



STATUTORY INSTRUMENTS.

**S.I. No. 366 of 2007**



EUROPEAN COMMUNITIES (INSURANCE AND REINSURANCE  
GROUPS SUPPLEMENTARY SUPERVISION) REGULATIONS 2007

**(Prn. A7/1196)**

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S.I. No. 366 of 2007

EUROPEAN COMMUNITIES (INSURANCE AND REINSURANCE  
GROUPS SUPPLEMENTARY SUPERVISION) REGULATIONS 2007

I, BRIAN COWEN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), as amended by the European Communities (Amendment) Act 1993 (No. 25 of 1993), and for the purpose of giving effect to Directive No. 98/78/EC<sup>1</sup> of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group and to Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance, hereby make the following Regulations:

PART 1

PRELIMINARY PROVISIONS

*Citation and commencement.*

1. (1) These Regulations may be cited as the European Communities (Insurance and Reinsurance Groups Supplementary Supervision) Regulations 2007.

(2) These Regulations come into operation on 1 June 2007.

*Object of these Regulations.*

2. The object of these regulations is to give effect to the Supplementary Supervision Directive, as amended by the Financial Conglomerates Directive and Article 59 of the Reinsurance Directive.

*Interpretation.*

3. (1) In these Regulations except where the context otherwise requires—

“asset management company” means—

- (a) a management company within the meaning of Article 1a (2) of the UCITS Directive, or
- (b) an undertaking the registered office of which is not located within a Member State but which would require authorisation in accordance with Article 5(1) of that Directive if it had its registered office within such a State;

“associate” has the meaning given by paragraph (2)(a);

<sup>1</sup>OJ L330, 5/12/1998, p. 1, as amended by Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate: OJ L 035, 11/02/2003, p. 1

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 3rd July, 2007.*

“authorised officer” means an authorised officer holding office as such under the Insurance Acts;

“Bank” means the Central Bank and Financial Services Authority of Ireland;

“Company Accounts Directive” means Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3) (g) of the Treaty on the annual accounts of certain types of companies;<sup>2</sup>

“competent authority”—

(a) in relation to the State, means the Bank, or

(b) in relation to another Member State, means the authority that is empowered by a law of that State to supervise the conduct of insurance or reinsurance, or both;

“Credit Institutions Directive” means Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions;

“Financial Conglomerates Directive” means Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate;<sup>3</sup>

“financial year”, in relation to an insurer, reinsurer or other undertaking, has the same meaning as in section 2 of the Companies Act 1963 (No. 33 of 1963);

“group” means—

(a) a group that comprises a parent undertaking and subsidiary undertakings of the undertaking and any entities in which the parent undertaking or any of its subsidiary undertakings participate, or

(b) a group of undertakings linked to each other by a relationship as defined by Article 12(1) of the Group Consolidated Accounts Directive;

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

“Insurance Acts” means the Insurance Acts 1909 to 2000, as amended from time to time, and includes any later Act that is required to be read as one with those or any of those Acts;

“insurance holding company” means a parent undertaking (not being a mixed financial holding company) whose main business is to acquire and hold participations in one or more subsidiary undertakings, where—

<sup>2</sup>OJ L222, 14/8/1978, p. 11.

<sup>3</sup>OJ L 035, 11/02/2003, p. 1

- (a) if there is only one subsidiary undertaking, it is an insurer or a reinsurer, or
- (b) if there are two or more subsidiary undertakings—
  - (i) those undertakings are exclusively or mainly insurers, reinsurers, asset management companies, third country insurers or third country reinsurers, and
  - (ii) at least one of those undertakings is an insurer or reinsurer;

“insurer” means—

- (a) the holder of an authorisation issued by the Bank under the Non-Life Insurance Regulations or the Life Assurance Regulations, or
- (b) the holder of an authorisation granted by the authority charged by law with the duty of supervising the activities of insurers in a Member State other than the State in accordance with Article 6 of the Non-Life Insurance Business Directive or Article 6 of the Life Assurance Business Directive, or
- (c) the holder of an official authorisation to undertake insurance in Iceland, Liechtenstein and Norway under the EEA Agreement within the meaning of the European Communities (Amendment) Act 1993 (No. 25 of 1993);

“Insurance Undertakings Accounting Directive” means Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings;

“Insurance Undertakings Account Regulations” means the European Communities (Insurance Undertakings: Accounts) Regulations 1996 (S.I. No. 23 of 1996);

“Life Assurance Business Directive” means Directive 2002/83/EC on life assurance;

“Life Assurance Regulations” means the European Communities (Life Assurance) Regulations 1984 (S.I. No. 57 of 1984);

“Life Assurance Framework Regulations” means the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994);

“Markets in Financial Instruments Directive” means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments;<sup>4</sup>

“Member State” means a Member State of the European Communities;

<sup>4</sup>OJ L145, 30/4/2005, p. 1.

“mixed-activity insurance holding company” means a parent undertaking (other than an insurer, a reinsurer, a mixed financial holding company, a third country insurer, a third country reinsurer, an asset management company or an insurance holding company) that includes at least one insurer or reinsurer among its subsidiary undertakings;

“mixed financial holding company” has the meaning given by Regulation 3 of the European Communities (Financial Conglomerates) Regulations 2004 (S.I. No. 727 of 2004);

“Non-Life Insurance Business Directive” means First Council Directive 73/239/EEC of 24 July 1973 on the co-ordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance;<sup>5</sup>

“Non-Life Insurance Regulations” means the European Communities (Non-Life Insurance) Regulations 1976 (S.I. No. 115 of 1976);

“Non-Life Insurance (Framework) Regulations” means the European Communities (Non-Life Insurance) Framework Regulations 1994 (S.I. No. 359 of 1994);

“parent undertaking” means a parent undertaking within the meaning of Article 1 of the Group Consolidated Accounts Directive and any undertaking that, in the opinion of the Bank, effectively exercises a dominant influence over another undertaking;

“participating undertaking” means an undertaking that is—

- (a) a parent undertaking or other undertaking that holds a participation, or
- (b) an undertaking that is linked to another undertaking by means of a relationship as defined by Article 12(1) of the Group Consolidated Accounts Directive;

“participation” means participation within the meaning of Article 17 of the Company Accounts Directive or the holding, directly or indirectly, of 20 per cent or more of the voting rights or capital of an undertaking;

“prescribed credit institution” means a credit institution within the meaning of the Credit Institutions Directive;

“prescribed investment firm” means an investment firm within the meaning of Article 4(1) of the Markets in Financial Instruments Directive;

“Reinsurance Directive” means Directive 2005/68/EC of the European Parliament and of the Council dated 16 November 2005 on reinsurance;

<sup>5</sup>OJ L228, 16/8/1973, p. 3



“Reinsurance Regulations” means the European Communities (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006);

“reinsurer” means an authorised reinsurance undertaking as defined by Regulation 3(1) of the Reinsurance Regulations;

“related”, in relation to an undertaking, has the meaning given by paragraph (2)(b);

“supplementary supervision” means supplementary supervision as referred to in Regulation 4;

“Supplementary Supervision Directive” means Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance and reinsurance undertakings in an insurance or reinsurance group;<sup>6</sup>

“subsidiary undertaking” means a subsidiary undertaking within the meaning of Article 1 of the Group Consolidated Accounts Directive and any undertaking over which, in the opinion of the Bank, a parent undertaking effectively exercises a dominant influence, and includes every subsidiary of a subsidiary undertaking of the parent undertaking that is the head of the subsidiary undertaking;

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

“third country insurer” means an undertaking established in a third country that would be required to be authorised as an insurer if it carried on insurance business in a Member State;

“third country reinsurer” means an undertaking established in a third country that would be required to be authorised as a reinsurer if it carried on reinsurance business in a Member State;

“Third Non-Life Insurance Business Directive” means Council Directive 92/49/EEC of 18 June 1992 on the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC;

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

“undertaking” (when not qualified by an adjective) includes an asset management company, insurance holding company, insurer, mixed activity insurance holding company, mixed financial holding company, reinsurer, third country insurer and third country reinsurer.

(2) For the purposes of these Regulations—

(a) an undertaking is an associate of an insurer or a reinsurer if it is—

<sup>6</sup>OJ L330, 5.12.98, p. 1.

- (i) a related insurer, or
- (ii) a related reinsurer, or
- (iii) a subsidiary undertaking, or
- (iv) a parent undertaking, or
- (v) a subsidiary of a parent undertaking,

of the insurer or reinsurer, and

(b) an undertaking is related to another undertaking if it—

- (i) is a subsidiary of the other undertaking, or is an undertaking in which the other undertaking holds a participation, or
- (ii) is linked to the other undertaking by means of a relationship as defined by Article 12(1) of the Group Consolidated Accounts Directive.

(3) For the purposes of these Regulations—

- (a) an insurer or reinsurer is established in the State if it has both its head office and its registered office located in the State, and
- (b) an insurer or reinsurer is established in another Member State if it has both its head office and its registered office located in that other State.

(4) A word or expression that is used in these Regulations and is also used in the Supplementary Supervision Directive, the Financial Conglomerates Directive or the Reinsurance Directive has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Directive concerned.

(5) Subject to these Regulations, the Insurance Acts, so far as applicable and subject to any necessary modifications, apply to all insurers and reinsurers to which these Regulations apply.

(6) These Regulations have effect irrespective of any provision to the contrary in any enactment, order or Regulation passed or made before the making of these Regulations.

## PART 2

### SUPPLEMENTARY SUPERVISION

*Certain insurers and reinsurers to be subject to supplementary supervision.*

4. (1) An insurer or reinsurer is subject to supervision as prescribed by Regulation 7, 9, 11 and 12 if it—

- (a) holds an authorisation issued by the Bank, and

(b) is a participating undertaking in at least one insurer, reinsurer, asset management company, third country insurer or third country reinsurer.

(2) An insurer or reinsurer is subject to supervision as prescribed by Regulations 9, 11 and 13 if it—

(a) holds an authorisation issued by the Bank, and

(b) is the subsidiary of an insurance holding company, an asset management company, a third country insurer or a third country reinsurer.

(3) An insurer or reinsurer is subject to supervision as prescribed by Regulations 9 and 11 if it—

(a) holds an authorisation issued by the Bank, and

(b) is the subsidiary of a mixed-activity insurance holding company.

(4) The supervision referred to in paragraphs (1) to (3) is supplementary to that prescribed by the Non-Life Insurance Regulations, the Life Assurance Regulations and the Reinsurance Regulations.

*Scope of supplementary supervision.*

5. (1) The Bank's role in exercising supplementary supervision of insurers and reinsurers to which Regulation 4 applies does not imply that the Bank is required to undertake a supervisory role in relation to a third country insurer, a third country reinsurer, an insurance holding company, a mixed-activity insurance holding company or an asset management company.

(2) However, the Bank's role in exercising supplementary supervision over an insurer or reinsurer to which Regulation 4 applies does extend to exercising supervision over—

(a) an undertaking related to the insurer or reinsurer, and

(b) a participating undertaking in the insurer or reinsurer, and

(c) an undertaking related to a participating undertaking in the insurer or reinsurer.

(3) In exercising supplementary supervision for the purposes of these Regulations, the Bank is not required to take account of an undertaking that has its registered office in a third country if legal impediments exist that prevent or inhibit the transfer of the information relating to the undertaking. This paragraph does not affect the operation of paragraph 16 of Schedule 1 or paragraph 6 of Schedule 2.

(4) In exercising supplementary supervision for the purposes of these Regulations the Bank may, in a particular case, decide not to include an undertaking

in the supervision if, having regard to the objectives of the supplementary supervision—

- (a) the undertaking that would be included is of negligible interest, or
- (b) the inclusion of the financial situation of the undertaking would be inappropriate or misleading.

*Responsibility for exercising supplementary supervision over insurers and reinsurers.*

6. (1) Subject to paragraph (2), if the authorisation of an insurer or reinsurer has been granted by the Bank, the Bank is responsible for exercising supplementary supervision over the undertaking, irrespective of whether the insurer or reinsurer is carrying on its insurance or reinsurance business in the State or in any other Member State.

(2) If—

- (a) an insurance holding company, asset management company, third country insurer, third country reinsurer or mixed-activity insurance holding company is the parent undertaking of an insurer or a reinsurer that is the holder of an authorisation issued by the Bank, and
- (b) that parent undertaking is also the parent undertaking of an insurer or a reinsurer that is the holder of an authorisation issued by the competent authority of another Member State,

the Bank may enter into an agreement with that authority as to which of them will be responsible for exercising supplementary supervision.

(3) For the purposes of these Regulations, the authority responsible for exercising supplementary supervision of an undertaking referred to in paragraph (1) is whichever authority is determined in accordance with an agreement entered into as provided by that paragraph.

*Insurers and reinsurers to maintain adequate internal control mechanisms.*

7. (1) An insurer or reinsurer that is subject to supplementary supervision shall maintain internal control mechanisms that are adequate to enable it to produce data and information to facilitate that supervision by the Bank.

(2) An insurer or reinsurer that fails to comply with paragraph (1) commits an offence and is liable on summary conviction to a fine not exceeding €5,000.

*Freedom of insurers, reinsurers and other undertakings to exchange information among themselves.*

8. Insurers, reinsurers and their related undertakings and participating undertakings are free to exchange among themselves any information relevant to their supplementary supervision and they incur no liability for providing such information.

*Insurers and reinsurers to provide Bank with information when required.*

9. (1) An insurer or reinsurer that holds an authorisation issued by the Bank shall provide to the Bank such information as it requires for the purpose of supplementary supervision.

(2) If an insurer or reinsurer fails to provide information to the Bank within 28 days after being requested to do so, or within such extended period as the Bank may allow, the Bank may seek the information from any relevant undertaking to which Regulation 4(2) or (3) applies.

(3) The Bank may carry out, in the State, on-the-spot verification of the information referred to in paragraph (1) and, for this purpose, the Bank may appoint an authorised officer.

(4) Paragraph (3) applies to the following undertakings:

- (a) the insurer or reinsurer that is subject to supplementary supervision;
- (b) subsidiary undertakings of that insurer or reinsurer;
- (c) parent undertakings of that insurer or reinsurer;
- (d) subsidiary undertakings of a parent undertaking of that insurer or reinsurer.

(5) If, in a particular case, the Bank wishes to verify information concerning an insurer or reinsurer located in another Member State and the insurer or reinsurer is an associate of an insurer or reinsurer that both holds an authorisation issued by the Bank and is subject to supplementary supervision, the Bank shall request the competent authority of that other Member State either—

- (a) to have that verification carried out by that authority or an officer appointed by it, or
- (b) to allow the Bank or an authorised officer to carry out the verification.

(6) Subject to paragraph (7), if the competent authority of another Member State requests the Bank to verify information concerning an undertaking that is located in the State and is an associate of an insurer or reinsurer that holds an authorisation issued by that authority, the Bank shall either—

- (a) comply with the request, or
- (b) allow that authority to carry out the verification itself or by means of an officer appointed by it.

If the competent authority making the request does not itself carry out the verification, it is nevertheless entitled to participate in the verification.

(7) For the purposes of these Regulations, an officer appointed by the competent authority of another Member State is taken to be, and has all the powers of, an authorised officer.

(8) For the purpose of this Regulation, “verification” includes verification by means of on-the-spot verification.

(9) An insurer or reinsurer that fails without reasonable excuse to comply with paragraph (1) commits an offence.

*Co-operation between competent authorities.*

10. (1) If an insurer or reinsurer established in the State is directly or indirectly related to an insurer or reinsurer established in another Member State, or an insurer or reinsurer established in the State and an insurer or reinsurer established in another Member State have a common participating undertaking, the Bank shall—

- (a) on being requested to do so by the competent authority of the other Member State, communicate to that authority all relevant information that may allow that authority to exercise, or may facilitate the exercise by that authority of, relevant supplementary supervision, or
- (b) on its own initiative, communicate any relevant information that in its opinion should be communicated to that authority.

(2) If—

- (a) an insurer or reinsurer is directly or indirectly related to a prescribed credit institution or prescribed investment firm, or
- (b) an insurer or reinsurer and a prescribed credit institution or prescribed investment firm have a common participating undertaking,

the Bank shall co-operate closely with the competent authorities responsible for the supervision of the firm or undertaking. That co-operation must include the provision of information relevant to the purpose of supplementary supervision.

(3) Information received under these Regulations and, in particular, any exchange of information between the Bank and the competent authorities of other Member States that is provided for by these Regulations is subject to the professional secrecy obligation as defined by Article 16 of the Third Non-Life Insurance Business Directive, Article 16 of the Life Assurance Business Directive and Articles 24 to 30 of the Reinsurance Directive.

*Intra-group transactions.*

11. (1) This Regulation applies to—

- (a) a transaction that exceeds, or
- (b) a series of transactions between the same parties the total of which, in the course of a financial year, exceeds 5 per cent of the available solvency margin.

(2) An insurer or reinsurer established in the State shall, within 6 months after the end of its financial year, or at such other times as the Bank specifies, report to the Bank any transaction between the insurer or reinsurer and—

- (a) a related undertaking of the insurer or reinsurer, or
- (b) a participating undertaking in the insurer or reinsurer, or
- (c) a related undertaking of a participating undertaking in the insurer or reinsurer, or
- (d) a natural person who holds a participation in—
  - (i) the insurer, reinsurer or any of its related undertakings, or
  - (ii) a participating undertaking in the insurer or reinsurer, or
  - (iii) a related undertaking of a participating undertaking in the insurer or reinsurer.

(3) An insurer or reinsurer that is established in the State shall establish and maintain adequate risk management processes and internal control mechanisms for the purpose of identifying, measuring, monitoring and controlling transactions to which this Regulation applies. Those processes and mechanisms must include sound reporting and accounting procedures.

(4) The Bank is responsible for supervising compliance with the requirements of paragraph (3).

(5) In particular, the transactions to which this Regulation applies include the following:

- (a) loans;
- (b) guarantees and off-balance-sheet transactions;
- (c) elements eligible for calculating the solvency margin;
- (d) investments;
- (e) reinsurance and retrocession operations;
- (f) agreements to share costs.

(6) If, on the basis of the information provided to the Bank under this Regulation, it appears that the solvency of the insurer or reinsurer is, or may be, jeopardised, the Bank shall take appropriate measures to rectify the situation at the level of the insurer or reinsurer.

(7) An insurer or reinsurer that fails without reasonable excuse to comply with paragraph (2) or (3) commits an offence.

*Adjusted solvency requirement.*

12. (1) In the case of an insurer or reinsurer to which Regulation 4(1) applies, the insurer or reinsurer shall provide to the Bank within 6 months after the financial year of the insurer or reinsurer, or at such other times as the Bank may request, the result of an adjusted solvency calculation carried out in accordance with Schedule 1.

(2) A related undertaking, participating undertaking or related undertaking of a participating undertaking must be included in the calculation referred to in paragraph (1).

(3) If the calculation referred to in paragraph (1) shows that the adjusted solvency is negative, the Bank shall take appropriate measures at the level of the insurer or reinsurer.

(4) An insurer or reinsurer that fails without reasonable excuse to comply with paragraph (1) commits an offence.

*Certain insurers and reinsurers to provide Bank with result of Schedule 2 calculation.*

13. (1) An insurer or reinsurer to which Regulation 4(2) applies shall provide to the Bank within 6 months after the financial year of the insurer or reinsurer, or at such other times as the Bank may specify, the result of the calculation required by Schedule 2.

(2) The following undertakings are also required to be included in the calculation required under paragraph (1) in the manner prescribed by Schedule 2:

- (a) all related insurers and reinsurers of the insurance holding company;
- (b) the relevant third country insurer (if any);
- (c) the relevant third country reinsurer (if any);
- (d) the relevant asset management company (if any).

(3) If the calculation referred to in paragraph (1) shows that the solvency of the insurer or reinsurer is, or may be, jeopardised, the Bank shall take appropriate measures at the level of the insurer or reinsurer.

(4) An insurer or reinsurer that fails without reasonable excuse to comply with paragraph (1) commits an offence.

*Qualifications, reputation and experience of persons concerned in the direction or management of insurance holding companies.<sup>7</sup>*

14. (1) This Regulation applies only to an insurance holding company that has its head office in the State.

<sup>7</sup>Inserted by S.I. No. 731 of 2004.



(2) An insurance holding company to which this Regulation applies shall take all reasonably practicable steps to ensure that the persons who are concerned in the direction or management of the company—

- (a) are suitably qualified, and
- (b) are of sufficiently good repute, and
- (c) have sufficient experience,

to be able to perform their duties in that capacity.

(3) The Bank may, by direction given in writing, require an insurance holding company to which this Regulation applies to provide it with such information as it requires concerning the qualifications, reputation and experience—

- (a) of all persons who are concerned in the direction or management of the company, or
- (b) of such of those persons as are specified in the notice.

(4) If it appears to the Bank that a person referred to in subparagraph (3)—

- (a) is not suitably qualified, or
- (b) is not of good reputation, or
- (c) does not have sufficient experience to hold the position,

it may, by notice in writing, direct the company to take such action (including the removal or dismissal of the person from the position) as is specified in the notice.

(5) An insurance holding company to which this Regulation applies shall not appoint a person to a position by virtue of which the person will be concerned in the direction or management of the company unless it has previously notified the Bank of the proposal to make the appointment. An appointment made in contravention of this paragraph is void.

(6) An insurance holding company to which this Regulation applies shall provide the Bank with such information as it requires concerning the qualifications, reputation and experience of the persons referred to in paragraph (3).

(7) An insurance holding company to which a direction has been notified under this Regulation shall comply with the direction within the period specified in the notice.

(8) An insurance holding company that, without reasonable excuse—

- (a) contravenes paragraph (5), or
- (b) fails to comply with paragraph (6) or (7),

commits an offence and is liable on summary conviction to a fine not exceeding €5,000.

(9) The Bank is not liable in damages for any loss of office arising directly or indirectly from a direction given under paragraph (4).

(10) The Bank may, by further notice in writing, vary or revoke a direction notified to an insurance holding company under this Regulation.

(11) A direction, and a variation or revocation of the direction, notified under this Regulation takes effect from the date of the notice or, if a later date is specified in the notice, from that later date.

(12) A direction given by the Bank under this Regulation and a variation of the direction are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942.

(13) For the purposes of this Regulation, a person is concerned in the direction or management of an insurance holding company if the person—

- (a) is a director of the company, or
- (b) not being a director of the company, has, in the opinion of the Bank, power to direct or control the affairs of the company, or
- (c) is the chief executive of the company, or
- (d) holds any other management position with the company of a kind publicly notified by the Bank.

### PART 3

#### ENFORCEMENT

##### *Enforcement of Bank directions.*

15. (1) If the Bank is of the opinion that an insurance holding company has not complied with a direction notified under Regulation 14, it may apply to the High Court for an order under paragraph (4).

(2) On making an application under paragraph (1), the Bank shall serve a copy of the application on the insurance holding company concerned. On being served with the copy, that company becomes the respondent to the application and as such is entitled to appear before and be heard at the hearing of the application.

(3) Pending the hearing of the application, the High Court may make such interim or interlocutory orders as it considers appropriate.

(4) On the hearing of the application, the High Court may, if satisfied that the respondent has not complied with the direction, make an order requiring the respondent to comply.

(5) If the High Court makes an order under paragraph (4), it may also make such ancillary orders as it thinks appropriate in the circumstances.

*Penalties for offences.*

16. Except as provided by Regulation 14, a person who is found guilty of an offence against these Regulations is liable to a fine not exceeding €5,000.

*Continuing offences.*

17. (1) If a person, after conviction for an offence under a provision of these Regulations, continues to fail to comply with the provision (disregarding any relevant time limit), the person commits an offence on every day on which the contravention continues and is liable on summary conviction to a fine not exceeding €500 for each such offence.

(2) Despite paragraph (1), the maximum amount that may be imposed for offences committed on consecutive days in respect of the same matter is €5,000.

*Offences committed by bodies corporate.*

18. (1) If—

- (a) an offence under these Regulations is committed by a body corporate, and
- (b) the offence is proved to have been so committed with the consent, connivance or approval of, or to be attributable to any neglect on the part of, an officer of the body, or any other person who was acting or purporting to act as such an officer,

that person, as well as the body corporate, also commits an offence and is liable to be proceeded against and punished in the same way as the body.

(2) A person may be proceeded against for an offence against this section whether or not the body corporate has been proceeded against or been convicted of the offence committed by the body.

(3) In this Regulation, “officer”, in relation to a body corporate, means a director, manager, executive officer, secretary or other person concerned in the management of the body.

*Trial of offences against these Regulations.*

19. (1) An offence against these Regulations is triable summarily.

(2) A prosecution for an offence under these Regulations may be brought only by the Bank.

## PART 4

### MISCELLANEOUS PROVISIONS

*Revocation and amendment of certain Regulations*

20. (1) The following Regulations are revoked:

- (a) the European Communities (Supplementary Supervision of Insurance Undertakings in an Insurance Group) Regulations 1999 (S.I. No. 399 of 1999);
- (b) the European Communities (Supplementary Supervision of Insurance Undertakings in an Insurance Group) (Amendment) Regulations 2004 (S.I. No. 731 of 2004).

(2) Part 2 of Schedule 2 to the Central Bank Act 1942 (as substituted by section 31 of the Central Bank and Financial Services Authority of Ireland Act 2003) is amended—

- (a) by deleting the item relating to the European Communities (Supplementary Supervision of Insurance Undertakings in an Insurance Group) Regulations 1999 (S.I. No. 399 of 1999), and
- (b) by inserting the following item at the end of the Part:

“S.I. No. of 2007	European Communities (Insurance and Reinsurance Groups Supplementary Supervision) Regulations 2007	The whole instrument”
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(3) The Central Bank and Financial Services Authority of Ireland Act 2003 is amended by repealing Part 17 of Schedule 2.

*Transitional provision*

21. If any act or matter was begun or was in existence under the Regulations revoked by Regulation 20 but was not completed before the commencement of these Regulations and that act or matter could have been begun or come into existence under these Regulations, that act or matter may be continued as if it had been done or come into existence under these Regulations.

## SCHEDULE 1

## CALCULATION OF THE ADJUSTED SOLVENCY OF INSURERS AND REINSURERS

## PART 1

## CALCULATION METHOD AND GENERAL PRINCIPLES

*Method to be used in calculating adjusted solvency of insurers and reinsurers.*

1. (1) Except as provided under subparagraph (2), the adjusted solvency of insurers and reinsurers to which Regulation 4(1) applies must be calculated according to the method specified in paragraph 17 of this Schedule.

(2) The Bank may also authorise or direct an insurer or reinsurer to use the method specified in paragraph 18 or 19 of this Schedule.

*Proportional share of participating undertaking to be taken into account.*

2. (1) In calculating the adjusted solvency of an insurer or reinsurer, the proportional share held by the participating undertaking in its related undertakings must be taken into account.

(2) If the related undertaking is a subsidiary undertaking and has a solvency deficit, the total solvency deficit of the subsidiary must be taken into account.

(3) However, if, in the opinion of the Bank, the responsibility of the parent undertaking that owns a share of the capital is limited strictly to that share of the capital, the Bank may allow the subsidiary undertaking's solvency deficit to be taken into account on a proportional basis.

(4) If capital links do not exist between 2 or more of the undertakings comprising an insurance group or reinsurance group, the Bank shall determine a notional proportional share that is to be taken into account when calculating the adjusted solvency of an insurer or reinsurer that is part of the group.

(5) In this paragraph, "proportional share" means—

(a) in the case where the methods described in paragraphs 17 or 18 of this Schedule are used, the proportion of the subscribed capital that is held, directly or indirectly, by the participating undertaking, or

(b) if the method described in paragraph 19 of this Schedule is used, the percentage used for the establishment of the consolidated accounts.

*Solvency margin elements not to be used more than once.*

3. (1) The double use of elements eligible for calculating the solvency margin among the different insurers or reinsurers must be eliminated when calculating the adjusted solvency margin of an insurer or reinsurer.

(2) The following elements are to be excluded when calculating the adjusted solvency of an insurer or reinsurer if the methods described in paragraphs 17, 18 and 19 of this Schedule do not prevent the double use of those elements:

- (a) the value of any asset of the insurer or reinsurer that represents the financing of elements eligible for calculating the solvency margin of one of the related insurers or reinsurers of the insurer or reinsurer;
- (b) the value of any asset of a related insurer or reinsurer that represents the financing of elements eligible for calculating the solvency margin of the insurer or reinsurer;
- (c) the value of any asset of an insurer or reinsurer related to the insurer or reinsurer that represents the financing of elements eligible for calculating the solvency margin of any other insurer or reinsurer related to the insurer or reinsurer.

*How certain elements are to be treated.*

4. (1) Without limiting paragraph 3, the following elements may be included in the calculation, but only to the extent that they are eligible for covering the solvency margin requirement of the related undertaking:

- (a) profit reserves and future profits arising in a related life assurance undertaking, or related life reinsurance undertaking, of the insurer or reinsurer for which the adjusted solvency margin is to be calculated;
- (b) any subscribed (but not paid-up) capital of an insurer or reinsurer related to the insurer or reinsurer for which the adjusted solvency margin is to be calculated.

(2) The following elements must be excluded from the calculation:

- (a) any subscribed (but not paid-up) capital that imposes a potential obligation on the participating insurer or reinsurer;
- (b) any subscribed (but not paid-up) capital of the participating insurer or reinsurer that imposes a potential obligation on a related insurer or reinsurer;
- (c) any subscribed (but not paid-up) capital of a related insurer or reinsurer that imposes a potential obligation on another related insurer or reinsurer of the same participating insurer or reinsurer.

*Solvency margin to be transferable from one insurer or reinsurer to related insurer or reinsurer.*

5. (1) If the Bank considers that a particular element eligible for calculating the solvency margin of a related insurer or reinsurer (other than one referred to in paragraph 4) cannot effectively be made available to cover the solvency margin requirement of the participating insurer or reinsurer for which the

adjusted solvency is to be calculated, that element may still be included in the calculation, but only to the extent that it would be eligible to cover the solvency margin requirement of the related insurer or reinsurer.

(2) The sum of the elements referred to in paragraph 4 and subparagraph (1) must not exceed the solvency margin requirement of the related insurer or reinsurer.

*Creation of intra-group capital not to be taken into account.*

6. (1) When calculating an adjusted solvency margin, no account may be taken of any element arising out of reciprocal financing between—

(a) the insurer or reinsurer, and

(b) a related undertaking, a participating undertaking, or another undertaking related to any of its participating undertakings.

(2) No account may be taken of any element that would be otherwise eligible for calculating the solvency margin of an insurer or reinsurer related to the insurer or reinsurer for which the adjusted solvency margin is to be calculated if the element arises out of reciprocal financing with any other undertaking related to that insurer or reinsurer.

(3) For the purpose of subparagraph (2), reciprocal financing exists when an insurer or reinsurer, or any of its related undertakings, holds shares in, or makes loans to, another undertaking that, directly or indirectly, holds an element eligible for calculating the solvency margin of the insurer or reinsurer.

*Assessment of value of assets and liabilities.*

7. For the purposes of this Schedule, the value of assets and liabilities is to be assessed according to the relevant provisions of the Non-Life Insurance Regulations, the Life Assurance Regulations or the Reinsurance Regulations, as the case requires, and the Insurance Undertakings Account Regulations.

## PART 2

### APPLICATION OF CALCULATION METHODS

*Calculations for related insurers and related reinsurers.*

8. (1) The adjusted solvency of an insurer or a reinsurer is to be calculated in accordance with the general principles and methods prescribed by this Schedule.

(2) If the relevant insurer or reinsurer is related to more than one other insurer or reinsurer, the related insurers or reinsurers are to be treated as a single integrated unit and the adjusted solvency calculation is to be applied to that unit.

(3) If there are successive participations (for example, when an insurer or reinsurer is a participating undertaking in another insurer or reinsurer that is also a participating undertaking in an insurer or reinsurer), the adjusted solvency calculation is to be carried out at the level of each participating insurer or reinsurer that has at least one related insurer or reinsurer.

*Circumstances in which Bank can waive calculation of adjusted solvency of insurer or reinsurer.*

9. The Bank may waive the requirement for calculating the adjusted solvency of an insurer or reinsurer—

- (a) if the insurer or reinsurer is a related undertaking of another insurer or reinsurer that is itself established in the State, and that related undertaking is taken into account in calculating the adjusted solvency of the participating insurer or reinsurer, or
- (b) if—
  - (i) the insurer or reinsurer is a related undertaking of an insurance holding company or asset management company, and
  - (ii) the insurance holding company or asset management company has its registered office in the State, and
  - (iii) the insurer or reinsurer is taken into account when calculating the adjusted solvency of the insurance holding company or asset management company.

*Further circumstances in which Bank can waive calculation of adjusted solvency of insurer or reinsurer.*

10. The Bank may also waive the requirement to calculate the adjusted solvency of an insurer or reinsurer if—

- (a) it is related to another insurer or reinsurer, or to an insurance holding company, that has its registered office in another Member State, and
- (b) the Bank has agreed with the competent authority of that other Member State that that authority should exercise supplementary supervision over the insurer or reinsurer.

*Restriction on giving waivers under paragraphs 9 and 10.*

11. The Bank may give a waiver under paragraph 9 or 10 only if it is satisfied that the elements eligible for calculating the solvency margins of the insurers or reinsurers to be included in the calculation are adequately distributed between those insurers or reinsurers.



*Power of Bank to direct account to be taken of solvency situation assessed by competent authority of other Member State.*

12. In calculating the adjusted solvency of a related insurer or reinsurer that has its registered office in another Member State (other than that of the insurer or reinsurer in respect of which the calculation is being made), the calculation to be made in respect of the insurer or reinsurer must, if the Bank so directs, take account of the solvency situation as assessed by the relevant competent authority of that other Member State.

*Situation of intermediate insurance holding company to be taken into account in certain cases.*

13. (1) When calculating the adjusted solvency of an insurer or reinsurer that holds a participation in a related insurer or related reinsurer, or in a third country insurer or third country reinsurer, through an insurance holding company, the financial situation of the insurance holding company is to be taken into account.

(2) For the purpose only of making the calculation referred to in subparagraph (1), the insurance holding company is to be treated as if it were an insurer or reinsurer that has a zero solvency requirement and is subject to the same conditions as those prescribed by Annex II to the Non-Life Insurance (Framework) Regulations, Annex II to the Life Assurance Regulations or Schedule 1 to the Reinsurance Regulations in respect of elements eligible for calculating the solvency margin.

*Special provisions for calculating adjusted solvency of participating insurer or reinsurer in third country insurer or reinsurer.*

14. (1) When calculating the adjusted solvency of an insurer or reinsurer that is a participating undertaking in a third country insurer or third country reinsurer—

- (a) the third country insurer or third country reinsurer is, for the purpose only of making the calculation, to be treated as if it were a related insurer or related reinsurer, and
- (b) the general principles and methods prescribed by this Schedule are to be applied to that third country insurer or third country reinsurer.

(2) However, if the laws of the country in which the third country insurer or third country reinsurer has its registered office—

- (a) require that insurer or reinsurer to be licensed, registered or otherwise authorised, and
- (b) impose on that insurer or reinsurer a solvency requirement at least as stringent as that prescribed by Annex II to the Non-Life Insurance

(Framework) Regulations, Annex II to the Life Assurance Regulations or Schedule 1 to the Reinsurance Regulations, taking into account the elements of cover of that requirement,

the Bank may direct that the calculation for that insurer or reinsurer must take into account the solvency requirement and the elements necessary to satisfy that requirement, as prescribed by those laws.

*Related credit institutions, investment firms and financial institutions.*

15. When calculating the adjusted solvency of an insurer or reinsurer that is a participating undertaking in a prescribed credit institution, prescribed investment firm or financial institution, the rules prescribed by Annex II to the Non-Life Insurance (Framework) Regulations, Annex II to the Life Assurance Regulations or Schedule 1 to the Reinsurance Regulations apply (including the provisions permitting the Bank under certain conditions to allow the use of alternative methods and to allow participations not to be deducted).

*What happens if the necessary information is unavailable.*

16. If—

- (a) information that concerns a related undertaking that has its registered office in another Member State, or in a third country, is required for calculating the adjusted solvency of an insurer or reinsurer, and
- (b) that information is for any reason not available to the Bank,

the book value of that undertaking in the participating insurer or reinsurer must be deducted from the elements that would otherwise be eligible for calculating the adjusted solvency margin. In that case, the unrealised gains arising from the participation may not be treated as an element that is eligible for making that calculation.

*Method for calculating adjusted solvency situation of participating insurer or reinsurer—Method 1: Deduction and aggregation method.*

17. (1) The adjusted solvency situation for the participating insurer or reinsurer is the difference between—

- (a) the sum of—
  - (i) the elements eligible for calculating the solvency margin of the participating insurer or reinsurer, and
  - (ii) the proportional share of the participating insurer or reinsurer in the elements eligible for calculating the solvency margin of the related insurer or reinsurer, and
- (b) the sum of—

- (i) the book value in the participating insurer or reinsurer of the related insurer or reinsurer, and
- (ii) the solvency requirement of the participating insurer or reinsurer, and
- (iii) the proportional share of the solvency requirement of the related insurer or reinsurer.

(2) If the participation in the related insurer or reinsurer consists wholly or partly of an indirect ownership—

- (a) the figure referred to in subparagraph (1)(b)(i) must incorporate the value of such indirect ownership, taking into account the relevant successive interests, and
- (b) the items referred to in subparagraph (1)(a)(ii) and (b)(iii) must include the corresponding proportional shares of the elements eligible for calculating the solvency margin of the related insurer or reinsurer.

*Method for calculating adjusted solvency situation of participating insurer or reinsurer—Method 2: Requirement deduction method.*

18. (1) The adjusted solvency of the participating insurer or reinsurer is the difference between—

- (a) the sum of the elements eligible for calculating the solvency margin of the participating insurer or reinsurer, and
- (b) the sum of—
  - (i) the solvency requirement of the participating insurer or reinsurer, and
  - (ii) the proportional share of the solvency requirement of the related insurer or reinsurer.

(2) When valuing the elements eligible for calculating the solvency margin, participations must be valued by the equity method, in accordance with the option set out in Article 59(2)(b) of the Company Accounts Directive.

*Method for calculating adjusted solvency situation of participating insurer or reinsurer—Method 3: Accounting consolidation-based method.*

19. (1) The adjusted solvency of the participating insurer or reinsurer must be calculated on the basis of the relevant consolidated accounts.

(2) The adjusted solvency of the participating insurer or reinsurer is the difference between—

- (a) the elements eligible for calculating the solvency margin on the basis of consolidated data, and
  - (b) either—
    - (i) the sum of the solvency requirement of the participating insurer or reinsurer and the proportional shares of the solvency requirements of the related insurers or reinsurers, based on the percentages used for the establishment of the consolidated accounts, or
    - (ii) the solvency requirement calculated on the basis of consolidated data.
- (3) The Life Assurance Regulations, the Non-Life Insurance (Framework) Regulations, the Reinsurance Regulations and the Insurance Undertakings Account Regulations apply to the calculation of the elements eligible for calculating the solvency margin and of the solvency requirement based on consolidated data.

## SCHEDULE 2

### SUPPLEMENTARY SUPERVISION OF SUBSIDIARIES OF INSURANCE HOLDING COMPANIES, THIRD COUNTRY INSURERS AND THIRD COUNTRY REINSURERS

#### *Application of this Schedule.*

1. This Schedule applies to whenever an insurance holding company or a third country insurer or reinsurer is the parent undertaking of—
  - (a) one or more insurers or reinsurers that are established in the State, and
  - (b) one or more insurers or reinsurers that are established in other Member States.

#### *Bank to co-operate with competent authorities of other Member States.*

2. The Bank shall co-operate as necessary with the competent authorities of other Member States to ensure that the method referred to in this Schedule is applied in a consistent manner in a case to which this Part applies.

#### *Frequency of supplementary supervision.*

3. In calculating the solvency margin of an insurer or reinsurer referred to in paragraph 1, the Bank shall exercise supplementary supervision with the same frequency as is prescribed by the Non-Life Insurance Directive, the Insurance Undertakings Accounting Directive, the Life Assurance Directive and the Reinsurance Directive.

*Bank may waive calculation.*

4. (1) The Bank may waive the calculation provided for by this Schedule in relation to an insurer or reinsurer referred to in paragraph 1—

(a) if—

- (i) the insurer or reinsurer is a related undertaking of another insurer or reinsurer, and
- (ii) the insurer or reinsurer is taken into account in making the calculation for that other insurer or reinsurer, as provided for by this Schedule, or

(b) if—

- (i) the insurer or reinsurer and one or more other insurers or reinsurers that are established in the State have as their parent undertaking the same insurance holding company, or third country insurer or reinsurer, and
- (ii) the insurer or reinsurer is taken into account in making the calculation for one of those other undertakings, as provided for by this Schedule, or

(c) if—

- (i) the insurer or reinsurer and one or more other insurers or reinsurers established in other Member States have as their parent undertaking the same insurance holding company, or the same third country insurer or reinsurer, and
- (ii) an agreement conferring on the competent authority of another Member State responsibility for exercising supplementary supervision of the insurer or reinsurer has been entered into in accordance with Regulation 5.

(2) In the case of successive participations (for example, an insurance holding company or a third country insurer or reinsurer that is itself owned by another insurance holding company or a third country insurer or reinsurer), the calculations provided for by this Schedule are, if the Bank so directs, to be applied only at the level of the ultimate parent undertaking of the insurer or reinsurer that is an insurance holding company or a third country insurer or reinsurer.

*Calculations to be made at level of relevant insurance holding company or third country insurer or reinsurer.*

5. (1) Calculations analogous to those specified in Schedule 1 to these Regulations are to be made at the level of the relevant insurance holding company or third country insurer or reinsurer.

(2) In making those calculations, the general principles and methods prescribed by Schedule 1 to these Regulations are to be applied at the level of the relevant insurance holding company or third country insurer or reinsurer.

(3) For the purpose only of making such a calculation, the parent undertaking is to be treated as if it were an insurer or reinsurer that—

- (a) in the case of an insurance holding company—is subject to a zero solvency requirement, or
- (b) in the case of a third country insurer or reinsurer—is subject to a solvency requirement calculated according to the principles of paragraph 14 of Schedule 1 to these Regulations, or
- (c) as regards the elements eligible for calculating the relevant solvency margin—is subject to the same conditions as those prescribed by Annex II to the Non-Life (Framework) Regulations, Annex II to the Life Assurance Regulations or Schedule 1 to the Reinsurance Regulations, as the case requires.

*What happens if the necessary information is unavailable.*

6. If—

- (a) information concerning a related insurer or reinsurer that has its registered office in another Member State, or in a third country, is required for making a calculation required by this Schedule, and
- (b) that information is for any reason not available to the Bank,

the book value of the insurer or reinsurer in the participating undertaking is to be deducted from the elements that would otherwise be eligible for making the calculation. In that case, the unrealised gains arising from the participation may not be treated as an element that is eligible for making the calculation.



GIVEN under my Official Seal,  
31 May 2007

BRIAN COWEN  
Minister for Finance

## EXPLANATORY NOTE

(This note is not a part of the Instrument and does not purport to be a legal interpretation)

These Regulations consolidate the European Communities (Supplementary Supervision of Insurance Undertakings in an Insurance Group) Regulations, 1999 (S.I. No. 399 of 1999) and the European Communities (Supplementary Supervision of Insurance Undertakings in an Insurance Group) (Amendment) Regulations 2004 (S.I. 731 of 2004) which introduced additional regulatory requirements for insurance companies which are part of an insurance group. These requirements include an obligation to provide information to the supervisory authorities on intra-group transactions and, in certain cases, to demonstrate compliance with additional solvency tests.

They also give effect to provisions in Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amends Directive 98/78/EC of the European Parliament and of the Council in order to ensure that reinsurance undertakings in an insurance or reinsurance group are subject to supplementary supervision in the same manner as insurance undertakings which are currently part of an insurance group.

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