custodian, the claim which is more favourable for the creditor shall be considered to be valid until the difference is corrected.
- (6) The bankruptcy trustee shall provide the creditors' custodian with access to all business books and documents of the insolvent debtor and document, at their request, the state of assets covering the claims of the creditors referred to in Articles 290 and 291 of this Act.
- (7) The creditors' custodian may request appropriate remuneration for their work and compensation of costs, which shall be paid out of the assets covering mathematical provisions referred to in Article 180, paragraph 2 of this Act.

Higher Priority Claims

Article 289

Higher priority claims shall, in addition to those provided for in the Bankruptcy Act, include also the following:

1. claims under life insurance contracts and other insurance contracts which are subject to probability tables and calculations similar to those applied for life insurance in respect of the commitments for which the insurance undertaking is obliged to establish mathematical provisions, which could not be settled from the assets covering mathematical provisions;
2. claims under non-life insurance contracts and other classes of insurance for commitments for which the insurance undertaking is obliged to establish accounting technical provisions, other than mathematical provisions, for the compensation of damage resulting from events which have occurred before the termination of the insurance contract and for the refund of a part of the premium paid for the period after the termination of the insurance contract;

3. claims of the Croatian Insurance Office for payments made from the Guarantee Fund for the compensation of the paid amount of damage that the injured persons could not collect from the insurance undertaking due to the opening of bankruptcy proceedings against the insurance undertaking.

*Special Provisions Concerning the Payment of Claims from the Assets Covering
Mathematical Provisions*

Article 290

(1) The claims of the creditors of the insurance undertaking under life insurance contracts and other insurance contracts which are subject to probability tables and calculations similar to those applied for life insurance in respect of commitment for which the insurance undertaking is obliged to establish mathematical provisions, shall be settled from the assets covering the mathematical provisions, or from the funds generated by the realisation of the assets covering the mathematical provisions.

(2) The assets covering the mathematical provisions referred to in Article 180, paragraph 2 of this Act shall be excluded from the bankruptcy estate and shall only be intended for meeting the claims of the creditors referred to in paragraph 1 of this Article.

(3) The assets covering mathematical provisions shall be kept separately from other assets of the insurance undertaking in accordance with Articles 182 – 185 of this Act.

(4) The creditors referred to in paragraph 1 of this Article shall be entitled to have their claims paid out of the assets covering the mathematical provisions up to the amount corresponding to the accounting technical provisions intended to cover the liabilities for which the insurance undertaking is obliged to establish mathematical provisions in respect of the insurance contract giving rise to the claim.

(5) If the assets covering the mathematical provisions are not sufficient for the entire payment of claims of the creditors referred to in paragraph 4 of this Article, the claims shall be paid in the amount which is in the same ratio to the accounting technical provisions intended to cover the liabilities for which the insurance undertaking is obliged to establish mathematical provisions in respect of the insurance contract giving rise to the claim, as is the ratio between the total value of the assets covering the mathematical provisions and accounting technical provisions intended to cover all the liabilities of the insurance undertaking in respect of which the undertaking is obliged to establish the mathematical provisions.

(6) Other claims of the creditors referred to in paragraph 4 of this Article shall be paid from the assets covering mathematical provisions which remain after the payment of the claims referred to in paragraph 4 of this Article.

(7) If the assets covering mathematical provisions are not sufficient for the entire payment of other claims referred to in paragraph 6 of this Article, these claims shall be settled proportionally from the assets covering the mathematical provisions.

(8) The situation as at the date of termination of the insurance contract shall apply to the determination of the level of claims and the total amount of the compulsory coverage.

(9) The creditors' claims referred to in paragraph 1 of this Article which have not been settled in accordance with paragraph 1 of this Article shall be settled from the bankruptcy estate of the insurance undertaking.

(10) By way of derogation from paragraph 2 of this Article, the creditor who holds a charge on the assets covering mathematical provisions shall be entitled to have their claims settled from the assets covering the mathematical provisions on which they hold a lien, in accordance with the provisions of the Bankruptcy Act.

(11) Once bankruptcy proceedings have been opened, the composition of the assets entered in the register in accordance with Articles 180 and 181 of this Act and this Article shall not be changed and no alteration other than the correction of purely clerical errors shall be made, except with the authorisation of the competent authority.

(12) By way of derogation from paragraph 11 of this Article, the bankruptcy trustee shall add to those assets its yield and the value of pure premiums received in respect of the classes of insurance concerned in the period between the opening of bankruptcy proceedings and the moment of payment of insurance claims.

(13) Where the product of the realisation of assets is less than their estimated value in the register, the bankruptcy trustee shall inform thereof the bankruptcy judge.

Special Provisions Concerning the Payment of Claims from the Assets Contained in the Internal Fund

Article 291

(1) Where the policy holders' benefits provided by the insurance contract where the investment risk is borne by the policy holders are directly linked to the value of the assets contained in the internal fund, the policy holder shall have the exclusive right to have their claims settled from the assets of that internal fund to which they are entitled under that contract.

(2) The provisions of Article 290 of this Act shall accordingly apply to the assets referred to in paragraph 1 of this Article.

Special Asset Account for the Coverage of the Mathematical Provisions

Article 292

The bankruptcy trustee shall manage all transactions involving the money generated by the realisation of the assets covering the mathematical provisions referred to in Article 180, paragraph 2 of this Act through a special asset account for coverage of mathematical provisions.

Co-Insurance in Bankruptcy Proceedings

Article 293

In the event of the insurance undertaking being bankrupt, the commitments arising from participation in co-insurance contracts at European Union level shall be met in the same manner as those arising under the other insurance contracts of that undertaking without distinction as to the nationality of the insured and of the beneficiaries.

Bankruptcy Proceedings against a Branch of the Insurance Undertaking from another Member State or a Third Country

Article 294

When the insurance undertaking from another Member State or a third country has a branch established in the territory of the Republic of Croatia, the provisions of the Bankruptcy Act concerning the international bankruptcy proceedings shall apply to bankruptcy proceedings in respect of that branch, and Articles 284 – 293 of this Act.

CHAPTER IV

SUPERVISION OF OTHER PERSONS

General Provisions

Article 295

The Agency shall also supervise other persons which perform the following activities as one of their operations or as their sole activity:

1. insurance or reinsurance business without having the Agency's approval to perform these activities;
2. insurance and reinsurance brokerage activities or insurance agents activities without having the Agency's approval to perform the aforementioned.

Supervisory Measures

Article 296

(1) If, on the basis of data available to it, the Agency finds that an entity pursues the insurance business, or the insurance and reinsurance brokerage activities and the insurance agents activities without having the Agency's approval to perform these activities, the entity shall be ordered to cease to perform those activities.

(2) In the case referred to in paragraph 1 of this Article, the Agency may first inspect business books and other documents and collect evidence in order to determine whether the entity concerned pursues the insurance business or insurance and reinsurance brokerage activities and insurance agents activities.

TITLE XV

SUPERVISION OF INSURANCE AND REINSURANCE UNDERTAKINGS IN A GROUP

CHAPTER I

GROUP SUPERVISION: DEFINITIONS, CASES OF APPLICATION, SCOPE AND LEVELS

Definitions

Article 297

(1) For the purposes of this Title, the following definitions shall apply:

1. 'participating undertaking' means an undertaking which is either a parent undertaking or other undertaking which holds a participation, or an undertaking linked with another undertaking by:

(a) managing this undertaking and one or more other undertakings on a unified basis pursuant to a contract concluded with that undertaking or provisions in the Articles of Association of those undertakings or;

(b) the management or the supervisory board or other managers of that undertaking and one or several legal entities which consist mostly of the same persons in office in the financial year until the consolidated accounts are drawn up.

Holding, directly or indirectly, of voting rights or capital in an undertaking over which, in the opinion of the Agency, a significant influence is effectively exercised, shall be considered participation.

2. 'related undertaking' means either a subsidiary undertaking or other undertaking in which a participation is held, or an undertaking linked with another undertaking by a relationship as set out in subparagraph 1, points (a) or (b) of this paragraph

3. 'group' means a group of undertakings that:

(a) consists of a participating undertaking, its subsidiaries and the entities in which the participating undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship as set out in subparagraph 1, points (a) or (b) of this paragraph or;

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

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

– the establishment and dissolution of such relationships for the purposes of this Title are subject to prior consent by the group supervisor, where the undertaking exercising the centralised coordination shall be considered as the parent undertaking, and the other undertakings shall be considered as subsidiaries

4. ‘group supervisory authority’ means the Agency or the supervisory authority of the Member State responsible for group supervision defined in accordance with Article 329 of this Act

5. ‘college of supervisory authorities’ means a permanent but flexible structure for cooperation, coordination and facilitation of rendering decisions with regard to group supervision

6. ‘insurance holding company’ means a parent undertaking which is not a mixed financial holding company and the main activity of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance or reinsurance undertakings, or Member-State insurance or reinsurance undertakings, or third-country insurance or reinsurance undertakings, at least one of such subsidiary undertakings being an insurance or reinsurance undertaking

7. ‘mixed-activity insurance holding company’ means a parent undertaking, other than an insurance undertaking, a Member-State insurance undertaking, third-country insurance undertaking, a reinsurance undertaking, a Member-State reinsurance undertaking, a third-country reinsurance undertaking, an insurance holding company or a mixed financial holding company, which includes at least one insurance or reinsurance undertaking among its subsidiary undertakings

8. ‘mixed financial holding company’ means a mixed financial holding company in accordance with the act governing supplementary supervision of financial conglomerates.

(2) Any undertaking which, in the opinion of the Agency, effectively exercises a dominant influence over another undertaking shall be considered a parent undertaking.

(3) Any undertaking over which, in the opinion of the Agency, a parent undertaking effectively exercises a dominant influence shall be considered a subsidiary undertaking.

Cases of Application of Group Supervision

Article 298

(1) The provisions of this Act stipulating the rules for the supervision of insurance undertakings and reinsurance undertakings taken individually shall be applied to insurance undertakings and reinsurance undertakings, which are a part of a group and are supervised on a group basis, except where otherwise stipulated in this Title.

(2) Supervision at group level in relation to:

1. insurance undertakings, which are participating undertakings in at least one insurance undertaking, reinsurance undertaking, Member-State insurance undertaking or Member-State

reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking, shall be performed in accordance with Articles 303 – 339 of this Act;

2. insurance undertakings, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in a Member State, shall be performed in accordance with Articles 303 – 339 of this Act;

3. insurance undertakings, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in a third country or a third-country insurance or reinsurance undertaking shall be performed in accordance with Articles 340 – 343 of this Act;

4. insurance undertakings, the parent undertaking of which is a mixed-activity insurance holding company shall be performed in accordance with Article 344 of this Act.

(3) In the cases referred to in paragraph 2, subparagraphs 1 and 2 of this Article, where the participating insurance undertaking or the insurance holding company or the mixed financial holding company which has its head office in one of the Member States is a regulated entity or a related undertaking of such an entity or a mixed financial holding company which is subject to supplementary supervision in accordance with the act governing supplementary supervision of financial conglomerates, the Agency, as the group supervisory authority may, after consulting other competent supervisory authorities, decide not to carry out at the level of that participating insurance undertaking or that insurance holding company or the mixed financial holding company, the supervision of risk concentration referred to in Article 326 of this Act, the supervision of intra-group transactions referred to in Article 327 of this Act, or both.

(4) If the mixed financial holding company is subject to equal provisions in accordance with this Act and in accordance with the act governing supplementary supervision of financial conglomerates, especially within the meaning of risk-based supervision, the Agency, as the group supervisory authority may, after consulting other competent supervisory authorities, apply only the corresponding provisions of the act governing supplementary supervision of financial conglomerates to that mixed financial holding company.

(5) If the mixed financial holding company is subject to equal provisions in accordance with this Act and the act governing credit institutions, especially within the meaning of risk-based supervision, the Agency, as the group supervisory authority may, in agreement with the consolidation supervisory authority in the banking and investment services sector, apply only the provisions of the act relating to the most significant sector, as defined in accordance with the act governing supplementary supervision of financial conglomerates.

(6) The Agency, as the group supervisory authority, informs EBA and EIOPA of the decisions adopted on the basis of paragraphs 4 and 5 of this Article.

(7) The provisions of this Title relating to the insurance undertaking shall also be applied in the appropriate manner to the reinsurance undertaking.

Scope of Group Supervision

Article 299

(1) The exercise of group supervision in accordance with Article 298 of this Act shall not imply that the Agency as the group supervisory authority is required to play a supervisory role in relation to the third-country insurance undertaking, the third-country reinsurance undertaking, the insurance holding company, the mixed financial holding company or the mixed-activity insurance holding company taken individually, without prejudice to Article 338 of this Act as far as insurance holding companies or mixed financial holding companies are concerned.

(2) The Agency as the group supervisory authority may decide on a case-by-case basis not to include an undertaking in the group supervision referred to in Article 298 of this Act where:

1. the undertaking is situated in a third country where there are legal impediments to the transfer of the necessary information, without prejudice to the provisions of Article 314 of this Act;

2. the undertaking which should be included is of negligible interest with respect to the objectives of group supervision; or

3. the inclusion of the undertaking would be inappropriate or misleading with respect to the objectives of the group supervision.

Where several undertakings of the same group, taken individually, may be excluded in accordance with subparagraph 2 of this paragraph, they shall nevertheless be included where, collectively, they are of non-negligible interest.

(3) Where the Agency is of the opinion that an insurance undertaking should not be included in the group supervision under paragraph 2, subparagraphs 2 and 3 of this Article, it shall consult the other supervisory authorities concerned before taking a decision.

(4) Where the Agency does not include an insurance undertaking in the group supervision under paragraph 2, subparagraphs 2 or 3 of this Article, the supervisory authorities of the Member State in which that undertaking is situated may ask the undertaking which is at the head of the group for any information which may facilitate their supervision of the insurance undertaking concerned.

Ultimate Parent Undertaking at Member State Level

Article 300

(1) Where the participating insurance undertaking or the insurance holding company or the mixed financial holding company referred to in Article 298, paragraph 2, subparagraphs 1 and 2 of this Act is also a subsidiary undertaking of another insurance undertaking or of another insurance holding company or of another mixed financial holding company which has its head office in one of the Member States, Articles 303 – 339 of this Act shall apply only at the level of the ultimate parent insurance undertaking, insurance holding company or mixed financial holding company which has its head office in one of the Member States.

(2) Where the ultimate parent insurance undertaking or insurance holding company or mixed financial holding company which has its head office in one of the Member States, referred to in paragraph 1 of this Article, is a subsidiary undertaking of an undertaking which is subject

to supplementary supervision in accordance with the act governing supplementary supervision of financial conglomerates, the Agency as the group supervisory authority may, after consulting the other competent supervisory authorities, decide not to carry out at the level of that ultimate parent undertaking the supervision of risk concentration referred to in Article 326 of this Act, the supervision of intra-group transactions referred to in Article 327 of this Act, or both.

Ultimate Parent Undertaking at the Level of the Republic of Croatia

Article 301

(1) Where the participating insurance undertaking or the insurance holding company or the mixed financial holding company which has its head office in one of the Member States, referred to in Article 298, paragraph 2, subparagraphs 1 and 2 of this Act, does not have its head office in the same Member State as the ultimate parent undertaking at European Union level referred to in Article 300 of this Act, the Agency may, after consulting the group supervisory authority and the ultimate parent undertaking at European Union level, adopt a decision to subject to group supervision the ultimate parent insurance undertaking or insurance holding company or mixed financial holding company at the level of the Republic of Croatia.

In such a case, the Agency shall explain its decision to the group supervisory authority and the ultimate parent undertaking at European Union level. The group supervisory authority shall inform the college of supervisory authorities in accordance with Article 330, paragraph 1, subparagraph 1 of this Act.

Articles 303 – 339 of this Act shall apply in the corresponding manner, in accordance with paragraphs 2 – 6 of this Article.

(2) The Agency may restrict group supervision of the ultimate parent undertaking at the level of the Republic of Croatia to one or several sections of Chapter II of this Title of the Act.

(3) Where the Agency determines that the conditions for the application of Articles 303 – 325 of this Act to the ultimate parent undertaking at the level of the Republic of Croatia are fulfilled, the choice of method made by the group supervisory authority in accordance with Article 305 of this Act in respect of the ultimate parent undertaking at European Union level referred to in Article 300 of this Act shall be recognised as determinative and applied by the Agency.

(4) Where the Agency decides to apply Articles 303 – 325 of this Act to the ultimate parent undertaking at the level of the Republic of Croatia and where the ultimate parent undertaking at European Union level referred to in Article 300 of this Act obtained, in accordance with Article 316 or Article 318, paragraph 5 of this Act, consent to calculate the group Solvency Capital Requirement, as well as the Solvency Capital Requirement for insurance undertakings in the group by applying the internal model, the subject decision shall be recognised as determinative and applied by the Agency.

In such a situation, where the Agency considers that the risk profile of the ultimate parent undertaking at the level of the Republic of Croatia deviates significantly from the internal model approved at European Union level, and as long as that undertaking does not properly

address the concerns of the Agency, the Agency may decide to impose a capital add-on to the group Solvency Capital Requirement of that undertaking resulting from the application of such model or, in exceptional circumstances where such capital add-on would not be appropriate, to require that undertaking to calculate its group Solvency Capital Requirement on the basis of the standard formula.

The Agency shall explain such decisions to the undertaking and the group supervisory authority that in turn informs the college of supervisory authorities in accordance with Article 330, paragraph 1, subparagraph 1 of this Act.

(5) Where the Agency determines that the conditions for the application of Articles 303 – 325 of this Act to the ultimate parent undertaking at the level of the Republic of Croatia are fulfilled, that undertaking shall not be permitted to introduce, in accordance with Articles 320 or 325 of this Act, an application for consent to subject any of its subsidiaries to the provisions of Articles 322 and 323 of this Act.

(6) No decision referred to in paragraph 1 of this Article can be made or maintained where the ultimate parent undertaking at the level of the Republic of Croatia is a subsidiary of the ultimate parent undertaking at European Union level referred to in Article 300 of this Act, whereby the ultimate parent undertaking at European Union level referred to in Article 300 of this Act in accordance with the provisions of Articles 321 or 325 of this Act has obtained consent for that subsidiary to be subject to Articles 322 and 323 of this Act.

(7) When adopting the decision referred to in paragraph 1 of this Article, the Agency shall consider Regulation (EU) No 2015/35.

Parent Undertaking Covering Several Member States

Article 302

(1) Where the Agency may adopt the decision referred to in Article 301, paragraph 1 of this Act, it is also authorised to adopt a decision on concluding an agreement with supervisory authorities in other Member States where another related ultimate parent undertaking at the level of the Republic of Croatia is present, with a view to carrying out group supervision at the level of a subgroup covering several Member States.

Where the Agency and the competent supervisory authorities have concluded such an agreement, group supervision shall not be carried out at the level of any ultimate parent undertaking referred to in Article 301 of this Act present in Member States other than the Member State where the subgroup is located. In such a case, the Agency and the competent supervisory authorities shall explain their agreement to the group supervisory authority and the ultimate parent undertaking at European Union level. The group supervisory authority shall inform the college of supervisory authorities in accordance with Article 330, paragraph 1, subparagraph 1 of this Act.

(2) The provisions of Article 301, paragraphs 2 – 6 of this Act shall apply *mutatis mutandis*.

CHAPTER II

FINANCIAL POSITION

SECTION I

GROUP SOLVENCY

Subsection I

General Provisions

Supervision of Group Solvency

Article 303

(1) Supervision of the group solvency shall be exercised in accordance with paragraphs 2 and 3 of this Article, Article 328 and Articles 329 – 339 of this Act.

(2) In the case referred to in Article 298, paragraph 2, subparagraph 1 of this Act, the participating insurance undertakings shall ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with Articles 305 – 318 of this Act.

(3) In the case referred to in Article 298, paragraph 2, subparagraph 2 of this Act, the insurance undertakings and the reinsurance undertakings in the group shall ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with Article 319 of this Act.

(4) The requirements referred to in paragraphs 2 and 3 of this Article shall be subject to supervisory review by the Agency as the group supervisory authority in accordance with Articles 329 – 339 of this Act. Article 163 and Article 165, paragraph 1 and 7 – 11 of this Act shall apply *mutatis mutandis*.

(5) As soon as the participating undertaking has observed and informed the Agency as the group supervisory authority that the group Solvency Capital Requirement is no longer complied with or that there is a risk of non-compliance of the group Solvency Capital Requirement in the following three months, the Agency as the group supervisory authority shall inform the other supervisory authorities within the college of supervisory authorities, which shall analyse the situation of the group.

Frequency of Calculation

Article 304

(1) The participating insurance undertaking or insurance holding company or mixed financial holding company shall perform the calculations referred to in Article 303, paragraphs 2 and 3 of this Act at least annually.

The relevant data for and the results of that calculation shall be submitted to the Agency as the group supervisory authority by the participating insurance undertaking or, where the group is not headed by an insurance undertaking, by the insurance holding company or the mixed financial holding company or the undertaking in the group identified by the Agency as the

group supervisory authority after consulting the other competent supervisory authorities and the group itself.

(2) The insurance undertaking, insurance holding company and mixed financial holding company shall monitor the group Solvency Capital Requirement on an ongoing basis. Where the risk profile of the group deviates significantly from the assumptions underlying the last reported group Solvency Capital Requirement, the group Solvency Capital Requirement shall be recalculated without delay and a report on the result of such a calculation shall be submitted to the Agency as the supervisory authority.

Where there is evidence to suggest that the risk profile of the group has altered significantly since the date on which the group Solvency Capital Requirement was last reported, the Agency as the group supervisory authority may require a recalculation of the group Solvency Capital Requirement.

Subsection II

Choice of Calculation Method and General Principles

Choice of Method

Article 305

(1) The calculation of the solvency at the level of the group of the insurance and reinsurance undertakings referred to in Article 298, paragraph 2, subparagraph 1 of this Act shall be carried out in accordance with the technical principles and methods set out in Articles 306 – 318 of this Act and Regulation (EU) No 2015/35.

(2) The Agency as the group supervisory authority may, with regard to a particular group, decide, after consulting the other competent supervisory authorities and the group itself, to apply to that group an alternative method, which is laid down in Article 318 of this Act, in accordance with Regulation (EU) No 2015/35, or a combination of the consolidation method and the alternative method, where the exclusive application of the consolidation method would not be appropriate.

Inclusion of Proportional Share

Article 306

(1) The calculation of the group solvency shall take account of the proportional share held by the participating undertaking in its related undertakings.

The proportional share shall comprise either of the following:

1. where the consolidation method is used, the percentages used for the establishment of the consolidated accounts; or
2. where the alternative method is used, the proportion of the subscribed capital that is held, directly or indirectly, by the participating undertaking.

(2) Regardless of the method used, where the related undertaking is a subsidiary undertaking and does not have sufficient eligible own funds to cover its Solvency Capital Requirement, the total solvency deficit of the subsidiary shall be taken into account.

Exceptionally, where in the opinion of the competent supervisory authorities, the responsibility of the parent undertaking owning a share of the capital is strictly limited to that share of the capital, the Agency as the group supervisory authority may allow for the solvency deficit of the subsidiary undertaking to be taken into account on a proportional basis.

(3) The Agency as the group supervisory authority shall determine, after consulting the other competent supervisory authorities and the group itself, the proportional share which shall be taken into account in the following cases:

1. where there are no capital ties between some of the undertakings in a group;
2. where the Agency has determined that the holding, directly or indirectly, of voting rights or capital in an undertaking qualifies as a participation because, in its opinion, a significant influence is effectively exercised over that undertaking;
3. where the Agency has determined that an undertaking is a parent undertaking of another because, in the opinion of the Agency, it effectively exercises a dominant influence over that other undertaking.

Elimination of Double Use of Eligible Own Funds

Article 307

(1) The double use of own funds eligible for the Solvency Capital Requirement among the different insurance undertakings taken into account in that calculation shall not be allowed.

When performing the subject calculation and where the methods described in Articles 315 – 318 of this Act do not provide for it, the following amounts shall be excluded:

1. the value of any asset of the participating insurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of one of its related insurance undertakings;
2. the value of any asset of a related insurance undertaking of the participating insurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of that participating insurance undertaking;
3. the value of any asset of a related insurance undertaking of the participating insurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of any other related insurance undertaking of that participating insurance undertaking.

(2) The following may be included in the calculation only in so far as eligible for covering the Solvency Capital Requirement of the related undertaking concerned:

1. surplus funds falling under Article 127, paragraph 2 of this Act arising in a related life insurance or reinsurance undertaking of the participating insurance undertaking for which the group solvency is calculated;

2. any subscribed but not paid-up capital of a related insurance undertaking of the participating insurance undertaking for which the group solvency is calculated.

(3) By way of derogation from paragraph 2, subparagraph 2 of this Article, the following shall in any event be excluded from the calculation:

1. subscribed but not paid-up capital which represents a potential obligation on the part of the participating undertaking;

2. subscribed but not paid-up capital of the participating insurance undertaking which represents a potential obligation on the part of a related insurance undertaking;

3. subscribed but not paid-up capital of a related insurance undertaking which represents a potential obligation on the part of another related insurance undertaking of the same participating insurance undertaking.

(4) Where the Agency and the competent supervisory authorities consider that certain own funds eligible for the Solvency Capital Requirement of a related insurance undertaking other than those referred to in paragraphs 2 and 3 of this Article cannot effectively be made available to cover the Solvency Capital Requirement of the participating insurance undertaking for which the group solvency is calculated, those own funds may be included in the calculation only in so far as they are eligible for covering the Solvency Capital Requirement of the related undertaking.

(5) The sum of the own funds referred to in paragraphs 2 – 4 of this Article shall not exceed the Solvency Capital Requirement of the related insurance undertaking.

(6) Any eligible own funds of a related insurance undertaking of the participating insurance undertaking for which the group solvency is calculated that are subject to prior authorisation by the Agency in accordance with Article 124 of this Act shall be included in the calculation only in so far as they have been duly authorised by the supervisory authority responsible for the supervision of that related undertaking.

Elimination of the Intra-Group Creation of Capital

Article 308

(1) When calculating group solvency, no account shall be taken of any own funds eligible for the Solvency Capital Requirement arising out of reciprocal financing between the participating insurance undertaking and any of the following:

1. a related undertaking;

2. a participating undertaking;

3. another related undertaking of any of its participating undertakings.

(2) When calculating group solvency, no account shall be taken of any own funds eligible for the Solvency Capital Requirement of a related insurance undertaking of the participating insurance undertaking for which the group solvency is calculated where the own funds concerned arise out of reciprocal financing with any other related undertaking of that participating insurance undertaking.

(3) Reciprocal financing shall be deemed to exist at least where an insurance undertaking, or any of its related undertakings, holds shares in, or makes loans to, another undertaking which, directly or indirectly, holds own funds eligible for the Solvency Capital Requirement of the first undertaking.

Valuation

Article 309

The value of the assets and liabilities for the purposes of group solvency shall be assessed in accordance with Article 105 of this Act.

Subsection

Application of Calculation Methods

Related Insurance and Reinsurance Undertakings

Article 310

Where the insurance undertaking has more than one related insurance undertaking, the group solvency calculation shall be carried out by including each of those related insurance undertakings.

Where the related insurance undertaking has its head office in a Member State other than that of the insurance undertaking for which the group solvency calculation is carried out, the calculation takes account, in respect of the related undertaking, of the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down in that other Member State.

Intermediate Insurance Holding Companies

Article 311

(1) When calculating the group solvency of an insurance undertaking which holds a participation in a related insurance undertaking, a related reinsurance undertaking, a third-country insurance undertaking or a third-country reinsurance undertaking, through an insurance holding company or a mixed financial holding company, the situation of such an insurance holding company or mixed financial holding company shall be taken into account.

For the sole purpose of that calculation, the intermediate insurance holding company or intermediate mixed financial holding company shall be treated as if it were an insurance undertaking subject to the rules laid down in this Act in respect of the Solvency Capital

Requirement and were subject to the same conditions as are laid down in this Act in respect of own funds eligible for the Solvency Capital Requirement.

(2) In cases where an intermediate insurance holding company or an intermediate mixed financial holding company holds subordinated debt or other eligible own funds subject to limitation in accordance with Articles 128 and 129 of this Act, they shall be recognised as eligible own funds up to the amounts calculated by application of the limits set out in Articles 128 and 129 of this Act to the total eligible own funds outstanding at group level as compared to the Solvency Capital Requirement at group level.

Any eligible own funds of an intermediate insurance holding company or an intermediate mixed financial holding company, which would require prior authorisation by the Agency in accordance with Article 124 of this Act if they were held by an insurance undertaking, may be included in the calculation of the group solvency only in so far as they have been duly authorised by the Agency as the group supervisory authority.

Equivalence with Regard to Related Third-Country Insurance Undertakings and Reinsurance Undertakings

Article 312

(1) When calculating the group solvency of an insurance undertaking which is a participating undertaking in a third-country insurance or reinsurance undertaking in accordance with Article 318 of this Act, the third-country insurance or reinsurance undertaking concerned, for the sole purpose of that calculation, shall be treated as a related insurance or reinsurance undertaking.

Where the third country in which that undertaking has its head office makes it subject to authorisation to pursue the insurance business and imposes on it a solvency regime at least equivalent to that laid down in this Act, the calculation takes into account, as regards that undertaking, the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down by the third country concerned.

(2) In the absence of regulations adopted by the European Commission governing the equivalence of the third-country supervisory regime, the verification of whether the third-country regime is at least equivalent shall be carried out by the Agency as the supervisory authority with the help of EIOPA, at the request of the participating undertaking or at its own initiative. The Agency as the group supervisory authority shall consult the other competent supervisory authorities before taking a decision on equivalence. The Agency as the group supervisory authority shall not adopt any decision regarding a third country, which is contrary to any other previously adopted decision for that third-country, unless significant changes in the supervisory regime referred to in the provisions of this Act and the third-country supervisory regime are to be taken into account.

(3) If the supervisory authorities disagree with the decision adopted in accordance with paragraph 2 of this Article, they may refer to subject to EIOPA and request its assistance within three months from the date of notification of that decision by the Agency as the group supervisory authority.

(4) When adopting the decision referred to in paragraph 2 of this Article, the Agency as the group supervisory authority shall consider Regulation (EU) No 2015/35 and other European Commission regulations governing the equivalence of the supervisory regime with regard to the related third-country insurance and reinsurance undertakings.

Related Credit Institutions, Investment Firms and Financial Institutions

Article 313

(1) When calculating the group solvency of an insurance undertaking which is a participating undertaking in a credit institution, investment firm or financial institution, the participating insurance undertakings may apply *mutatis mutandis* the consolidation method or the alternative method in accordance with the act governing supplementary supervision of financial conglomerates. The consolidation method shall be applied only where the Agency as the group supervisory authority is satisfied as to the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation. The method chosen shall be applied in a constant and consistent manner.

(2) The Agency as the supervisory authority may, at the request of the participating undertaking or at its own initiative, deduct any participation as referred to in paragraph 1 of this Article from the own funds eligible for the group solvency of the participating undertaking.

Non-Availability of the Necessary Information

Article 314

Where the information necessary for calculating the group solvency, concerning a related undertaking with its head office in a Member State or a third country, is not available to the Agency, the book value of that undertaking in the participating insurance undertaking shall be deducted from the own funds eligible for the group solvency. In that case, the unrealised gains connected with such participation shall not be recognised as own funds eligible for the group solvency.

Subsection IV

Calculation Methods

Consolidation Method: Accounting Consolidation-Based Method

Article 315

(1) The calculation of the group solvency of the participating insurance undertaking shall be carried out on the basis of the consolidated accounts.

The group solvency of the participating insurance undertaking is the difference between the following:

1. the own funds eligible to cover the Solvency Capital Requirement, calculated on the basis of consolidated data;

2. the Solvency Capital Requirement at group level calculated on the basis of consolidated data.

The rules laid down in this Act relating to the own funds and the Solvency Capital Requirement shall apply for the calculation of the own funds eligible for the Solvency Capital Requirement and of the Solvency Capital Requirement at group level based on consolidated data.

(2) The Solvency Capital Requirement at group level based on consolidated data, i.e. the consolidated group Solvency Capital Requirement, shall be calculated on the basis of either the standard formula or an approved internal model, in a manner consistent with the general principles contained in this Act regarding the Solvency Capital Requirement.

(3) The consolidated group Solvency Capital Requirement shall have as a minimum the sum of the following:

1. the Minimum Capital Requirement as referred to in Article 158 of this Act of the participating insurance undertaking;

2. the proportional share of the Minimum Capital Requirement of the related insurance and reinsurance undertakings and shall be covered by the eligible basic own funds set out in Article 129, paragraph 1 of this Act.

For the purposes of determining whether such eligible own funds qualify to cover the minimum consolidated group Solvency Capital Requirement, the principles set out in Articles 306 – 314 and Article 166, paragraphs 1, 3 and 4 of this Act shall apply *mutatis mutandis*.

Group Internal Model

Article 316

(1) The insurance undertaking and its related undertakings or jointly related undertakings of the insurance holding company may submit to the Agency as the group supervisory authority a request to grant consent for the calculation of the consolidated group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model.

(2) The Agency and the competent supervisory authorities shall cooperate to decide whether or not to grant that consent and to determine the terms and conditions, if any, to which such consent is subject. The Agency as the group supervisory authority shall inform the other members of the college of supervisory authorities without delay and shall forward to them the complete application. The Agency and the competent supervisory authorities shall do everything within their power to reach, in accordance with the European Commission regulations governing the joint decision-making process, a joint decision on the application within six months from the date of receipt of the complete application by the Agency as the group supervisory authority.

(3) If the Agency and the competent supervisory authorities have reached a joint decision referred to in paragraph 2 of this Article, the Agency as the group supervisory authority shall submit to the applicant a decision indicating the full reasons.

(4) In the absence of a joint decision within six months from the date of receipt of the complete application by the members of the college of supervisory authorities, the Agency as the group supervisory authority shall take its own decision on the application. The Agency as the group supervisory authority shall take account of all opinions and reservations of other competent supervisory authorities expressed during that six-month period. The Agency as the group supervisory authority shall submit to the applicant and other competent supervisory authorities a document providing a complete explanation of its decision. That decision shall be recognised as determinative and applied by the competent supervisory authorities.

(5) If during the six-month period referred to in paragraph 2 of this Article any of the competent supervisory authorities refers the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the procedure before the Agency as the group supervisory authority shall be placed in a cooling-off period and the Agency shall wait for any decision, which may be adopted by EIOPA in accordance with Article 19, paragraph 3 of that Regulation and shall take its decision in accordance with the decision by EIOPA. That decision shall be recognised as determinative and applied by the competent supervisory authorities.

(6) The matter may not be referred to EIOPA after the expiry of the six-month period or after the joint decision has been taken.

(7) If, in accordance with Article 41, paragraphs 2 and 3 and Article 44, paragraph 1, subparagraph 3 of Regulation (EU) No 1094/2010, the decision proposed by the working authority is refused, the Agency as the group supervisory authority shall take the determinative decision. That decision shall be recognised as determinative and applied by the competent supervisory authorities.

(8) Where the Agency considers that the risk profile of an insurance undertaking under its supervision deviates significantly from the assumptions underlying the internal model approved at group level, and as long as that undertaking has not properly addressed the concerns of the Agency, the Agency may, in accordance with Article 239 of this Act, impose a capital add-on to the Solvency Capital Requirement of that insurance undertaking resulting from the application of such internal model.

In exceptional circumstances, where such capital add-on would not be appropriate, the Agency may require the undertaking concerned to calculate its Solvency Capital Requirement on the basis of the standard formula in accordance with this Act. In accordance with Article 239, paragraph 3, subparagraphs 1 and 3 of this Act, the Agency may impose a capital add-on to the Solvency Capital Requirement of that insurance undertaking resulting from the application of the standard formula.

The Agency shall explain any decision referred to in this paragraph to the insurance undertaking and other members of the college of supervisory authorities.

Group Capital Add-On

Article 317

(1) The Agency as the group supervisory authority may determine the capital add-on to the consolidated group Solvency Capital Requirement when it appropriately does not reflect the

risk profile of the group in the cases referred to in Article 239, paragraph 3, subparagraphs 1 – 4 of this Act at group level, in particular where:

1. a specific risk existing at group level would not be sufficiently covered by the standard formula or the internal model used, because it is difficult to quantify;
2. a capital add-on to the Solvency Capital Requirement of the related insurance undertakings is imposed by the competent supervisory authorities in the same manner as set out in Article 239 and Article 316, paragraph 8 of this Act.

(2) Article 239, paragraphs 1 – 9 of this Act together with Regulation (EU) No 2015/35 and other European Commission regulations governing the procedures of adopting decisions on defining, calculating and eliminating capital add-ons shall be applied in the appropriate manner when the Agency as the group supervisory authority may determine the capital add-on to the consolidated group Solvency Capital Requirement in accordance with paragraph 1 of this Article.

Alternative Method: Deduction and Aggregation Method

Article 318

(1) The group solvency of the participating insurance undertaking is the difference between the following:

1. the aggregated group eligible own funds, as provided for in paragraph 2 of this Article;
2. the value in the participating insurance undertaking of the related insurance undertakings and the aggregated group Solvency Capital Requirement, as provided for in paragraph 3 of this Article.

(2) The aggregated group eligible own funds are the sum of the following:

1. the own funds eligible for the Solvency Capital Requirement of the participating insurance undertaking;
2. the proportional share of the participating insurance undertaking in the own funds eligible for the Solvency Capital Requirement of the related insurance undertaking.

(3) The aggregated group Solvency Capital Requirement is the sum of the following:

1. the Solvency Capital Requirement of the participating insurance undertaking;
2. the proportional share of the Solvency Capital Requirement of the related insurance undertaking.

(4) Where the participation in the related insurance undertakings consists, wholly or in part, of an indirect ownership, the value in the participating insurance undertaking of the related insurance undertakings shall incorporate the value of such indirect ownership, taking into account the relevant successive interests, and the items referred to in paragraph 2, subparagraph 2 and paragraph 3, subparagraph 2 of this Article shall include the

corresponding proportional shares, respectively, of the own funds eligible for the Solvency Capital Requirement of the related insurance undertakings and of the Solvency Capital Requirement of the related insurance undertakings.

(5) In the case of an application for consent to calculate the Solvency Capital Requirement of insurance and reinsurance undertakings in the group on the basis of an internal model, submitted by an insurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company or a mixed financial holding company, Article 316 of this Act shall apply *mutatis mutandis*.

(6) The aggregated group Solvency Capital Requirement, calculated as set out in paragraph 3 of this Article, shall appropriately reflect the risk profile of the group. Particular attention shall be paid to any specific risks existing at group level which would not be sufficiently covered, because they are difficult to quantify.

(7) Where the risk profile of the group deviates significantly from the assumptions underlying the aggregated group Solvency Capital Requirement, a capital add-on to the aggregated group Solvency Capital Requirement may be imposed by the Agency as the group supervisory authority.

(8) Article 239, paragraphs 1 – 9 of this Act together with Regulation (EU) No 2015/35 and other European Commission regulations governing the procedures of adopting decisions on defining, calculating and eliminating capital add-ons shall apply *mutatis mutandis* when the Agency as the group supervisory authority may determine the capital add-on to the aggregated group Solvency Capital Requirement.

Subsection V

Supervision of Group Solvency, which Includes Insurance and Reinsurance Undertakings that Are Subsidiaries of the Insurance Holding Company or the Mixed Financial Holding Company

Group Solvency of the Insurance Holding Company or the Mixed Financial Holding Company

Article 319

(1) Where insurance and reinsurance undertakings are subsidiaries of an insurance holding company or a mixed financial holding company, the Agency as the group supervisory authority shall ensure that the calculation of the solvency of the group is carried out at the level of the insurance holding company or the mixed financial holding company by applying Articles 305 – 318 of this Act.

(2) For the purpose of that calculation, the parent undertaking referred to in previous paragraph of this Article shall be treated as if it were an insurance undertaking subject to the rules laid down in this Act as regards the Solvency Capital Requirement and subject to the same conditions as laid down in this Act as regards the own funds eligible for the Solvency Capital Requirement.

Subsection VI

Supervision of Group Solvency for Groups with Centralised Risk Management

Conditions

Article 320

The provisions of Articles 322 and 323 of this Act shall apply to any insurance undertaking, which is a subsidiary of the insurance undertaking when the following conditions are satisfied, in accordance with Regulation (EU) No 2015/35:

1. the subsidiary, in relation to which the Agency as the group supervisory authority has not made a decision under Article 299, paragraph 2 of this Act, is included in the group supervision carried out by the Agency as the group supervisory authority at the level of the parent undertaking in accordance with this Title of the Act;
2. the risk-management processes and internal control mechanisms of the parent undertaking cover the subsidiary, and the parent undertaking satisfies the conditions defined by the competent supervisory authorities regarding the prudent management of the subsidiary;
3. the parent undertaking has received the agreement referred to in Article 328, paragraph 7 of this Act;
4. the parent undertaking has received the agreement referred to in Article 336, paragraph 2 of this Act;
5. an application for agreement to be subject to Articles 322 and 323 of this Act has been submitted by the parent undertaking and a favourable decision has been made on such application in accordance with the procedure set out in Article 321 of this Act.

Decision on the Application for Permission

Article 321

(1) In the case of applications for permission to be subject to the rules laid down in Articles 322 and 323 of this Act, the Agency and the competent supervisory authorities of the Member States shall work together within the college of supervisory authorities to decide whether or not to grant the permission sought and to determine the other terms and conditions to which such permission should be subject.

(2) An application as referred to in paragraph 1 of this Article shall be submitted only to the Agency or the competent supervisory authority of the Member States having authorised the subsidiary to pursue the insurance business. The Agency or the competent supervisory authority shall inform and forward the complete application to the other members of the college of supervisory authorities without delay.

(3) The Agency and the competent supervisory authorities of the Member States shall reach a joint decision, in accordance with the European Commission regulations governing the joint decision-making procedure, on the application within three months from the date of receipt of

the complete application by all competent supervisory authorities within the college of supervisory authorities.

(4) If the Agency and the competent supervisory authorities of the Member States have reached a joint decision referred to in paragraph 3 of this Article, the Agency, having authorised the subsidiary to pursue the insurance business, shall provide to the applicant a decision indicating the full reasons. The decision shall be recognised as determinative and applied by the Agency and the competent supervisory authorities.

(5) In the absence of a joint decision by the Agency and the competent supervisory authorities of the Member States within the three-month period referred to in paragraph 3 of this Article, the Agency as the group supervisory authority shall take its own decision on the application. During this period, the Agency as the group supervisory authority shall duly consider the following:

1. any views and reservations of the competent supervisory authorities;
2. any reservations of the other supervisory authorities within the college of supervisory authorities.

The decision shall state the full reasons and shall contain an explanation of any significant deviations from the reservations of the other competent supervisory authorities. The Agency as the group supervisory authority shall provide the applicant with a decision and shall forward it to the other competent supervisory authorities. The decision shall be recognised as determinative and applied by the Agency and the competent supervisory authorities of the Member States.

(6) If during the three-month period referred to in paragraph 3 of this Article any of the competent supervisory authorities refers the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the Agency as the group supervisory authority shall put the procedure into abeyance and shall wait for any decision, which may be adopted by EIOPA and shall take its decision in accordance with the decision by EIOPA. The decision shall be recognised as determinative and applied by the Agency and the competent supervisory authorities.

(7) The matter may not be referred to EIOPA after the expiry of the three-month period or after the joint decision has been reached.

(8) If, in accordance with Article 41, paragraphs 2 and 3 and Article 44, paragraph 1, subparagraph 3 of Regulation (EU) No 1094/2010, the decision proposed by the working authority is refused, the Agency as the group supervisory authority shall take the determinative decision. That decision shall be recognised as determinative and applied by the competent supervisory authorities.

Determination of the Solvency Capital Requirement

Article 322

(1) Without prejudice to Article 316 of this Act, the Solvency Capital Requirement of the subsidiary shall be calculated as set out in paragraphs 2, 4, and 5 of this Article.

(2) Where the Solvency Capital Requirement of the subsidiary is calculated on the basis of an internal model approved at group level in accordance with Article 316 of this Act and the Agency, having authorised the subsidiary to pursue the insurance business, considers that its risk profile deviates significantly from the assumptions underlying the internal model, and as long as that undertaking does not properly address the concerns of the Agency, the Agency may, in the cases referred to in Article 239 of this Act, propose to set a capital add-on to the Solvency Capital Requirement of that subsidiary resulting from the application of such model. Exceptionally, where such capital add-on would not be appropriate, the Agency shall require that undertaking to calculate its Solvency Capital Requirement on the basis of the standard formula. The Agency shall discuss its proposal within the college of supervisory authorities and communicate the grounds for such proposals to both the subsidiary and the other members of the college of supervisory authorities prior to determining the capital add-on, i.e. proposing the application of the standard formula.

(3) Where the Solvency Capital Requirement of the subsidiary is calculated on the basis of the standard formula and the Agency, having authorised the subsidiary to pursue the insurance business, considers that its risk profile deviates significantly from the assumptions underlying the standard formula, and as long as that undertaking does not properly address the concerns of the Agency, the Agency may, in exceptional circumstances, propose that the undertaking replace a subset of the parameters used in the standard formula calculation by parameters specific to that undertaking when calculating capital requirements for the life, non-life and health underwriting risk modules, as set out in Article 141 of this Act, or in the cases referred to in Article 239 of this Act, to set a capital add-on to the Solvency Capital Requirement of that subsidiary. The Agency shall discuss its proposal within the college of supervisory authorities and communicate the grounds for such proposals to both the subsidiary and the other members of the college of supervisory authorities prior to proposing a change in the parameters, i.e. determining the capital add-on.

(4) The college of supervisory authorities shall do everything within its power to reach an agreement on the proposal of the Agency, having authorised the subsidiary to pursue the insurance business, or on other possible measures. The agreement reached shall be recognised as determinative and applied by the competent supervisory authorities.

(5) Where the Agency and the group supervisory authority disagree, the Agency or the group supervisory authority may, within one month from the proposal of the Agency, refer the matter for consultation to EIOPA and its assistance may be requested in accordance with Article 19 of Regulation (EU) No 1094/2010. The matter may not be referred to EIOPA after the expiry of the one-month period from the date of the proposal by the Agency or after an agreement has been reached in accordance with paragraph 4 of this Article at the college of supervisory authorities. The Agency, having authorised the subsidiary to pursue the insurance business, shall wait for any decision, which may be taken by EIOPA and shall take a decision in accordance with the decision by EIOPA.

The decision shall be recognised as determinative and applied by the Agency and the competent supervisory authorities of the Member States. The decision shall be submitted to the subsidiary and the college of supervisory authorities.

Non-Compliance with the Solvency and Minimum Capital Requirements

(1) The subsidiary shall within six months from the observation of non-compliance with the Solvency Capital Requirement, re-establish the level of eligible own funds or reduce its risk profile to ensure compliance with the Solvency Capital Requirement. The Agency, having authorised the subsidiary to pursue the insurance business, shall, without delay, forward to the college of supervisory authorities the recovery plan submitted by the undertaking.

The college of supervisory authorities shall do everything within its power to reach an agreement on the approval of the recovery plan within four months from the date on which non-compliance with the Solvency Capital Requirement was first observed. In the absence of such agreement within the stipulated deadline, the Agency, having authorised the subsidiary to pursue the insurance business, shall decide whether the recovery plan should be approved, taking due account of the views and reservations of the other supervisory authorities within the college of supervisory authorities.

(2) Where the Agency, having authorised the subsidiary to pursue the insurance business, identifies, in accordance with Article 163 of this Act, deteriorating financial conditions, it shall notify the college of supervisory authorities without delay of the proposed measures to be taken. Save in emergency situations, which shall be assessed in accordance with Regulation (EU) No 2015/35, the measures to be taken shall be discussed within the college of supervisory authorities.

The college of supervisory authorities shall do everything within its power to reach an agreement on the proposed measures to be taken within one month of notification.

In the absence of such agreement, the Agency, having authorised the subsidiary to pursue the insurance business, shall decide whether the proposed measures should be approved, taking due account of the views and reservations of the other supervisory authorities within the college of supervisory authorities.

(3) In the event of non-compliance with the Minimum Capital Requirement and without prejudice to Article 166 of this Act, the Agency, having authorised the subsidiary to pursue the insurance business, shall, without delay, forward to the college of supervisory authorities the short-term finance scheme submitted by the subsidiary in order to achieve, within three months from the date on which non-compliance with the Minimum Capital Requirement was first observed, the re-establishment of the level of eligible own funds covering the Minimum Capital Requirement or the reduction of its risk profile to ensure compliance with the Minimum Capital Requirement. The Agency shall inform the college of supervisory authorities of any measures taken to enforce the Minimum Capital Requirement at the level of the subsidiary.

(4) The Agency or the group supervisory authority may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010 when they disagree on the following:

1. approving the recovery plan, including any extension of the recovery period, during a four-month period referred to in paragraph 1 of this Article or
2. approving the proposed measures during the one-month period referred to in paragraph 2 of this Article.

(5) The matter may not be referred to EIOPA:

1. after the expiry of the deadlines referred to in paragraph 4 of this Article;
2. after an agreement has been reached at the college of supervisory authorities in accordance with paragraphs 1 or 2 of this Article;
3. in emergency situations referred to in paragraph 2 of this Article.

(6) If EIOPA takes a decision in accordance with Article 19, paragraph 3 of Regulation (EU) No 1094/2010, the Agency shall take a decision in accordance with the decision by EIOPA. The decision of the Agency shall be recognised as final and applied by the Agency and the competent supervisory authorities of the Member States. The decision shall state the full reasons for EIOPA's decision. The Agency shall submit its decision to the subsidiary and the college of supervisory authorities.

End of Derogations for Subsidiaries

Article 324

(1) The provisions referred to in Articles 322 and 323 of this Act shall not be applied where:

1. the conditions referred to in Article 320, paragraph 1 of this Act are no longer complied with;
2. the conditions referred to in Article 320, subparagraph 2 of this Act are no longer complied with and the group does not restore compliance with this condition in an appropriate period of time;
3. the conditions referred to in Article 320, subparagraphs 3 and 4 of this Act are no longer complied with.

(2) In the case referred to in paragraph 1, subparagraph 1 of this Act, where the Agency as the supervisory authority decides, after consulting the college of supervisory authorities, no longer to include the subsidiary in the group supervision it carries out, it shall immediately inform the competent supervisory authority of the Member State and the parent undertaking.

For the purposes of Article 320, subparagraphs 2, 3 and 4 of this Act, the parent undertaking shall be responsible for ensuring that the conditions are complied with on an ongoing basis. In the event of non-compliance, it shall inform the Agency as the competent supervisory authority and the competent supervisory authority of the Member State of the subsidiary without delay. The parent undertaking shall present a plan to restore compliance within an appropriate period of time.

(3) The Agency as the group supervisory authority shall verify at least annually, at its own initiative, that the conditions referred to in Article 320, subparagraphs 2, 3 and 4 of this Act continue to be complied with. The Agency as the group supervisory authority shall also perform such verification upon request from the supervisory authority of the Member State, where the latter has significant concerns related to the ongoing compliance with those conditions.

Where the verification performed identifies weaknesses, Agency as the group supervisory authority shall require the parent undertaking to present a plan to restore compliance within an appropriate period of time.

(4) Where the Agency as the group supervisory authority, after consulting the college of supervisory authorities, determines that the plan referred to in paragraph 2 or 3 of this Article is insufficient or subsequently that it is not being implemented within the agreed period of time, the Agency as the group supervisory authority shall conclude that the conditions referred to in Article 320, subparagraphs 2, 3 and 4 of this Act are no longer complied with and it shall immediately inform the supervisory authority of the Member State.

(5) The regime provided for in Articles 322 and 323 of this Act shall be applicable again where the parent undertaking submits a new application and obtains a favourable decision in accordance with the procedure set out in Article 320 of this Act.

Subsidiaries of an Insurance Holding Company or Mixed Financial Holding Company

Article 325

(1) Articles 320 – 324 and Regulation (EU) No 2015/35 shall apply *mutatis mutandis* to insurance undertakings and reinsurance undertakings, which are subsidiaries of the insurance holding company or the mixed financial holding company.

(2) When exchanging information, exercising its rights or fulfilling its duties in accordance with the provisions of Articles 321 – 324 of this Act, the Agency shall follow the procedures set out in accordance with Regulation (EU) No 2015/35.

SECTION II

RISK CONCENTRATION AND INTRA-GROUP TRANSACTIONS

Supervision of Risk Concentration

Article 326

(1) The insurance and reinsurance undertakings or insurance holding companies or mixed financial holding companies shall report on a regular basis and at least annually to the Agency as the group supervisory authority any significant risk concentration defined in accordance with Regulation (EU) No 2015/35, at group level, unless Article 300, paragraph 2 of this Act is applied.

(2) The necessary information shall be submitted to the Agency as the group supervisory authority, in accordance with the European Commission regulations governing risk concentration reporting, by the insurance undertaking which is at the head of the group or, where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company, mixed financial holding company or the insurance undertaking in the group determined by the Agency as the group supervisory authority after consulting the other competent supervisory authorities of the Member States and the group.

(3) The Agency as the group supervisory authority, after consulting the other competent supervisory authorities of the Member States and the group, shall identify the type of risks, in accordance with Regulation (EU) No 2015/35, of which insurance and reinsurance undertakings in a particular group shall report in all circumstances, whereby the Agency shall take into account the specific group and risk-management structure of the group.

(4) The Agency as the group supervisory authority, after consulting the other competent supervisory authorities of the Member States and the group, shall impose appropriate thresholds, in accordance with Regulation (EU) No 2015/35, based on Solvency Capital Requirements, technical provisions, or both, according to which the significant risk concentration to be reported on is determined.

(5) When reviewing the risk concentrations, the Agency as the group supervisory authority shall in particular monitor the possible risk of contagion in the group, the risk of a conflict of interests, and the level or volume of risks.

(6) The supervision of risk concentration at group level shall also be carried out with the due application of the provisions referred to in Article 328 of this Act and Chapter III of this Title of the Act.

Supervision of Intra-Group Transactions

Article 327

(1) The insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies shall report on a regular basis and at least annually to the Agency as the group supervisory authority all significant intra-group transactions defined in accordance with Regulation (EU) No 2015/35, by insurance and reinsurance undertakings within a group, including those performed with natural persons with close links to an undertaking in the group, unless Article 300, paragraph 2 of this Act is applied.

(2) The necessary information shall be submitted to the Agency as the group supervisory authority by the insurance undertaking which is at the head of the group or, where the group is not headed by an insurance undertaking, by the insurance holding company, mixed financial holding company or the insurance undertaking in the group determined by the Agency as the group supervisory authority after consulting the other competent supervisory authorities of the Member States and the group.

(3) The undertaking referred to in the previous paragraph shall report, in accordance with the European Commission regulations governing the reporting on intra-group transactions, to the Agency as the group supervisory authority on very significant intra-group transactions as soon as practicable.

(4) The Agency as the group supervisory authority, after consulting the other competent supervisory authorities of the Member States and the group, shall identify the types of intra-group transactions, in accordance with Regulation (EU) No 2015/35, of which the insurance and reinsurance undertakings in a particular group shall report in all circumstances. Article 326, paragraphs 3 – 5 of this Act shall apply *mutatis mutandis*.

(5) The intra-group transactions shall also be supervised with the due application of the provisions referred to in Article 328 and Articles 329 – 339 of this Act.

SECTION III

RISK MANAGEMENT AND INTERNAL CONTROL

Supervision of the System of Governance

Article 328

(1) The requirements set out in this Act referring to the system of governance shall apply *mutatis mutandis* at the level of the group.

(2) Without prejudice to paragraph 1 of this Article, the risk management and internal control systems and reporting procedures shall be implemented consistently in all the undertakings included in the scope of group supervision in accordance with Article 298, paragraph 2, subparagraphs 1 and 2 of this Act so that those systems and reporting procedures can be controlled at the level of the group.

(3) Without prejudice to paragraphs 1 and 2 of this Article, the group internal control mechanisms shall include at least the following

1. adequate mechanisms as regards group solvency to identify and measure all material risks incurred and to appropriately relate eligible own funds to risks;
2. sound reporting and accounting procedures to monitor and manage the intra-group transactions and the risk concentration.

(4) The systems and reporting procedures referred to in paragraphs 1, 2 and 3 of this Article shall be subject to supervisory review by the Agency as the group supervisory authority, in accordance with the rules laid down in Chapter III of this Title of the Act.

(5) The participating insurance undertaking, insurance holding company or mixed financial holding company shall undertake at the level of the group the own risk and solvency assessment required by Article 96 of this Act. The own risk and solvency assessment conducted at group level shall be subject to supervisory review by the Agency as the group supervisory authority in accordance with Chapter III of this Title of the Act.

(6) Where the calculation of the solvency at the level of the group is carried out in accordance with the consolidation method as referred to in Article 315 of this Act, the participating insurance undertaking, insurance holding company or mixed financial holding company shall provide to the Agency as the group supervisory authority a proper understanding of the difference between the sum of the Solvency Capital Requirements of all the related insurance undertakings of the group and the group consolidated Solvency Capital Requirement.

(7) Where the participating insurance undertaking, insurance holding company or mixed financial holding company may, subject to the agreement of the Agency as the group supervisory authority, undertake any assessments required by Article 96 of this Act at the level of the group and at the level of any subsidiary in the group at the same time, and may

produce a single report covering all the assessments. In that case, the participating insurance or reinsurance undertaking, insurance holding company or mixed financial holding company shall submit a report to all competent supervisory authorities at the same time. Before granting an agreement, the Agency as the group supervisory authority shall consult the other members of the college of supervisory authorities and duly take into account their views.

The obligation of the subsidiary in accordance with Article 96 of this Act with regard to conducting an own risk and solvency assessment shall remain in force.

CHAPTER III

MEASURES TO FACILITATE GROUP SUPERVISION

Group Supervisory Authority

Article 329

(1) The group supervisory authority, designated from among the competent supervisory authorities of the Member States, shall be responsible for coordination and exercise of group supervision.

(2) Where the Agency is competent for all insurance undertakings in a group, the group supervisory authority shall be the Agency. In all other cases, in accordance with paragraph 3 of this Article, the following shall be exercised:

1. where a group is headed by an insurance undertaking, the group supervisory authority shall be the supervisory authority which has authorised that undertaking to pursue the insurance business;

2. where a group is not headed by an insurance undertaking:

– and where the parent of an insurance undertaking is an insurance holding company or a mixed financial holding company, the group supervisory authority shall be the supervisory authority which has authorised that insurance undertaking to pursue the insurance business;

– and where more than one insurance undertaking with a head office in the European Union have as their parent the same insurance holding company or mixed financial holding company, and one of those undertakings has been authorised to pursue the insurance business in the Member State in which the insurance holding company or mixed financial holding company has its head office, the group supervisory authority shall be the supervisory authority having issued to that insurance undertaking the authorisation to pursue the insurance business;

– and where the group is headed by more than one insurance holding company or mixed financial holding company with a head office in different Member States and there is an insurance undertaking in each of those Member States, the group supervisory authority shall be the supervisory authority of the insurance undertaking with the largest balance sheet total;

– and where more than one insurance undertaking with a head office in the European Union have as their parent the same insurance holding company or mixed financial holding company

and none of those undertakings has been authorised to pursue the insurance business in the Member State in which the insurance holding company or mixed financial holding company has its head office, the group supervisory authority shall be the supervisory authority which authorised the insurance undertaking to pursue the insurance business, with the largest balance sheet total or;

– where the group is a group without a parent undertaking, or in any circumstances not referred to in the first four indents of this subparagraph, the group supervisory authority shall be the supervisory authority which authorised the insurance undertaking to pursue the insurance business, with the largest balance sheet total.

(3) In particular cases, the Agency as the group supervisory authority may, at the request of any of the other competent authorities of the Member States, take a joint decision to derogate from the criteria set out in paragraph 2 of this Article where their application would be inappropriate, taking into account the structure of the group and the relative importance of the insurance and reinsurance undertakings' activities in different countries, and designate a different supervisory authority as the group supervisory authority. Another group supervisory authority may not be appointed more often than annually. The Agency and the competent supervisory authorities of the Member States shall do everything within their power to reach a joint decision on the choice of the group supervisory authority within three months from the request for discussion. Before taking their decision, the competent supervisory authorities shall give the group an opportunity to state its opinion. The designated group supervisor shall submit to the group a joint decision indicating the full reasons.

(4) If during the three-month period referred to in paragraph 3 of this Article any of the competent supervisory authorities refers the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the competent supervisory authorities shall postpone their decisions and wait for any decision, which may be taken by EIOPA and shall take a joint decision in accordance with the decision by EIOPA. That joint decision shall be recognised as determinative and applied by the competent supervisory authorities. The appointed supervisory authority shall submit to the group and the college of supervisory authorities a joint decision indicating the full reasons.

(5) The matter may not be referred to EIOPA after the expiry of the three-month period or after the joint decision has been reached.

(6) If a joint decision is not taken in accordance with paragraph 3 or 4 of this Article, the group supervisory authority shall be the supervisory authority determined in accordance with paragraph 2 of this Article.

Rights and Duties of the Group Supervisory Authority and the Other Supervisory Authorities at the College of Supervisory Authorities

Article 330

(1) The rights and duties assigned to the group supervisory authority referred to in Article 329 of this Act with regard to group supervision shall comprise the following:

1. coordination of the gathering and exchange of information for going concern and emergency situations, including the exchange of information, which is of importance for the supervisory tasks of competent supervisory authorities of the Member States;

2. supervisory review and assessment of the financial situation of the group;

3. assessment of compliance of the group with the rules on solvency, risk concentration and intra-group transactions as set out in Articles 303 – 327 of this Act;

4. assessment of the system of governance of the group, as set out in Article 328 of this Act, and of whether the management and supervisory board members of the participating undertaking and other persons managing the participating undertaking or holding other key functions of the participating undertaking fulfil the requirements with regard to the business experience and reputation as set out in Articles 51, 59 and 93 and Article 338 of this Act;

5. planning and coordination, through regular meetings held at least annually or through other appropriate means, of supervisory activities in going concern as well as in emergency situations, in cooperation with the supervisory authorities of the Member States and taking into account the nature, scale and complexity of the risks inherent in the business of all undertakings that are part of the group;

6. other tasks, measures and decisions assigned to the group supervisory authority by this Act or deriving from the application of this Act, in particular leading the process for validation of any internal model at group level as set out in Articles 316 and 318 of this Act and leading the process for permitting the application of the regime established in Articles 321 – 324 of this Act.

(2) The group supervisory authority shall chair the college of supervisory authorities.

(3) If the group supervisory authority fails to perform the tasks referred to in paragraph 1 of this Article or if the members of the college of supervisory authorities fail to cooperate in the measure required under paragraphs 2 and 5 of this Article, any competent supervisory authority may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

(4) The membership of the college of supervisory authorities shall include the group supervisory authority, supervisory authorities of all the Member States in which head offices of all subsidiary undertakings and EIOPA are situated in accordance with Article 21 of Regulation (EU) No 1094/2010. The supervisory authorities of significant branches, defined in accordance with Regulation (EU) No 2015/35, and related undertakings shall also be allowed to participate in the college of supervisory authorities. However, their participation shall be limited to achieving the objective of an efficient exchange of information.

(5) The college of supervisory authorities shall ensure that the cooperation, exchange of information and advisory procedures between the supervisory authorities that are members of the college of supervisory authorities are performed efficiently in accordance with this Title of the Act in order to promote the compliance of their decisions and activities. The effective functioning of the college of supervisory authorities may require that some activities be carried out by a reduced number of supervisory authorities therein.

(6) The establishment and functioning of the college of supervisory authorities shall be based on coordination arrangements concluded by the group supervisory authority and the other competent supervisory authorities.

If there are diverging views concerning the coordination arrangements, any member of the college of supervisory authorities may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. The Agency as the group supervisory authority shall take its determinative decision in accordance with the decision taken by EIOPA and shall submit the decision to the other competent supervisory authorities.

(7) The coordination arrangements referred to in paragraph 6 of this Article shall specify the procedures for:

1. the decision-making process among the competent supervisory authorities in accordance with the provisions of Articles 316, 317 and 329 of this Act;
2. consultation under paragraph 6 of this Article and under Article 303, paragraph 5 of this Act.

The coordination arrangements may set out procedures for:

1. consultation among the competent supervisory authorities, in particular as referred to in the provisions of Articles 298 – 302, Articles 304 – 306, Article 312, Articles 326 – 328, Article 332, Article 336, Article 340 and Article 342 of this Act;
2. cooperation with other supervisory authorities.

The coordination arrangements may entrust additional tasks to the group supervisory authority, other supervisory authorities or EIOPA where this would result in the more efficient supervision of the group and would not impair the supervisory activities of the members of the college of supervisory authorities in respect of their individual responsibilities.

Cooperation and Exchange of Information between Supervisory Authorities

Article 331

(1) The authorities responsible for the supervision of the individual insurance and reinsurance undertakings in a group and the group supervisory authority shall cooperate closely, in accordance with Regulation (EU) No 2015/35 and other European Commission regulations governing the exchange of information between the supervisory authorities, in particular in cases where an insurance undertaking encounters financial difficulties.

(2) The competent supervisory authorities shall exchange information, in accordance with Regulation (EU) No 2015/35 and other European Commission regulations governing the exchange of information between the supervisory authorities, which would allow and facilitate the exercise of the supervisory tasks of the other authorities under this Act. The group supervisory authority shall communicate to the competent supervisory authorities and EIOPA information relevant to the group in accordance with Article 31, paragraphs 3 and 4, Article 33, paragraph 1, subparagraph 9, Article 168, paragraph 2 and Article 334, paragraph

2 of this Act, especially with regard to the legal structure, management and organisational structure of the group.

(3) In the absence of relevant information communicated by the competent supervisory authority or in case the request for cooperation, especially exchange of relevant information has been rejected or not acted on within two weeks, the Agency may refer the matter to EIOPA.

(4) The authorities responsible for the supervision of the individual insurance and reinsurance undertakings in a group and the group supervisory authority shall each call immediately for a meeting of all supervisory authorities involved in group supervision in at least the following circumstances:

1. in the event of a significant breach of the Solvency Capital Requirement or a breach of the Minimum Capital Requirement of an individual insurance undertaking;
2. in the event of a significant breach of the group Solvency Capital Requirement calculated on the basis of consolidated data or the aggregated Solvency Capital Requirement, in accordance with whichever calculation method is used in accordance with Articles 315 – 318 of this Act;
3. where other exceptional circumstances are occurring or have occurred.

Consultation between the Agency and Supervisory Authorities from other Member States

Article 332

(1) The Agency and the competent supervisory authorities of the Member States shall, where a decision is of importance for the supervisory tasks of other supervisory authorities, prior to that decision, consult each other in the college of supervisory authorities with regard to the following:

1. changes in the shareholder structure, organisational or management structure of insurance and reinsurance undertakings in a group, which require the approval or authorisation of supervisory authorities;
2. decision on the extension of the recovery period in accordance with Article 165, paragraphs 4 and 7 – 11 of this Act
3. major sanctions or exceptional measures taken by supervisory authorities, including the imposition of a capital add-on to the Solvency Capital Requirement under Article 239 of this Act and the imposition of any limitation on the use of an internal model for the calculation of the Solvency Capital Requirement under this Act.

(2) For the purposes of paragraph 1, subparagraphs 2 and 3 of this Act, the Agency shall always consult the group supervisory authority. In addition, the Agency and the competent supervisory authorities of the Member States shall, where a decision is based on information received from other supervisory authorities, consult each other prior to that decision.

(3) The Agency may decide not to consult other supervisory authorities in cases of urgency or where such consultation may jeopardise the effectiveness of the decision. In that case, the Agency shall, without delay, inform the other competent supervisory authorities of the Member States.

(4) The Agency as the group supervisory authority may invite the competent supervisory authority of the Member State in which a parent undertaking has its head office, and which does not itself exercise the group supervision equivalent to that referred to in Article 329 of this Act, to request from the parent undertaking any information which would be relevant for the exercise of its coordination rights and duties as laid down in Article 330 of this Act, and to transmit that information to the Agency as the group supervisory authority.

(5) The Agency as the group supervisory authority shall, when it needs information referred to in Article 334, paragraphs 2 – 5 of this Act, which has already been given to another supervisory authority, contact that authority whenever possible in order to prevent duplication of reporting to the various authorities involved in supervision.

(6) Where an insurance undertaking and a credit institution as defined in the act governing credit institutions or an investment firm as defined in the act governing the capital market, or both, are directly or indirectly related or have a common participating undertaking, the Agency and the competent supervisory authorities of the Member States and the authorities responsible for the supervision of those other undertakings shall cooperate closely.

(7) The Agency and the authorities referred to in paragraph 6 of this Article shall provide one another with any information likely to simplify their tasks, in particular as set out in this Title of the Act.

Professional Secrecy and Confidentiality

Article 333

(1) The exchange of information between the Agency and the competent supervisory authorities and between the Agency and other supervisory authorities shall be carried out in accordance with Articles 331 and 332 of this Act.

(2) Information received in the framework of group supervision, and in particular any exchange of information between the Agency and the competent supervisory authorities and between the Agency and other supervisory authorities, which is provided for in this Title of the Act, shall be subject to the provisions of Article 386 of this Act.

Access to Information

Article 334

(1) The natural persons and legal entities included within the scope of group supervision, and their related undertakings and participating undertakings may exchange any information, which could be relevant for the purposes of group supervision.

(2) The Agency as the group supervisory authority shall have access to any information relevant for the purposes of that supervision regardless of the nature of the undertaking concerned. Articles 215 and 216 of this Act shall apply *mutatis mutandis*.

(3) The Agency as the group supervisory authority may limit the regular supervisory reporting at group level, which is carried out more than annually if all the insurance undertakings within the group benefit from this limitation in accordance with Article 217, paragraphs 1 – 3 of this Act, taking account of the nature, scale and complexity of the risks inherent to the group business.

(4) The Agency as the group supervisory authority may exempt from reporting on an item-by-item basis at group level if all insurance undertakings within the group benefit from this exemption in accordance with Article 217, paragraphs 4 – 6 of this Act, taking account of the nature, scale and complexity of the risks inherent to the group business and the objective of financial stability.

(5) The Agency may address the undertakings in the group directly to obtain the necessary information, only where such information has been requested from the insurance undertaking subject to group supervision and has not been supplied by it within a reasonable period of time.

Verification of Information

Article 335

(1) The Agency may in the territory of the Republic of Croatia, either directly or through the intermediary of persons whom they appoint for that purpose, carry out on-site verification of the information referred to in Article 334 of this Act on the premises of any of the following:

1. the insurance undertaking subject to group supervision;
2. related undertakings of that insurance undertaking;
3. parent undertakings of that insurance undertaking;
4. related undertakings of a parent undertaking of that insurance undertaking.

(2) Where information concerning an undertaking needs to be verified in specific cases, whether regulated or not, which is part of a group and is situated in another Member State, the Agency shall ask the supervisory authorities of that other Member State to have the verification carried out, and the group supervisory authority shall be informed of the action taken.

(3) In the case referred to in paragraph 2 of this Article, the Agency may, where it so wishes, participate in the verification when it does not carry out the verification directly.

(4) If, with regard to the request referred to in paragraph 2 of this Article, which has been submitted to another supervisory authority to carry out the verification, has not been acted on within two weeks or if the Agency is not able to exercise its right of participation in

accordance with paragraph 3 of this Article, it may refer the matter to EIOPA and may request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

Group Solvency and Financial Condition Report

Article 336

(1) The participating insurance and reinsurance undertaking, insurance holding company and mixed financial holding company shall disclose publicly, on an annual basis, a Solvency and Financial Condition Report at the level of the group in accordance with Regulation (EU) No 2015/35 and other European Commission regulations governing the disclosure of information relating to the report on the solvency and financial condition. Articles 168 – 171 of this Act shall apply *mutatis mutandis*.

(2) Where a participating insurance undertaking, insurance holding company or mixed financial holding company so decides, and subject to the consent from the Agency as the group supervisory authority, it may provide a single Solvency and Financial Condition Report which shall, in accordance with Regulation (EU) No 2015/35 and other European Commission regulations governing the disclosure of information relating to the Solvency and Financial Condition Report, comprise the following:

1. the information at the level of the group which must be disclosed in accordance with paragraph 1 of this Article;

2. the information for any of the subsidiaries within the group which shall be individually identifiable and disclosed in accordance with Articles 168 – 171 of this Act.

(3) Before granting the consent in accordance with paragraph 2 of this Article, the Agency as the group supervisory authority shall consult and duly take into account any views and reservations of the members of the college of supervisory authorities.

(4) Where the report referred to in paragraph 2 of this Article fails to include information which the Agency, having authorised a subsidiary within the group to pursue the insurance business, requires comparable undertakings to provide, and where the omission is material, the Agency shall have the power to require the subsidiary concerned to disclose the necessary additional information.

Group Structure

Article 337

The insurance and reinsurance undertakings, insurance holding company and mixed insurance holding company at group level shall disclose the legal, management and organisational structure on an annual basis, including a description of all subsidiaries, significantly related undertakings and significant branches within the group.

Management Boards of Insurance Holding Companies and Mixed Financial Holding Companies

Article 338

(1) The persons managing the operations of the insurance holding company or the mixed financial holding company shall be fit and proper to perform their duties.

(2) Article 51 of this Act shall apply *mutatis mutandis* to the conditions to be fulfilled by the persons referred to in paragraph 1 of this Article.

Enforcement Measures

Article 339

(1) Where the insurance or reinsurance undertakings in a group do not comply with the requirements referred to in Articles 303 – 328 of this Act or where the requirements are met but solvency may nevertheless be jeopardised or where the intra-group transactions or the risk concentrations are a threat to the financial position of the insurance undertakings, the Agency shall take the necessary measures in order to rectify the situation as soon as possible:

1. if it is the group supervisory authority with respect to the insurance holding companies or mixed financial holding companies;

2. if it is the competent supervisory authority with respect to the insurance and reinsurance undertakings.

(2) Where, in the case referred to in paragraph 1 of this Article, the Agency as the group supervisory authority is not one of the supervisory authorities of the Member State in which the insurance holding company, mixed financial holding company or the insurance or reinsurance undertaking have their head office, the Agency as the group supervisory authority shall inform those supervisory authorities of its findings with a view to enabling them to take the necessary measures, in accordance with the European Commission regulations governing the enforcement measures.

(3) The Agency and the supervisory authorities shall cooperate closely to ensure that sanctions or measures are effective with regard to insurance holding companies, mixed financial holding companies or persons effectively managing those companies where laws and other regulations are breached, especially when the central administration or main establishment of an insurance holding company or mixed financial holding company is not located in the same Member State as their head office.

CHAPTER IV

THIRD COUNTRIES

Verification of Equivalence

Article 340

(1) In the case referred to in Article 298, paragraph 2, subparagraph 3 of this Act, the Agency shall verify whether the insurance and reinsurance undertakings, the parent undertaking of which has its head office in a third country, are subject to supervision, by a third-country supervisory authority, which is equivalent to that provided for by this Title of the Act on the

supervision at the level of the group of insurance and reinsurance undertakings referred to in Article 298, paragraph 2, subparagraphs 1 and 2 of this Act.

(2) In the absence of regulations adopted by the European Commission governing the equivalence of third countries, the verification shall be carried out by the Agency which would be the group supervisory authority if the criteria set out in Article 329, paragraph 2 of this Act were to apply (acting group supervisory authority), at the request of the parent undertaking or of any of the insurance undertakings authorised to pursue the insurance business in the European Union or *ex officio*.

(3) In performing the verification referred to in paragraph 2 of this Article, the Agency as the acting group supervisory authority shall, with assistance from EIOPA, consult the other supervisory authorities before taking a decision on equivalence. This decision shall be taken in accordance with Regulation (EU) No 2015/35. The Agency as the acting group supervisory authority shall not take any decision relating to a third country, which is contrary to any previously taken decision for that third country, unless the supervisory regime stipulated by the provisions of this Act and the third-country supervisory regime have significantly changed.

(4) If the Agency disagrees with the decision taken in the same manner as stipulated by paragraph 3 of this Article, it may, in accordance with Article 19 of Regulation (EU) No 1094/2010, refer the matter to EIOPA and request its assistance within three months after being informed of the decision by the acting group supervisory authority.

(5) If the European Commission, based on European Commission regulations governing the equivalence of third countries, adopts regulations specifying that the prudential regime in a third country is temporarily equivalent, Article 341 of this Act shall apply, unless there is an insurance or reinsurance undertaking in the Republic of Croatia with a balance sheet total exceeding the total balance of the parent undertaking outside the European Union. In that case, the duty of the group supervisory authority shall be performed by the Agency as the acting group supervisory authority.

(6) In the absence of regulations adopted by the European Commission based on the regulations of the European Commission governing the equivalence of third countries, Article 342 of this Act shall apply.

Equivalence

Article 341

(1) In the event of equivalent supervision referred to in Article 340 of this Act, the Agency shall rely on the group supervision exercised by the third-country supervisory authority, in accordance with paragraph 2 of this Article.

(2) Articles 329 – 339 of this Act shall apply *mutatis mutandis* to the cooperation with third-country supervisory authorities.

Absence of Equivalence

Article 342

(1) In the absence of equivalent supervision referred to in Article 340 of this Act, Articles 303 – 319 and Articles 326 – 339 of this Act shall apply *mutatis mutandis*.

(2) The general principles and methods set out in Articles 303 – 339 of this Act shall apply at the level of the insurance holding company, mixed financial holding company, third-country insurance undertaking or third-country reinsurance undertaking. For the sole purpose of the group solvency calculation, the parent undertaking shall be treated as if it were an insurance undertaking subject to the same conditions as laid down in this Act as regards the own funds eligible for the Solvency Capital Requirement and to either of the following:

1. a Solvency Capital Requirement determined in accordance with the principles of Article 311 of this Act where it is an insurance holding company or a mixed financial holding company;

2. a Solvency Capital Requirement determined in accordance with the principles of Article 312 of this Act, where it is a third-country insurance undertaking or a third-country reinsurance undertaking.

Levels

Article 343

(1) Where the parent undertaking referred to in Article 340 of this Act is itself a subsidiary of an insurance holding company or a mixed financial holding company having its head office in a third country or of a third-country insurance or reinsurance undertaking, the Agency shall apply the verification provided for in Article 340 of this Act only at the level of the ultimate parent undertaking which is a third-country insurance holding company, a third-country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.

(2) The Agency may, in absence of equivalent supervision referred to in Article 340 of this Act carry out a new verification at a lower level where a parent undertaking of insurance undertakings exists, whether a third-country insurance holding company, a third-country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking. In such cases, the Agency shall explain its decision to the group. In such a case, Article 342 of this Act shall apply *mutatis mutandis*.

CHAPTER V

INSURANCE HOLDING COMPANIES AND MIXED-ACTIVITY INSURANCE HOLDING COMPANIES

Intra-Group Transactions

Article 344

Where the parent undertaking of one or more insurance undertakings is a mixed-activity insurance holding company, the Agency shall perform general supervision of those insurance undertakings and the mixed-activity insurance holding company and its related undertakings.

The provisions of Article 327, Articles 331 – 255 and Article 339 of this Act shall apply *mutatis mutandis*.

TITLE XVI

SPECIFIC PROVISIONS FOR INSURANCE

CHAPTER I

SPECIFICITIES OF NON-LIFE INSURANCE

Health Insurance

Article 345

(1) The insurance undertaking shall manage the health insurance business in the class of insurance referred to in Article 7, paragraph 2, subparagraph 2 of this Act on technical bases similar to the technical bases for life insurance where all the following conditions are fulfilled:

1. the premiums are calculated on the basis of sickness tables and other statistical data relevant to the Member State in which the risk is situated in accordance with the actuarial methods;
2. technical provisions are set up for increasing age;
3. the insurance undertaking may cancel the insurance contract only within three years or a fixed period determined by the Member State in which the risk is situated;
4. the insurance contract provides that premiums may be increased or reduced during the validity of the insurance contract, even for current insurance contracts;
5. the insurance contract provides that the policy holder may change their existing contract into a new contract offered by the same insurance undertaking or the same branch taking account of their acquired rights.

(2) In the case referred to in paragraph 1, subparagraph 5 of this Article, account shall be taken of the reserve for increasing age and a new medical examination may be required only for increased insurance cover.

(3) The sickness tables and other relevant statistical data referred to in paragraph 1, subparagraph 1 of this Article shall as a rule be the most recent official tables on probability and other statistics of the Republic of Croatia or the Member State in which the risk is located.

(4) The premiums shall be sufficient, based on reasonable actuarial assumptions, for insurance undertakings to be able to meet all their commitments having regard to all aspects of their financial situation. The insurance undertaking shall notify the Agency of the technical basis for the calculation of the premium before the product is circulated.

(5) Paragraphs 3 and 4 of this Article shall apply where existing contracts are modified.

Legal Expenses Insurance

Article 346

(1) The insurance undertaking promises, against the payment of a premium, to bear the costs of legal proceedings and to provide other services directly linked to insurance cover regarding the legal expenses insurance referred to in Article 7, paragraph 2, subparagraph 17 of this Act, in particular with a view to the following:

1. securing compensation for the loss, damage or injury suffered by the insured person, by settlement out of court or in a civil or criminal proceedings;
2. defending or representing the insured person in civil, criminal, administrative or other proceedings or in respect of any other claim made against that person.

(2) The provisions referred to in Article 1 shall not apply to any of the following:

1. legal expenses insurance where such insurance concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels;
2. the activities pursued by an insurance undertaking providing civil liability cover for the purpose of defending or representing the insured person in any inquiry or proceedings where that activity is at the same time pursued in the own interest of that insurance undertaking and under such cover;
3. the activity of legal expenses insurance may be performed by an insurance undertaking concluding an assistance insurance, referred to in Article 7, paragraph 2, subparagraph 18 of this Act, which complies with the following conditions:
 - the activity is pursued in a Member State other than that in which the insured person is habitually resident;
 - the activity forms part of a contract covering solely the assistance provided for persons who fall into difficulties while travelling, while away from their home or their habitual residence.

(3) Within the meaning of paragraph 2, subparagraph 3 of this Article, the insurance contract shall clearly state that the cover concerned is limited to the circumstances referred to in that subparagraph and is ancillary to the assistance.

(4) To cover the costs of legal expenses insurance, a separate insurance contract is concluded in relation to the one concluded for other classes of insurance or is regulated in a separate section of a policy, which more specifically determines the nature of the cover of legal expenses insurance.

Management of Claims

Article 347

(1) The insurance undertaking shall adopt at least one of the methods for the management of claims set out in paragraphs 2, 3 and 4 of this Article. Whichever method is adopted, the interest of persons having legal expenses cover shall be regarded as safeguarded in an equivalent manner in accordance with Articles 346, 348, 376 and 377 of this Act.

(2) The insurance undertaking shall ensure that no member of the staff who is concerned with the management of legal expenses claims or with legal advice in respect thereof pursues at the same time a similar activity in another undertaking having financial, commercial or legal links with the first insurance undertaking and pursuing one or more of the other classes of insurance set out in Article 7 of this Act.

The composite insurance undertaking shall ensure that no member of the staff who is concerned with the management of legal expenses claims or with legal advice in respect thereof pursues at the same time a similar activity for another class transacted by them.

(3) The insurance undertaking shall entrust the management of claims in respect of legal expenses insurance to an undertaking having separate legal personality. That undertaking shall be mentioned in the separate contract or separate section referred to in Article 346, paragraph 4 of this Act.

(4) Where the undertaking having separate legal personality has links to an insurance undertaking, which carries on one or more of the classes of insurance referred to in Article 7 of this Act, members of the staff of the undertaking having separate legal personality who are concerned with the management of claims or with legal advice connected with such management shall not pursue the same or a similar activity in the other insurance undertaking at the same time. Member States may impose the same requirements on the members of the administrative, management or supervisory authority.

(5) The insurance contract shall provide that the insured persons may instruct a lawyer of their choice or, to the extent that national law so permits, any other appropriately qualified person, from the moment that those insured persons have a claim under that contract.

Free Choice of Lawyer

Article 348

In cases of covering the costs of legal expenses insurance when recourse is had to a lawyer or other person appropriately qualified according to national law in order to defend, represent or serve the interests of the insured person in any inquiry or proceedings, that insured person shall be free to choose such lawyer or other person. The insured person shall be free to choose a lawyer or, where they so prefer and to the extent that national law so permits, any other appropriately qualified person, to serve their interests whenever a conflict of interests arises.

CHAPTER II

SPECIFICITIES OF LIFE INSURANCE

Premiums for New Business

Article 349

The insurance undertaking shall prepare the premiums for newly concluded life insurance contracts in such a manner as to be sufficient, based on reasonable actuarial assumptions and taking account of other financial sources of the insurance undertaking available for that purposes, to enable the insurance undertaking to meet all their commitments and, in particular, to establish adequate technical provisions.

TITLE XVII

INSURER ASSOCIATION AND INSURANCE OR REINSURANCE ASSOCIATION (POOL)

Insurer Association

Article 350

- (1) Insurance undertakings may form an insurer association established as an economic interest grouping or as another form of association of economic entities.
- (2) The insurance undertaking shall not enter into any written or verbal contracts with another undertaking, i.e. insurance undertakings or insurance or reinsurance associations that may restrict the principle of free competition or competition in the insurance business.
- (3) With the aim of applying paragraph 2 of this Article, the insurer association shall submit to the Agency its Articles of Association, all agreements and other documentation at the request of the Agency.

Insurance or Reinsurance Association (Pool)

Article 351

- (1) Two or more insurance or reinsurance undertakings may establish an insurance or reinsurance association (pool) for the purpose of the pursuit of insurance or reinsurance business that covers the risks of major damage under the liability for nuclear damage or any other major damage in accordance with the provisions of the Companies Act on establishing an economic interest grouping.
- (2) If not otherwise stipulated in this Article, the provisions of the act governing the establishment of an economic interest grouping shall be applied to the insurance or reinsurance association (pool).
- (3) The provisions referred to in Titles III, XIII, XIV, XXI and XXII of this Act and the provisions referring to internal audit shall apply *mutatis mutandis* to the insurance or reinsurance association (pool).

TITLE XVIII

NATIONAL INSURANCE BUREAU IN THE REPUBLIC OF CROATIA

General Provisions

Article 352

- (1) The national insurance bureau in the Republic of Croatia is the Croatian Insurance Bureau as the legal entity representing the insurance association in legal transactions with third parties.
- (2) The bodies of the Croatian Insurance Bureau are the general assembly, the board of directors and the director.
- (3) The general assembly members of the Croatian Insurance Bureau shall be appointed by insurance undertakings that are members of the Croatian Insurance Bureau.
- (4) The Articles of Association of the Croatian Insurance Bureau define the activity, rights and obligations of its bodies, acceptance conditions and cessation of membership in the Croatian Insurance Bureau and the manner of financing the Croatian Insurance Bureau.
- (5) The activity of the Croatian Insurance Bureau shall be financed by the insurance undertakings as the members of the Croatian Insurance Bureau.

Activities of the Croatian Insurance Bureau

Article 353

- (1) The Croatian Insurance Bureau shall perform for its members the tasks defined by this Act, the Act on Compulsory Insurance within the Transport Sector and other regulations:
 - activities of the national insurance bureau and other tasks defined by international agreements on insurance against third-party liability of motor vehicle owners;
 - activities of introducing and representing the interests of the insurance undertaking in international institutions
 - activities of managing the Guarantee Fund
 - activities of the Compensation Body
 - activities of the Information Centre
 - activities of insurance statistics
 - activities of handling complaints by the insured persons, i.e. injured parties
 - activities of out-of-court settlement of disputes between the insured persons, i.e. policy holders, or the consumers and insurance undertakings, or the insurance service providers.
- (2) The Croatian Insurance Bureau shall stipulate the manner of performing the activities referred to in paragraph 1 of this Article.

(3) The Croatian Insurance Bureau shall set up and maintain a computer system for the processing of statistical data on the activities performed by the members of the Croatian Insurance Bureau.

(4) The Croatian Insurance Bureau also performs other tasks of general and common interest for the insurance business.

Reporting to the Agency

Article 354

(1) The Croatian Insurance Bureau shall submit reports to the Agency as stipulated by the ordinance of the Agency.

(2) The Agency shall adopt an ordinance prescribing the form and content of the report, as well as the deadlines and manner of reporting by the Croatian Insurance Bureau.

TITLE XIX

MUTUAL INSURANCE UNDERTAKING

CHAPTER I

GENERAL PROVISIONS

Definition

Article 355

(1) A mutual insurance undertaking is a legal entity entered in the court register pursuant to an authorisation to pursue the insurance business issued by the Agency.

(2) A mutual insurance undertaking referred to in paragraph 1 of this Article shall pursue the insurance business based on the principle of mutuality for its members only.

(3) A mutual insurance undertaking may pursue any line of business under non-life insurance and life assurance classes, except for the classes of insurance referred to in Article 7, paragraph 2, subparagraphs 10 – 15 of this Act.

(4) A mutual insurance undertaking is not permitted to pursue the reinsurance business.

Company Name

Article 356

The company name of a mutual insurance undertaking shall contain an indication that the company in question is a mutual insurance undertaking. The words “mutual insurance undertaking” or any derivation thereof as part of the company name or abridged company name may be entered in the court register and used in legal transactions only if the

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undertaking concerned has been granted the authorisation to pursue the insurance business in accordance with the provisions of this Act.

Establishment and Supervision

Article 357

(1) A mutual insurance undertaking shall be established subject to adoption of the Articles of Association and payment of share capital by the founders who are members of the undertaking.

(2) The founders of the mutual insurance undertaking shall submit to the Agency the application for authorisation to pursue the insurance business by the mutual insurance undertaking indicating the classes of insurance, i.e. risks the undertaking shall insure, and shall enclose the following together with the request:

1. the contract on the establishment of the mutual insurance undertaking,
2. the Articles of Association of the mutual insurance undertaking in the form of a notary public document,
3. evidence of share capital payment,
4. contracts on performing outsourced activities if the mutual insurance undertaking will authorise other persons to perform specific activities.

(3) The provisions of this Act concerning the issuance of authorisation to pursue the insurance business by an insurance undertaking from this Act shall apply *mutatis mutandis* to the decision-making on the issuance of authorisation to pursue the insurance business to the mutual insurance undertaking, and the provisions of this Act concerning the expiry and termination of that authorisation to pursue the insurance business by an insurance undertaking shall apply *mutatis mutandis* to the expiry and termination of that authorisation.

(4) The Agency shall apply *mutatis mutandis* the provisions of this Act on the supervision of insurance undertakings to the supervision of the mutual insurance undertaking.

Articles of Association

Article 358

(1) The Articles of Association of a mutual insurance undertaking shall be prepared in the form of a notary public document.

(2) The Articles of Association of a mutual insurance undertaking shall contain as follows:

1. name and head office of the undertaking;
2. the classes of insurance, i.e. insurance risks, which shall be insured,
3. manner and form of publishing notifications important for the undertaking and members

4. start of membership
 5. share capital
 6. terms and conditions and manner of paying the share capital by the members
 7. amount and manner of preparing the contingency reserves
 8. terms and conditions and manner of utilising the profit, i.e. covering debts
 9. the criteria by which the profit shall be distributed among the members
 10. the number of the management and supervisory board members
 11. the minimum number of the general assembly members who may exercise their minority rights.
- (3) The Agency may refuse the application for authorisation to pursue the insurance business to a mutual insurance undertaking if the provisions of the Articles of Association are likely to be detrimental to the members' interests and in cases provided for in this Act concerning the refusal of the applications for authorisation to pursue the insurance business of insurance undertakings.

Membership in Mutual Insurance Undertakings

Article 359

- (1) Membership in a mutual insurance undertaking shall be subject to the conclusion of an insurance contract with the mutual insurance undertaking, acceptance of the Articles of Association and aliquot payment of share capital.
- (2) The members shall not be liable for the obligations of the mutual insurance undertakings.
- (3) A member may not set off their obligation to pay contributions and make subsequent payments to the mutual insurance undertaking against their claims against the mutual insurance undertaking.
- (4) The contributions and subsequent payments by the members, as well as the liabilities of a mutual insurance undertaking to its members may be determined by applying the same conditions and criteria.

CHAPTER II

FUNDS OF THE MUTUAL INSURANCE UNDERTAKING

Share Capital

Article 360

(1) The share capital of the mutual insurance undertaking shall be at least equal to the amount of the absolute floor of the Minimum Capital Requirement provided for in Article 158, paragraph 1, subparagraph 4 of this Act.

(2) The share capital of the mutual insurance undertaking shall be paid in full in cash prior to entering the establishment of the mutual insurance undertaking in the court register or entering the increase in its share capital in the court register. The share capital funds shall not derive from loans or credits or be encumbered in any manner.

(3) The Articles of Association shall define the terms and conditions and manner of refunding the paid share capital funds. If the Articles of Association provide for the paid share capital funds not to be refunded, the Articles of Association shall define the manner of utilising these funds.

(4) The paid share capital funds shall be refunded only from the undertaking profits in an individual business year. The refund in an individual year shall not exceed the amount earmarked for the preparation of contingency reserves for that year.

Funds in the Accounts of the Members of the Mutual Insurance Undertaking

Article 361

(1) The Articles of Association of the mutual insurance undertaking may provide that the funds in the accounts of members of a mutual insurance undertaking may also constitute the share capital of the mutual insurance undertaking.

(2) The funds in the accounts of members of a mutual insurance undertaking may constitute the share capital of a mutual insurance undertaking where the Articles of Association provide the following:

- the payments from the members' accounts are possible insofar as this does not jeopardise the capital adequacy of the undertaking or where all liabilities of the undertaking have been met on the closure of the winding-up proceedings;
- the mutual insurance undertaking informs the Agency one month before the payment from the members' accounts of its intention to withdraw payment, except for repayment in the case of termination of membership;
- the undertaking shall not amend the Articles of Association in the part concerning the accounts of the members without prior authorisation by the Agency.

Contributions (Premiums), Additional Payments and Contingency Reserves

Article 362

(1) The Articles of Association shall lay down the terms and conditions and the manner in which the funds required for the operation of the mutual insurance undertaking are provided by the members. The funds required for the operation of the mutual insurance undertaking in any year of operation shall be covered by predetermined contributions (premiums) of the members.

(2) The Articles of Association shall lay down the terms and conditions and the method of additional payment of funds if the funds referred to in paragraph 1 of this Article are not sufficient to cover the liabilities of the mutual insurance undertaking.

(3) Additional payments of the funds shall also be performed by the persons who have become members during the year, and the persons whose membership has terminated in the respective year, in proportion to the duration of their membership in that particular year. If there is a change, in the course of the financial year, in the contributions (premiums) that serve as the basis for determination of the level of the additional payments, the additional payments shall be calculated according to the higher basis.

(4) The Articles of Association shall also lay down the manner of setting up the provisions used to cover operating losses (contingency reserves) and shall specify which contributions (premiums) are to be used on an annual basis for the establishment of contingency reserves, along with the minimum level of such reserves.

Appropriation of Annual Profits

Article 363

The profits of the mutual insurance undertaking may be distributed to the members or carried forward to the next financial year to the extent that these are not required to form contingency reserves or any other provisions stipulated in the Articles of Association.

CHAPTER III

BODIES OF THE MUTUAL INSURANCE UNDERTAKING

Bodies of the Undertaking

Article 364

The bodies of the mutual insurance undertaking are the management board, supervisory board and the general assembly.

Management Board of the Mutual Insurance Undertaking

Article 365

The provisions of this Act concerning the management board of the insurance undertaking shall apply *mutatis mutandis* to the management board of the mutual insurance undertaking.

Supervisory Board of the Mutual Insurance Undertaking

Article 366

(1) The supervisory board of the mutual insurance undertaking shall consist of at least three members.

(2) The Articles of Association of the mutual insurance undertaking may provide that the supervisory board has more than three members on condition that the number of members is odd and the maximum number is twenty-one.

(3) The relevant provisions of the Companies Act concerning the shares of the members of the supervisory board in the profits of the undertaking and the provisions of this Act concerning the supervisory board of the insurance undertaking shall apply *mutatis mutandis* to the supervisory board of the mutual insurance company.

General Assembly of the Mutual Insurance Undertaking

Article 367

(1) The members of the mutual insurance undertaking shall exercise their rights by means of the general assembly.

(2) The general assembly may be organised as a general assembly of all members (general assembly of members) or as a general assembly of the members' representatives who shall be members themselves (general assembly of representatives). If the Articles of Association stipulate that the general assembly of the mutual insurance undertaking shall be organised as a general assembly of representatives, the Articles of Association shall also specify the composition of the general assembly and the procedure for the appointment of representatives.

(3) The general assembly shall decide on the issues, which pursuant to law or the Articles of Association come within exclusive authority of the general assembly, while the decisions regarding management issues may be taken by the general assembly if the board of directors or supervisory board so decide.

(4) The relevant provisions of the Companies Act concerning the general assembly of the limited liability company shall apply *mutatis mutandis* to the general assembly of a mutual insurance undertaking.

CHAPTER IV

DISSOLUTION OF THE MUTUAL INSURANCE UNDERTAKING

Reasons for Dissolution

Article 368

(1) The mutual insurance undertaking shall dissolve:

1. upon expiry of the period for which it was founded;
2. by virtue of a resolution of the general assembly (voluntary winding-up);
3. if the authorisation to pursue the insurance business of the undertaking has been revoked or if bankruptcy proceedings or compulsory winding-up proceedings have been initiated.

(2) A minimum of three-quarters majority of votes shall be required for the adoption of a resolution on the dissolution of the undertaking by the general assembly.

(3) The Agency shall be notified in writing of the intention to adopt the resolution referred to in paragraph 2 of this Article at least 30 days prior to the adoption thereof.

Transfer and Acquisition of the Mutual Insurance Undertaking's Portfolio

Article 369

(1) The provisions of this Act concerning the transfer and acquisition of the portfolio of the insurance undertaking shall apply *mutatis mutandis* to the transfer and acquisition of the portfolio of the mutual insurance undertaking.

(2) A transfer or acquisition of the portfolio of the mutual insurance undertaking shall be subject to the consent of the general assembly of the mutual insurance undertaking. Unless the Articles of Association stipulate a higher majority, a three-quarter majority of votes shall be required for a resolution of the general assembly to transfer a portfolio.

(3) The mutual insurance undertaking may transfer its portfolio to the insurance undertaking. The provisions of this Act concerning the acquisition of a portfolio of another insurance undertaking shall apply *mutatis mutandis* to the subject transfer.

(4) The Agency may refuse the application for approval for the transfer or acquisition of the portfolio due to the reasons for the refusal of that application by the insurance undertaking.

Status Changes of the Mutual Insurance Undertaking

Article 370

(1) The mutual insurance undertaking may be merged with another mutual insurance undertaking or an insurance undertaking.

(2) The provisions of this Act concerning the status changes of the insurance undertaking shall apply *mutatis mutandis* to the status changes of the mutual insurance undertaking.

(3) A three-quarter majority of votes shall be required for the adoption of a decision on the status changes of the mutual insurance undertaking.

Transfer of Assets to the Insurance Undertaking

Article 371

(1) The mutual insurance undertaking may, without prior winding-up, transfer all of its assets to an insurance undertaking.

(2) The provisions of this Act concerning the transfer of the portfolio of the insurance undertaking shall apply *mutatis mutandis* to the transfer of assets of the mutual insurance undertaking to the insurance undertaking.

Transformation into a Joint-Stock Undertaking

Article 372

- (1) The mutual insurance undertaking may be transformed into a joint-stock insurance undertaking by virtue of a resolution adopted by the general assembly. A three-quarter majority of votes shall be required to adopt the resolution on the transformation into a joint-stock insurance undertaking to be adopted by the general assembly.
- (2) Each member may, by the end of the third day prior to the general assembly, object to the transformation by sending a registered letter.
- (3) The management board shall, no later than at the time the general assembly is called, inform all the members of the content of the proposed resolution on the transformation in accordance with the method of notification of the undertaking provided for by the Articles of Association. The notification shall include a reference to the members' right to object as referred to in paragraph 2 of this Article and the rights ensuing from the objection lodged.
- (4) Transformation shall be subject to approval by the Agency. The Agency shall refuse the application for transformation where, in its opinion, such transformation is likely to prejudice the interests of the members.

Resolution on the Transformation

Article 373

- (1) The resolution on the transformation shall lay down the share capital and the amount for which the shares shall be issued, as well as other amendments to the Articles of Association necessary for the transformation. The nominal amount of the share capital shall not exceed the value of the assets of the mutual insurance undertaking less its liabilities. The amount for which the shares are issued shall equal the minimum amount, as laid down in the Companies Act, for which the shares may be issued.
- (2) Unless otherwise provided in the resolution on the transformation, the members of the mutual insurance undertaking shall participate in the share capital. Where there is no provision in the resolution to the effect that all the members of the mutual insurance undertaking participate in the share capital with equal holdings, a holding of an individual member shall be determined on the basis of only one criterion or several of the following criteria:
 1. the level of the sum insured;
 2. the level of the contribution;
 3. the level of basic coverage in the case of life assurance;
 4. profit distribution criteria;
 5. duration of membership.

(3) Where a holding of an individual member does not reach the minimum nominal share value, their participation in the share capital shall not be taken into account. Other holdings shall be rounded up so as to be divisible by the minimum nominal share value and so as to divide the total share capital.

(4) If the nominal amount of a member's participation in the share capital of a joint-stock undertaking exceeds the holding determined on the basis of paragraphs 1 and 2 of this Article, the member shall pay the difference to the joint-stock undertaking. On the other hand, if the nominal amount of a member's participation in the share capital of a joint-stock undertaking is lower than the holding determined on the basis of paragraphs 1 and 2 of this Article or if a member does not participate in the share capital of a joint-stock undertaking, the difference or the holding shall be paid to the member by the joint-stock undertaking.

Implementation of Transformation

Article 374

(1) Unless otherwise specified herein, the provisions of the Companies Act shall apply *mutatis mutandis* to the transformation of a mutual insurance undertaking.

(2) A joint-stock insurance undertaking shall acquire legal personality as of the date it is entered in the court register.

(3) As of the date of registration referred to in paragraph 2 of this Act, the members of the mutual insurance undertaking shall become the shareholders pursuant to the resolution on the transformation.

(4) Any shareholder who objects to the transformation in the manner set out in Article 372, paragraph 2 of this Act, may place their shares at the disposal of the undertaking.

TITLE XX

PROTECTION OF INTERESTED PERSONS AND PROMOTIONAL ACTIVITIES

CHAPTER I

GENERAL PROVISIONS

Definition of Interested Person

Article 375

The interested persons within the meaning of this Act are:

1. the consumers, i.e. every natural person with the rights and obligations arising from the insurance contract from the class of insurance referred to in Article 7 of this Act and the users of the services of insurance and reinsurance brokerage activities and insurance agents activities;

2. legal entities with the rights and obligations arising from the insurance contract from the class of insurance referred to in Article 7 of this Act, i.e. that are the users of the services of insurance and reinsurance mediation and insurance representation;

3. injured parties in the proceedings regarding the resolution of claims arising from the extra-contractual liability for damages.

Application of a Special Act and Governing Law

Article 376

(1) The consumer rights protection shall be performed in accordance with the provisions of this Act and pursuant to a special act governing consumer protection.

(2) With regard to exercising of rights pursuant to this Act, judicial protection may be realised before the ordinary court of the Republic of Croatia, unless otherwise specified in this Act.

(3) The law applicable to insurance contracts shall be determined in accordance with Regulation (EC) No 593/2008 of the European Parliament and of the Council.

Out of Court Proceedings for the Handling of Complaints and Objections

Article 377

(1) The insurance undertakings shall instigate out of court proceedings for the resolution of disputes arising from complaints made by interested persons referred to in Article 375, subparagraphs 1 and 2 of this Act.

(2) The insurance undertakings shall instigate out of court proceedings for the resolution of disputes arising from objections made by interested persons referred to in Article 375, subparagraph 3 of this Act.

Complaints and Objections by Interested Persons

Article 378

(1) The interested persons referred to in Article 375, subparagraphs 1 and 2 of this Act shall have the right to file a complaint to the insurance undertaking with regard to the provision of insurance services, i.e. with regard to the performance of the obligations arising from the insurance contract, and the interested persons referred to in Article 375, subparagraph 3 of this Act shall have the right to file a complaint to the insurance undertaking in out of court proceedings for the resolution of disputes.

(2) The insurance undertaking shall respond to the complaint or objection referred to in paragraph 1 of this Article within 15 days from the date of receiving the complaint or objection.

(3) If the interested person referred to in paragraph 1 of this Article considers that the insurance undertaking or the persons pursuing the insurance agents activities or insurance and

reinsurance brokerage activities are not acting in accordance with their obligations, they may address a petition to the Agency thereon.

(4) The Agency shall verify the indications from the petition referred to in paragraph 4 of this Article and act in accordance with their powers, and when it established there are no conditions for the initiation of *ex officio* proceedings, it shall notify the petitioner thereof as soon as possible, but no later than 30 days from the date of completing the verification of the indications from the petition.

(5) Within its competence over insurance undertakings and persons pursuing the insurance agents activities or insurance and reinsurance brokerage activities, the Agency is authorised to verify whether they are following good business practices and the rules of the profession.

Deadline to Set Aside the Decision and the Right of the Party to Legal Remedy

Article 379

(1) The Agency shall, within 60 days from the date of establishing the reasons for setting aside the decision, adopt a decision on setting aside the adopted decision in accordance with the provisions of this Act.

(2) An appeal is not possible against a decision adopted by the Agency in administrative matters under its competence, but administrative proceedings may be initiated.

CHAPTER II

INFORMATION TO THE POLICY HOLDER

Information to the Policy Holder during the Conclusion of an Insurance Contract

Article 380

(1) Before an insurance contract is concluded, the insurance undertaking shall submit or deliver by mail or e-mail to the policy holder a written notification containing the following information and data:

1. name and head office of the insurance undertaking concluding the insurance contract;
2. if the insurance contract is concluded through a branch of the insurance undertaking, in addition to the information referred to in subparagraph 1 of this paragraph, the name and the registered office of the insurance undertaking through which the insurance contract is concluded shall be indicated;
3. insurance conditions applied to the insurance contract, which is to be concluded;
4. the deadline during which the offer shall be binding to the insurance service provider, the right to cancel the offer for the conclusion of the insurance contract and the right to withdraw from the concluded insurance contract;

5. the conditions for the expiry and cancellation of the contract;
6. the duration of the insurance contract;
7. the amount of the insurance premium, method of paying the insurance premium, amount of contributions, taxes and other costs and fees charged, except the insurance premium and the total amount of payment;
8. information on the procedure for handling complaints concerning the contracts, including an address for receiving complaints and the authority competent for handling the complaint;
9. on the authority competent for supervision of the insurance undertaking.

(2) In addition to the data referred to in paragraph 1 of this Article, the insurance undertaking providing non-life insurance services shall also indicate the following in the notification:

1. when the policy holder is a natural person, the governing law applicable to the insurance contract where the parties do not have a free choice; or
2. when the policy holder is a natural person, where the parties are free to choose the governing law and the law the life insurance undertaking proposes to choose as governing law.

(3) Where the non-life insurance is offered under the right of establishment or the freedom to provide services, the policy holder shall, before any commitment is entered into, be informed in all the documents issued to them of the Member State in which the head office is situated or, where appropriate, the branch with which the contract is to be concluded, while the aforementioned shall not be applied to large risks.

(4) In the case referred to in paragraph 3 of this Article, the insurance undertaking shall indicate in the information the name and address of the insurance undertaking representative referred to in Article 67 of this Act.

(5) In addition to the data referred to in paragraph 1 of this Article, the insurance undertaking providing life insurance services shall also indicate the following in the notification:

1. concrete reference to the policy holder as to the location of the Solvency and Financial Condition Report of the insurance undertaking, allowing the policy holder easy access to this information;
2. determining each charge and each option;
3. the basis, benchmarks and conditions for participation in the profit and the right to the payment of the profit attributed in all payment cases;
4. purchase price tables and capitalised sum tables per years of insurance coverage;
5. information that the policy holder may withdraw from the life insurance contract no later than 30 days from the date of receiving the notification by the insurance company regarding

the conclusion of the contract, whereby the policy holder shall not bear the obligations arising from the contract;

6. other specific information required to enable the policy holder to properly understand the risks underlying the contract and the obligations of the contracting parties;

7. information on arrangements for application of the cooling-off period, containing the conditions and consequences of concluding such agreements, where applicable;

8. governing law applicable to the insurance contract when the parties are not free to choose the law;

9. the freedom of choosing the applicable law and the law proposed by the insurance undertaking to be selected as governing law.

(6) In the case of life insurance contracts where the investment risk is borne by policy holders, the insurance undertaking shall, in addition to the data referred to in paragraphs 1 and 5 of this Article, indicate the following in the notification before the insurance contract is concluded:

– in the case of insurance linked to the value of units in the UCITS fund, the data contained in the prospectus and UCITS fund rules as defined by the law governing the establishment and operation of open-ended investment funds with a public offer;

– in the case of insurance linked to the value of the assets or units in the internal fund, the data contained in the rules of the internal fund referred to in Article 162, paragraph 5 of this Act;

– in the case of insurance linked to a share index or some other reference value, the data on the underlying assets of the share index or other reference values.

(7) If the data specified in this Article are contained in the insurance terms that the insurance undertaking has submitted to the policy holder before the insurance contract is concluded, the company shall be deemed to have fulfilled the obligation of providing the information to the policy holder.

(8) In the case of an insurance contract concluded on a web site, the information referred to in this Article shall be made available on the website and accepted by the policy holder before the insurance is taken out.

Information to the Policy Holder during the Validity of the Insurance Contract

Article 381

(1) During the validity of the insurance contract, the insurance undertaking shall notify the policy holder in writing of the change in data referred to in Article 380, paragraph 1 of this Act.

(2) Where, in connection with an offer for or conclusion of a life insurance contract, the insurance undertaking provides figures relating to the amount of potential payments above and beyond the contracted payments, the insurance undertaking shall provide the policy holder with a specimen calculation of possible payments after the expiry of the insurance,

applying the basis for the premium calculation using three different rates of interest. The above does not apply to life insurance contracts in the event of death. The insurance undertaking shall inform the policy holder in a clear and comprehensible manner that the specimen calculation is only a model of computation based on assumptions and that the policy holder shall not be able to derive any contractual claims from the specimen calculation.

(3) In the case of insurance with profit participation, the insurance undertaking shall notify the policy holder annually in writing of the status of the total insurance cover, incorporating the profit participation. Furthermore, where the insurance undertaking has provided figures about the potential future development of the profit participation, the insurance undertaking shall inform the policy holder of differences between the actual participation in the profits and the data provided when concluding the contract.

(4) In the case of insurance where the policy holder bears the risk of investment, the insurance undertaking shall notify the policy holder annually in writing of the value of the assets per insurance policy in accordance with Article 162 of this Act.

Content of the Notification

Article 382

(1) The wording and content of the notification referred to in Articles 380 and 381 of this Act shall be written in a clear and comprehensible manner to the policy holder or insured person and drawn up in Croatian.

(2) Exceptionally, the wording and content of the notification referred to in Articles 380 and 381 of this Act may be written in another language if the policy holder so requests or if the policy holder is free to choose the applicable law.

CHAPTER III

PROMOTIONAL ACTIVITIES

General Provision

Article 383

Promotional activities and information on insurance undertakings and products they offer on the market shall contain clear, true and complete information based on credible data.

Promotional Information

Article 384

(1) The insurance undertaking shall submit to the Agency the promotional information containing data on the financial position, market position and business results of that insurance undertaking, no later than 30 days prior to the publication, for the purpose of verifying whether the content of the promotional information is in accordance with the provisions of this Act. If, within a period of 30 days from the date of receiving the notification

on the promotional information, the Agency finds that the promotional information has not been produced in accordance with the provisions of this Act, it shall inform the insurance undertaking thereof.

(2) If the Agency does not inform the insurance undertaking within the deadline referred to in paragraph 1 of this Article, it shall be considered that the Agency has no objection to the content of the promotional information.

(3) The insurance undertaking shall be responsible for clarity, completeness and truthfulness of the information that is published for the purpose of promoting the insurance undertaking and its products.

(4) The promotional information shall include all information communicated to third parties and potential policy holders and insured persons through advertisements in the press, on the radio, television, through personal visits, by telephone calls, websites and electronic media, interactive television and in any other manner which results in the intention of promotion.

Rules of Promotional Activities

Article 385

(1) When providing promotional information on insurance undertakings and products they offer on the market, the insurance undertakings:

- shall not conceal or display in a misleading manner the promotional purpose and purpose of the information;
- shall provide a complete, accurate, clear and true description of the insurance product, prescribed obligations, projection of the yield and the likelihood of loss, as well as the description of the risks arising from such a product;
- shall substantiate the facts contained in the information by credible evidence;
- shall not state false or unverified indicators relating to the insurance undertaking, its position on the market and the products it offers;
- shall make sure that all information, in terms of appearance, content and form, are represented equally and consistently.

(2) The success and financial indicators of the group, holding company or conglomerate that owns the insurance undertaking shall not be the reason for promotion of the insurance undertaking and the products it offers on the market.

TITLE XXI

PROFESSIONAL SECRECY

General Provision

Article 386

The insurance undertaking shall treat as confidential all data, information, facts and circumstances that they have become aware of during the business conducted with a particular insurance undertaking or policy holder, insured person and insurance user, or another holder of insurance rights.

Obligation to Protect the Confidentiality of Data

Article 387

(1) The members of the insurance undertaking bodies, the shareholders of the insurance undertaking, the persons performing the audit, employees of the insurance undertaking, trustees, special management board members, liquidators or other persons who, during their work in the insurance undertaking or provision of services for the insurance undertaking, have in any manner access to data, which are considered confidential data within the meaning of this Act and the Personal Data Protection Act, shall not disclose these data or make them available to third parties, use them against the interests of the insurance undertaking and the users of its services or to enable third parties to use them.

(2) The obligation to protect the confidentiality of data referred to in paragraph 1 of this Article shall not apply in the following cases:

1. if the party expressly agrees in writing to disclose certain confidential data for a particular purpose or to a particular person;
2. if the data is required by the Ministry of the Interior or the competent state attorney's office for the purposes of performing the tasks within their competence;
3. if the information is required by a court or a notary public for the proceedings being conducted, and requires the submission of such data in writing;
4. in the cases determined by the Anti-Money Laundering and Terrorist Financing Act;
5. if such data are required by the Agency, the competent supervisory authority or other supervisory authority, including EIOPA, ESMA, EBA, ESRB and the Joint Committee, for the purpose of supervision carried out within their competence;
6. if such information is required by the tax authority in the proceedings it is conducting within its competence;
7. in cases determined by the Act on Compulsory Insurance within the Transport Sector.

(3) The obligation to protect the confidentiality of data also applies to the persons referred to in paragraph 1 of this Article after the termination of their employment in the insurance undertaking, or after the termination of the shareholder or membership status in the insurance undertaking bodies.

(4) The Agency or other authorities, courts and notaries public may use the data collected under paragraph 2 of this Article solely for the purpose for which they were collected.

(5) By way of derogation from paragraph 4 of this Article, the Agency, the competent supervisory authority, EIOPA, ESMA, EBA, ESRB and the Joint Committee shall be authorised to submit the data, which it collected or obtained pursuant to paragraph 2 of this Article, to the other competent supervisory authority, EIOPA, ESMA, EBA, ESRB, the Joint Committee, the European Commission, the European Central Bank and the European Central Bank System for the purpose of carrying out their tasks.

(6) The insurance undertaking shall ensure that the policy holder, when concluding each individual insurance contract or during the validity of the insurance contract, gives the consent referred to in paragraph 2, subparagraph 1 of this Article, and is aware of the provision of paragraph 2 of this Article.

(7) When the exchange of confidential data is performed based on written consent of the party referred to in paragraph 2, subparagraph 1 of this Article, the insurance undertaking shall fulfil the following conditions:

1. ensure that the submitted data are accurate, complete and up to date;
2. allow the party to inspect the data they submit;
3. ensure that the data exchanged in this manner are not of a larger extent than is necessary for the purposes for which the data are exchanged; and
4. keep the data received in such a manner no longer than necessary for the purpose for which the data are provided.

Collecting, Maintaining and Using Personal Data

Article 388

(1) The insurance undertakings and the Croatian Insurance Bureau shall collect, process, keep, submit and use the personal data required for the conclusion of insurance contracts and adjusting of loss arising from insurance in accordance with this Act, and pursuant to the Personal Data Protection Act and other regulations on data protection.

(2) The insurance undertakings and the Croatian Insurance Bureau may set up, maintain and keep the following databases:

1. insured persons database;
2. loss events database;
3. database for estimating the insurance cover and amount of loss compensation.

TITLE XXII

COOPERATION OF THE AGENCY WITH OTHER AUTHORITIES AND THE EUROPEAN COMMISSION AND SUBMISSION OF INFORMATION

Data Processing and Provision of Information

Article 389

(1) The Agency shall be responsible for the collection and processing of data on the facts and circumstances relevant to the performance of the tasks within the competence of the Agency determined in this Act.

(2) The data referred to in paragraph 1 of this Article, which are relevant to the performance of the tasks and the competence of the Agency as defined by this Act, shall in particular be considered the data on:

1. authorisations to pursue the insurance business and other approvals issued by the Agency under this Act;
2. members of the management and supervisory boards of the insurance undertakings, their organisation and internal audit work;
3. the branches or the direct pursuit of the insurance business in the Member States by insurance undertakings with head offices in the Republic of Croatia;
4. the branches or the direct pursuit of the insurance business of the insurance undertakings from the Member States in the Republic of Croatia;
5. branches in third countries of the insurance undertakings with head offices in the Republic of Croatia;
6. the branches of insurance companies from third countries in the Republic of Croatia;
7. respecting the provisions on risk management in accordance with this Act and other regulations;
8. information referred to in Article 215 of this Act;
9. holders of qualifying holdings referred to in Article 36 of this Act;
10. revised accounts referred to in Article 194 of this Act;
11. the measures taken referred to in Articles 167 and 233 of this Act;
12. information collected by the Agency as part of the information exchange with the competent supervisory authorities;
13. information on issued authorisations given to a direct or indirect subsidiary whose one or more parent undertakings are governed by third country legislation, with an indication of the structure of the relevant group and the acquisition of a qualifying holding in the insurance undertaking by a third-country undertaking, thereby making the insurance undertaking a subsidiary of that undertaking;

14. information on the difficulties faced by insurance undertakings during their establishment and business operations in third countries.

(3) The Agency shall inform the European Commission, EIOPA (except the information referred to in paragraph 2, subparagraph 12 of this Article) and the competent supervisory authorities of the Member States on the names of persons, or the names of authorities authorised to submit data referred to in paragraph 2 of this Article.

Cooperation with Supervisory Authorities of the European Union

Article 390

- (1) The Agency shall cooperate with EIOPA and shall participate in EIOPA activities.
- (2) The Agency shall perform all the activities necessary for the purpose of harmonisation with the guidelines and recommendations issued by EIOPA in accordance with Article 16 of Regulation (EU) No 1094/2010 and indicate the reasons for failing to do so.
- (3) The Agency shall act in accordance with Article 35 of Regulation (EU) No 1094/2010, at the request by EIOPA concerning the collection of data it requires to perform its activities.
- (4) The Agency may submit a request to EIOPA in accordance with Article 35, paragraph 3 of Regulation (EU) No 1094/2010 for the purpose of collecting the data required to perform the supervision.
- (5) For the purpose of harmonisation with the best supervisory practice, EIOPA employees may participate in the work of the supervisory colleges, including the direct supervision performed by two or more competent supervisory authorities, within the meaning of Article 21 of Regulation (EU) No 1094/2010.

Reporting to EIOPA

Article 391

The Agency shall annually provide EIOPA with the following information:

1. the average capital add-on per individual insurance undertaking and the allocation of capital add-ons introduced by the Agency during the previous year, expressed as a percentage of the Solvency Capital Requirement and separately indicated for:

- insurance undertakings and reinsurance undertakings;
- life insurance undertakings;
- non-life insurance undertakings;
- insurance undertakings that pursue the life and non-life insurance business;
- reinsurance undertakings;

2. for each announcement referred to in subparagraph 1 of this paragraph, the share of capital add-ons introduced in accordance with Article 239, paragraph 1 and paragraph 3, subparagraphs 1 – 3 of this Act;

3. the number of insurance and reinsurance undertakings benefiting from the limitations of regular supervisory reporting and the number of insurance and reinsurance undertakings benefiting from the exemption from reporting under provisions in Article 217, paragraphs 1 and 4 of this Act, together with their amount of the Capital Requirement, premiums, technical provisions and assets that are expressed as a percentage of the total volume of the Capital Requirement, premiums, technical provisions and assets of insurance undertakings and reinsurance undertakings in the Member State;

4. the number of groups benefiting from the limitations of regular supervisory reporting and the number of groups benefiting from the exemption from reporting under the provisions in Article 334, paragraphs 3 and 4 of this Act, together with their amount of the Capital Requirement, premiums, technical provisions and assets that are expressed as a percentage of the total amount of the Capital Requirement, premiums, technical provisions and assets of all groups.

Activities of the Agency

Article 392

If the Agency disagrees with the procedure, content of the activities or failure to act by the competent supervisory authority of another Member State, in the cases referred to in the acts from Article 1, paragraph 2 of Regulation (EU) No 1094/2010, it may act in accordance with Article 19 of Regulation (EU) No 1094/2010 or in accordance with Article 20 of Regulation (EU) No 1094/2010.

Review of the Long-Term Guarantee Measures and Measures Concerning Equity Risk

Article 393

In the period until 1 January 2021, the Agency shall provide EIOPA with the following information on an annual basis:

1. availability of long-term guarantees in insurance products and conduct of insurance undertakings as long-term investors;

2. the number of insurance undertakings applying the matching adjustment, volatility adjustment, extending the recovery period in accordance with Article 165, paragraphs 7 – 11 of this Act and the transitional measures established by Articles 455 and 456 of this Act;

3. the impact of the matching adjustment, volatility adjustment, symmetric adjustment mechanism for the calculation of the capital requirement for equity and the transitional measures on the financial position of the insurance undertakings in accordance with Articles 455 and 456 of this Act, anonymously for each individual company;

4. the effect of the matching adjustment, volatility adjustment and symmetric adjustment mechanism for the calculation of the capital requirement for equity on the investment

behaviour of the insurance undertakings and whether the effect of these adjustments on the reduction of capital requirements is excessive;

5. the effect of any extension of the recovery period in accordance with Article 165, paragraph 7 – 11 of this Act on the efforts of insurance companies to re-establish the level of eligible own funds to cover the Solvency Capital Requirement or to reduce the risk profile in order to achieve compliance with the Solvency Capital Requirement;

6. when the insurance company applies the transitional measures provided for in Articles 455 and 456 of this Act, whether they are in compliance with the gradual introduction plans referred to in Article 457 of this Act and the expectations of reduced dependence on such transitional measures, including the measures that the undertaking and the Agency have undertaken or are expected to undertake.

Informing the European Commission of the Refusal of the Request to Submit Notifications

Article 394

(1) The Agency shall inform the European Commission and EIOPA of the refusal of the request to submit the notification referred to in Article 62, paragraph 4 of this Act.

(2) The Agency shall inform the European Commission if it wishes to be informed in accordance with Article 435, paragraph 3 of this Act.

Informing the European Commission of Relations with Third Countries

Article 395

(1) The Agency shall inform the European Commission of the following:

1. issuance of any approval to an insurance or reinsurance undertaking whose direct or indirect parent company is a legal entity with a head office in a third country. This information also includes a statement on the structure of the subject group;

2. issuance of any approval to acquire a qualifying holding on the basis of which a third-country entity becomes a parent company of an insurance or reinsurance undertaking;

3. all the significant difficulties that insurance or reinsurance undertakings have in pursuing the insurance business in third countries.

(2) The Agency shall also inform the supervisory authorities of other Member States of the circumstances referred to in paragraph 1 subparagraphs 1 and 2 of this Article.

(3) The Agency shall also inform EIOPA of the circumstances referred to in paragraph 1, subparagraph 3 of this Article.

(4) At the request of the European Commission, the Agency shall suspend the procedures for deciding on the applications by entities from a third country for a maximum of three months, based on a decision on the applications for

1. an authorisation to an insurance or reinsurance undertaking indirectly or directly owned by a legal entity with a head office in a third country to which the decision by the European Commission refers;

2. an authorisation to acquire a qualifying holding on the basis of which an entity with a head office in a third country, to which the decision by the European Commission refers, becomes a dominant undertaking over the insurance or reinsurance undertaking.

(5) In the period of the suspension of the proceedings in accordance with paragraph 4 of this Article, the deadlines for the decision shall not run.

(6) The Agency shall, at the request of the Council of the European Union, extend the period referred to in paragraph 4 of this Article for the period defined by the Council of the European Union.

(7) Exceptionally, the provisions of paragraphs 4 and 6 of this Article shall not apply to:

1. the establishment of an insurance or reinsurance undertaking as a subsidiary, which, at the time of adopting the decision referred to in paragraphs 4 and 6 of this Article, is entitled to pursue the insurance or reinsurance business in a Member State or to the establishment of a subsidiary of that insurance or reinsurance undertaking;

2. acquisition of a qualifying holding whose future holder is an insurance or reinsurance undertaking, which, at the time of adopting the decision referred to in paragraphs 4 and 6 of this Article, is authorised to pursue the insurance or reinsurance business in a Member State or whose future holder is a subsidiary of that insurance or reinsurance undertaking.

(8) The Agency shall inform the European Commission at its request of any application for authorisation referred to in paragraph 1 of this Article, or of any application to acquire a qualifying holding on the basis of which a holder from a third country would become a dominant company over an insurance or reinsurance undertaking if the European Commission requires that data to establish the facts relevant to the adoption of the decision referred to in paragraphs 4 and 6 of this Article.

Cooperation with the European Commission

Article 396

(1) The Agency shall cooperate with the European Commission and the competent supervisory authorities of the Member States for the purpose of facilitating the supervision of insurance or reinsurance undertakings in the European Union and examining any difficulties that may arise from the application of this Act.

(2) The Agency shall inform the European Commission of any major difficulties arising from the application of this Act. The Agency, in cooperation with the European Commission and the competent supervisory authorities of the Member States, shall examine those difficulties as quickly as possible in order to find an appropriate solution.

Providing Information to the Competent Supervisory Authorities and Other Entities or Authorities

Article 397

(1) The persons employed in the Agency or engaged by the Agency shall not disclose to other persons or authorities the confidential information referred to in Article 389, paragraphs 1 and 2 of this Act, which they have obtained in the performance of their duties.

(2) The obligation referred to in paragraph 1 of this Article shall continue even after the termination of employment in the Agency, or after the termination of the engagement by the Agency.

(3) Paragraphs 1 and 2 of this Article shall not apply to the publication of data in a concise or aggregate form, which cannot be used to discern individual insurance or reinsurance undertakings.

(4) The obligation of professional secrecy referred to in paragraph 1 of this Article shall not prevent the exchange of information between the Agency and the competent supervisory authorities of other Member States under this Act and other regulations applicable to insurance or reinsurance undertakings. For information obtained in such a manner, the confidentiality obligation referred to in paragraph 1 of this Article shall apply. The exchange of data between the Agency and the competent supervisory authorities of third countries shall only be permitted if a cooperation agreement has been concluded in that respect, if such data are necessary for conducting the supervisory tasks of those authorities and if those authorities and persons authorised by that authority are subject to the confidentiality obligation referred to in paragraph 1 of this Article. The information that the Agency is obliged to communicate to a third country, which originates from another Member State shall not be disclosed without the express consent of the competent supervisory authority of that Member State and, where appropriate, only for the purposes for which it has given its consent.

(5) The Agency may use the data it received under paragraphs 1 and 4 of this Article only for the following purposes:

1. verifying whether the conditions governing the performance of the activities of the entities under the supervision by the Agency are fulfilled in accordance with this Act;
2. supervising the activities of the entities under the supervision by the Agency in accordance with this Act;
3. adopting supervisory measures and prosecution or punishment of the offenders by the Agency;
4. court proceedings;
5. fulfilling the requirements of the European Parliament based on the powers of inquiry referred to in Article 226 of the Treaty on the Functioning of the European Union.

(6) The confidentiality obligation referred to in paragraph 1 of this Article shall not prohibit the forwarding of the data:

1. to the central state administration authorities or to the competent state attorney's office;

2. to the courts, and in particular in civil proceedings or proceedings before a commercial court when insolvency or bankruptcy proceedings have been initiated against the insurance or reinsurance undertaking or when the winding-up proceedings are being conducted against the aforementioned if the confidential information does not refer to third parties involved in attempting to rescue that undertaking;

3. to the authorities authorised to supervise the insurance undertakings, reinsurance undertakings, insurance agents or brokers, credit institutions, investment companies, other financial institutions, financial markets or payment systems;

4. to central banks;

5. to the authorities involved in the winding-up, bankruptcy or similar proceedings against the insurance or reinsurance undertaking;

6. to persons carrying out statutory audit of the accounts of the insurance undertakings, reinsurance undertakings, credit institutions, financial services institutions, investment companies or other financial institutions;

7. to the bodies managing the guarantee funds if they require this information for the performance of their duties;

8. to the authorities, which supervise the authorities and persons referred to in subparagraphs 5 and 6 of this paragraph;

9. to independent authorised actuaries of insurance or reinsurance undertakings, which carry out statutory control of the business operations of those undertakings and authorities responsible for the supervision of those actuaries;

10. to competent authorities authorised to detect and investigate the violation of regulations governing the establishment and operation of companies;

11. to the European Central Bank, the European System of Central Banks, EIOPA, EBA, ESMA, the Joint Committee, ESRB and the European Commission if these authorities require the data to perform their tasks;

12. to the European Parliament with regard to its powers of inquiry referred to in Article 226 of the Treaty on the Functioning of the European Union.

(7) Confidential information forwarded by the Agency to the authorities referred to in paragraph 6, subparagraphs 1 – 7 of this Article are subject to the obligation of professional secrecy referred to in paragraph 1 of this Article, even if such authorities are situated in another Member State.

(8) Confidential information forwarded by the Agency to supervisory authorities, competent authorities or authorised actuaries referred to in paragraph 6, subparagraphs 8 – 10 of this Article:

1. shall be intended for the purpose of supervision, detection and investigation or legal verifications performed by such authorities or persons;

2. shall be subject to the obligation of professional secrecy laid down in paragraph 1 of this Article;

3. when the forwarded information originates in another Member State, it shall not be disclosed without the express consent of the competent supervisory authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its consent.

(9) The Agency shall communicate to the Commission and the competent supervisory authorities of the Member States the titles or names of the authorities and persons that may receive the information in accordance with paragraph 6, subparagraphs 8 – 10 of this Article.

(10) The competent authorities referred to in paragraph 6, subparagraph 10 of this Article shall submit to the competent supervisory authority, from which originates the provided information, the names and accountabilities of the persons to whom such information is to be sent.

(11) The confidential information received by the Agency in accordance with paragraph 4 of this Article or during the supervision of the business operations of the branch of an insurance or reinsurance undertaking in another Member State may be published solely with the express consent of the supervisory authority of the Member State from which that information originates, or with the express consent of the supervisory authority of the Member State in which the supervision was performed.

(12) Confidential information forwarded by the Agency to the authorities and institutions in accordance with paragraph 6, subparagraphs 1 – 7 of this Article may not be published without the approval of the Agency.

Providing Information in an Emergency Situation

Article 398

(1) In an emergency situation, including the emergency situation referred to in Article 18 of Regulation (EU) No 1094/2010, the Agency shall, without delay, submit the information to the ESCB central banks, including the ECB, if such information is relevant for the performance of their statutory duties, including the implementation of the monetary policy and related liquidity assurance, payment monitoring, alignment and settlement systems and maintenance of the stability of the financial system, and to the ESRB if such information is relevant to the performance of its duties.

(2) The institutions or authorities referred to in paragraph 1 of this Article may also provide the Agency with the information that may be required within the meaning of Article 397, paragraph 5 of this Act. The information received in that context shall be subject to the provisions on the obligation of professional secrecy set out in this section.

TITLE XXIII

INSURANCE AGENTS ACTIVITIES AND INSURANCE AND REINSURANCE BROKERAGE ACTIVITIES

CHAPTER I

INSURANCE AGENTS ACTIVITIES

Insurance Agents Activities

Article 399

(1) Insurance agents activities is the activity of introducing, proposing or conducting activities concerning the preparation and conclusion of insurance contracts on behalf and for the account of one or more insurance undertakings for insurance products that are not in competition with each other.

(2) Insurance representation undertakings, insurance undertakings, credit institutions, the Financial Agency, HP-Hrvatska pošta d.d. and investment companies may represent several insurance undertakings and insurance products that are in competition with each other based on a written consent from the insurance undertaking being represented.

Insurance Agent

Article 400

(1) The insurance agent is a natural person authorised by the Agency to conduct insurance agents activities.

(2) The business pursued by an insurance agent include introducing and proposing the preparation and conclusion of insurance contracts on behalf and for the account of one or more insurance undertakings, in accordance with Article 399 of this Act.

(3) The insurance agent referred to in paragraph 1 of this Article may pursue the insurance agents activities solely on the basis of employment or another legal relationship based on a written contract, with the insurance undertaking, insurance representation undertaking, insurance representation craft, credit institution, the Financial Agency, HP-Hrvatska pošta d.d. and an investment company.

(4) By way of derogation from the provision of paragraph 3 of this Article, the insurance agent shall not be considered the persons who pursue the insurance agents activities on the basis of employment with the insurance undertaking.

(5) The insurance agent may not, on their own behalf and for their account, charge insurance premiums or other amounts from the policy holder.

Insurance Representation Undertaking

Article 401

(1) The insurance representation undertaking is a legal entity with a head office in the Republic of Croatia that performs the economic activity of providing insurance representation

services and that has obtained authorisation from the Agency to perform insurance agents activities.

(2) The insurance representation undertaking may not be entered in the court register before obtaining the authorisation referred to in paragraph 1 of this Article.

(3) The insurance representation undertaking may be established under the Companies Act as a joint stock company or a limited liability company.

(4) The term “insurance agents activities” or the derivative thereof in an undertaking name or an abbreviated undertaking name may be entered in the court register and used in legal transactions only by the undertaking that has obtained the authorisation referred to in Article 420 of this Act.

Insurance Representation Craft

Article 402

(1) The insurance representation craft is a natural person – an entrepreneur (crafts person) with residence in the Republic of Croatia who performs the economic activity of providing insurance representation services and who has received the authorisation by the Agency to perform insurance agents activities.

(2) The insurance representation craft may not be entered in the craft register before obtaining the license referred to in paragraph 1 of this Article.

(3) The insurance representation craft may be established under the Trades and Crafts Act.

(4) The provisions of this Act concerning the insurance representation undertaking shall also apply to the insurance representation craft, except for the provisions of Article 401 and Article 420, paragraph 3, subparagraph 1 of this Act.

(5) The owner of the representation craft who does not have an authorisation to pursue the insurance agents activities issued in accordance with the provisions of this Act shall appoint a manager, in accordance with the provisions of the Trades and Crafts Act, who has the authorisation to perform insurance representation.

Liability Insurance for Insurance Representation Undertakings

Article 403

(1) The insurance representation undertaking and the investment company pursuing the insurance representation business for several insurance undertakings shall have liability insurance or an appropriate guarantee in the amount of no less than HRK 9,700,000.00 per claim, that is, HRK 14,650,000.00 for all claims in one year.

(2) The insurance or the guarantee referred to in paragraph 1 of this Article shall apply to the territory of the Member States.

(3) Exceptionally, paragraph 1 of this Article shall not apply if the insurance undertaking in whose name the insurance representation undertaking or the investment company is acting or is authorised to act has already provided such insurance or an appropriate guarantee or if the insurance undertaking assumes full responsibility for the actions of the insurance representation undertaking or the investment company.

Obligations of the Insurance Agent and Liability of the Insurance Undertaking

Article 404

(1) The insurance representation undertaking and the insurance undertaking shall be liable for the actions of the insurance agent.

(2) The insurance agent may pursue only the business they are authorised to pursue in accordance with the provisions of this Act.

Limitation of Powers of the Insurance Agent

Article 405

(1) If the power of the insurance agent is restricted to a particular area, the insurance agent shall be authorised to undertake legal actions referred to in Article 400 of this Act only with regard to insurance concerning the assets in that area, that is, a person with residence in that area.

(2) If the power of the insurance agent is limited in such a manner that the insurance agent is not authorised to undertake all legal actions referred to in Article 400 of this Act or in the manner referred to in paragraph 1 of this Article, the limitation of power shall have no effect on the policy holder unless he was informed of this limitation.

CHAPTER II

INSURANCE AND REINSURANCE BROKERAGE ACTIVITIES

Insurance and Reinsurance Brokerage Activities

Article 406

Brokerage activities in insurance and reinsurance is the activity of introducing, proposing or performing the activities concerning the preparations for the conclusion of the insurance or reinsurance contract, assistance in exercising the rights under the insurance or reinsurance contract, and especially in settling claims filed with the insurance or reinsurance undertaking.

Insurance and Reinsurance Broker

Article 407

(1) The insurance and reinsurance broker is a natural person authorised to pursue the insurance and reinsurance brokerage activities.

(2) Insurance and reinsurance broker's activities concern negotiations with the insurance or reinsurance undertaking with the purpose of enabling the future insurance or reinsurance policy holder to conclude an insurance or reinsurance contract in accordance with their requirements or needs.

(3) In addition to the business referred to in paragraph 2 of this Article, the business pursued by insurance and reinsurance brokers shall include the preparation for the conclusion of an insurance or reinsurance contract and assistance in exercising the rights under the insurance or reinsurance contract, especially in settling claims filed with the insurance or reinsurance undertaking.

(4) Assistance in exercising the rights under the insurance or reinsurance contract and especially in settling claims filed with the insurance or reinsurance undertaking may only be provided by persons referred to in paragraph 1 of this Article and persons authorised to do so by other laws regulating the performance of their activity.

(5) The insurance and reinsurance broker referred to in paragraph 1 of this Article may pursue the insurance and reinsurance brokerage activities solely on the basis of employment with the insurance and reinsurance mediation undertaking.

Liability of the Insurance and Reinsurance Mediation Undertaking

Article 408

The insurance and reinsurance mediation undertaking shall be liable for the actions of the insurance and reinsurance broker.

Insurance and Reinsurance Mediation Undertaking

Article 409

(1) The insurance and reinsurance mediation undertaking is a legal entity with a head office in the Republic of Croatia that performs the economic activity of providing insurance and reinsurance brokerage services and that has obtained authorisation from the Agency to perform insurance and reinsurance brokerage activities.

(2) The insurance and reinsurance mediation undertaking shall not be entered in the court register prior to obtaining the authorisation referred to in paragraph 1 of this Article.

(3) The insurance and reinsurance mediation undertaking may be established pursuant to the Companies Act as a joint stock company or a limited liability company.

(4) The term "insurance and reinsurance brokerage activities" or the derivative thereof in an undertaking name or an abbreviated undertaking name may be entered in the court register and used in legal transactions only by the undertaking that has obtained the authorisation referred to in Article 422 of this Act.

Liability Insurance of the Insurance and Reinsurance Mediation Undertaking

Article 410

(1) The insurance and reinsurance mediation undertaking shall have liability insurance or an appropriate guarantee in the amount of no less than HRK 9,700,000.00 per claim, that is, HRK 14,650,000.00 for all claims in one year.

(2) The insurance or the guarantee referred to in paragraph 1 of this Article shall apply to the territory of the Member States.

(3) Exceptionally, paragraph 1 of this Article shall not apply if the insurance or reinsurance undertaking in whose name the insurance and reinsurance mediation undertaking is acting or is authorised to act has already provided such insurance or an appropriate guarantee or if the insurance or reinsurance undertaking assumes full responsibility for the actions of the insurance or reinsurance mediation undertaking.

Obligations of the Insurance and Reinsurance Broker

Article 411

(1) The insurance and reinsurance broker shall pursue the brokerage activities in such a manner as to protect the interests of the insurance policy holders, reinsurance policy holders or the insured persons.

(2) In order to fulfil the obligation referred to in paragraph 1 of this Article, the insurance and reinsurance broker shall:

1. prepare an appropriate risk analysis and set out appropriate coverage principles;
2. explain in writing the reasons for their proposal of the insurance or reinsurance undertaking and inform them of the amount of commission defined for the conclusion of the insurance or reinsurance contract;
3. mediate, on behalf of the insurance or reinsurance policy holders, during the conclusion of the insurance or reinsurance contract, which is in accordance with the requirement of the insurance or reinsurance policy holder with regard to the insurance cover, whereby such an obligation may be limited only to certain insurance or reinsurance services if the insurance broker expressly notifies the insured person thereof;
4. inform the insurance or reinsurance undertaking that an insurance or reinsurance policy holder is requesting an offer for the purpose of conclusion of an insurance or reinsurance contract;
5. submit to the insurance or reinsurance policy holder the insurance policy or a reinsurance contract and other documents concerning the insurance or reinsurance contract;
6. check the content of the insurance policy or the reinsurance contract;
7. provide assistance to the insurance or reinsurance policy holder or the insured person during the validity of the insurance or reinsurance contract, prior to and after the occurrence of the insured event and primarily ensure that the insurance or reinsurance policy holder or insured person undertakes all legal actions, which are important for retaining or exercising the

rights under the insurance or reinsurance contract, within the deadlines defined for undertaking such legal actions;

8. continuously check the insurance or reinsurance contracts concluded by the insurance or reinsurance policy holder through their mediation and prepare proposals for the amendments of these insurance or reinsurance contracts to ensure better protection.

Protection of Clients' Interests

Article 412

(1) The insurance and reinsurance broker shall, in the pursuit of the insurance and reinsurance brokerage activities, protect the interests of the insurance policy holder, reinsurance policy holder or the insured person.

(2) The insurance and reinsurance broker shall, in pursuit of the insurance and reinsurance brokerage activities, protect the interests of the insurance or reinsurance undertaking, which the insurance or reinsurance policy holder shall otherwise protect prior to or after the conclusion of the insurance or reinsurance contract. The insurance and reinsurance broker shall, in conducting activities of preparing for the conclusion of the insurance and reinsurance contract, inform the insurance and reinsurance undertakings of all the risks that are known or should be known to them.

(3) The insurance and reinsurance broker shall explain to the insurance or reinsurance policy holder all the legal and economic connections with a particular insurance or reinsurance undertaking that may affect the bias of the insurance and reinsurance brokers when fulfilling the obligations to the insurance or reinsurance policy holder.

Prohibition of Insurance and Reinsurance Brokerage

Article 413

The insurance and reinsurance broker shall not mediate the conclusion of contracts with the insurance or reinsurance undertaking if conclusion of such an insurance or reinsurance contract would be contrary to the provision of Article 7 or Article 9 of this Act.

Exemptions in the Pursuit of the Insurance Agents Activities or Insurance and Reinsurance Brokerage Activities

Article 414

The provisions of this Title shall not apply to the persons in pursuit of the insurance agents activities or insurance and reinsurance brokerage activities, but not for an insurance representation undertaking or an insurance and reinsurance mediation undertaking if all of the following conditions are met:

1. the insurance contract requires knowledge of only the class of insurance covered by the contract;
2. the insurance contract is not a life insurance contract;

3. the insurance contract does not cover liability insurance;
4. the principal activity is not insurance agents activities or insurance and reinsurance brokerage activities;
5. insurance is a supplement to a product or service if such insurance covers:
 - risk of failure, loss or damage to products or items;
 - risk of damage or loss of luggage and other dangers related to the travel booked through the travel agency and the insurance contains provisions on life insurance or liability insurance provided that such insurance is an ancillary or supplementary form of insurance covering the risks associated with this travel;
6. the amount of the annual insurance premium does not exceed HRK 3,750.00 and the insurance contract, including its extensions, has not been concluded for a period of more than five years.

CHAPTER III

AUTHORISATION FOR THE PURSUIT OF INSURANCE AGENTS ACTIVITIES OR INSURANCE AND REINSURANCE BROKERAGE ACTIVITIES

Authorisation for the Pursuit of Insurance Agents Activities

Article 415

- (1) The business of the insurance agent may be pursued only by natural persons who have obtained authorisation from the Agency to pursue the insurance agents activities.
- (2) The Agency shall issue an authorisation to pursue the insurance agents activities to a person who fulfils the following conditions:
 1. they have successfully completed the testing of professional knowledge required to pursue the insurance agents activities;
 2. they have knowledge of the Croatian language;
 3. they have at least secondary education;
 4. they have not been convicted for criminal offences pursuant to the Criminal Code (Official Gazette 125/11 and 144/12, as follows:
 - Title XXIV – criminal offences against the economy, that is, criminal offences stipulated by the Criminal Code (Official Gazette 110/97, 27/98, 129/00, 51/01, 111/03, 190/03; – Decision of the Constitutional Court of the Republic of Croatia, 105/04, 84/05, 71/06, 110/07, 152/08, 57/11 and 143/12), as follows:

– Title XXI – criminal offences concerning the security of payment transactions and business and;

– not having been convicted for criminal offences according to the legislation of other Member States or third countries whose description corresponds to the subject criminal offences.

(3) The Agency shall revoke or annul the authorisation to pursue the insurance agents activities if:

1. the authorisation has been obtained by providing false data;
2. the conditions referred to in paragraph 2, subparagraph 4 of this Article have ceased to apply;
3. the insurance agent violates the provisions of this Act;
4. the insurance agent commits a serious violation of good business practice and the rules of the profession.

(4) The person whose authorisation to pursue the insurance agents activities has been revoked by the Agency shall not obtain an authorisation from the Agency to pursue the insurance agents activities prior to the expiry of three years from the date of enforceability of the decision on the revocation of the authorisation to pursue the insurance agents activities.

Assistant to the Insurance Agent

Article 416

(1) The assistant to the insurance agent is a natural person who, based on employment or another legal relationship, assists the insurance agent referred to in Article 400, paragraph 3 of this Act by establishing communication between the insurance agent and the potential policy holder for the purpose of concluding an insurance contract based on which they exercise the right to benefits.

(2) In addition to the business referred to in paragraph 1 of this Article, the assistant to the insurance agent shall not pursue other insurance agents activities or the business referred to in paragraph 1 of this Article at the same time for several insurance agents.

(3) The natural person without the authorisation referred to in Article 415 of this Act may act as an assistant to the insurance agent for a total duration of up to two years, regardless of interruptions in the work as an assistant to the insurance agent.

(4) The insurance agent shall monitor the work performed by their assistant referred to in paragraph 1 of this Article.

(5) The insurance representation undertakings and legal entities referred to in Article 418, paragraph 4 of this Act shall keep records of the appointment of assistants to their insurance agent, as well as of the start and end of their employment and of the insurance agent monitoring their work.

(6) Paragraph 5 of this Act shall also apply *mutatis mutandis* to the insurance undertaking that shall keep record of the assistant to their insurance agent who pursues the insurance agents activities for that insurance undertaking.

(7) The persons referred to in Article 400, paragraph 4 of this Act may not have an assistant referred to in this Article.

Authorisation to Pursue the Insurance and Reinsurance Brokerage Activities

Article 417

(1) The insurance and reinsurance brokerage activities may only be pursued by natural persons who have obtained authorisation from the Agency to pursue the insurance and reinsurance mediation business.

(2) The Agency shall issue an authorisation to pursue the insurance and reinsurance brokerage activities to the person fulfilling the following requirements:

1. they have successfully completed the testing of professional knowledge required to pursue the insurance and reinsurance brokerage activities;

2. they have knowledge of the Croatian language;

3. they have completed an undergraduate and graduate university study or an integrated undergraduate and graduate university study or a professional study and a specialist graduate professional study with at least 300 ECTS credits and have at least a one year experience in the field of insurance, reinsurance, agents activities or brokerage activities, or have completed an undergraduate university study or an undergraduate professional study of three years upon the completion of which they have acquired at least 180 ECTS credits and have at least a three year experience in the field of insurance, reinsurance, agents activities or brokerage activities;

4. they have not been convicted for criminal offences pursuant to the Criminal Code (Official Gazette 125/11 and 144/12, as follows:

– Title XXIV – criminal offences against the economy, that is, criminal offences stipulated by the Criminal Code (Official Gazette 110/97, 27/98, 129/00, 51/01, 111/03, 190/03; – Decision of the Constitutional Court of the Republic of Croatia, 105/04, 84/05, 71/06, 110/07, 152/08, 57/11 and 143/12), as follows:

– Title XXI – criminal offences concerning the security of payment transactions and business and;

– not having been convicted for criminal offences according to the legislation of other Member States or third countries whose description corresponds to the subject criminal offences.

(3) The Agency shall revoke or annul the authorisation to pursue the insurance and reinsurance brokerage activities if:

1. the authorisation has been obtained by providing false data;

2. the conditions referred to in paragraph 2, subparagraph 4 of this Article have ceased to apply;

3. the insurance and reinsurance broker violates the provisions of this Act;

4. the insurance and reinsurance broker commits a serious violation of good business practice and the rules of the profession.

(4) The person whose authorisation to pursue the insurance and reinsurance brokerage activities has been revoked shall not obtain an authorisation from the Agency to pursue the insurance and reinsurance brokerage activities prior to the expiry of three years from the date of enforceability of the decision on the revocation of the authorisation to pursue the insurance and reinsurance brokerage activities.

CHAPTER IV

PURSUIT OF THE INSURANCE AGENTS ACTIVITIES OR INSURANCE AND REINSURANCE BROKERAGE ACTIVITIES

Pursuit of the Insurance Agents Activities

Article 418

(1) The insurance agents activities may be performed by:

1. the insurance representation undertaking with a head office in the Republic of Croatia that obtained the authorisation from the Agency to perform the insurance agents activities;

2. the insurance representation craft with a head office in the Republic of Croatia that obtained the authorisation from the Agency to perform the insurance agents activities;

3. the insurance representation undertaking of another Member State that, pursuant to this Act, has the right to pursue the insurance agents activities in the territory of the Republic of Croatia directly or through a subsidiary.

(2) The insurance representation undertaking may, in addition to pursuing the insurance agents activities, provide services in accordance with this Act.

(3) The insurance representation undertaking referred to in paragraph 1 of this Article may not pursue the insurance and reinsurance brokerage activities.

(4) By way of derogation from paragraph 1 of this Article, the insurance agents activities may also be pursued by credit institutions, which have received authorisation from the Croatian National Bank to provide these services and have obtained the approval of the Insurance Representation Agency, the Financial Agency and HP-Hrvatska pošta d.d. that have received the consent from the Agency to provide these services and the investment companies that have received authorisation from the Agency to perform insurance agents activities issued in accordance with this Act and the act regulating the capital market.

(5) The Agency shall decide on the application for consent referred to in paragraph 4 of this Article within 60 days from the date of receiving the complete application.

(6) The provisions of this Act applicable to the insurance representation undertakings, except Article 401, Article 403, Article 419, Article 420, paragraph 2, and paragraph 3, subparagraph 1 and Article 423 of this Act, shall apply *mutatis mutandis* to the credit institution, the investment company, the Financial Agency and HP-Hrvatska pošta d.d., which, in accordance with paragraph 4 of this Article, pursue the insurance agents activities.

(7) In addition to the insurance agents activities, the representation undertaking may:

1. provide other intellectual and technical services concerning the insurance business under the terms prescribed by an ordinance adopted by the Agency;

2. pursue the business of offering shares in investment funds and business of providing retirement programmes of voluntary pension funds and pension insurance undertakings in accordance with the provisions of the act regulating the operations of investment funds, voluntary pension funds and pension insurance undertakings;

3. cooperate with other persons authorised to pursue the insurance agents activities in the pursuit of the insurance agents activities under the conditions prescribed by an ordinance adopted by the Agency.

(8) To the revocation of the authorisation to pursue the insurance agents activities previously issued to the Financial Agency, HP-Hrvatska pošta d.d. and investment companies and revocation of the consent to perform the insurance agents activities previously given to credit institutions, the provisions of Article 420, paragraphs 5 – 8 of this Act shall apply *mutatis mutandis*.

(9) The insurance representation undertaking, the insurance representation craft and the legal entities referred to in paragraph 4 of this Article shall designate a responsible person for the pursuit of the insurance agents activities in each subsidiary or branch in which they provide insurance agents activities services.

(10) The credit institutions shall submit to the Agency an application for consent to pursue the insurance agents activities, and the other legal entities referred to in paragraph 4 of this Article shall submit an application for authorisation to pursue the insurance agents activities. Along with the above mentioned applications, the evidence prescribed in paragraph 9 of this Article and Article 420, paragraph 3, subparagraphs 2 – 4 of this Act shall be submitted.

(11) The Agency shall without delay inform the Croatian National Bank of revoking the consent to the credit institution to pursue the insurance agents activities, that is, of the cessation of the conditions provided for by this Act for the pursuit of the insurance agents activities, and the Croatian National Bank shall terminate the authorisation previously issued to the credit institution to pursue the insurance agents activities without delay and inform the Agency thereof.

Performing the Insurance Agents Activities at Vehicle Testing Centre

(1) The vehicle testing centre is the location where a general interest activity is performed, as prescribed by the Road Traffic Safety Act.

(2) Only the insurance representation undertaking that has obtained an authorisation from the Agency to pursue the insurance agents activities may perform the activities at the vehicle testing centre concerning the preparation and conclusion of insurance contracts at the vehicle testing centre.

(3) The insurance undertaking may perform the activities concerning the preparation and conclusion of insurance contracts in the vehicle testing centre only through insurance representation undertakings referred to in paragraph 2 of this Article.

(4) The provisions of Article 420 of this Act shall apply to the issuance of the authorisation referred to in paragraph 2 of this Article.

(5) Within the meaning of this Act, the vehicle testing centre is a property or several real properties connected to each other so as to represent a single unit in which the authorised person performs vehicle testing and registration.

(6) The natural person or legal entity with the right to lease a part of the area at the testing centre referred to in paragraph 5 of this Article shall provide the insurance representation undertaking referred to in paragraph 2 of this Article with an area for conducting the insurance agents activities.

(7) If the person referred to in paragraph 6 of this Article does not provide the area for performing insurance agents activities referred to in paragraph 6 of this Article, no insurance agents activities may be performed at the vehicle testing centre referred to in paragraph 5 of this Article.

(8) The insurance representation undertaking shall pursue the insurance agents activities referred to in paragraph 2 of this Article under the same conditions for all interested insurance undertakings.

(9) The prohibition of the preparation and conclusion of insurance contracts for insurance products that are in competition with each other referred to in Article 399 and Article 400, paragraph 2 of this Act shall not apply to the insurance agents activities and the insurance agent of the insurance representation undertaking referred to in paragraph 2 of this Article.

(10) The insurance representation undertaking may pursue the insurance agents activities referred to in paragraph 2 of this Article only in the classes of insurance referred to in Article 7, paragraph 2, subparagraphs 1, 3, 7, 10, 17 and 18 of this Act, and the Agency shall specify in the authorisation to perform the representation the classes of insurance for which the insurance representation undertaking may pursue the insurance agents activities at the vehicle testing centre.

(11) The Agency shall adopt an ordinance prescribing the technical and organisational conditions for the pursuit of the insurance agents activities referred to in paragraphs 2 and 6 of this Article.

(12) When pursuing the insurance agents activities at a testing centre contrary to the provisions of this Act, the insurance undertaking whose insurance contracts are concluded and the insurance representation undertaking on whose behalf and for whose account the subject insurance agents activities is pursued shall be liable.

Authorisation to Perform Insurance Agents Activities

Article 420

(1) Prior to the entry in the court register, the insurance representation undertaking shall obtain an authorisation from the Agency to pursue the insurance agents activities.

(2) The Agency shall issue an authorisation to pursue the insurance representation business at the request of the founder or the legal entity intending to pursue the insurance agents activities in accordance with the provisions of this Act.

(3) To the application for authorisation to pursue the insurance agents activities the applicant shall enclose evidence that the following conditions are fulfilled:

1. share capital paid in cash in the amount of at least HRK 100,000.00;
2. at least one insurance agent who shall be employed full-time based on an employment contract;
3. the applicant does not have close links to an insurance and reinsurance mediation undertaking;
4. the applicant has not been convicted, on the basis of a judgement with final force and effect, for criminal offences prescribed by the Criminal Code (Official Gazette 125/11 and 144/12, as follows:
 - Title XXIV – criminal offences against the economy, that is, criminal offences stipulated by the Criminal Code (Official Gazette 110/97, 27/98, 129/00, 51/01, 111/03, 190/03; – Decision of the Constitutional Court of the Republic of Croatia, 105/04, 84/05, 71/06, 110/07, 152/08, 57/11 and 143/12), as follows:
 - Title XXI – criminal offences concerning the security of payment transactions and business and;
 - the insurance agent has not been convicted, on the basis of a judgement with final force and effect, for criminal offences according to the legislation of other Member States or third countries whose description corresponds to the subject criminal offences.

(4) A member of the management board, or a director of the representation undertaking shall have the authorisation referred to in Article 415 of this Act and be employed with that undertaking full-time, while the legal entities referred to in Article 418, paragraph 4 of this Act shall have at least one insurance agent who shall act as the person responsible for the pursuit of the insurance agents activities and will be employed full-time at the head office and the subsidiary of that entity if the representation undertaking has an established branch.

(5) The Agency shall revoke or annul the decision on issuing an authorisation to pursue the insurance agents activities in the following cases:

1. if the authorisation has been obtained by providing false data;
2. if the insurance representation undertaking or the insurance agent employed by the undertaking has severely violated the provisions of Article 424 of this Act;
3. if the insurance representation undertaking has no liability insurance in accordance with Article 403 of this Act;
4. if the insurance representation undertaking frequently violates the obligations of timely and complete reporting to the Agency as provided by this Act and the regulations issued on the basis thereof;
5. if the representation undertaking fails to execute the decisions of the Agency concerning the elimination of legal violations and irregularities within the defined deadline;
6. if the insurance representation undertaking acts contrary to the provision of Article 399 of this Act or if it pursues the business for which it is not authorised;
7. if the conditions referred to in paragraph 3 of this Article have ceased to apply.

(6) The authorisation to perform insurance agents activities shall lapse, and the insurance representation undertaking shall be stricken from the register of insurance representation undertakings kept by the Agency in accordance with Article 432 of this Act:

1. if the insurance representation undertaking fails to initiate its operations within six months from the date of obtaining the authorisation;
2. if the insurance representation undertaking does not pursue the insurance agents activities longer than six months;
3. by initiating winding-up or bankruptcy proceedings over the insurance representation undertaking;
4. by adopting a decision on the dissolution of the insurance representation undertaking;
5. by finalising a status change due to which the insurance representation undertaking shall be dissolved.

(7) The insurance representation undertaking shall without delay inform the Agency in writing of the occurrence of circumstances referred to in paragraph 6 of this Article.

(8) If a reason referred to in paragraph 6, subparagraphs 1, 2 or 4 of this Act applies, the Agency shall adopt a decision in which it shall establish that the authorisation to pursue the insurance agents activities has lapsed.

Performing Insurance and Reinsurance Mediation Activities

Article 421

(1) The insurance and reinsurance brokerage activities may be pursued by:

1. the insurance and reinsurance mediation undertaking with a head office in the Republic of Croatia that has obtained the authorisation from the Agency to pursue insurance and reinsurance brokerage activities;
2. the insurance and reinsurance mediation undertaking of a Member State which, in accordance with this Act, is entitled to pursue insurance and reinsurance brokerage activities in the territory of the Republic of Croatia directly or through its branch.

(2) The insurance and reinsurance mediation undertaking may only pursue the insurance brokerage activities and pursue other business in accordance with this Act.

(3) The insurance and reinsurance mediation undertaking referred to in paragraph 1 of this Article shall not pursue the insurance agents activities.

(4) The insurance and reinsurance mediation undertaking may, in addition to the insurance and reinsurance brokerage activities, pursue the business of offering shares in investment funds and the business of providing retirement programmes of voluntary pension funds and pension insurance undertakings in accordance with the provisions of the act regulating the operations of investment funds, voluntary pension funds and pension insurance undertakings, as well as cooperate with other persons authorised to pursue the insurance and reinsurance brokerage activities in the pursuit of the insurance and reinsurance brokerage activities under the conditions prescribed by an ordinance adopted by the Agency.

Authorisation to Perform Insurance and Reinsurance Brokerage Activities

Article 422

(1) Prior to the entry in the court register, the insurance and reinsurance mediation undertaking shall obtain an authorisation from the Agency to pursue the insurance and reinsurance brokerage activities.

(2) The Agency shall issue an authorisation to perform insurance and reinsurance brokerage activities at the request of the founder or the legal entity intending to pursue the insurance and reinsurance brokerage activities in accordance with the provisions of this Act.

(3) To the application for authorisation to pursue the insurance and reinsurance brokerage activities, the applicant shall enclose evidence that the following conditions are fulfilled:

1. share capital paid in cash in the amount of at least HRK 200,000.00;
2. at least two insurance and reinsurance brokers who shall be employed full-time based on employment contracts;
3. the applicant does not have close links to an insurance undertaking, another insurance and reinsurance mediation undertaking or an insurance representation undertaking within the meaning of this Act;

4. the applicant has not been convicted, on the basis of a judgement with final force and effect, for criminal offences prescribed by the Criminal Code (Official Gazette 125/11 and 144/12, as follows:

– Title XXIV – criminal offences against the economy, that is, criminal offences stipulated by the Criminal Code (Official Gazette 110/97, 27/98, 129/00, 51/01, 111/03, 190/03; – Decision of the Constitutional Court of the Republic of Croatia, 105/04, 84/05, 71/06, 110/07, 152/08, 57/11 and 143/12), as follows:

– Title XXI – criminal offences concerning the security of payment transactions and business and;

– the insurance agent has not been convicted, on the basis of a judgement with final force and effect, for criminal offences according to the legislation of other Member States or third countries whose description corresponds to the subject criminal offences.

(4) A member of the management board, or the director of the insurance and reinsurance mediation undertaking shall have the authorisation by the Agency referred to in Article 417, paragraph 1 of this Act and be employed with that undertaking full-time.

(5) The Agency shall revoke or annul the decision on issuing an authorisation to pursue the insurance and reinsurance brokerage activities in the following cases:

1. if the authorisation has been obtained by providing false data;

2. if the insurance and reinsurance mediation undertaking, or the insurance and reinsurance broker employed by the undertaking frequently violates the provisions of Articles 411 and 424 of this Act;

3. if the insurance and reinsurance mediation undertaking has no liability insurance in accordance with Article 410 of this Act;

4. if the insurance and reinsurance mediation undertaking frequently violates the obligations of timely and complete reporting to the Agency as provided by this Act and the regulations issued on the basis thereof;

5. if the insurance and reinsurance mediation undertaking fails to execute the decisions of the Agency concerning the elimination of legal violations and irregularities within the defined deadline;

6. if the insurance and reinsurance mediation undertaking acts contrary to the provision of Article 406 of this Act or if it pursue the business for which it is not authorised;

7. if the conditions referred to in paragraph 3 of this Article have ceased to apply.

(6) The authorisation to pursue the insurance and reinsurance brokerage activities shall lapse, and the insurance and reinsurance mediation undertaking shall be stricken from the register of insurance and reinsurance mediation undertakings kept by the Agency in accordance with Article 432 of this Act:

1. if the insurance and reinsurance mediation undertaking fails to initiate its operations within six months from the date of obtaining the authorisation;
 2. if the insurance and reinsurance mediation undertaking does not pursue the insurance and reinsurance brokerage activities longer than six months;
 3. by operation of law, by initiating winding-up or bankruptcy proceedings over the insurance and reinsurance mediation undertaking;
 4. by adopting a decision on the dissolution of the insurance and reinsurance mediation undertaking;
 5. by force of law by finalising a status change due to which the insurance and reinsurance mediation undertaking shall be dissolved.
- (7) The insurance and reinsurance mediation undertaking shall without delay inform the Agency in writing of the occurrence of circumstances referred to in paragraph 6 of this Article.
- (8) If the reason referred to in paragraph 6, subparagraphs 1, 2 or 4 of this Act applies, the Agency shall adopt a decision in which it shall establish that the authorisation to pursue the insurance and reinsurance brokerage activities has lapsed.

Acquisition and Merger

Article 423

- (1) The insurance representation undertaking, or the insurance and reinsurance mediation undertaking that takes over another insurance representation undertaking, or an insurance and reinsurance mediation undertaking shall, prior to entering the decision on the takeover into the court register, obtain an approval for the acquisition from the Agency.
- (2) The insurance representation undertakings, or the insurance and reinsurance mediation undertakings that are merging shall, prior to entering the decision on the merger into the court register, obtain an approval for the merger from the Agency and the authorisation to pursue the insurance agents activities, or the insurance and reinsurance brokerage activities for the new insurance representation undertaking, or the new insurance and reinsurance mediation undertaking established by their merger.
- (3) With the date of entry of the new insurance representation undertaking, or the new insurance and reinsurance mediation undertaking into the court register, all insurance representation undertakings, or insurance and reinsurance mediation undertakings that are being merged shall be dissolved, and their authorisations to pursue the insurance agents activities, or the insurance and reinsurance brokerage activities shall lapse.

Obligation of the Insurance and Reinsurance Broker and the Insurance Agent with Regard to the Provision of Information

Article 424

(1) The insurance agent, or the insurance and reinsurance broker shall, prior to concluding the insurance or reinsurance contract, as well as in case of amendments to or the renewal of the contract, provide the insurance or reinsurance policy holder with the following information:

1. name and surname and address;
2. register of entry and manner of accessing the register;
3. insurance representation undertaking, or the insurance and reinsurance mediation undertaking of employment;
4. names of the insurance or reinsurance undertakings with which it has concluded a contract;
5. data on the procedure for out of court settlement of disputes and internal procedure for the handling of complaints by interested persons referred to in Article 377 of this Act;
6. data on links to an insurance undertaking in case they have close links to the insurance undertaking in accordance with this Act;
7. other information referred to in Article 380 of this Act.

(2) The insurance and reinsurance broker shall prepare the analysis referred to in Article 411, paragraph 2, subparagraph 1 of this Act based on a sufficiently large number of insurance or reinsurance contracts available on the market enabling the intermediary to provide recommendations in accordance with professional criteria, in order for the insurance or reinsurance policy holder to realise their needs and requirements by concluding such a contract.

(3) Prior to concluding the contract, the insurance and reinsurance broker shall, on the basis of the data provided by the policy holder, the reinsurance policy holder or the insured person, determine the needs and desires, as well as the underlying reasons for any advice given to the policy holder, the reinsurance policy holder or the insured person concerning the insurance or reinsurance contracts.

Manner of Providing Information by the Insurance and Reinsurance Broker, or the Insurance Agent

Article 425

(1) The data referred to in Article 424 of this Act shall be provided to the insurance or reinsurance policy holder:

1. in written form on paper or another permanent medium available to the insurance or reinsurance policy holder;
2. in a manner understandable to the insurance or reinsurance policy holder;
3. in the Croatian language if not otherwise agreed.

(2) By way of derogation from paragraph 1 of this Article, the data may be provided verbally at the request of the insurance or reinsurance policy holder or in case the risk coverage is required immediately.

(3) In the cases referred to in paragraph 2 of this Article, the data shall be provided in the manner stipulated by paragraph 1 of this Article immediately after the conclusion of the insurance or reinsurance contract.

Obligation of the Insurance Undertaking

Article 426

The insurance undertaking shall not enable persons other than the persons referred to in Articles 418 and 421 of this Act to pursue the insurance agents activities, or the insurance and reinsurance brokerage activities.

Obligation of the Insurance Representation Undertaking, or the Insurance and Reinsurance Mediation Undertaking

Article 427

(1) The insurance representation undertaking shall not enable persons other than the persons referred to in Article 400 of this Act to pursue the business of the insurance agent for that undertaking.

(2) The insurance and reinsurance mediation undertaking shall not enable persons other than the persons referred to in Article 407 of this Act to pursue the insurance and reinsurance brokerage activities for that undertaking.

(3) The following shall apply *mutatis mutandis* to the insurance representation undertaking and the insurance and reinsurance mediation undertaking:

1. regulations governing mandatory insurance referred to in Article 4, paragraph 2 of this Act;
2. regulations of the Republic of Croatia referring to the obligation of professional secrecy, consumer protection and the regulations governing the prevention of money laundering and financing of terrorism.

Commission

Article 428

(1) The insurance representation undertaking or the insurance agent shall not be entitled to request the payment of commission or any other payment from the policy holder or the insured person.

(2) The insurance and reinsurance mediation undertaking, or the insurance and reinsurance broker shall not be entitled to request the payment of commission or any other payment from the insurance or reinsurance policy holder, or the insured person, unless otherwise expressly agreed in writing by the contract with the insurance or reinsurance policy holder.

(3) The insurance and reinsurance mediation undertaking, or the insurance and reinsurance broker shall acquire the right to a commission on the date when the insurance or reinsurance contract takes effect.

(4) If the contract with the insurance or the reinsurance policy holder referred to in paragraph 2 of this Article expressly states in writing that the insurance and reinsurance mediation undertaking, or the insurance and reinsurance broker is entitled to a commission or any other payment, they shall not be entitled to request a commission or any other payment from the insurance undertaking under the same insurance or reinsurance contract, the conclusion of which they have mediated.

(5) The insurance and reinsurance mediation undertaking, or the insurance and reinsurance intermediary may not subsequently agree on a change of the calculation method, or the amount of commission for the concluded insurance or reinsurance contracts, the conclusion of which they have mediated.

Business Books and Accounts

Article 429

(1) The insurance representation undertaking, or the insurance and reinsurance mediation undertaking shall keep business books, compile accounting documents, perform a valuation of assets and liabilities, as well as prepare the accounts pursuant to the Companies Act, the Accounting Act and other regulations, while following accounting and financial standards and principles and general accounting assumptions, unless otherwise stipulated under this Act.

(2) The insurance representation undertaking, or the insurance and reinsurance mediation undertaking shall compile semi-annual and annual accounts and statistical reports.

(3) The insurance representation undertaking, or the insurance and reinsurance mediation undertaking shall submit to the Agency the annual accounts no later than three months after the end of the calendar year and the semi-annual accounts no later than 30 days after the end of the half-year for which the statement is compiled.

(4) The representation craft, the insurance representation undertaking, or the insurance and reinsurance mediation undertaking, the credit institution, the Financial Agency, HP-Hrvatska pošta d.d. and the investment company shall submit to the Agency the semi-annual statistical report within 30 days after the end of the half-year for which the report is compiled. The annual statistical report shall be submitted no later than three months after the end of the calendar year.

(5) The Agency shall adopt an ordinance prescribing the form and the content of the statements and reports referred to in paragraphs 2 and 4 of this Article.

Reporting

Article 430

(1) The insurance representation undertaking, or the insurance and reinsurance mediation undertaking shall also report to the Agency on the following:

1. the change of data entered in the court register;
 2. the structure and scope of the insurance agents activities, or the insurance and reinsurance brokerage activities with the insurance or reinsurance undertakings performed in a specific year;
 3. the fulfilment of the obligations referred to in Article 403 or Article 410 of this Act.
- (2) The provision of paragraph 1, subparagraph 3 of this Article shall also apply to investment companies.

Cooperation with Other Competent Supervisory Authorities

Article 431

The competent supervisory authorities shall exchange information on the persons performing the insurance agents activities and insurance and reinsurance brokerage activities if supervisory measures have been undertaken against them that may result in those persons being removed from the register referred to in Article 432, paragraph 1 of this Act. The competent supervisory authorities may also exchange all important information at own request.

Register of Insurance Agents and Insurance and Reinsurance Brokers

Article 432

(1) The Agency shall keep a register of:

1. insurance representation undertakings that are entitled to pursue the insurance agents activities in the territory of the Republic of Croatia pursuant to this Act;
2. insurance and reinsurance mediation undertakings that are entitled to pursue the insurance and reinsurance brokerage activities in the territory of the Republic of Croatia pursuant to this Act;
3. insurance agent;
4. insurance and reinsurance broker.

(2) The registers referred to in paragraph 1 of this Article are public.

(3) The registers of the insurance representation undertakings, or the insurance and reinsurance mediation undertakings shall contain data on the persons of the undertaking responsible for pursuing the insurance agents activities, or the insurance and reinsurance brokerage activities.

(4) The legal entities and natural persons referred to in paragraph 1 of this Article shall report to the Agency in writing on the change of data listed in the register by the Agency.

*Regulation on Insurance Agents, or Insurance and Reinsurance Brokers and the
Submission of Reports to the Agency*

Article 433

The Agency shall adopt an ordinance prescribing the following in more detail:

1. the conditions for the acquisition and verification of expert knowledge in order to obtain authorisations to pursue the insurance agents activities referred to in Article 415 of this Act, or insurance and reinsurance brokerage activities referred to in Article 417 of this Act;
2. the form, content and rules on the manner of keeping the register referred to in Article 432 of this Act and the submission of data contained in the register;
3. the form and content of the report referred to in Article 430 of this Act, as well as the deadlines and manner of reporting;
4. the form and content of the report, as well as the deadlines and the manner in which the other entities referred to in Article 418 of this Act pursuing the insurance agents activities shall report to the Agency.

*Insurance Representation Undertakings, or Insurance and Reinsurance Mediation
Undertakings from other Member States*

Article 434

- (1) The insurance representation undertaking or the insurance and reinsurance mediation undertaking of a Member State is a legal entity with a head office in a Member State, which has obtained the authorisation from the competent supervisory authority to pursue the insurance agents activities or the insurance and reinsurance brokerage activities.
- (2) The insurance representation undertaking, or the insurance and reinsurance mediation undertaking of a Member State may perform the insurance agents activities or the insurance and reinsurance brokerage activity in the territory of the Republic of Croatia directly or through a branch.
- (3) The following Articles shall apply *mutatis mutandis* to the insurance representation undertakings referred to in paragraph 2 of this Article: Article 77, Article 211, Article 399, Article 400, Article 401, Article 404, Article 405, Article 414, Article 418, Article 419, Article 424, Article 425, Article 427, Article 428 and Article 432 of this Act concerning the business pursued by the insurance representation undertaking, or the insurance and reinsurance mediation undertaking in the territory of the Republic of Croatia.
- (4) The following Articles shall apply *mutatis mutandis* to the insurance and reinsurance mediation undertakings referred to in paragraph 2 of this Article: Article 77, Article 211, Articles 406 – 412, Article 414, Article 421, Article 424, Article 425, Article 427, Article 428 and Article 432 of this Act concerning the business pursued by the insurance representation undertaking, or the insurance and reinsurance mediation undertaking in the territory of the Republic of Croatia.

Performing the Insurance Agents Activities, or the Insurance and Reinsurance Brokerage Activities in another Member State

Article 435

- (1) The insurance representation undertaking, or the insurance and reinsurance mediation undertaking with a head office in the Republic of Croatia may perform the insurance agents activities, or the insurance and reinsurance brokerage activities in the territory of another Member State for which it has obtained an authorisation from the Agency, directly or through a branch, if it meets the conditions laid down by regulations of that Member State.
- (2) The insurance representation undertaking, or the insurance and reinsurance mediation undertaking that intends to start the insurance agents activities, or the insurance and reinsurance brokerage activities in another Member State shall inform the Agency thereof.
- (3) The Agency shall, within a deadline of one month, forward the notification referred to in paragraph 2 of this Article to the competent supervisory authority of the Member State, if that authority has requested it from the European Commission, and inform the insurance representation undertaking, or the insurance and reinsurance mediation undertaking thereof.
- (4) The insurance representation undertaking, or the insurance and reinsurance mediation undertaking may start the insurance agents activities, or the insurance and reinsurance brokerage activities in another Member State one month after receiving the notification from the Agency referred to in paragraph 3 of this Article. The insurance representation undertaking, or the insurance and reinsurance mediation undertaking may immediately start the insurance agents activities, or the insurance and reinsurance brokerage activities if the competent supervisory authority of the Member State has not requested the notification referred to in paragraph 3 of this Article.
- (5) The provisions of this Article shall apply *mutatis mutandis* to the pursuit of the business of the insurance agent, or the insurance and reinsurance brokerage activities in another Member State.
- (6) The Member State shall submit the notification to the European Commission if it wishes to be notified in accordance with paragraph 3 of this Article.

Start of the Insurance Agents Activities, or the Insurance and Reinsurance Brokerage Activities by the Undertaking with Head Office in another Member State

Article 436

- (1) The insurance representation undertaking, or the insurance and reinsurance mediation undertaking referred to in Article 434, paragraph 1 of this Act that intends to perform the insurance agents activities, or the insurance and reinsurance brokerage activities in the Republic of Croatia shall inform the competent supervisory authority of the Member State in which it has its head office.
- (2) The supervisory authority referred to in paragraph 1 of this Article shall forward the notification referred to in paragraph 1 of this Article to the Agency within one month.

(3) The insurance representation undertaking, or the insurance and reinsurance mediation undertaking referred to in Article 434, paragraph 1 of this Act may start the insurance agents activities, or the insurance and reinsurance brokerage activities in the Republic of Croatia after the expiry of one month from the date of receiving the notification from the supervisory authority referred to in paragraph 2 of this Article.

(4) The provisions of this Article and Article 434 of this Act shall apply *mutatis mutandis* to the activity of the insurance agent, or the insurance and reinsurance brokerage activities from other Member States in the Republic of Croatia.

(5) The supervisory authorities of the Member States shall exchange data and information concerning the insurance agents, insurance and reinsurance broker, as well as insurance representation undertakings, or insurance and reinsurance mediation undertakings, in particular when measures have been imposed against them due to failure to follow the law of the country in which they pursue the insurance agents activities, or the insurance and reinsurance brokerage activities.

(6) Articles 72, 73 and 76 of this Act shall apply *mutatis mutandis* to the supervision of persons from other Member States, which directly or through a branch in the Republic of Croatia provide services of insurance agents activities, or insurance and reinsurance brokerage activities.

TITLE XXIV

PENAL SANCTIONS

Misdemeanours of the Insurance or Reinsurance Undertaking

Article 437

(1) The insurance or reinsurance undertaking shall be fined for a misdemeanour in the amount of HRK 500,000.00 to HRK 1,000,000.00 if it:

1. pursues the insurance business contrary to Article 17, paragraphs 1 and 3 of this Act;
2. fails to limit its objectives to the insurance business in accordance with Article 20, paragraphs 1 and 6 of this Act;
3. fails to limit its objectives to the reinsurance business, related business and/or business being a direct result of reinsurance in accordance with Article 20, paragraph 2 of this Act;
4. performs activities other than the business referred to in Article 20, paragraph 3 of this Act;
5. fails to pursue the insurance business in accordance with Article 20, paragraph 4 of this Act;
6. pursues the insurance business contrary to Article 21, paragraph 1 of this Act;
7. fails to act in accordance with Article 21, paragraph 2 of this Act;

8. performs an acquisition, merger or division without the approval referred to in Article 48, paragraph 1 of this Act;
9. takes over the insurance or reinsurance portfolio without the approval referred to in Article 86, paragraph 2 of this Act;
10. transfers the insurance or reinsurance portfolio without the approval referred to in Article 87, paragraph 1 of this Act;
11. takes over the insurance or reinsurance portfolio without the approval referred to in Article 88, paragraph 1 of this Act;
12. performs business contrary to Article 92, paragraph 1 of this Act;
13. fails to appoint the holders of key functions in accordance with Article 93, paragraph 2 of this Act;
14. fails to conduct an own risk and solvency assessment in accordance with Article 96, paragraph 1 of this Act;
15. fails to inform the Agency in accordance with Article 104, paragraph 6 of this Act;
16. fails to perform a valuation of assets and liabilities in accordance with Article 105, paragraph 1 of this Act;
17. fails to obtain the authorisation in accordance with Article 124, paragraph 3 of this Act;
18. fails to classify the own-funds items in accordance with Article 125, paragraph 1 of this Act;
19. fails to act in accordance with Article 128, paragraph 2 of this Act with regard to the Solvency Capital Requirement coverage of the insurance undertaking;
20. fails to act in accordance with Article 129, paragraph 2 of this Act with regard to the Minimum Capital Requirement coverage of the insurance undertaking;
21. fails to calculate the Solvency Capital Requirement and/or submit to the Agency the report in accordance with Article 132, paragraph 1 of this Act;
22. fails to perform the calculation of the Solvency Capital Requirement using the standard formula in accordance with Article 133 of this Act;
23. uses a complete or partial internal model to calculate the Solvency Capital Requirement contrary to Article 143, paragraph 1 of this Act;
24. fails to modify the internal model and/or policy contrary to Article 145, paragraph 2 of this Act;
25. fails to calculate the Minimum Capital Requirement in accordance with Article 157, paragraph 2 of this Act;

26. fails to calculate the Minimum Capital Requirement and/or fails to report to the Agency in accordance with Article 158, paragraph 3 of this Act;
27. fails to invest the assets, or fails to provide for asset management in accordance with Article 159, paragraph 1 of this Act;
28. fails to invest the assets, or fails to provide for asset management in accordance with Article 159, paragraph 2 of this Act;
29. fails to invest the assets, or fails to provide for asset management in accordance with Article 159, paragraph 3 of this Act;
30. fails to invest the assets in accordance with Article 160, paragraph 1 of this Act;
31. fails to invest the assets, or fails to provide for asset management in accordance with Article 160, paragraph 3 of this Act;
32. fails to invest the assets, or fails to provide for asset management in accordance with Article 160, paragraph 4 of this Act;
33. does not have the value of the assets to cover the mathematical provisions at least equal to the amount of the technical provisions according to the accounting regulations in accordance with Article 180, paragraph 3 of this Act;
34. fails to provide that the value of the assets covering technical provisions according to the accounting regulations is in accordance with Article 180, paragraph 4 of this Act;
35. fails to act in accordance with Article 180, paragraph 6 of this Act;
36. fails to keep the register in accordance with Article 181, paragraph 1 of this Act;
37. fails to keep separate registers in accordance with Article 181, paragraph 2 of this Act;
38. fails to appoint the authorised actuary in accordance with Article 187, paragraph 1 of this Act;
39. fails to act in accordance with Article 190, paragraph 1 of this Act;
40. fails to act in accordance with Article 190, paragraph 2 of this Act;
41. fails to ensure that eligible own funds are available within the group and/or that they are always at least equal to the Solvency Capital Requirement in accordance with Article 303, paragraph 2 of this Act;
42. fails to ensure that eligible own funds are available within the group and/or that they are always at least equal to the Solvency Capital Requirement in accordance with Article 303, paragraph 3 of this Act;
43. fails to conduct an own risk and solvency assessment at group level in accordance with Article 328, paragraph 5 of this Act;

44. contrary to Article 385, paragraph 1, subparagraph 2 of this Act, fails to provide a correct and/or clear description of the insurance product, the prescribed obligation, the yield projection and/or the possibility of loss and the description of the risk deriving from such a product when providing the promotional information;

45. fails to substantiate with credible evidence the facts presented in the promotional information in accordance with Article 385, paragraph 1, subparagraph 3 of this Act;

46. the promotional information it provides are not equally and/or equivalently represented in accordance with Article 385, paragraph 1, subparagraph 5 of this Act.

(2) The responsible person of the insurance or reinsurance undertaking shall also be fined for a misdemeanour referred to in paragraph 1 of this Article in the amount of HRK 20,000.00 to HRK 50,000.00.

Article 438

(1) The insurance or reinsurance undertaking shall be fined in the amount of HRK 75,000.00 to 150,000.00 for a misdemeanour if it:

1. fails to inform the Agency in accordance with Article 62, paragraph 1 of this Act;
2. fails to inform the Agency of the changes of data in accordance with Article 62, paragraph 7 of this Act;
3. fails to inform the Agency in accordance with Article 63, paragraph 1 of this Act;
4. starts pursuing the insurance business contrary to Article 63, paragraph 4 of this Act;
5. fails to inform the Agency of a change of data in accordance with Article 63, paragraph 5 of this Act;
6. has established a branch contrary to Article 65, paragraph 2 of this Act;
7. fails to obtain the authorisation from the Agency as the accepting undertaking in accordance with Article 86, paragraph 2 of this Act;
8. fails to inform the Agency in accordance with Article 93, paragraph 10 of this Act;
9. contrary to Article 111, paragraph 1 of this Act, applies the matching adjustment to the relevant risk-free interest rates term structure in calculating the best estimate of obligations arising from the insurance contract with life insurance characteristics, including non-life insurance annuities or the obligations arising from the reinsurance contract without the prior approval from the Agency;
10. fails to inform the Agency in accordance with Article 111, paragraph 6 of this Act when applying the matching adjustment to the portfolio of obligations arising from the insurance and/or reinsurance contract;

11. contrary to Article 113, paragraph 1 of this Act, applies the volatility adjustment to the relevant risk-free interest rates term structure, without the prior approval from the Agency;
12. fails to submit the plan to the Agency in accordance with Article 148, paragraph 1 of this Act;
13. fails to establish procedures for determining deterioration in the financial position in accordance with Article 163, paragraph 1 of this Act;
14. fails to inform the Agency of deterioration in the financial position in accordance with Article 163, paragraph 2 of this Act;
15. fails to inform the Agency of non-compliance with the Solvency Capital Requirement in accordance with Article 165, paragraph 1 of this Act;
16. fails to submit to the Agency a realistic recovery plan for approval in accordance with Article 165, paragraph 3 of this Act;
17. fails to inform the Agency of non-compliance with the Minimum Capital Requirement in accordance with Article 166, paragraph 1 of this Act;
18. fails to submit to the Agency a realistic short-term financial plan for approval in accordance with Article 166, paragraph 3 of this Act;
19. fails to compile or publish the Solvency and Financial Condition Report in accordance with Article 168, paragraph 1 of this Act;
20. fails to publish the relevant information in accordance with Article 170, paragraph 1 of this Act;
21. fails to establish the appropriate systems and structures in accordance with Article 171, paragraph 1 of this Act;
22. fails to inform the Agency on appointing an authorised actuary in accordance with Article 187, paragraph 3 of this Act;
23. fails to submit to the Agency the auditor's report on the performed audit and/or the annual accounts and the consolidated accounts in accordance with Article 192, paragraph 1 of this Act;
24. fails to submit to the Agency, within the deadline referred to in Article 193 of this Act, the report by the appointed authorised actuary referred to in Article 188, paragraph 4 of this Act together with the opinion of the appointed authorised actuary on the form and sufficiency of the premiums and the technical provisions according to the accounting regulations in accordance with Article 193 of this Act;
25. fails to report to the Agency in accordance with Article 201, paragraph 4 of this Act;
26. fails to manage and/or process the statistical data in accordance with Article 202, paragraph 1 of this Act;

27. fails to submit data to the Agency in accordance with Article 215, paragraph 6 of this Act;
28. at the request of the Agency, fails to act in accordance with Article 221, paragraph 1 of this Act;
29. fails to allow the performance of direct supervision in accordance with Article 223, paragraph 1 of this Act;
30. fails to allow the revision of business books and/or business documentation and/or administrative or business records or the supervision of the information system and technologies that enable the operation of the information system in accordance with Article 223, paragraph 2 of this Act;
31. at the request of the authorised person of the Agency, fails to submit the documentation in accordance with Article 225, paragraph 2 of this Act;
32. fails to submit the report to the Agency in accordance with Article 326, paragraph 1 of this Act;
33. fails to submit the report to the Agency in accordance with Article 327, paragraph 1 of this Act;
34. fails to submit or fails to deliver to the policy holder the written notification in accordance with Article 380, paragraph 1 of this Act;
35. fails to prepare the written notification in accordance with Article 380, paragraph 2 of this Act;
36. the written notification does not contain the data in accordance with Article 380, paragraph 5 of this Act;
37. prior to the conclusion of the contract, fails to submit or fails to deliver to the policy holder the written notification in accordance with Article 380, paragraph 6 of this Act;
38. fails to inform the policy holder of a change of data in accordance with Article 381, paragraph 1 of this Act;
39. fails to inform the policy holder of the profit distribution status in accordance with Article 381, paragraph 3 of this Act;
40. fails to inform the policy holder of the status of the value of assets per insurance policy in the case of insurance in which the policy holder bears the risk of investing into the insurance undertaking in accordance with Article 381, paragraph 4 of this Act;
41. performs the activities of preparing and/or concluding the insurance contracts at the vehicle testing centres contrary to Article 419, paragraph 3 of this Act;
42. contrary to Article 426 of this Act, enables persons other than the persons referred to in Article 418, paragraphs 1 and 4 and Article 421, paragraph 1 of this Act to pursue the insurance agents activities, or the insurance and reinsurance brokerage activities.

(2) The responsible person of the insurance or reinsurance undertaking shall also be fined for a misdemeanour referred to in paragraph 1 of this Article in the amount of HRK 10,000.00 to HRK 40,000.00.

Misdemeanours of the Insurance or Reinsurance Undertaking from another Member State

Article 439

(1) The insurance or reinsurance undertaking from another Member State, or their branch in the Republic of Croatia shall be fined for a misdemeanour in the amount of HRK 500,000.00 to HRK 1,000,000.00 if:

1. the insurance undertaking acts contrary to Article 66, paragraph 2 of this Act;
2. the insurance undertaking acts contrary to Article 66, paragraph 5 of this Act;
3. the insurance undertaking acts contrary to Article 66, paragraph 8 of this Act;
4. the insurance undertaking acts contrary to Article 67, paragraph 4 of this Act;
5. at the request of the Agency, fails to act in accordance with Article 72, paragraph 1 of this Act;
6. the insurance undertaking fails to eliminate the irregularities in accordance with Article 73, paragraph 1 of this Act.

(2) The responsible person of the insurance or reinsurance undertaking shall also be fined for a misdemeanour referred to in paragraph 1 of this Article in the amount of HRK 20,000.00 to HRK 50,000.00.

(3) The responsible person of the branch of the insurance or reinsurance undertaking shall also be fined for a misdemeanour referred to in paragraph 1 of this Article in the amount of HRK 20,000.00 to HRK 50,000.00.

Misdemeanours of the Third-Country Insurance or Reinsurance Undertaking

Article 440

(1) The insurance or reinsurance undertaking, or their branch shall be fined for a misdemeanour in the amount of HRK 500,000.00 to HRK 1,000,000.00 if it:

1. pursues the insurance business in the Republic of Croatia contrary to Article 78, paragraph 1 of this Act;
2. pursues the reinsurance business in the Republic of Croatia through a branch contrary to Article 78, paragraph 1 of this Act;
3. fails to inform the Agency in accordance with Article 79, paragraph 4 of this Act;

4. starts to pursue the business contrary to Article 79, paragraph 5 of this Act;
5. fails to establish the technical provisions in accordance with Article 80, paragraph 1 of this Act;
6. fails to perform a valuation of assets and liabilities and/or fails to determine own funds in accordance with Article 80, paragraph 2 of this Act;
7. fails to calculate the Solvency Capital Requirement and/or the Minimum Capital Requirement in accordance with Article 80, paragraph 4 of this Act;
8. fails to calculate the deposit in accordance with Article 80, paragraph 7 of this Act;
9. has no own funds in accordance with Article 80, paragraph 8 of this Act;
10. pursues the insurance business contrary to Article 82 of this Act.

(2) The responsible person of the insurance or reinsurance undertaking shall also be fined for a misdemeanour referred to in paragraph 1 of this Article in the amount of HRK 20,000.00 to HRK 50,000.00.

(3) The responsible person of the branch of the insurance or reinsurance undertaking shall also be fined for a misdemeanour referred to in paragraph 1 of this Article in the amount of HRK 20,000.00 to HRK 50,000.00.

Misdemeanours of the Insurance Undertaking from the Swiss Confederation

Article 441

(1) The insurance undertaking from the Swiss Confederation shall be fined for a misdemeanour in the amount of HRK 500,000.00 to HRK 1,000,000.00

1. if it pursues the insurance business in the Republic of Croatia contrary to Article 85, paragraph 1 of this Act

2. if it pursues the insurance business in the Republic of Croatia contrary to Article 85, paragraph 2 of this Act

3. if it pursues the insurance business in the Republic of Croatia contrary to Article 85, paragraph 10 of this Act

(2) The responsible person of the insurance undertaking shall also be fined in the amount HRK 20,000.00 to HRK 50,000.00 for a misdemeanour referred to in paragraph 1 of this Article.

(3) The responsible person of the branch of the insurance undertaking from the Swiss Confederation shall also be fined for a misdemeanour referred to in paragraph 1 of this Article in the amount of HRK 20,000.00 to HRK 50,000.00.

Misdemeanours by the Member of the Board of Directors, Supervisory Board or the Management Board of the Insurance or Reinsurance Undertaking

Article 442

(1) The member of the board of directors of the insurance or reinsurance undertaking shall be fined for a misdemeanour in the amount of HRK 15,000.00 to HRK 40,000.00 if they:

1. fail to perform their obligations in accordance with Article 92, paragraph 4 of this Act;
2. fail to undertake measures and/or fail to prepare a proposal of the measures in accordance with Article 165, paragraph 2 of this Act;
3. fail to undertake measures and/or fail to prepare a proposal of the measures in accordance with Article 166, paragraph 2 of this Act;
4. fail to ensure the business operations of the undertaking in accordance with Article 55, paragraph 1 of this Act;
5. fail to establish and/or fail to implement the management system in accordance with Article 55, paragraph 2 of this Act;
6. for the purpose of establishing and implementing an efficient and reliable management system, fail to act in accordance with Article 55, paragraph 3 of this Act;
7. fail to inform the Agency in accordance with Article 55, paragraph 4 of this Act;
8. fail to ensure the implementation of the supervisory measures in accordance with Article 55, paragraph 5 of this Act;
9. fail to perform their obligations in accordance with Article 55, paragraph 6 of this Act;
10. fail to inform the Agency in accordance with Article 201, paragraph 3 of this Act;
11. fail to submit to the Agency the decision on the appointment of an audit firm in accordance with Article 195, paragraph 2 of this Act;
12. fail to provide the special administration and the assistants to the special administration access to the insurance undertaking documentation and/or fail to prepare the business handover report in accordance with Article 256, paragraph 1 of this Act;
13. fail to inform the Agency of the intention to adopt the decision on the dissolution of the insurance undertaking or its branch in accordance with Article 263, paragraph 2 of this Act;
14. fail to inform the Agency of the adopted decision on the dissolution of the insurance undertaking or its branch in accordance with Article 263, paragraph 3 of this Act.

(2) The member of the supervisory board of the insurance or reinsurance undertaking shall be fined for a misdemeanour in the amount of HRK 20,000.00 to HRK 50,000.00 if they:

1. fail to inform the Agency of the information in accordance with Article 60, paragraph 5 of this Act;
2. fail to inform the Agency of the dissolution of the insurance undertaking or its branch in accordance with Article 263, paragraph 2 of this Act.

Misdemeanours of the Insurance Representation Undertaking, Insurance Representation Craftsmen or the Insurance Agent

Article 443

(1) The insurance representation undertaking shall be fined for a misdemeanour in the amount of HRK 150,000.00 to HRK 250,000.00 if it:

1. does not have liability insurance and/or an appropriate guarantee in accordance with Article 403, paragraph 1 of this Act;
2. pursues business and/or provides services other than the ones referred to in Article 418, paragraph 2 of this Act;
3. contrary to the provision of Article 423, paragraph 1 of this Act, takes over another undertaking without the approval from the Agency;
4. contrary to the provision of Article 423, paragraph 2 of this Act, merges with another undertaking without the approval from the Agency;
5. contrary to Article 427, paragraph 1 of this Act, enables persons other than the persons referred to in Article 400 of this Act to pursue the business of the insurance agent for that undertaking;
6. contrary to the provision of Article 428, paragraph 1 of this Act, requests the payment of or collects the commission and/or any other payment from the policy holder or the insured person;
7. fails to submit to the Agency the annual or the semi-annual accounts in the deadline provided for in Article 429, paragraph 3 of this Act;
8. fails to submit to the Agency the statistical report within the deadline defined by Article 429, paragraph 4 of this Act;
9. fails to report to the Agency in accordance with Article 430 of this Act;
10. fails to inform the Agency prior to starting to perform the insurance agents activities in the Member State in accordance with Article 435, paragraph 2 of this Act.

(2) The responsible person of the insurance representation undertaking shall also be fined for a misdemeanour referred to in paragraph 1 of this Article in the amount of HRK 15,000.00 to HRK 50,000.00.

(3) The insurance representation craftsman or the investment company shall be fined for a misdemeanour in the amount of HRK 25,000.00 to HRK 100,000.00 if it:

1. does not have liability insurance in accordance with Article 403, paragraph 1 of this Act;
2. pursues the insurance agents activities contrary to Article 418, paragraph 1 of this Act;
3. requests the payment of or collects the commission or any other payment from the policy holder or the insured person contrary to the provision of Article 428, paragraph 1 of this Act;
4. fails to submit to the Agency the statistical report within the deadline defined by Article 429, paragraph 4 of this Act;
5. fails to report to the Agency in accordance with Article 430 of this Act, within the deadlines and in the manner defined by a regulation adopted on the basis of Article 433 of this Act;
6. fails to inform the Agency prior to starting to perform the insurance agents activities in the Member State in accordance with Article 435, paragraph 2 of this Act;
7. enables the assistant to the insurance agent to act contrary to Article 416, paragraph 2 of this Act;
8. fails to act in accordance with Article 416, paragraph 5 of this Act.

(4) The insurance representation undertaking, or the insurance representation craftsman, shall be fined for a misdemeanour in the amount of HRK 20,000.00 to HRK 80,000.00 if it:

1. fails to enable the authorised person to perform the supervision and revision of the business in accordance with Article 219, paragraph 1 of this Act, in conjunction with Article 204, paragraph 9 of this Act;
2. fails to act in accordance with Article 221, paragraph 1 of this Act, in conjunction with Article 204, paragraph 9 of this Act;
3. fails to act in accordance with Article 223, paragraph 2 of this Act, in conjunction with Article 204, paragraph 9 of this Act;
4. fails to act in accordance with Article 224, paragraph 2 of this Act, in conjunction with Article 204, paragraph 9 of this Act;
5. fails to act in accordance with Article 225, paragraph 2 of this Act, in conjunction with Article 204, paragraph 9 of this Act;
6. fails to act in accordance with Article 226, paragraph 1 of this Act, in conjunction with Article 204, paragraph 9 of this Act.

(5) The responsible person of the insurance representation undertaking shall also be fined for a misdemeanour referred to in paragraph 4 of this Article in the amount of HRK 3,000.00 to HRK 10,000.00.

(6) The insurance representation craftsman who, contrary to Article 427, paragraph 1 of this Act, enables persons other than the persons referred to in Article 400 of this Act to pursue the business of the insurance agent shall be fined for a misdemeanour in the amount of HRK 75,000.00 to HRK 150,000.00.

(7) The responsible person shall also be fined for the misdemeanour referred to in paragraph 6 of this Article in the amount of HRK 5,000.00 to HRK 10,000.00.

(8) The insurance agent shall be fined for a misdemeanour in the amount of HRK 5,000.00 to HRK 25,000.00 if they:

1. pursue the business contrary to Article 400, paragraph 3 of this Act;
2. collect the insurance premiums and/or other amounts from the policy holder in their name and on their behalf contrary to Article 400, paragraph 5 of this Act;
3. pursue the business contrary to Article 404, paragraph 2 of this Act;
4. fail to present or misrepresent the information referred to in Article 424, paragraph 1 of this Act to the policy holder;
5. present the information referred to in Article 424 in a form contrary to Article 425, paragraph 3 of this Act;
6. request the payment of, or collect the payment of the commission or any other payment from the policy holder or the insured person contrary to the provision of Article 428, paragraph 1 of this Act.

Article 444

(1) The insurance representation undertaking shall be fined for a misdemeanour in the amount of HRK 150,000.00 to HRK 250,000.00 if it:

1. pursues the insurance agents activities at the vehicle testing centre contrary to Article 419, paragraph 2 of this Act;
2. pursues the insurance agents activities at the vehicle testing centre contrary to Article 419, paragraph 8 of this Act;
3. pursues the insurance agents activities at the motor vehicle test station contrary to Article 419, paragraph 10 of this Act.

(2) The responsible person of the insurance representation undertaking shall also be fined for a misdemeanour referred to in paragraph 1 of this Article in the amount of HRK 20,000.00 to HRK 50,000.00.

Article 445

The insurance representation craftsman pursuing the insurance agents activities at the vehicle testing centre contrary to Article 419, paragraph 2 of this Act shall be fined for a misdemeanour in the amount of HRK 25,000.00 to HRK 100,000.00.

Misdemeanours of the Insurance and Reinsurance Mediation Undertaking, or the Insurance and Reinsurance Broker

Article 446

(1) The insurance and reinsurance mediation undertaking shall be fined for a misdemeanour in the amount of HRK 150,000.00 to HRK 250,000.00 if it:

1. does not have liability insurance in accordance with Article 410, paragraph 1 of this Act;
2. pursues the business other than the business stipulated in Article 421, paragraph 2 of this Act;
3. takes over another undertaking without the approval of the Agency contrary to Article 423, paragraph 1 of this Act;
4. merges with another undertaking without the approval of the Agency contrary to Article 423, paragraph 2 of this Act;
5. contrary to Article 427, paragraph 2 of this Act, enables persons other than the persons referred to in Article 407 of this Act to pursue the insurance and reinsurance brokerage activities;
6. requests the payment of, or collects the commission or any other payment from the policy holder, reinsurance policy holder, or the insured person contrary to the provision of Article 428, paragraph 2 of this Act;
7. requests the payment of, or collects the commission or any other payment from the insurance undertaking contrary to the provision of Article 428, paragraph 4 of this Act;
8. subsequently agrees on a change of the method of calculation, or the amount of commission for the concluded insurance or reinsurance contracts, the conclusion of which it has mediated, contrary to the provision of Article 428, paragraph 5 of this Act;
9. fails to submit to the Agency the annual or the semi-annual accounts in the deadline provided for in Article 429, paragraph 3 of this Act;
10. fails to submit to the Agency the statistical report within the deadline defined by Article 429, paragraph 4 of this Act;
11. fails to report to the Agency in accordance with Article 430 of this Act, within the deadlines and in the manner defined by a regulation adopted on the basis of Article 433 of this Act;
12. fails to inform the Agency prior to pursuing the insurance and reinsurance brokerage activities in the Member State in accordance with Article 435, paragraph 2 of this Act.

(2) The responsible person of the insurance and reinsurance mediation undertaking shall also be fined of a misdemeanour referred to in paragraph 1 of this Article in the amount of HRK 15,000.00 to HRK 50,000.00.

(3) The insurance and reinsurance mediation undertaking shall be fined for a misdemeanour in the amount of HRK 20,000.00 to HRK 80,000.00, and the responsible person of the insurance and reinsurance mediation undertaking shall also be fined for that misdemeanour in the amount of HRK 3,000.00 to HRK 10,000.00 if they:

1. fail to enable the authorised person to perform the supervision and revision of the business in accordance with Article 219, paragraph 1 of this Act, in conjunction with Article 204, paragraph 9 of this Act;
2. fail to act in accordance with Article 221, paragraph 1 of this Act, in conjunction with Article 204, paragraph 9 of this Act;
3. fail to act in accordance with Article 223, paragraph 2 of this Act, in conjunction with Article 204, paragraph 9 of this Act;
4. fail to act in accordance with Article 224, paragraph 2 of this Act, in conjunction with Article 204, paragraph 9 of this Act;
5. fail to act in accordance with Article 225, paragraph 2 of this Act, in conjunction with Article 204, paragraph 9 of this Act;
6. fail to act in accordance with Article 226, paragraph 1 of this Act, in conjunction with Article 204, paragraph 9 of this Act.

(4) The insurance and reinsurance broker shall be fined for a misdemeanour in the amount of HRK 5,000.00 to HRK 25,000.00 if they:

1. pursue the brokerage activities contrary to Article 407, paragraph 5 of this Act;
2. fail to act in accordance with Article 411, paragraph 2 of this Act when fulfilling their obligation;
3. act contrary to the provision of Article 412, paragraph 1 of this Act when pursuing the insurance and reinsurance brokerage activities;
4. fail to inform the insurance or reinsurance undertaking of all the required risks in accordance with Article 412, paragraph 2 of this Act when preparing for the conclusion of insurance or reinsurance contracts;
5. fail to provide the policy holder with the explanations in accordance with Article 412, paragraph 3 of this Act;
6. perform mediation during the conclusion of insurance or reinsurance contracts contrary to Article 413 of this Act;

7. pursue the insurance and reinsurance brokerage activities without the authorisation from the Agency contrary to Article 417, paragraph 1 of this Act;
8. fail to submit or submit false information referred to in Article 424, paragraph 1 of this Act to the insurance or reinsurance policy holder;
9. present the information referred to in Article 424 in a form contrary to Article 425, paragraph 3 of this Act;
10. request the payment of, or collects the commission or any other payment from the policy holder, reinsurance policy holder, or the insured person contrary to the provision of Article 428, paragraph 2 of this Act;
11. subsequently agree on a change of the method of calculation, or the amount of commission for the concluded insurance or reinsurance contracts, the conclusion of which they have mediated contrary to the provision of Article 428, paragraph 5 of this Act.

Misdemeanours of the Insurance Representation Undertaking and the Insurance and Reinsurance Mediation Undertaking from another Member State

Article 447

- (1) The insurance representation undertaking from another Member State shall be fined for a misdemeanour in the amount of HRK 150,000.00 to HRK 250,000.00 if it pursues the insurance agents activities in the territory of the Republic of Croatia prior to the expiry of one month after the date of receiving the notification from the supervisory authority referred to in Article 436, paragraph 3 of this Act.
- (2) The insurance and reinsurance mediation undertaking from another Member State shall be fined for a misdemeanour in the amount of HRK 150,000.00 to HRK 250,000.00 if it pursues the insurance and reinsurance brokerage activities in the territory of the Republic of Croatia prior to the expiry of one month after the date of receiving the notification from the supervisory authority referred to in Article 436, paragraph 1 of this Act.
- (3) The responsible person of the insurance representation undertaking, or the insurance and reinsurance mediation undertaking shall also be fined in the amount of HRK 15,000.00 to HRK 50,000.00 for a misdemeanour referred to in paragraphs 1 and 2 of this Article.

Misdemeanours of the Insurance Group

Article 448

- (1) The insurance holding company, mixed-activity insurance holding company, mixed financial holding company, parent insurance or reinsurance undertaking in an insurance group shall be fined for a misdemeanour in the amount of HRK 500,000.00 to HRK 1,000,000.00 if it:
 1. fails to publish the Solvency and Financial Condition Report at group level in accordance with Article 336, paragraph 1 of this Act;

2. fails to publish the legal, management and organisational structure in accordance with Article 337 of this Act;
3. fails to perform the calculations in accordance with Article 304, paragraph 1 of this Act;
4. acts contrary to Article 308, paragraph 1 of this Act when calculating the group solvency;
5. acts contrary to Article 308, paragraph 2 of this Act when calculating the group solvency;
6. fails to submit the report to the Agency in accordance with Article 326, paragraph 1 of this Act;
7. fails to submit the report to the Agency in accordance with Article 327, paragraph 1 of this Act;
8. fails to conduct an own risk and solvency assessment at group level in accordance with Article 328, paragraph 5 of this Act.

(2) The responsible person of the insurance holding company, mixed-activity insurance holding company, mixed financial holding company or parent insurance or reinsurance undertaking in the insurance group shall also be fined for a misdemeanour referred to in paragraph 1 of this Article in the amount of HRK 20,000.00 to HRK 50,000.00.

Misdemeanours of Other Persons

Article 449

(1) The legal entity shall be fined for a misdemeanour in the amount of HRK 75,000.00 to HRK 750,000.00 if it:

1. starts its operation contrary to Article 14, paragraph 1 of this Act;
2. acquires a qualified share contrary to Article 36, paragraph 2 of this Act;
3. fails to apply for the authorisation from the Agency in accordance with Article 36, paragraph 3 of this Act;
4. fails to submit the application to the Agency in accordance with Article 36, paragraph 6 of this Act;
5. fails to inform the Agency in accordance with Article 39, paragraph 7 of this Act;
6. fails to submit the application to the Agency in accordance with Article 42, paragraph 2 of this Act;
7. pursues the insurance agents activities contrary to Article 418, paragraph 1 of this Act;
8. pursues the insurance agents activities contrary to Article 418, paragraph 4 of this Act;
9. pursues the insurance agents activities contrary to Article 419, paragraph 2 of this Act;

10. performs the insurance and reinsurance brokerage activities contrary to Article 421, paragraph 1 of this Act.

(2) The responsible person of the legal entity shall also be fined for a misdemeanour referred to in paragraph 1 of this Article in the amount of HRK 10,000.00 to HRK 50,000.00.

(3) The natural person shall be fined for a misdemeanour in the amount of HRK 5,000.00 to HRK 25,000.00 if it:

1. acquires a qualified share contrary to Article 36, paragraph 2 of this Act;
2. fails to apply for the authorisation from the Agency in accordance with Article 36, paragraph 3 of this Act;
3. fails to submit the application to the Agency in accordance with Article 36, paragraph 6 of this Act;
4. fails to inform the Agency in accordance with Article 39, paragraph 7 of this Act;
5. fails to submit the application to the Agency in accordance with Article 42, paragraph 2 of this Act;
6. as the member of special administration fails to submit to the Agency the report on the financial position and/or the operation conditions of the insurance undertaking in accordance with Article 258, paragraph 1 of this Act;
7. as the member of special administration fails to deliver to the Agency the report on the financial position and/or the operation conditions of the insurance undertaking in accordance with Article 258, paragraph 2 of this Act;
8. as the member of special administration fails to inform the Agency of all the circumstances, which may cause a deterioration of the financial position of the insurance undertaking in accordance with Article 258, paragraph 4 of this Act;
9. as the liquidator fails to fulfil its obligations in accordance with Article 274, paragraph 4 of this Act;
10. pursues the insurance agents activities contrary to Article 415, paragraph 1 of this Act;
11. pursues the business of the assistant to the insurance agent contrary to Article 416, paragraph 1 of this Act;
12. pursues the business of the assistant to the insurance agent contrary to Article 416, paragraph 2 of this Act;
13. pursues the business of the assistant to the insurance agent contrary to Article 416, paragraph 3 of this Act;
14. pursues the insurance and reinsurance brokerage activities contrary to Article 417, paragraph 1 of this Act;

15. performs the insurance agents activities based on employment with a credit institution, an investment company, the Financial Agency and HP-Hrvatska pošta d.d. contrary to Article 415, paragraph 1 of this Act in conjunction with Article 418, paragraph 6 of this Act;

16. performs the insurance agents activities contrary to Article 418, paragraph 1, subparagraph 2 of this Act;

17. performs the insurance agents activities contrary to the provisions of Article 419, paragraph 2 of this Act;

18. performs the insurance and reinsurance brokerage activities contrary to Article 421, paragraph 1 of this Act.

(4) The following shall be fined for a misdemeanour in the amount of HRK 150,000.00 to HRK 250,000.00:

1. the credit institution, the investment company, the Financial Agency or HP-Hrvatska pošta d.d. if it, as the entity pursuing the insurance agents activities, requests the payment of or collects the commission or any other payment from the policy holder or the insured person contrary to Article 428, paragraph 1 of this Act;

2. the credit institution, the investment company, the Financial Agency or HP-Hrvatska pošta d.d. if it fails to submit to the Agency the statistical report within the deadline defined in Article 429, paragraph 4 of this Act;

3. the credit institution, the investment company, the Financial Agency or HP-Hrvatska pošta d.d. if it fails to report to the Agency in accordance with Article 430 of this Act within the deadlines and in the manner defined by the regulation adopted on the basis of Article 433 of this Act.

(5) The responsible person of the investment company, the credit institution, the Financial Agency or HP-Hrvatska pošta d.d. shall also be fined for a misdemeanour referred to in paragraph 4 of this Act in the amount of HRK 15,000.00 to HRK 50,000.00.

(6) The investment company, the credit institution, the Financial Agency and HP-Hrvatska pošta d.d. shall be fined for a misdemeanour in the amount of HRK 20,000.00 to HRK 80,000.00 if it:

1. fails to enable the authorised person to perform the supervision and revision of the business in accordance with Article 219, paragraph 1 of this Act, in conjunction with Article 204, paragraph 9 of this Act;

2. fails to act in accordance with Article 221, paragraph 1 of this Act, in conjunction with Article 204, paragraph 9 of this Act;

3. fails to act in accordance with Article 223, paragraph 2 of this Act, in conjunction with Article 204, paragraph 9 of this Act;

4. fails to act in accordance with Article 224, paragraph 2 of this Act, in conjunction with Article 204, paragraph 9 of this Act;

5. fails to act in accordance with Article 225, paragraph 2 of this Act, in conjunction with Article 204, paragraph 9 of this Act;

6. fails to act in accordance with Article 226, paragraph 1 of this Act, in conjunction with Article 204, paragraph 9 of this Act.

(7) The responsible person of the investment company, the credit institution, the Financial Agency and HP-Hrvatska pošta d.d. shall also be fined in the amount of HRK 15,000.00 to HRK 50,000.00 for the misdemeanour referred to in paragraph 6 of this Article.

Misdemeanours of the Audit Firm

Article 450

(1) The audit firm shall be fined for a misdemeanour in the amount of HRK 30,000.00 to HRK 100,000.00 if it:

1. fails to submit to the Agency the audit plan for each insurance undertaking in accordance with Article 195, paragraph 3 of this Act;

2. performs the audit of the accounts of the insurance undertaking contrary to Article 197, paragraph 2 of this Act;

3. fails to inform the Agency in accordance with Article 198, paragraph 1 of this Act;

4. fails to inform the Agency in accordance with Article 198, paragraph 2 of this Act;

5. fails to inform the Agency in accordance with Article 198, paragraph 3 of this Act;

6. fails to perform the audit in accordance with Article 200, paragraph 1 of this Act.

(2) The responsible person of the audit firm shall also be fined for a misdemeanour referred to in paragraph 1 of this Article in the amount of HRK 15,000.00 to HRK 50,000.00.

Misdemeanours of the Appointed Authorised Actuary

Article 451

The appointed authorised actuary shall be fined for a misdemeanour in the amount of HRK 5,000.00 to HRK 25,000.00 if they:

1. fail to inform the management board of the insurance undertaking in accordance with Article 188, paragraph 5 of this Act;

2. fail to inform the Agency in accordance with Article 188, paragraph 7 of this Act;

3. fail to inform the Agency in accordance with Article 188, paragraph 8 of this Act.

Misdemeanours Concerning the Protection of the Confidentiality of Data

Article 452

(1) The insurance or reinsurance undertaking that fails to fulfil the obligation to protect the confidentiality of data in accordance with Article 386 of this Act shall be fined for a misdemeanour in the amount of HRK 75,000.00 to HRK 750,000.00.

(2) The responsible person of the insurance or reinsurance undertaking shall also be fined for the misdemeanour referred to in paragraph 1 of this Article in the amount of HRK 5,000.00 to HRK 25,000.00.

(3) The natural person who fails to fulfil the obligation to protect the confidentiality of data in accordance with Article 387, paragraph 1 of this Act shall be fined for a misdemeanour in the amount of HRK 20,000.00 to HRK 50,000.00.

TITLE XXV

TRANSITIONAL AND FINAL PROVISIONS

Transitional Provisions

Article 453

(1) The insurance or reinsurance undertaking which, on the date of entry into force of this Act, has an authorisation by the Agency to pursue insurance or reinsurance business shall be deemed to have an authorisation to pursue the insurance or reinsurance business issued in accordance with the provisions of this Act.

(2) The insurance undertaking which, on 1 July 2013, simultaneously pursued the life and non-life insurance business, may continue to pursue the life and non-life insurance business in the Republic of Croatia, provided that the life and non-life insurance business is managed separately in accordance with Article 21 of this Act.

(3) The third-country insurance or reinsurance undertaking which, on the date of entry into force of this Act, has the authorisation by the Agency to pursue the insurance or reinsurance business in the Republic of Croatia through a branch established in the Republic of Croatia shall be deemed to have an authorisation to pursue the insurance or reinsurance business through a branch established in the Republic of Croatia issued in accordance with the provisions of this Act.

(4) The persons who have the authorisation to pursue the business of an authorised actuary issued by the Agency or the Minister of Finance on the date of entry into force of this Act shall be deemed to have the authorisation to pursue the business of an authorised actuary in accordance with Article 186 of this Act.

(5) The permits and authorisations for the pursuit of the insurance agents activities and the licenses and authorisations for the pursuit of the insurance and reinsurance brokerage activities issued prior to the entry into force of this Act, which are effective on the date of entry into force of this Act shall remain effective.

(6) When assessing the fulfilment of the conditions referred to in Article 417, paragraph 2, subparagraph 3 of this Act, the provisions of the act regulating the academic and professional titles and the academic degree shall apply.

(7) The insurance representation undertaking and the insurance representation craft which, on the date of entry into force of this Act, have the authorisation to pursue the insurance agents activities at a vehicle testing centre, are deemed to have an authorisation for the pursuit of the insurance agents activities at the vehicle testing centre in terms of the classes of insurance referred to in Article 419, paragraph 10 of this Act.

(8) Other Agency authorisations issued prior to the entry into force of this Act, which were effective on the date of entry into force of this Act, shall remain effective.

Transitional Measures

Article 454

(1) The insurance undertaking, which stops concluding new insurance or reinsurance contracts by 1 January 2016 and manages only its existing portfolio in order to terminate its operation shall not be subject to the provisions of this Act, except for the provisions on the reorganisation, winding-up and bankruptcy of the insurance undertaking by the date set out in paragraph 2 of this Article when:

1. the insurance undertaking has proved to the Agency that it shall terminate its operation prior to 1 January 2019; or
2. the insurance undertaking is subject to reorganisation measures established in accordance with Articles 248 – 251 of this Act and an administrator has been appointed.

(2) The insurance undertaking to which the following applies:

1. paragraph 1, subparagraph 1 of this Article, shall be subject to the provisions of this Act, with the exception of provisions on reorganisation, winding-up and bankruptcy of the insurance undertaking from 1 January 2019 or from an earlier date if the Agency is not satisfied with the progress achieved with regard to the termination of operation of the insurance undertaking;

2. paragraph 1, subparagraph 2 of this Article, shall be subject to the provisions of this Act, with the exception of provisions on reorganisation, winding up and bankruptcy of the insurance undertaking from 1 January 2021 or from an earlier date if the Agency is not satisfied with the progress achieved with regard to the termination of the operation of the insurance undertaking.

(3) The insurance undertaking shall be subject to transitional measures referred to in paragraphs 1 and 2 of this Article only if the following conditions have been met:

1. the insurance undertaking is not part of a group or if it is, all undertakings that form the group have ceased to conclude new insurance or reinsurance contracts;

2. the insurance undertaking submits to the Agency an annual report defining the progress made in relation to the termination of the operation of that insurance undertaking;

3. the insurance undertaking has informed the Agency of implementing the transitional measures;

4. paragraphs 1 and 2 of this Article do not prevent the operation of the insurance undertakings in accordance with the provisions of this Act, excluding the provisions on reorganisation, winding-up and bankruptcy of the insurance undertaking.

(4) The Agency shall compile a list of the insurance undertakings concerned and shall submit it to other competent authorities of the Member States.

(5) The insurance undertaking shall submit the information for supervision purposes referred to in Article 215 of this Act on an annual basis within:

- 20 weeks after the expiry of the business year ending on 31 December 2016;
- 18 weeks after the expiry of the business year ending on 31 December 2017;
- 16 weeks after the expiry of the business year ending on 31 December 2018;
- 14 weeks after the expiry of the business year ending on 31 December 2019.

(6) The insurance undertaking shall publish the information referred to in Article 168 of this Act within:

- 20 weeks after the expiry of the business year ending on 31 December 2016;
- 18 weeks after the expiry of the business year ending on 31 December 2017;
- 16 weeks after the expiry of the business year ending on 31 December 2018;
- 14 weeks after the expiry of the business year ending on 31 December 2019.

(7) The insurance undertaking shall submit the information for supervision purposes referred to in Article 215 of this Act on a quarterly basis within:

- eight weeks after the expiry of the quarterly periods in 2016 (31 March, 30 June, 30 September, 31 December);
- seven weeks after the expiry of the quarterly periods in 2017 (31 March, 30 June, 30 September, 31 December);
- six weeks after the expiry of the quarterly periods in 2018 (31 March, 30 June, 30 September, 31 December);
- five weeks after the expiry of the quarterly periods in 2019 (31 March, 30 June, 30 September, 31 December).

(8) Paragraphs 5, 6 and 7 of this Article shall apply *mutatis mutandis* to the participating insurance and reinsurance undertakings, insurance holding companies and mixed-activity insurance holding companies at group level in accordance with Articles 334 and 336 of this Act, whereby the deadlines referred to in paragraphs 5, 6 and 7 of this Article shall be prolonged by six weeks.

(9) Notwithstanding Article 126 of this Act, the basic own-fund items shall be included in the Tier 1 basic own funds for a duration of 10 years after 1 January 2016, under the condition that the items:

1. have been issued prior to the entry into force of Regulation (EU) No 2015/35, i.e. prior to 18 January 2015;
2. could be used by 31 December 2015 as additional capital items up to 50% of the basic capital in accordance with Article 96 of the Insurance Act (Official Gazette 151/05, 87/08, 82/09, 54/13 and 94/14) and Article 7, paragraph 2 and Articles 8, 9 and 10 of the Ordinance on the manner of calculating capital, guarantee fund and capital adequacy of insurance and reinsurance undertakings (Official Gazette 97/09, 42/10, 94/11, 39/12, 73/13, 105/13 and 136/14);
3. would otherwise not be classified as Tier 1 or Tier 2 in accordance with Article 126 of this Act.

(10) Notwithstanding Article 126 of this Act, the basic own-fund items shall be included in the Tier 2 basic own funds for a duration of 10 years after 1 January 2016, under the condition that the items:

1. have been issued prior to the entry into force of Regulation (EU) No 2015/35, i.e. prior to 18 January 2015;
2. could be used by 31 December 2015 as additional capital items up to 25% of the basic capital in accordance with Article 96 of the Insurance Act (Official Gazette 151/05, 87/08, 82/09, 54/13 and 94/14) and Article 7, paragraph 2 and Articles 8, 9 and 10 of the Ordinance on the manner of calculating capital, guarantee fund and capital adequacy of insurance and reinsurance undertakings (Official Gazette 97/09, 42/10, 94/11, 39/12, 73/13, 105/13 and 136/14).

(11) Notwithstanding Article 130, Article 131, paragraphs 1 and 3 and Article 135 of this Act, the following shall be applied:

1. by 31 December 2017 the standard parameters that shall be used to calculate the capital requirements for concentration risk and spread risk in accordance with the standard exposure formula towards central government authorities and central banks of the Member States that are denominated and financed in the domestic currency of any Member State are the same as those that would be applied to such exposures denominated and financed in domestic currencies of those Member States;
2. the standard parameters that shall be used to calculate the capital requirements for concentration risk and spread risk in accordance with the standard formula in 2018 shall be reduced by 80% for exposure towards central government authorities and central banks of the

Member States that are denominated and financed in the domestic currency of any other Member State;

3. the standard parameters that shall be used to calculate the capital requirements for concentration risk and spread risk in accordance with the standard formula in 2019 shall be reduced by 50% for exposure towards central government authorities and central banks of the Member States that are denominated and financed in the domestic currency of any other Member State;

4. the standard parameters that shall be used to calculate the capital requirements for concentration risk and spread risk in accordance with the standard formula from 1 January 2020 shall not be reduced for exposure towards central government authorities and central banks of the Member States that are denominated and financed in the domestic currency of any other Member State.

(12) Notwithstanding Article 130, Article 131, paragraphs 1 and 3 and Article 135 of this Act, the standard parameters that shall be used for equity the undertaking purchased by 1 January 2016 or earlier when calculating the equity risk sub-module in accordance with the standard formula shall be calculated as weighted averages:

1. of the standard parameter used for the calculation of the equity risk sub-module of the Solvency Capital Requirement which is calibrated using a Value-at-Risk measure, over a time period, which is consistent with the typical holding period of equity investments for the insurance undertaking concerned and with a confidence level providing the policy holders and beneficiaries with a level of protection equivalent to that set out in Article 131 of this Act; and

2. of the standard parameter used for the calculation of the equity risk sub-module in accordance with the standard formula.

The weight for the standard parameter indicated in subparagraph 2 of this paragraph shall be increased every year at least linearly from 0% during the year beginning on 1 January 2016 until 1 January 2023 when it shall be 100%.

This paragraph shall be applied in accordance with Regulation (EU) No 2015/35 additionally explaining the criteria for the application of transitional measures referred to in this paragraph, including the equity to which they can be applied.

(13) Notwithstanding Article 165, paragraph 4 of this Act and without prejudice to Article 165, paragraphs 5 – 10 of this Act, when the insurance undertaking complies with the requirements concerning the solvency margin referred to in Article 98 or Article 99 of the Insurance Act (Official Gazette 151/05, 87/08, 82/09, 54/13 and 94/14) that is applied on the date prior to the date of repealing that Act, but in the first year of applying this Act does not comply with the Solvency Capital Requirement, the insurance undertaking shall take the measures required to achieve the level of eligible own funds to cover the Solvency Capital Requirement or reduce the risk profile to ensure compliance with the Solvency Capital Requirement by 31 December 2017.

The insurance undertaking concerned shall, every three months, submit a progress report to the Agency setting out the measures taken and the progress made to re-establish the level of

eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile to ensure compliance with the Solvency Capital Requirement.

The extension referred to in subparagraph 1 of this paragraph shall be withdrawn where that progress report shows that there was no significant progress in achieving the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of the risk profile to ensure compliance with the Solvency Capital Requirement between the date of the observation of non-compliance with the Solvency Capital Requirement and the date of the submission of the progress report.

(14) In the period before 31 March 2022, the ultimate parent insurance or reinsurance undertaking may submit an application for the approval of the internal model at group level applicable to a part of the group provided that both the undertaking and the ultimate parent undertaking are located in the same Member State and that the part of the group concerned forms a separate part with a significantly different risk profile than the rest of the group.

(15) Notwithstanding Article 303, paragraphs 2 and 3 of this Act, the transitional provisions indicated in paragraphs 8 – 11 of this Act and in Articles 455 – 457 of this Act shall apply *mutatis mutandis* at group level. Notwithstanding Article 303, paragraphs 2, 3 and 4 of this Act, the transitional provisions referred to in paragraph 13 of this Act shall apply *mutatis mutandis* at group level also where the participating insurance or reinsurance undertakings, or the group insurance or reinsurance undertakings comply with the adjusted solvency pursuant to the Insurance Act (Official Gazette 151/05, 87/08, 82/09, 54/13 and 94/14), but do not comply with the group Solvency Capital Requirement. This paragraph shall be applied in accordance with the regulations of the European Commission governing the changes at group level.

Transitional Measure for Risk-Free Interest Rates

Article 455

(1) The insurance undertaking may, with the prior approval by the Agency, implement a transitional measure for the relevant risk-free interest rate term structures for certain obligations arising from the insurance or reinsurance contract, or the obligation referred to in paragraph 5 of this Article.

(2) The adjustment for each currency shall be calculated as a portion of the difference between:

1. the interest rate defined by the insurance undertaking in accordance with Article 107 of the Insurance Act (Official Gazette 151/05, 87/08, 82/09, 54/13 and 94/14) on the last day of applying the Act concerned and the Ordinance on the minimum standards, method of calculation and benchmarks for the calculation of technical insurance provisions (Official Gazette 97/09, 135/09, 150/09, 39/12, 56/13 and 97/13) on the last day of the application of that Ordinance;

2. the annual effective interest rate calculated as a single discount interest rate, such that the value of the cash flows of the portfolio of certain obligations arising from the insurance or reinsurance contract to which it is applied corresponds to the value of the best estimate of the

portfolio of certain obligations arising from the insurance or reinsurance contract, using the relevant risk-free interest rate term structure in accordance with Article 108 of this Act.

(3) The portion of the difference referred to in paragraph 2 of this Article shall be linearly reduced at the end of each year from 100% during the year beginning on 1 January 2016 to 0% during the year beginning on 1 January 2032.

(4) If the insurance undertaking applies the volatility adjustment referred to in Article 113 of this Act, the risk-free interest rate term structure referred to in paragraph 2, subparagraph 2 of this Article shall be the adjusted risk-free interest rate term structure established by Article 113 of this Act.

(5) The insurance undertaking may obtain the approval of the Agency for the application of the transitional measures referred to in paragraph 1 of this Article only for obligations arising from insurance or reinsurance contracts that meet the following requirements:

1. insurance or reinsurance contracts resulting in the obligations have been concluded before the first day of application of this Act, excluding insurance or reinsurance contracts renewed on that date or later;

2. the technical provisions for the obligations arising from the insurance or reinsurance contracts were defined in accordance with Article 107 of the Insurance Act (Official Gazette 151/05, 87/08, 82/09, 54/13 and 94/14) before the last day of the application of that Act and the Ordinance on the minimum standards, method of calculation and benchmarks for the calculation of technical insurance provisions (Official Gazette 97/09, 135/09, 150/09, 39/12, 56/13 and 97/13) on the last day of the application of that Ordinance;

3. matching adjustment referred to in Article 111 of this Act does not apply to the obligations arising from the insurance or reinsurance contracts.

(6) The insurance undertaking with the authorisation for the implementation of transitional measures referred to in paragraph 1 of this Article:

1. shall not include specific obligations arising from the insurance or reinsurance contract referred to in paragraph 5 of this Article into the calculation of the volatility adjustment defined by Article 113 of this Act;

2. shall not implement the transitional measures for the technical provisions referred to in Article 456 of this Act;

3. shall, as part of its Solvency and Financial Condition Report in accordance with Article 168 of this Act, report the implementation of the transitional measure for the risk-free interest rate term structure, as well as the quantification of the effect of implementing the transitional measure referred to in paragraph 1 of this Article to its financial position as opposed to when it is not implemented.

(7) The Agency shall issue an ordinance stipulating in more detail the documentation to be enclosed to the application for authorisation referred to in paragraph 1 of this Article.

Transitional Measure for Technical Provisions

Article 456

(1) The insurance undertaking may, with prior approval from the Agency, apply the deductions from the transitional measures on the technical provisions. The deduction concerned may be applied at the level of homogeneous risk groups referred to in Article 116 of this Act.

(2) The deduction from the transitional measures corresponds to the portion of the difference between the following two amounts:

1. the technical provisions following the deduction for the recoverables from reinsurance contracts and special purpose vehicles, calculated in accordance with Article 106 of this Act on the first day of the application of this Act;

2. the technical provisions following the deduction for the recoverables from reinsurance contracts calculated in accordance with Article 107 of the Insurance Act (Official Gazette 151/05, 87/08, 82/09, 54/13 and 94/14) before the last day of the application of that Act concerned and the Ordinance on the minimum standards, method of calculation and benchmarks for the calculation of technical insurance provisions (Official Gazette 97/09, 135/09, 150/09, 39/12, 56/13 and 97/13) on the last day of the application of that Ordinance.

The deduction that can be applied linearly shall be decreased at the end of each year from 100% during the year beginning on 1 January 2016 to 0% on 1 January 2032.

If the insurance undertaking applies the volatility adjustment referred to in Article 113 of this Act on the first day of application of this Act, the amount referred to in subparagraph 1 of this paragraph shall be calculated using the volatility adjustment on that date.

(3) With the prior approval of the Agency or at its initiative, the amounts of the technical provisions, including, where appropriate, the volatility adjustments used to calculate the temporary deduction referred to in paragraph 2, subparagraphs 1 and 2 of this Article, may be re-calculated every 24 months or more frequently if the risk profile of the company alters significantly.

(4) The deduction from paragraph 2 of this Article may be limited by the Agency if its application could result in a reduction in the amount of financial resources that an undertaking must have at its disposal compared to the deduction calculated in accordance with the Insurance Act (Official Gazette 151/05, 87/08, 82/09, 54/13 and 94/14) on the date prior to the date of repealing that Act.

(5) The insurance undertaking to which paragraph 1 of this Article applies shall:

1. not apply Article 455 of this Act;

2. when failing to fulfil the Solvency Capital Requirement without the implementation of deduction from transitional measures, submit to the Agency on an annual basis a report indicating the measures undertaken and the progress made in order to, at the end of the transitional period defined in paragraph 2 of this Article, re-establish the level of eligible own funds to cover the Solvency Capital Requirement or to reduce the risk profile to ensure compliance with the Solvency Capital Requirement;

3. in its Solvency and Financial Condition Report in accordance with Article 168 of this Act, indicate that the deduction referred to in the transitional measures is applied on the technical provisions, and the quantification of the effect of applying the deduction concerned to its financial position as opposed to when it is not applied.

(6) The Agency shall issue an ordinance stipulating in more detail the documentation to be enclosed to the application for authorisation referred to in paragraph 1 of this Article.

Plan for the Gradual Implementation of Transitional Measures for Risk-Free Interest Rates and Technical Provisions

Article 457

(1) The insurance undertaking implementing the transitional measures defined by Article 455 or 456 of this Act shall without delay inform the Agency of the absence of compliance with the Solvency Capital Requirements without the implementation of the transitional measures concerned. The Agency shall require the necessary measures be taken in order to ensure compliance with the Solvency Capital Requirement at the end of the transitional period.

(2) Within two months from the observation of the non-compliance with the Solvency Capital Requirement without the application of the temporary deduction referred to in Articles 455 and 456 of this Act, the insurance undertaking shall submit to the Agency a plan for the gradual implementation defining the measures planned for reaching the level of eligible own funds to cover the Solvency Capital Requirement or to reduce the risk profile in order to ensure compliance with the Solvency Capital Requirement at the end of the transitional period. During the transitional period, the insurance undertaking may update the plan for the gradual implementation.

(3) The insurance undertaking shall, on an annual basis, submit to the Agency a report identifying the measures undertaken and the progress made in ensuring compliance with the Solvency Capital Requirement at the end of the transitional period. The Agency shall revoke the authorisation for the application of the transitional measure if the progress report indicates that the compliance with the Capital Requirement is unrealistic at the end of the transitional period.

Transitional Measures for Public Disclosure

Article 458

The insurance undertaking for which a capital add-on has been defined or which shall use specific parameters when calculating the total Solvency Capital Requirement in accordance with Article 141 of this Act together with the disclosure of the Solvency Capital Requirement amount shall not indicate separately the capital add-on amount or the effect of specific parameters by 31 December 2020.

Transitional Provisions on the Compliance with the Minimum Capital Requirement

Article 459

(1) By way of derogation from Articles 34, 166 and 246 of this Act, if the insurance undertaking complies by 31 December 2015 with the requirements concerning the solvency margin referred to in Article 98 or Article 99 of the Insurance Act (Official Gazette 151/05, 87/08, 82/09, 54/13 and 94/14) applied on the date preceding the date of repealing the Act, but lacks sufficient eligible basic own funds to cover the Minimum Capital Requirement, the insurance undertaking shall comply with Article 157, paragraph 1 of this Act by 31 December 2016.

(2) If the insurance undertaking fails to comply with Article 157, paragraph 1 of this Act within the deadline referred to in paragraph 1 of this Article, the Agency shall revoke its authorisation to pursue the insurance business.

Procedures

Article 460

(1) All procedures for obtaining the approvals, authorisations, consent and licences, as well as supervision procedures initiated prior to the entry into force of this Act and which are within the competency of the Agency shall be finalised in accordance with the provisions of the Insurance Act (Official Gazette 151/05, 87/08, 82/09, 54/13 and 94/14), unless the provisions of that Act are contrary to the provisions of this Act.

(2) The provisions of the ordinances adopted on the basis of the Insurance Act (Official Gazette 151/05, 87/08, 82/09, 54/13 and 94/14) shall apply to the procedures for obtaining the approvals, authorisations, consent and licences initiated after the entry into force of this Act until the entry into force of the ordinances adopted under this Act if the provisions of those ordinances are not contrary to the provisions of this Act.

(3) Paragraph 2 of this Article shall also apply to all other procedures stipulated by the ordinances adopted by the Agency.

Adoption of Regulations

Article 461

(1) The Agency shall within a deadline of eight months from the date of entry into force of this Act adopt ordinances whose adoption is stipulated by this Act.

(2) Until the entry into force of the ordinances adopted under this Act, the provisions of the ordinances adopted on the basis of the Insurance Act (Official Gazette 151/05, 87/08, 82/09, 54/13 and 94/14) shall apply, if the provisions of those ordinances are not contrary to the provisions of this Act.

Cessation of the Act

Article 462

The Insurance Act (Official Gazette 151/08, 87/08, 82/09, 54/13 and 94/14) shall cease to be valid on 1 January 2016.

Gradual Implementation

Article 463

(1) In order to realise the prerequisites for the operation of the insurance or reinsurance undertakings in accordance with the provisions of this Act from 1 January 2016, the insurance or reinsurance undertakings may submit applications for approvals or consent referred to in paragraphs 2 – 4 of this Article.

(2) From 1 April 2015, the Agency shall at the request of the insurance or reinsurance undertaking adopt a decision on the issuance of approvals for:

1. ancillary own funds in accordance with Article 124 of this Act;
2. classification of own fund items referred to in Article 125, paragraph 5 of this Act;
3. use of special parameters in accordance with Article 135, paragraph 7 of this Act;
4. complete or partial internal model in accordance with Articles 143 and 144 of this Act;
5. ancillary own funds of the intermediary insurance holding company in accordance with Article 311, paragraph 2 of this Act;
6. the internal group model in accordance with Articles 315 and 316 and Article 318, paragraph 5 of this Act;
7. use of the matching adjustment for the relevant risk-free interest rate term structure in accordance with Articles 111 and 112 of this Act;
8. use of the volatility adjustment for the relevant risk-free interest rate term structure in accordance with Article 113 of this Act;
9. implementation of the transitional measure on the risk-free interest rates in accordance with Article 455 of this Act;
10. implementation of the transitional measure on the technical provisions in accordance with Article 456 of this Act.

(3) From 1 April 2015, the Agency shall at the request of the insurance or reinsurance undertaking adopt a decision on the issuance of approvals for:

1. determining the level and scope of group supervision in accordance with Articles 298 – 302 of this Act;
2. determining the group supervisory authority in accordance with Article 329 of this Act;
3. establishing a college of supervisory authorities in accordance with Article 330 of this Act.

(4) From 1 July 2015, the Agency shall at the request of the insurance or reinsurance undertaking adopt a decision on the issuance of approvals or providing consent for:

1. deduction of any participation in accordance with Article 313, paragraph 2 of this Act;
 2. selection of the group solvency calculation method in accordance with Article 305 of this Act;
 3. equivalence in accordance with Articles 312 and 340 of this Act;
 4. providing consent to the insurance or reinsurance undertaking for the application on it of Articles 322 and 323 of this Act, in accordance with Article 320 of this Act;
 5. checking the equivalence referred to in Articles 342 and 343 of this Act;
 6. implementation of transitional measures in accordance with Article 454 of this Act.
- (5) With the decisions referred to in paragraphs 2 – 4 of this Article on issuing approvals or providing consent, the Agency shall determine that the insurance or reinsurance undertaking is authorised to act in accordance with the approval issued or the consent provided from 1 January 2016.

Coming into Force

Article 464

This Act shall be published in the Official Gazette, and shall enter into force on 1 January 2016, except for Articles 111, 112, 113 and 124, Article 125, paragraph 5, Article 135, paragraph 7, Articles 143, 144, 298 – 302, Article 311, paragraph 2, Articles 315 and 316, Article 318, paragraph 5, Articles 329, 330, 455, 456 and 463 of this Act, which enter into force on 1 April 2015 and Articles 305 and 312, Article 313, paragraph 2, Articles 320, 322, 323, 340, 342, 343 and 454 of this Act, which shall enter into force on 1 July 2015.

Class: 022-03/15-01/24

Zagreb, 6 March 2015

THE CROATIAN PARLIAMENT

President
of the Croatian
Parliament
Josip Leko, m.p.