In accordance with Article 331, paragraph 1, of the Royal Decree of 3 March 2011 ("Moniteur belge/Belgisch Staatsblad" (Belgian Official Gazette), 9 March 2011), the words "the Banking, Finance and Insurance Commission" and the word "CBFA" are replaced by the words "the Financial Services and Markets Authority" and the word "FSMA" respectively.

**Article 1**

The purpose of this Law is to protect the rights of the insured persons and third parties concerned by the execution of insurance contracts and, to that end, to lay down the main conditions and rules governing the activities of insurance companies, to organise the supervision of those activities and to determine special rules for the settlement of insurance transactions.

[Without prejudice to the powers assigned to the FSMA pursuant to Article 45, § 1, paragraph 1, 3°, and § 2 of the Law of 2 August 2002, the Bank shall supervise compliance by insurance companies with the provisions of this Law.]

**Paragraph 2, inserted by Article 2 of the Royal Decree of 3 March 2011 – MB 9 March 2011**

**Article 2**

[§ 1. The provisions of this Law shall apply to Belgian companies, foreign companies having an establishment in Belgium, and foreign companies pursuing insurance activities in Belgium without being established there. They shall not apply to companies effecting reinsurance without at the same time effecting direct insurance in Belgium.

For the purposes of this Law, shall be assimilated to an establishment, any permanent presence of a company in Belgium, even if that presence does not take the form of a branch or agency but consists of a simple office run by the company's own personnel or by a self-employed person with instructions to act permanently for the company in the same way as an agency.]

§ 1 replaced by Article 1, § 1 of the Royal Decree of 22 February 1991 – MB 11 April 1991
§ 1bis. This Law shall not affect the obligations of insurance companies pursuant to the provisions of the Law of 10 April 1971 on accidents at work and the Law of 3 July 1967 on the prevention of, and compensation for, accidents at work, accidents on the way to work, and occupational diseases in the public sector.]

§ 1bis inserted by Article 2 of the Law of 10 August 2001 – MB 7 September 2001

§ 1ter. […]

§ 1ter, paragraph 1, abrogated by Article 3, 1° (a) of the Royal Decree of 3 March 2011 – MB 9 March 2011

[The mutual benefit societies referred to in Articles 43bis, § 5 and 70, §§ 6, 7 and 8 of the Law of 6 August 1990 on private sickness funds and national unions of private sickness funds] shall limit their activities to sickness insurance within the meaning of class 2 of Annex 1 to the Royal Decree of 22 February 1991 containing general regulations relating to the supervision of insurance companies, and in addition, to insuring risks relating to assistance as referred to in class 18 of Annex 1 to the said Royal Decree.

§ 1ter, paragraph 2, amended by Article 3, 1° (b) of the Royal Decree of 3 March 2011 – MB 9 March 2011

Affiliation to such insurance schemes shall be reserved for the following persons:

1° in regard to mutual benefit societies set up pursuant to Article 43bis, § 5 of the said Law of 6 August 1990, the persons affiliated to a private sickness fund or private sickness funds affiliated to the mutual benefit society;

2° in regard to mutual benefit societies set up pursuant to Article 70, §§ 6, 7 and 8 of the said Law of 6 August 1990, the persons referred to in those §§ 6, 7 and 8.

The King may, by Royal Decree adopted following debate in the Council of Ministers and on the advice of [the Bank or the FSMA, each within its own sphere of competence] and the Supervision Office for the private sickness funds and the national unions of private sickness funds, grant those mutual benefit societies exemption from certain provisions of this Law and specify the rules applicable to them in place of those provisions.]

§ 1ter, paragraph 4, amended by Article 3, 1° (c) of the Royal Decree of 3 March 2011 – MB 9 March 2011

§ 1ter inserted by Article 30, 1° of the Law of 26 April 2010 – MB 28 May 2010

§ 1quater. The King may grant exemption from all or part of this Law in the case of mutual insurance associations and cooperative societies which restrict their insurance activities to the municipality where their registered office is located, or to that municipality and neighbouring municipalities, if they fulfil the additional conditions
which the King stipulates. The King shall determine the special rules and conditions to which such companies are subject.

§ 1quater inserted by Article 30, 2° of the Law of 26 April 2010 – MB 28 May 2010

§ 2. This Law shall not apply to the following companies:

[1° mutual benefit societies which are recognised in accordance with the Law of 23 June 1894 and which are not covered by the said Law of 6 August 1990;]

§ 2, 1° replaced by Article 30, 3° (a) of the Law of 26 April 2010 – MB 28 May 2010

[1°bis private sickness funds, national unions of private sickness funds and mutual benefit societies referred to by the said Law of 6 August 1990 which are not permitted to offer insurance and whose services as referred to in Article 3, paragraph 1, (b) and (c) of that Law fulfil all the conditions laid down in Article 67, paragraph 1, of the Law of 26 April 2010 containing miscellaneous provisions on the organisation of supplementary health insurance (I);]

§ 2, 1° bis inserted by Article 30, 3° (b) of the Law of 26 April 2010 – MB 28 May 2010

2° joint funds, private companies charging fixed premiums, public institutions in regard to the operations referred to:

a) […]

§ 2, 2° (a) abrogated by Article 3 of the Law of 10 August 2001 – MB 7 September 2001

b) by the laws on retirement pensions and survivors' pensions for manual workers, non-manual workers, mineworkers, seamen and self-employed workers;

[3° in so far as they are not subject to this Law in respect of other operations, companies pursuing an assistance activity whereby the liability to assist in the event of an accident or breakdown involving a road vehicle, normally occurring in Belgian territory, is limited to:

a) roadside technical assistance for which, in most cases, the company uses its own personnel and equipment;
b) conveyance of the vehicle to the nearest or most appropriate place where the repair can 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 can continue their journey by other means.

The condition that the accident or breakdown must have happened in Belgian territory shall not apply if the company is an organisation to which the beneficiary belongs and the assistance or conveyance of the vehicle is provided simply on presentation of the membership card, without any additional premium being paid, by a similar organisation in the country concerned on the basis of a reciprocal agreement.]
§ 2, 3° inserted by Article 1 of the Royal Decree of 9 September 1988 – MB 4 November 1988

§ 3. [The provisions of this Law ] shall apply to the following within the limits of the special rules and conditions to be laid down by the King:


1° […]

§ 3, paragraph 1, 1° abrogated by Article 30, 4° (a) of the Law of 26 April 2010 – MB 28 May 2010

2° public institutions effecting insurance operations;
3° provident funds of the university institutions referred to in Article 25 of the Law of 27 July 1971 on the funding and supervision of university institutions;

4° […]

§ 3, paragraph 1, 4° abrogated by Article 176 of the Law of 27 October 2006 – MB 10 November 2006

5° insurance companies or institutions in regard to their operations concerning the grant of non-statutory benefits to workers as referred to in the regulations on retirement pensions and survivors’ pensions for workers;

6° […]

§ 3, paragraph 1, 6° abrogated by Article 176 of the Law of 27 October 2006 – MB 10 November 2006

[...]

§ 3, paragraph 2, abrogated by Article 30, 4° (b) of the Law of 26 April 2010 – MB 28 May 2010

[...]

§ 3, paragraph 3, abrogated by Article 30, 4° (b) of the Law of 26 April 2010 – MB 28 May 2010

§ 4. The King may exempt insurance companies from all or part of this Law in respect of the following insurance operations:

1° insurance concerning transport or industrial or commercial risks;
2° insurance concerning special or exceptional risks which the King shall determine;
3° reinsurance and co-insurance operations which the King shall determine.
The King may lay down special rules on the obligations and supervision of those companies.

[§ 5. For the purpose of implementing obligations on Belgium resulting from international treaties or agreements, the King may exempt foreign companies [...] from all or some of the obligations pursuant to this Law; in that case, the King may determine the rules and conditions to which such companies are subject.]


[§ 6. For the purposes of this Law and its implementing decrees and regulations, the following definitions shall apply:

1° "the Community": the European Community (EC);

2° "Member State": a State which is a member [of the European Economic Area];

§ 6, 2° amended by Article 10 of the Law of 19 November 2004 – MB 28 December 2004

3° "branch": an agency or branch of an insurance company, having regard to § 1, paragraph 2;

4° "freedom to provide services": the activity whereby a company [from the European Economic Area], operating from its head office or from a branch located in a Member State, covers risks located in another Member State;

§ 6, 4° amended by Article 10 of the Law of 19 November 2004 – MB 28 December 2004

5° "home Member State": the Member State in which the head office of the insurance company covering a risk is located;

6° "Member State of the branch": the Member State in which the branch covering a risk is located;

7° "Member State of the provision of service": the Member State in which a risk is located, if it is covered by an insurance company under freedom to provide services;

8° "Member State where the risk is located":

a) the Member State where the policyholder has his habitual place of residence or, if the policyholder is a legal person, the Member State where the legal person to which the contract relates is established, in all cases not expressly covered by the following lettered paragraphs:
b) the Member State where the property is located, if the insurance concerns either immovable property or immovable property and the contents thereof, in so far as the latter is covered by the same insurance contract;

c) the Member State of registration, if the insurance concerns vehicles of any kind;

[By way of derogation from the preceding paragraph, if a motor vehicle referred to in Article 1 of the Law of 21 November 1989 on compulsory liability insurance for motor vehicles is sent from one Member State to another Member State, the Member State of destination is deemed to be the Member State where the risk is located for a period of thirty days from acceptance of delivery by the purchaser, even if the vehicle has not been officially registered in the Member State of destination;]

§ 6, 8° (c), paragraph 2, inserted by Article 18 of the Law of 8 June 2008 – MB 16 June 2008

d) the Member State where the policyholder has signed the contract, in the case of contracts with a term of four months or less, relating to risks incurred during travel or a holiday, regardless of the class concerned;

9° "parent company": a parent company within the meaning of Articles 2 and 3 of the Royal Decree of 6 March 1990 on the consolidated accounts of companies [except for the application of Chapter VIIbis of this Law];

§ 6, 9° amended by Article 1 of the Royal Decree of 14 March 2001 - MB 19 April 2001

10° "subsidiary": a subsidiary company within the meaning of Articles 2 and 3 of the Royal Decree of 6 March 1990 on the consolidated accounts of companies [except for the application of Chapter VIIbis of this Law];

§ 6, 10° amended by Article 1 of the Royal Decree of 14 March 2001 - MB 19 April 2001

[10° bis. "close links":

a) a situation in which two or more natural or legal persons are linked by virtue of participating interests within the meaning of the regulations on the annual accounts of insurance companies, or

b) a situation in which two or more persons are related companies within the meaning of the regulations on the annual accounts of insurance companies, or a situation in which an insurance company and a natural or legal person are connected by a link of the same nature;]
§ 6, 10° bis inserted by Article 1 of the Royal Decree of 6 May 1997 – MB 6 August 1997

[10°ter qualifying holding: the direct or indirect holding of 10% or more of the capital in a company or the voting rights attached to securities issued by that company, or any other possibility of exerting a significant influence over the management of the company in which an interest is held; the voting rights shall be calculated in accordance with the Law of 2 May 2007 on the disclosure of significant interests and its implementing decrees; no account shall be taken of voting rights or shares held as a result of the underwriting and/or placing of financial instruments on a firm commitment basis, unless those rights are exercised or otherwise used to intervene in the management of the issuer and provided they are assigned within one year following their acquisition;]

§ 6, 10° ter inserted by Article 10 of the Law of 31 July 2009 - MB 8 September 2009

11° "competent authorities": the authorities empowered by their national law or regulations to supervise insurance companies;

12° "the Minister": the Minister whose responsibilities include insurance.]

§ 6, 1° to 12° inserted by Article 1, 2° of the Royal Decree of 12 August 1994 - MB 16 September 1994

[12° bis "the Bank": the National Bank of Belgium, referred to by the Law of 22 February 1998 establishing the Organic Statute of the National Bank of Belgium;]

§ 6, 12° bis inserted by Article 3, 2° of the Royal Decree of 3 March 2011 – MB 9 March 2011

[13° "the FSMA": the Financial Services and Markets Authority referred to in Article 44 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services. [For mutual benefit societies it is necessary to read the words ["the Bank or] "the FSMA" to mean "the Supervisory Office for private sickness funds and national unions of private sickness funds" as referred to in Article 49 of the Law of 6 August 1990 on private sickness funds and national unions of private sickness funds, except in Articles 14ter, paragraph 6, [21 § 1bis, paragraph 2], 38, paragraph 1, 40, 40quinquies, paragraph 2, 82 § 1 and 90 § 4, paragraph 3;]]


[14° "reorganisation measures": measures which are intended to preserve or restore the financial position of an insurance company and which affect pre-existing rights of parties other than the insurance company itself. In the case of companies incorporated under Belgian law, those measures correspond to:
§ 6, 14° (a) replaced by Article 12 (a) of the Law of 2 June 2010 – MB 14 June 2010

b) the measures referred to in Article 26 and in Article 44, paragraph 3:

15° "winding-up proceedings": collective proceedings involving the realisation of the assets of an insurance company and the distribution of the proceeds among the creditors, shareholders or members, which necessarily involve any intervention by the competent administrative or judicial authorities, whether or not they are founded on insolvency or are voluntary or compulsory. In the case of companies under Belgian law, such a procedure corresponds to a bankruptcy regulated by the Law of 8 August 1997 on bankruptcies and collective winding-up procedures referred to in Book IV, Title IX of the Companies Code;

16° "reorganisation authorities": the administrative or judicial authorities which are competent for the purposes of reorganisation measures. In the case of companies under Belgian law, those authorities are the King and the Bank in regard to their respective powers concerning reorganisation measures;


17° "winding-up authorities": the administrative or judicial authorities which are competent for the purposes of winding-up proceedings. In the case of companies under Belgian law, this means the commercial court in respect of its competence concerning bankruptcy and compulsory dissolution, and the Bank in respect of its competence in all other winding-up proceedings;


18° "reorganisation inspector": a person or body appointed by a reorganisation authority for the purpose of administering reorganisation measures;

19° "liquidator": a person or body appointed by a winding-up authority or designated in accordance with the legal or statutory rules for the purpose of administering winding-up proceedings;

20° "insurance claim": an amount which is owed by an insurance company to insured persons, policyholders, beneficiaries or to any injured party having direct right of action against the insurance company and which arises from an insurance contract or from any operation provided for in Article 2 (2) and (3) of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance, including an amount set aside for those persons, when some elements of the debt are not yet known.

The premium repayable by an insurance company as a result of the non-conclusion or cancellation of an insurance contract or operation in accordance with the law
applicable to such contracts or operations before the institution of the winding-up proceedings shall also be considered an insurance claim;]

§ 6, 14° to 20° inserted by Article 32 of the Law of 6 December 2004 – MB 28 December 2004

[21° "reinsurance company": a company as defined in Article 4, 1° of the Law of 16 February 2009 on reinsurance.]


[22° "Law of 2 August 2002": the Law of 2 August 2002 on the supervision of the financial sector and on financial services;]

§ 6, 22° inserted by Article 3, 4° of the Royal Decree of 3 March 2011 – MB 9 March 2011


§ 6, 23° inserted by Article 3, 4° of the Royal Decree of 3 March 2011 – MB 9 March 2011

CHAPTER II
Authorisation

[Article 2bis

Insurance companies under Belgian law which intend to pursue their activity in Belgium and insurance companies which come under the law of a state which is not a member of the European Economic Area and which intend to pursue their insurance activity in Belgium via a branch must obtain authorisation from the Bank before commencing their operations.

Article inserted by Article 5 of the Royal Decree of 3 March 2011 – MB 9 March 2011

Article 3

[§ 1. It is prohibited for any company, whether acting on its own account or on behalf of a third party, to conclude or to offer to conclude insurance contracts in the capacity of an insurer […] without the prior authorisation of [the Bank].

§ 1, paragraph 2, abrogated by Article 2, 2° of the Royal Decree of 12 August 1994 – MB 16 September 1994

[The FSMA shall contribute to compliance with this provision.]

New paragraph 2, inserted by Article 6 of the Royal Decree of 3 March 2011 – MB 9 March 2011

§ 2. All agents, brokers or intermediaries shall be prohibited from intervening in the conclusion of insurance contracts effected in contravention of the provisions of this law.

§ 3. [The contracts referred to in § 1 relating to risks located in Belgium and concluded with a company not authorised to pursue that activity under this law shall be void.]

§ 3, paragraph 1, replaced by Article 2, 3° of the Royal Decree of 12 August 1994 – MB 16 September 1994

However, if the policyholder concluded the contract in good faith, the company must fulfil its contractual obligations.


Article 4

[Authorisation shall be granted [by the Bank] to companies which fulfil the conditions laid down by this law or its implementing decrees.

Paragraph 1, amended by Article 7, 1° of the Royal Decree of 3 March 2011 – MB 9 March 2011

The authorisation shall be granted per insurance class or per group of insurance classes […].


[On the advice of the Bank, the King shall determine] the insurance classes and
groups of classes.

The decision on the grant or refusal of authorisation shall be taken within a maximum of four months following receipt by [the Bank] of all the information and documents, in accordance with the requirements of this law and its implementing decrees, which must accompany the application referred to in Article 5.


Specific reasons must be stated for any decision to refuse authorisation.

Authorisation shall be deemed to have been refused if no decision has been taken on expiry of the four-month period referred to in paragraph 4.

The decision on the grant or refusal of authorisation shall be notified to the company.

[The [Bank] shall draw up a list of companies authorised pursuant to this chapter. That list and all changes to it shall be published on its website.]


**Article replaced by Article 3 of the Royal Decree of 22 February 1991 – MB 11 April 1991**

**Article 5**

[All applications for authorisation shall be [addressed to the Bank according to the forms and conditions laid down by the King on the advice of the Bank and the FSMA, each within its own sphere of competence].]


Applications must be accompanied by the following information and documents:

1° the articles of association stating, if appropriate, the date of their publication in the annexes to the "Moniteur belge/Belgisch Staatsblad" (Belgian Official Gazette);

2° the surnames, first names, domicile, residence, occupation and nationality of the directors and of the persons responsible for the management of the company [and the powers of the latter persons];

3° notification of the identity of natural or legal persons who, directly or indirectly, acting alone or in concert with others, have a qualifying holding in the capital of the insurance company, whether or not it confers the right to vote; the notification must state the percentages of the capital and the voting rights held by such persons;

**Paragraph 2, 3° replaced by Article 11 (a) of the Law of 31 July 2009 – MB 8 September 2009**

3°bis in the case of associations under Belgian law, the domicile or residence of natural or legal persons with a qualifying holding [...] and the percentage of that holding;


3°ter in the case of insurance companies under Belgian law, sufficiently detailed information on close links existing between the company and other natural or legal persons;

**Paragraph 2, 3° ter inserted by Article 2 of the Royal Decree of 6 May 1997 – MB 6 August 1997**

4° if the head office of the applicant company is not established in Belgium, proof that the company is authorised to conduct in the country of that head office the insurance operations forming the subject of the application, or the reasons why it is not so authorised;

5° the programme of operations comprising all the technical and financial data relating to the execution of the planned operations, and to the establishment of the administrative services and the production network;

6° proof that the minimum guarantee fund referred to in Article 15ter has been established and that the surety, if required pursuant to Article 15quater, has been lodged;

7° the other information and documents determined by the King [on the advice of the Bank and the FSMA, each within its own sphere of competence].

**Paragraph 2, 7° amended by Article 8, 2° of the Royal Decree of 3 March 2011 – MB 9 March 2011**

**Article 6**

If, prior to the application, the company pursued an activity relating to insurance, it shall also attach the following documents to its application:
a) a detailed statement of the technical reserves and corresponding investments at the time of submission of the application;

b) a statement of outstanding claims notified before the start of the calendar year in which the application is submitted;

c) […]

*Paragraph 1, (c) abrogated by Article 11 of the Law of 19 November 2004 – MB 28 December 2004*

If, prior to the application, the company pursued another activity, [the Bank] may demand all information on its financial position and its operations of any kind whatsoever.


**Article 6bis**

[If the application for authorisation originates from an insurance company which is either a subsidiary of a company authorised by the FSMA or a subsidiary of the parent company of a company authorised by the FSMA, or is controlled by the same natural or legal persons as a company authorised by the FSMA, the Bank shall consult the FSMA before granting authorisation.]

*Paragraph 1, inserted by Article 9 of the Royal Decree of 3 March 2011 – MB 9 March 2011*

[If the application for authorisation originates from an insurance company which is either a subsidiary of another insurance company, reinsurance company, credit institution, investment firm or management company of undertakings for collective investment, authorised in another Member State, or a subsidiary of the parent company of another insurance company, reinsurance company, credit institution, investment firm or management company of undertakings for collective investment, authorised in another Member State, or controlled by the same natural or legal persons as another insurance company, reinsurance company, credit institution, investment firm or management company of undertakings for collective investment, authorised in another Member State, the [Bank] shall, before taking its decision, consult the national authorities of those other Member States which supervise the insurance companies, reinsurance companies, credit institutions, investment firms or management companies of undertakings for collective investment, authorised in accordance with their law.]

*Paragraph 2, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011*
Article replaced by Article 100 of the Law of 16 February 2009 – MB 16 March 2009

Article 7

[...]

Article abrogated by Article 10 of the Royal Decree of 3 March 2011 – MB 9 March 2011

Article 8

§ 1. Authorisation may be granted to insurance companies under Belgian law only if:
- the central administration is located in Belgium;
- the shareholders, partners or members having a qualifying holding [...] have the necessary qualifications, taking into account the need to ensure sound and prudent management;

§ 1, second indent, amended by Article 12 of the Law of 31 July 2009 – MB 8 September 2009

- the close links which exist between the insurance companies and other natural or legal persons do not prevent the effective exercise of [the Bank's] supervisory functions over the insurance company;


- the laws, regulations and administrative provisions of a State which is not a member [of the European Economic Area], applicable to one or more natural or legal persons with whom the insurance company has close links, or difficulties connected with the application of those provisions, do not prevent the effective exercise of [the Bank's] supervisory functions over the insurance company;


§ 2 In addition, authorisation may be granted to insurance companies under Belgian law and insurance companies under foreign law only:

- if the technical and financial resources which they propose to deploy, taking account of the reinsurance ceded, are appropriate to their schedule of operations;
- if they satisfy the other conditions and rules laid down by or pursuant to this Law].
on the advice of the FSMA regarding the following questions:

1° the adequacy of the organisation of the insurance company as referred to in Article 14bis, § 2 from the point of view of compliance with the rules referred to in Article 45, § 1, paragraph 1, 3°, and § 2 of the Law of 2 August 2002;

2° the adequacy of the integrity policy of the insurance company as referred to in Article 14bis, § 3, paragraph 3, from the point of view of compliance with the rules referred to in Article 45, § 1, paragraph 1, 3°, and § 2 of the Law of 2 August 2002;

3° the professional integrity of the natural persons involved in the administration, management or senior management of the insurance company if those persons are proposed for the first time to perform such a function in a financial company subject to the supervision of the Bank pursuant to Article 36/2 of the Law of 22 February 1998;

4° the articles of association, from the point of view of compliance with Article 9, §1, paragraph 1, final sentence.

The FSMA shall give its opinion on the aforesaid questions within fourteen days following receipt from the Bank of the information and documents in accordance with Article 4, paragraph 4, forwarded to the FSMA by the Bank, and no later than two months following receipt of the request for an opinion. If no opinion is given within that period, the opinion shall be deemed favourable.

If the Bank disregards the FSMA’s opinion on the questions referred to in paragraph 1, it shall record the fact and state the reasons for it in the grounds for the decision on the application for authorisation. The said opinion of the FSMA concerning 1°, 2° and 4° in paragraph 1, shall be attached to the notification of the decision on the application for authorisation.

If the Bank authorises an insurance company in accordance with the provisions of this chapter, it shall make available to the FSMA the information referred to in Article 5, paragraph 2, 1°, 2° and 5°, Article 11, 1°, 2°, 3°, 6° and 8°, Article 22, §§ 1 and 2, and Article 23, paragraph 2, and any changes to that information, in order to enable the FSMA to exercise the powers referred to in Article 45, § 1, 3° and § 2 of the Law of 2 August 2002.


*Article 9*

§ 1. Private insurance companies under Belgian law must be established in the form of a company limited by shares, a cooperative society or a mutual insurance association; their company object must be restricted to insurance, capitalisation or the management of collective pension funds, and to operations resulting directly from those activities. They must ensure that their articles of association contain no
provisions prejudicial to the insured persons, policyholders and beneficiaries of the insurance.

[Notwithstanding paragraph 1, insurance companies conducting the operations referred to by the Law of 10 April 1971 on accidents at work and by the said Law of 3 July 1967, or the operations referred to by the Royal Decree of 14 May 1969 on the grant of non-statutory benefits to the workers referred to by Royal Decree No 50 of 24 October 1967 on retirement pensions and survivors' pensions for workers may be set up in the form of joint funds. In that case, for the purposes of this Law and its implementing decrees and regulations, such funds shall be regarded as mutual insurance associations.]

§ 1, paragraph 2, inserted by Article 4 of the Law of 10 August 2001 – MB 7 September 2001

[Notwithstanding paragraph 1, insurance companies under Belgian law may be set up in the form of a mutual benefit society pursuant to Article 43bis, § 5 or Article 70, §§ 6, 7 or 8 of the said Law of 6 August 1990.]

§ 1, paragraph 3, inserted by Article 31 of the Law of 26 April 2010 – MB 28 May 2010

§ 2. […]


[Article 9bis

An insurance company under Belgian law may not grant loans in any form whatsoever to its directors, managers or executives except on the conditions permitted by [the Bank].


Article 10

Any Belgian insurance company set up in one of the forms referred to in Article 9, §§ 1 and 2 shall be subject to the obligations incumbent upon limited companies pursuant to Articles 67, 68, 73, 74, 75, 76, 98, 100, 101, 102, 173, 179, 195 and 1012 of the Companies Code.

Paragraph 1, amended by Article 32, 1° of the Law of 26 April 2010 – MB 28 May 2010
The provisions of the preceding paragraph shall not alter the civil character of mutual insurance associations [and mutual benefit societies].


Article 11

[Mutual insurance associations shall have legal personality. They shall acquire it with effect from the day on which their articles of association are published in the manner described below.]


The articles of association of Belgian mutual insurance associations must mention the following, under penalty of being null and void:

1° the name and registered office of the association
2° the object for which the association was established;
3° the conditions and method of admitting, dismissing and excluding partners;
4° the extent of the personal commitments entered into by the partners in regard to the creation and maintenance of an association fund [including the indications referred to in Article 15bis, § 1, 1° (a) and (b)];


5° the organisation and administration of the association, and the method of appointment, powers and term of office of the persons responsible for that administration;

6° the method of determining and collecting the contributions or premiums and any supplements for the settlement of claims;

7° the method of drawing up and approving the accounts;

8° the procedure to be followed in the event of amendments to the articles of association or the winding-up of the association, without prejudice to the provisions of this Law.

[The King may, on the advice of the Bank,] determine any other provisions which must be included in the articles of association of Belgian mutual insurance associations.


The articles of association and their amendments must be published in the annexes to the "Moniteur belge/Belgisch Staatsblad" (Belgian Official Gazette).
Article 12

§ 1. The articles of association, technical organisation and financial position of foreign insurance companies must offer guarantees equivalent to those required of Belgian companies.

Authorisation may be refused if their articles of association permit an activity other than those referred to in Article 9 for Belgian companies.

§ 2. In regard to the financial guarantees, the King, [acting on the advice of the Bank, ] shall lay down the rules on equivalence referred to in § 1.


§ 3. Foreign insurance companies must designate an authorised agent resident and domiciled in Belgium, possessing sufficient powers to bind the company in relation to third parties and to represent it in relations with the Belgian authorities and courts.

If the authorised agent has legal personality, it must have its head office in Belgium and must in turn designate a natural person to represent it who complies with the above conditions.

[If the mandate is renounced or revoked, or in the event of the death of the authorised agent or the natural person designated to represent it, the company must take the necessary steps to ensure that the successor is in post within the month.]


Article 13

Foreign companies may be refused authorisation if their country of origin refuses to accord equivalent treatment to Belgian companies.

CHAPTER III
Pursuit of insurance activities

Article 14

|$§ 1. Insurance activities shall be divided into two groups: life insurance activities and non-life insurance activities or BOAR/IARD [fire, accident, liability, miscellaneous]. The King shall determine the classes and groups of classes which come under those groups of activities.

§ 2. [It is prohibited for any insurance company under Belgian law engaging in a non-life activity to pursue a life activity at the same time.]}
However, the companies referred to in paragraph 1, which were pursuing a life activity on 27 November 1992 may continue that activity.

Notwithstanding paragraph 1, companies pursuing activities in one or more classes belonging to the life group may also operate in the Accident class or the Sickness class. Companies which only operate in the Accident and Sickness classes may also be authorised to operate in one or more classes belonging to the life group of activities.

Companies which conduct the combination of activities referred to paragraphs 2 and 3, must keep separate accounts under the conditions laid down by the King [on the advice of the Bank], showing the results specific to each of the two groups of life and non-life activities.


[The Bank] shall ensure that the accounts of a Belgian companies pursuing one of the groups of activities and having financial, commercial or administrative links with a company pursuing the other group of activities are not distorted by agreements concluded between those companies or by any arrangement which could influence the allocation of expenditure and income.


§ 2bis. Any foreign insurance company pursuing a non-life activity in Belgium or in another country shall be prohibited from pursuing a life activity in Belgium.

However, the companies referred to in paragraph 1 which were pursuing a life activity in Belgium on 15 March 1979 may continue that activity provided they keep separate accounts under the conditions laid down by the King [on the advice of the Bank], showing the results specific to each of the two groups of life and non-life activities.


§ 3. For each of the two groups of life and non-life activities pursued in Belgium, the companies shall establish separate management and separate accounting per class or group of classes designated [by the King on the advice of the Bank].

§ 3, paragraph 1, amended by Article 14, 2° of the Royal Decree of 3 March 2011 – MB 9 March 2011

The separate management shall be organised per calendar year.
Companies must keep a list, data file or any other schedule of contracts and claims per separately managed activity under the conditions laid down by the King on the advice of the Bank.]

§ 3, paragraph 3, amended by Article 14, 2° of the Royal Decree of 3 March 2011 – MB 9 March 2011


Article 14bis

[§ 1. Insurance companies must have in place a management structure, an administrative and accounting organisation, IT control and security mechanisms and an internal control system appropriate to their existing or intended activities. In that regard they shall take account of the nature, scale and complexity of those activities and the associated risks.

§ 2. Insurance companies must have in place an adequate management structure which includes the following elements in particular:

- a coherent and transparent organisational structure with appropriate segregation of functions;
- a clearly defined, transparent and coherent system for the allocation of responsibilities; and
- adequate procedures for the identification, measurement, management, monitoring and internal reporting of significant risks incurred by the insurance company on account of its existing or intended activities.

§ 3. Insurance companies must organise an adequate internal control system whose functioning is assessed at least once a year. In regard to their administrative and accounting organisation, they must organise an internal control system which ensures a reasonable degree of certainty about the reliability of the financial reporting process, so that the annual accounts conform to the current accounting regulations.

Insurance companies shall take the necessary measures to ensure the continuous availability of an adequate independent internal audit function.

Insurance companies shall draw up an appropriate integrity policy which is regularly updated. [Without prejudice to Article 87bis of the Law of 2 August 2002, they shall take] the necessary measures to ensure the continuous availability of an adequate independent compliance function, to ensure that the company, its directors, its senior managers, its employees and its agents comply with the legal rules on the integrity of its business.

§ 3, paragraph 3, amended by Article 15, 1° of the Royal Decree of 3 March 2011 – MB 9 March 2011
Insurance companies must have in place an appropriate independent risk management function.

§ 4. The [Bank] may, without prejudice to the provisions of §§ 1, 2 and 3, specify what is meant by an appropriate management structure, appropriate internal control, an appropriate independent internal audit function, [an appropriate risk management function and, on the advice of the FSMA, an appropriate independent compliance function].

§ 4 amended by Articles 4 and 15, 2° of the Royal Decree of 3 March 2011 – MB 9 March 2011

§ 5. Without prejudice to the powers of the legal decision-making body regarding the determination of general policy as stipulated by the Companies Code, the senior management, where applicable the management committee, shall take the necessary measures, under the surveillance of the legal decision-making body, to ensure compliance with the provisions of §§ 1, 2 and 3.

The legal decision-making body of the insurance company must check at least once a year, if appropriate via the audit committee, whether the company conforms to the provisions of §§ 1, 2 and 3 and paragraph 1 of this § 5, and shall take note of the appropriate measures adopted.

The senior management, if appropriate the management committee, shall report at least once a year to the legal decision-making body, to the [Bank] and to the accredited auditor on compliance with the provisions of paragraph 1 of this § 5 and on the appropriate measures taken.


This information shall be forwarded to the [Bank] and to the accredited auditor in accordance with the arrangements which the [Bank] shall determine.


§ 6. The accredited auditor shall report to the legal decision-making body via the audit committee on important issues arising in the performance of his task of conducting the statutory audit of the accounts, and in particular on significant weaknesses in the internal control regarding the financial reporting process.]

Article replaced by Article 100 of the Law of 16 February 2009 – MB 16 March 2009

[Article 14ter

Insurance companies shall set up an audit committee within their legal decision-making body. The audit committee shall comprise non-executive members of the legal decision-making body. At least one member of the audit committee shall be an
independent member of the legal decision-making body within the meaning of Article 526ter of the Companies Code and shall have relevant expertise in accounting and/or auditing. In addition, the members of the audit committee shall have collective expertise in the sphere of activities of the insurance company concerned, and in accounting and auditing.

The annual report of the legal decision-making body shall provide evidence of the individual and collective expertise of the members of the audit committee.

In insurance companies which meet at least two of the following three criteria:

a) average number of employees less than 250 persons during the financial year concerned;
b) balance sheet total less than or equal to € 43,000,000;
c) annual net turnover less than or equal to € 50,000,000,

it is not compulsory to set up an audit committee within the legal decision-making body, but the functions assigned to the audit committee must then be performed by the legal decision-making body as a whole, provided that, if the chairman of that body is an executive member, he shall not chair the legal decision-making body when the latter is acting as the audit committee. Any director who is a member of the management committee referred to in Article 90, § 3 and any director placed in charge of the day-to-day management within the meaning of Article 525 of the Companies Code shall be among those presumed to be an executive member of the legal decision-making body.

In so far as an audit committee has been set up with competence extending to the entire group and meeting the requirements of this Law, the [Bank] may, in the case of insurance companies which are subsidiaries or sub-subsidiaries of a mixed financial holding company, an insurance holding company, a financial holding company, another insurance company, a reinsurance company, a credit institution, an investment firm or a management company of undertakings for collective investment, waive the foregoing provisions and lay down specific conditions for the grant of such a waiver. The [Bank] shall publish its waiver policy.

**Paragraph 4, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011**

Without prejudice to the statutory tasks of the legal decision-making body, the audit committee shall be responsible for the following tasks, as a minimum:

a) monitoring the financial reporting process;
b) monitoring the effectiveness of the internal control and risk management systems of the company;
c) monitoring the internal audit and its activities;
d) monitoring the statutory audit of the annual accounts and of the consolidated accounts, including monitoring the questions and recommendations formulated by the accredited auditor;
e) examining and monitoring the independence of the accredited auditor, in particular as regards the provision of additional services to the audited entity.
The [Bank] may, by a regulation passed in accordance with [Article 12bis, § 2 of the Law of 22 February 1998], specify and supplement the elements listed above in regard to technical points.

Paragraph 6, amended by Articles 4 and 16 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The audit committee shall report regularly to the legal decision-making body on the performance of its tasks, at least when drawing up the annual and consolidated accounts and the half-yearly periodic statements which the insurance company submits at the end of the financial year and at the end of the first half year respectively.

The accredited auditor shall:

a) give the audit committee written confirmation each year of his independence from the insurance company;

b) inform the audit committee each year of the additional services provided for the insurance company;

c) examine with the audit committee the risks to his independence and the safeguard measures which he has recorded, designed to mitigate those risks.

The foregoing provisions are without prejudice to the provisions of the Companies Code concerning the audit committee of listed companies within the meaning of Article 4 of that Code.


Article 15

[§ 1. Insurance companies must establish an adequate solvency margin in respect of their entire business.

The insurance companies referred to in Article 14, § 2, paragraphs 2 and 3, which pursue a combination of life and non-life business must establish a solvency margin for each of those groups of activities.

[The Bank shall determine by a regulation passed in accordance with Article 12bis, § 2 of the Law of 22 February 1998 the method of calculating the solvency margin and the level which it must reach in relation to the liabilities of the company. The minimum margin to be established must be at least equal to the absolute minimum of the guarantee fund as determined by the Bank.]]

§ 1, paragraph 3, replaced by Article 17, 1° of the Royal Decree of 3 March 2011 – MB 9 March 2011
§ 2. The solvency margin shall correspond to the assets of the insurance company free of any foreseeable liabilities, less any intangible items […]. It shall include, in particular, the items referred to in Article 15bis.

§ 2, paragraph 1, amended by Article 1 of the Law of 26 May 2004 – MB 28 May 2004

[On the advice of the Bank, the King shall determine] for the insurance companies referred to in Article 14, § 2, paragraphs 2 and 3, the method of apportioning the elements of the margin between the two groups of activities, the method of imputing the results to the margins thus obtained, and the conditions governing transfers from one margin to the other.]

§ 2, paragraph 2, amended by Article 17, 2° of the Royal Decree of 3 March 2011 – MB 9 March 2011

Article replaced by Article 7 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Article 15bis

§ 1. The following items shall be considered for the establishment of the available solvency margin relating to the "non-life" and "life" groups of activities:

1° the paid-up share capital plus the issue premiums or, in the case of mutual insurance associations, the effective initial fund plus any accounts of the members of the mutual association.

The members' accounts must fulfill all the following conditions:

(a) the articles of association must stipulate that payments may be made from those accounts to members only in so far as this does not cause the available solvency margin to fall below the required level or, after the dissolution of the company, where all the company's other debts have been settled;

(b) the articles of association must stipulate, with respect to any payments effected for reasons other than the individual termination of membership, that the [Bank] must be given notice at least one month in advance and [can] prohibit the payment within that period;

§1, 1° (b) amended by Articles 4 and 18, 1° of the Royal Decree of 3 March 2011 – MB 9 March 2011

[2° reserves (statutory and free) not corresponding to liabilities or not classified as provisions for equalisation and catastrophes;]

§ 1, 2° replaced by Article 102 of the Law of 16 February 2009 – MB 16 March 2009
3° the profit or loss brought forward;

4° the fund for future appropriations where it may be used to cover any losses which may arise and where it has not been made available for distribution to policyholders;

5° subordinated loan capital up to the amounts fully paid-up, plus the items referred to in 6° and 7° of this § 1, up to 50 % of the lesser of the available solvency margin and the required solvency margin, no more than 25 % of which shall consist of subordinated loans with a fixed maturity.

Loans must also fulfil the following conditions:

(a) the loan agreement must expressly stipulate that, in the event of the bankruptcy or winding-up of the insurance company, the loans rank after the claims of all other creditors and are not to be repaid until all other debts outstanding at the time have been settled;

(b) for loans with a fixed maturity, the original maturity shall be at least five years. No later than one year before the repayment date, the insurance company shall submit to the [Bank] for approval a plan showing how the available solvency margin will be kept at or brought to the required level at maturity, unless the extent to which the loan may rank as a component of the available solvency margin is gradually reduced during at least the five years before the repayment date.

The [Bank] may authorise early repayment provided application is made by the insurance company and its available solvency margin could not consequently fall below the required level at any time;

§ 1, paragraph 1, 5° (b) amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

(c) loans the maturity of which is not fixed shall be repayable only subject to five years’ notice unless the loans are no longer considered as a component of the available solvency margin or unless the prior consent of the [Bank] is formally required for early repayment. In the latter event the insurance company shall give notice to the [Bank] at least six months before the date of the proposed repayment, specifying the available solvency margin and the required solvency margin both before and after that repayment.

The [Bank] shall authorise repayment only where the company's available solvency margin does not risk falling below the required level;

§ 1, paragraph 1, 5° (c) amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

(d) the loan agreement shall not include any clause providing that in specified circumstances, other than the winding-up of the insurance company, the debt will become repayable before the agreed repayment date;
(e) the loan agreement may be amended only after the [Bank] has declared that it has no objection to the proposed amendment.

§ 1, paragraph 1, 5° (e) amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

6° cumulative preferential share capital added to the items referred to in 5° and 7° of this § 1, up to 50 % of the lesser of the available solvency margin and the required solvency margin, no more than 25 % of which shall consist of fixed-term cumulative preferential share capital.

The conditions of issue must expressly stipulate that, in the event of the bankruptcy or winding-up of the insurance company, the cumulative shares rank after the claims of all other creditors and are not to be repaid until all other debts outstanding at the time have been settled;

7° securities with no specified maturity date and other instruments, up to the amounts fully paid-up, and up to a maximum of 50 % of the available solvency margin, or the required solvency margin, whichever the lesser, for the total of such securities and the items referred to in 5° and 6° of this § 1.

The conditions of issue must expressly stipulate that, in the event of the bankruptcy or winding-up of the insurance company, the securities with no specified maturity date and other instruments rank after the claims of all other creditors and are not to be repaid until all other debts outstanding at the time have been settled.

In addition, the following conditions must be fulfilled:

(a) they must not be repaid on the initiative of the bearer or without the prior consent of the [Bank];

§ 1, paragraph 1, 7° (a) amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

(b) the contract of issue must enable the insurance company to defer the payment of interest on the loan;

(c) the lender’s claims on the insurance company must rank entirely after those of all non-subordinated creditors;

(d) the documents governing the issue of the securities must provide for the loss-absorption capacity of the debt and unpaid interest, while enabling the insurance company to continue its business;

8° one half of the unpaid share capital or initial fund once the paid-up part amounts to 25% of that capital, up to 50 % of the lesser of the available solvency margin and the required solvency margin.
The fraction which can be taken into consideration shall equal at least 5% of the absolute minimum guarantee fund per subscriber, as determined by Article 15ter, paragraph 2 of this Law;

9° Supplementary contributions which mutual insurance associations operating only with variable contributions may call for from their members (supplementary members’ calls) for a particular financial year, up to half of the difference between the maximum contributions and the contributions actually called.

Supplementary members’ calls may not represent more than 50 % of the lesser of the available solvency margin and the required solvency margin.

The insurance contract must expressly mention the possibility of supplementary members’ calls and the conditions under which they may take place;

10° any hidden net reserves arising out of the valuation of assets, in so far as such hidden net reserves are not of an exceptional nature;

11° the undepreciated acquisition costs contained in the technical provisions.

That amount is equal to the sum, for all contracts, of the Zillmerised values per contract limited to those obtained on the basis of a Zillmerisation rate equal to 0.08 less the sum of the following two amounts:

a) the corresponding commissions and acquisition costs to be depreciated, entered as an asset;

b) the sum, for all contracts, of the percentages repayable in the event of a fall in the current value of the reduction premiums not yet due on the loading for acquisition costs;

12° the future profits of the company, for an amount not exceeding 25% of the lesser of the available solvency margin and the required solvency margin.

The amount of future profits shall be obtained by multiplying the estimated annual profit by a factor corresponding to the average residual term of the contracts. That factor must not exceed 6. In addition, the estimated annual profit must not exceed the arithmetical mean of the profits for the past five years in the case of operations in classes 21, 22 and 23, as referred to in Annex I of the Royal Decree of 22 February 1991 containing general regulations relating to the supervision of insurance companies.

Future profits may not be taken into consideration unless:

- an actuarial report is submitted, confirming the probability of such future profits;
- part of the future profits corresponding to the hidden net reserves referred to in 10° of this § 1 has not already been taken into account.
Future profits may be taken into consideration only up to 50% of the estimated amounts up to 31 December 2004, 42% up to 31 December 2005, 34% up to 31 December 2006, 25% up to 31 December 2007, 17% up to 31 December 2008 and 8% up to 31 December 2009. After 31 December 2009, future profits can no longer be taken into consideration as elements of the solvency margin established.

§ 2. The elements referred to in 4°, 11° and 12° of § 1 of this Article may be taken into consideration only by companies pursuing the "life" group of activities and only for the establishment of the solvency margin relating to the "life" group of activities.

The element referred to in 9° of this Article may be taken into consideration only by companies pursuing the "non-life" group of activities.

§ 3. The elements referred to in § 1, 8° to 12° of this Article may be taken into consideration only upon application by the company with supporting evidence and with the approval of the [Bank].

§ 3 amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

§ 4. The available solvency margin shall be calculated after deduction of the following items:

1° own shares and the elements referred to in § 1, 5°, 6° and 7°, issued and directly held by the insurance company;

2° participations in other insurance companies, reinsurance companies and insurance holding companies;

3° participations in a credit institution or financial institution within the meaning of the Law of 22 March 1993 on the legal status and supervision of credit institutions, in an investment firm or financial institution within the meaning of the Law of 6 April 1995 on the legal status and supervision of investment firms, and on intermediaries and investment advisers, or in a management company of undertakings for collective investment within the meaning of the Law of 20 July 2004 on certain forms of collective management of investment portfolios;

4° the subordinated loans, instruments and claims referred to in § 1, 5°, 6° and 7°, issued by the companies referred to in 2° in which the insurance company holds a participation;

5° the subordinated loans, instruments and claims issued by the companies referred to in 3° in which the insurance company holds a participation, which items form part of the own funds of those companies eligible to be taken into consideration for the supervision of compliance with the solvency requirements applicable to those companies;

6° participations in mixed financial holding companies and the elements referred to in 4° and 5°, issued by mixed financial holding companies in which the insurance company holds a participation.
For the calculation of the solvency margin on a company basis, insurance companies subject to supplementary supervision as referred to in Chapter VIIbis or Chapter VIIter shall be exempt from making the deductions referred to in paragraph 1, 2° to 6°, if those deductions concern components of the own funds of companies which are included in the calculation of the group position for the purposes of Chapters VIIbis and VIIter.

The [Bank] may exempt the insurance company from the deduction obligation referred to in paragraph 1, 2° to 6°, if the elements in question are held in connection with a restructuring or rescue operation for the companies concerned.

§4, paragraph 3, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The [Bank] may permit or require the insurance company to apply, instead of the deductions referred to in paragraph 1, 3°, 5° and 6°, one of the solvency methods authorised by the King [on the advice of the Bank] pursuant to Article 91octies decies of the Law. Use of the method based on the consolidated accounts shall be subject to the existence of integrated group management and integrated internal control of the entities to be included in the consolidated supervision. Any change of method shall require the prior approval of the [Bank].]

§ 4, last paragraph amended by Articles 4 and 18, 2° of the Royal Decree of 3 March 2011 – MB 9 March 2011

§ 4 replaced by Article 8 of the Law of 20 June 2005 – MB 26 August 2005

§ 5. For insurance companies which discount or reduce the technical provisions for claims to take account of the proceeds from their investments, pursuant to Article 34sexies, § 1, paragraph 2 of the Royal Decree of 17 November 1994 on the annual accounts of insurance companies, the available solvency margin shall be reduced by the difference between the technical provisions before discount or reduction, as stated in the notes, and the discounted or reduced technical provisions.

This adjustment shall be made for all risks in the "Non-life activities group" as defined in Annex I to the Royal Decree of 22 February 1991 containing general regulations relating to the supervision of insurance companies, except for risks in classes 1 and 2. For risks other than those in classes 1 and 2, no adjustment is necessary for the discounting of income included in the technical provisions.]


[Article 15ter

The guarantee fund referred to in Article 5, 6° shall be equal to one-third of the solvency margin.

Article inserted by Article 7 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Article 15quater

Foreign insurance companies must have, in Belgium, a solvency margin calculated in accordance with Articles 15 and 15bis. However, for the calculation of that margin, only the elements pertaining to the operations conducted by the branch shall be taken into consideration. One-third of the solvency margin shall constitute the guarantee fund.

The absolute minimum of the guarantee fund shall be equal to half of the minimum determined under Article 15ter.

Foreign companies must lodge half of the minimum guarantee fund as security. That security shall be imputed to the guarantee fund.]

Article inserted by Article 7 of the Royal Decree of 12 August 1994 – MB 16 September 1994

Article 16

§ 1. Insurance companies are required to calculate and record under the name of technical reserves or provisions the obligations to which they are subject both for execution of the insurance contracts [and operations] which they have effected and for the application of the statutory or regulatory provisions relating to those insurance operations.

§ 1, paragraph 1, amended by Article 33, 1° of the Law of 26 April 2010 – MB 28 May 2010

[The technical reserves or provisions shall concern both current contracts and contracts which have matured but have not yet been paid out in full, regardless of country where the risk is located; however, in the case of foreign companies established in Belgium, these provisions shall apply only to contracts concluded by the Belgian establishment.]

§ 1, paragraph 2, replaced by Article 5, § 1 of the Royal Decree of 22 February 1991 – MB 11 April 1991
[The King shall determine, on the advice of the Bank,] the method of calculation and, if appropriate, the minimum level of the technical reserves or provisions, including [the mathematical balance sheet reserves or provisions] and any provisions for profit-sharing by the insured persons; the part charged to reinsurers can never be deducted from the technical reserves or provisions.


§ 2. [The technical reserves or provisions referred to in § 1 of this Article, pertaining to insurance contracts [, operations] and obligations derived from the statutory or regulatory provisions relating to insurance operations, [and the technical debts determined by the King [on the advice of the Bank],] must be represented at all times by equivalent assets wholly owned by the insurance company and ring-fenced to guarantee the said obligations for each separately managed activity.]


Those assets are designated hereinafter as "covering assets".

[The King, on the advice of the Bank,] shall determine the nature of the covering assets, the rules on their location and valuation and, if appropriate, the limits on their allocation […].


[Belgian companies must lodge their depositable covering assets in open custody either with the [Bank] or with a credit institution, stockbroking firm or foreign investment firm [authorised by the FSMA, by the Bank] or by the competent authority of a Member State [of the European Economic Area] in which that credit institution, stockbroking firm or foreign investment firm has its head office.

[Foreign companies must lodge their depositable covering assets in open custody either with the National Bank of Belgium or with the Belgian branch of a credit institution or investment firm referred to in paragraph 4.]

§ 2, paragraph 5, replaced by Article 8, 3° of the Royal Decree of 12 August 1994 – MB 16 September 1994

[§ 3. Every insurance company shall keep at its head office a special register, called a permanent inventory, of the covering assets for each separately managed activity.

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

Where a covering asset entered in the register is subject to a right in rem in favour of a creditor or a third party, with the result that part of the value of the covering asset is not available for the purpose of covering commitments, that fact shall be recorded in the register and the amount not available shall not be included in the total value referred to in paragraph 2.

Without prejudice to the application of Article 21, § 1, paragraph 3, companies shall give notice to [the Bank] of the position concerning the permanent inventory for each separately managed activity in accordance with the form and content stipulated by the Bank, via the medium and within the time which the latter shall determine.]


Article 17

[In the event of a ban on the free disposal of assets located in Belgium pursuant to Article 26, [the Bank] may apply the following provisions to the company:]


1° The allocation of the movable and immovable covering assets shall form the subject of a written declaration by the company to [the Bank]; withdrawals or reductions shall be subject to the prior authorisation of [the Bank].

2° [In the case of covering assets lodged in Belgium in an open custody account, [the Bank] shall order the institution lodging the assets to block the account. [In the case of other depositable assets, [the Bank] shall order the company to deposit them immediately in a special, blocked account for each separately managed activity at the [Bank] or with a credit institution, stockbroking firm or foreign investment firm authorised by [the FSMA, by the Bank] or by the competent authority of a Member State [of the European Economic Area] in which that credit institution, stockbroking firm or foreign investment firm has its head office.]]


Paragraph 1, 2°, first indent, abrogated by Article 9, § 3 of the Law of 19 July 1991 – MB 9 August 1991

- The depositaries may return the assets lodged only on presentation of the authorisation of [the Bank];


- Deposit receipts must mention the allocation of the assets lodged and the prohibition on disposal without the authorisation of [the Bank];


- The depositaries and the companies shall be jointly liable for any loss resulting from non-compliance with the obligations under the two preceding paragraphs;
- [The Bank] shall inform the depositaries of their obligations under this § 1.


3° The immovable […] assets shall be subject to a legal mortgage in favour of all the policyholders or insurance beneficiaries.

Paragraph 1, 3°, paragraph 1, amended by Article 9, § 4 of the Law of 19 July 1991 – MB 9 August 1991
The registration shall be required by [the Bank] under the conditions laid down in Articles 82 to 87 of the Law of 16 December 1851 on the revision of the mortgage system.


The registration may take place at any time; it must take place pursuant to one of the measures referred to in Article 26.

The registration shall be deleted or reduced with the consent of [the Bank] under the conditions laid down in Articles 92 to 95 of the Law of 16 December 1851 cited above.

*Paragraph 1, 3° paragraph 4, amended by Article 26 of the Royal Decree of 25 March 2003 – MB 31 March 2003 and by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011*

The costs and fees relating to registration, deletion and reduction shall be charged to [the Bank]; they shall be imputed against the supervision costs [of the company concerned.]


4° In regard to the other […] assets which are not depositable, the King shall determine [, on the advice of the Bank] the rules concerning the precautionary measures to which those assets may be subject.


[5° [The Bank] may, by registered letter to the mortgage registrars, oppose the deletion or reduction of the mortgage granted by a third party in favour of the company.]


[The movable covering assets subject to the provisions of the preceding paragraph shall be unattachable except in favour of creditors holding rights or privileges acquired in good faith by a formality completed before the allocation of the said assets.]

[Article 17bis]

[The Bank] may, in the cases referred to in Article 26 [§5], request the competent authorities of the Member States in whose territory the assets of the insurance company are located to take the necessary measures to restrict or prohibit their free disposal. [The Bank] shall designate the assets to which these measures are to apply.]


Article 18

Taken together, the assets representing the technical provisions or reserves referred to in Article 16 shall form, for each separately managed activity, segregated assets reserved preferentially for the fulfilment of liabilities towards insured persons or insurance beneficiaries coming under that activity.

The segregated assets of each separately managed activity shall comprise the content of the permanent inventory prescribed by Article 16; in the case of the companies referred to [in Articles 17 and 17bis], those segregated assets shall comprise the permanent inventory kept by [the Bank] on the basis of the documents notified to it by the companies and duly recorded for that purpose.


Article 19

[§ 1. In regard to the establishment and application of their tariffs and conditions and all documents relating to the conclusion and execution of insurance contracts, the companies must comply with the [rules laid down pursuant to this Law by the King, on the advice of the Bank and the FSMA, each within its own sphere of competence.]


§ 2. The maximum reference interest rate for long-term life insurance operations shall be fixed by the [Bank]. The decision of the [Bank] need not be approved by the
§ 2, paragraph 1, amended by Article 23, 2° of the Royal Decree of 3 March 2011 – MB 9 March 2011

If the [Bank] fails to adjust the maximum reference interest rate it may be ordered by the Minister of Economic Affairs to make that adjustment within thirty days. If it fails to do so, the maximum reference interest rate referred to in paragraph 1 may be fixed by the minister responsible for economic affairs.

§ 2, paragraph 2, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

§ 3. When the [Bank] fixes the maximum reference interest rate referred to in § 2, the minister responsible for economic affairs may, on his own initiative or at the request of the Council of Ministers, exercise a right of call-back within fifteen days subject to the submission of detailed grounds.

If the minister responsible for economic affairs does not take a duly reasoned decision within thirty days from the date of exercising the right of call-back, the decision of the [Bank] shall become final. ]


[Article 19bis

All clauses and agreements which do not conform to the provisions of this Law or its implementing decrees and regulations shall be deemed to have been established from the date of conclusion of the contract in accordance with those provisions.

This provision shall not apply to contracts concluded before the entry into force of this Law. However, it shall apply with effect from their renewal or their amendment by the parties.

It shall also not apply to the tariffs.]


[Article 19ter

Without prejudice to the application of international treaties and agreements, all clauses and agreements attributing jurisdiction to foreign courts, to the exclusion of the Belgian courts, in respect of all disputes relating to insurance contracts shall be void.]

§ 1 abrogated by Article 104, 1° of the Law of 16 February 2009 – MB 16 March 2009

[…] [All documents intended for the policyholder, the insured person, the beneficiary, the injured party and the third parties concerned in the execution of the insurance contract] and, in general, all documents made available to the public by insurance companies in Belgium must contain the notices [determined by the King on the advice of the FSMA].


The King may also determine the information which insurance companies must supply to the policyholder before the conclusion of the contract and during the term of the contract.


Article 21

§ 1. The Bank and the FSMA shall determine, each within its own sphere of competence, the information which insurance companies must supply to enable them to verify whether those companies comply with the statutory and regulatory provisions applicable to them. The Bank and the FSMA shall likewise determine, each within its own sphere of competence, the frequency and arrangements for reporting that information.

§ 1 inserted by Article 25, 1° of the Royal Decree of 3 March 2011 – MB 9 March 2011

§ 1 bis. [[Without prejudice to § 1, insurance companies must] preserve the documents relating to contracts concluded by their Belgian establishment, either at the head office of the Belgian companies or at the Belgian head office of the agencies or branches of the foreign companies, or in any other place agreed in advance by [the Bank and by] [the FSMA], [each within its own sphere of competence].]

Without prejudice to other legal provisions, [the Bank and the FSMA may, each within its own sphere of competence,] determine by regulation the period for the compulsory preservation of the said documents.

§ 1, paragraph 2, amended by Article 26 of the Royal Decree of 25 March 2003 – MB 31 March 2003 and by Article 25, 2° (b) of the Royal Decree of 3 March 2011 – MB 9 March 2011

[On request by [the Bank or] [the FSMA], the insurance companies referred to in Article 2, § 1 shall be required to supply all information and documents necessary for the performance [of their respective tasks by the Bank and FSMA]. […]]


[The Bank and the FSMA may, each within its own sphere of competence,] on the premises of the companies or their branches, agencies or offices in Belgium, inspect all books, accounting documents, prospectuses and other documents and conduct all investigations relating to the financial position and activities of those companies.


[[The Bank and the FSMA may, each within its own sphere of competence] carry out the inspections referred to in paragraph 4 at the branches of Belgian companies established in another Member State, following prior notification of the competent authorities of that State. [They may] equally ask the competent authorities of the Member State of the branch to carry out those inspections on [their] behalf.]


[Insurance agents, brokers or intermediaries shall be required to [supply on request to the Bank and the FSMA, each within its own sphere of competence,] all information concerning the insurance contracts which they hold.

For the purpose of implementing the [four] preceding paragraphs, [the Bank and the FSMA may, each within its own sphere of competence,] delegate [members of their staff] or duly authorised independent experts to report [to them].


[§ 1ter.] If the provisions of Article 26 are applied to the insurance company[, the Bank and the FSMA, each within its own sphere of competence, may]:

§ 1bis renumbered by Article 25, 3° and the introduction amended by Article 25, 3° (a) of the Royal Decree of 3 March 2011 – MB 9 March 2011

[…] extend the request for information or documents and the on-site verification referred to in § 1, paragraphs 3 and 4, to any company established in Belgium over which the insurance company, acting alone or jointly or in concert with others, exercises de jure or de facto control within the meaning of the Royal Decree of 6 March 1990 on the consolidated accounts of companies;

§ 1bis, paragraph 1, first indent amended by Article 26 of the Royal Decree of 25 March 2003 – MB 31 March 2003 and by Article 25, 3° (b) of the Royal Decree of 3 March 2011 – MB 9 March 2011

[…] do the same with regard to companies or institutions established in Belgium which have concluded with the insurance company a management or reinsurance agreement or other agreement permitting transfer of the management;

§ 1bis, paragraph 2, 2nd indent amended by Article 25, 3° (b) of the Royal Decree of 3 March 2011 – MB 9 March 2011

- within the framework of international agreements, [the supervision referred to in § 1bis] may also be extended to the insurance branches and subsidiaries established abroad of insurance companies under Belgian law. [The Bank and the FSMA may], for the purposes of this paragraph, conclude agreements with foreign supervisory authorities.

§ 1bis, paragraph 1, third indent amended by Article 26 of the Royal Decree of 25 March 2003 – MB 31 March 2003 and by Article 25, 3° (c) of the Royal Decree of 3 March 2011 – MB 9 March 2011

That extension, which must form the subject of a reasoned decision, must be confined to the verification of the financial position of the insurance company subject to supervision and of fulfilment by that company of the commitments which it has contracted in regard to insured persons or beneficiaries of insurance contracts.

 […]
§ 1bis, paragraph 3, abrogated by Article 25, 3° (d) of the Royal Decree of 3 March 2011 – MB 9 March 2011


§ 2. […]

§ 2 abrogated by Article 25, 4° of the Royal Decree of 3 March 2011 – MB 9 March 2011

 §§ 3 – 3bis – 4 […]

 §§ 3, 3bis and 4 abrogated by Article 13, 4° of the Royal Decree of 12 August 1994 – MB 16 September 1994

 Article 21bis – 21septies

[...]


 Article 21octies

Article renumbered by Article 15 of the Royal Decree of 12 August 1994 – MB 16 September 1994

§ 1. Without prejudice to the application of Article 19bis, [the FSMA and the Bank shall require, each within its own sphere of competence] the withdrawal or rewriting of contract documents or advertising material which [they find] not to conform to the provisions laid down by or pursuant to the law. [They shall inform one another accordingly.]

§ 1 amended by Article 26, 1° (a), (b) and (c) of the Royal Decree of 3 March 2011 – MB 9 March 2011

[§ 2. The [Bank] may require a company to balance a tariff if it finds that the application of that tariff is loss-making. [It shall inform the FSMA accordingly].

§ 2, paragraph 1, amended by Article 26, 2° (a) and (b) of the Royal Decree of 3 March 2011 – MB 9 March 2011

Without prejudice to paragraph 1, the [Bank], acting at the request of a company and if it finds that, despite the application of Article 138bis -4, §§ 2 and 3 of the Law of 25 June 1992 on non-marine insurance contracts, that tariff is or could become loss-making, may, in the case of sickness insurance other than an occupational sickness
insurance contract as referred to in Article 138bis -2 of the Law of 25 June 1992, authorise the company to take measures to bring its tariffs into balance. Those measures may include changes to the cover conditions.

§ 2, paragraph 2, amended by Article 26, 2° (c) of the Royal Decree of 3 March 2011 – MB 9 March 2011

The tariff increase shall apply to contracts concluded with effect from notification of the decision of the [Bank] and, without prejudice to the policyholder's right of cancellation, it shall also apply to premiums and contributions under current contracts, falling due from the first day of the second month following notification of the [Bank]'s decision.

§ 2, paragraph 3, amended by Article 26, 2° (d) of the Royal Decree of 3 March 2011 – MB 9 March 2011

The tariff increase shall not be subject to the obligation to declare price increases, referred to by the Law of 22 January 1945 on economic regulation and prices and by its implementing decrees. [The Bank shall inform the FSMA and] the Prices Commission of the decision to increase the tariff. That decision shall not take effect until fifteen days after that notification, and shall be valid only for a period determined by the [Bank].]

§ 2, paragraph 4, amended by Article 26, 2° (e) of the Royal Decree of 3 March 2011 – MB 9 March 2011

§ 2 replaced by Article 12 of the Law of 17 June 2009 – MB 8 July 2011

§ 3. […]

§ 3 abrogated by Article 26, 3° of the Royal Decree of 3 March 2011 – MB 9 March 2011

[Article 21nonies

[...]  


Article 22

§ 1. Belgian insurance companies shall communicate to [the Bank and] [the FSMA] at least three weeks before the general meeting or, in the absence thereof, the meeting of the decision-making body of the company, the drafts […] of amendments
to the articles of association and of the decisions that they propose to take at that meeting which may affect the contracts in general.


[The Bank and the FSMA] may require that [their] observations concerning these drafts be brought to the knowledge of the general meeting or, in the absence thereof, the decision-making body of the company.

§ 1, paragraph 2, amended by Article 26 of the Royal Decree of 25 March 2003 – MB 31 March 2003 and by Article 27, 1° (b) of the Royal Decree of 3 March 2011 – MB 9 March 2011

Those observations and the responses must be recorded in the minutes.

[The provisions of the articles of association of mutual insurance associations relating to the criteria referred to in Article 15bis, § 1, 1° (a) and (b) may not be amended until after [the FSMA and the Bank have stated] that they have no objection to the amendment.]


§ 2. Belgian and foreign companies shall communicate to [the Bank and] [the FSMA] in the month following their approval by the general meeting or, in the absence thereof, by the decision-making body, the amendments to the articles of association and decisions which may affect the contracts […]


In regard to any decisions or amendments referred to in the preceding paragraph which would be contrary to the provisions of this law or its implementing measures, [the Bank or the FSMA, each within its own sphere of competence, shall, within a maximum of one month from the date on which such decisions or amendments come to its knowledge, oppose ] their implementation in Belgium.

§ 3. [Belgian companies and foreign companies established in Belgium shall periodically submit to the [Bank] a detailed financial statement. That statement shall be drawn up in accordance with the rules laid down by the [Bank] which shall also determine the frequency of reporting. The [Bank] may in addition stipulate the regular reporting of other figures or explanatory information necessary for verifying compliance with the provisions of this law or its implementing decrees and regulations. For certain categories of companies or in special cases duly reasoned, the [Bank] may authorise waivers of the regulations implementing this paragraph.]


[The senior management of the insurance company, where appropriate the management committee, shall declare to the [Bank] that the aforesaid periodic statements submitted to it by the company at the end of the first half of the financial year and at the end of the financial year conform to the accounts and inventories. To that end, the periodic statements must be complete, i.e. they must mention all the data shown in the accounts and inventories forming the basis of the statements, and they must be correct, i.e. they must tally exactly with the accounts and inventories on which they are based. The persons involved in the senior management shall confirm that they have done what is necessary to ensure that the aforesaid statements are drawn up in accordance with the current instructions of the [Bank], and pursuant to the accounting and valuation rules governing the making up of annual accounts, or in the case of periodic statements which do not relate to the end of the financial year, pursuant to the accounting and valuation rules which governed the making up of the annual accounts for the last financial year.]


[…]

§ 3, paragraph 3, abrogated by Article 105, 4° of the Law of 16 February 2009 – MB 16 March 2009

[§ 4. [Belgian companies which intend to conclude contracts concerning risks located outside [the European Economic Area]] must inform [the Bank] beforehand, stating the country in whose territory they wish to pursue this activity and the type of risks which they propose to cover.

Foreign companies established in Belgium must supply the same information if they intend to conclude contracts from Belgium concerning risks located abroad.]

[The King may, on the advice of the Bank,] determine the information or evidence which must be supplied for that purpose.

§ 4, paragraph 3, amended by Article 27, 3° of the Royal Decree of 3 March 2011 – MB 9 March 2011

If solvency certificates or class certificates are required pursuant to an obligation under an international agreement or treaty, they shall be issued by [the Bank].


In the event of a decision to refuse a certificate, specific reasons must be stated and notified to the company concerned.]

§ 4 inserted by Article 9, § 4 of the Royal Decree of 22 February 1991 – MB 11 April 1991

Article 23

Unless Article 22 applies, all changes to the financial or administrative organisation, in particular those concerning the data referred to in [Article 5, paragraph 2, 2° to 4°] must be notified to [the Bank] within one month.


[Unless Article 22 applies, all changes to the operating conditions, in particular those concerning the conditions referred to in Article 5, paragraph 2, 5°, must be notified to [the Bank].


Article 23bis

§ 1. Without prejudice to Articles 5 and 8 of the Law of 2 May 2007 on the disclosure of significant holdings, any natural or legal person, acting alone or in concert with others, who has taken a decision either to acquire, directly or indirectly, a qualifying holding in an insurance company under Belgian law, or to further increase, directly or indirectly, such a qualifying holding in an insurance company under Belgian law, as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 %, or so that the insurance company would become its subsidiary, must first give notice to the [Bank] in writing of the size of the intended holding and relevant information, as referred to in § 3, paragraph 3.

§ 1 amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

§ 2. The [Bank] shall, promptly and in any event within two working days following receipt of the notification and full information referred to in § 1, as well as following the possible subsequent receipt of the information referred to in paragraph 3, acknowledge receipt thereof in writing to the proposed acquirer. The acknowledgement of receipt shall indicate the expiry date of the assessment period.

§ 2, paragraph 1, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The [Bank] shall have a maximum of 60 working days, as from the date of the acknowledgement of receipt of the notification and of all documents required to be attached to the notification on the basis of the list referred to in § 3, paragraph 3, to carry out the assessment provided for in § 3.

§ 2, paragraph 2, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The [Bank] may, during the assessment period, and no later than on the fiftieth working day of that period, request any further information that is necessary to complete its assessment. Such request shall be made in writing and shall specify the additional information needed.

§ 2, paragraph 3, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

For the period between the date of request for information by the [Bank] and the receipt of a response thereto from the proposed acquirer, the assessment period shall be interrupted. That interruption shall not exceed 20 working days. After the deadline determined in accordance with the preceding paragraph, the [Bank] may make further
requests for completion or clarification of the information, but such requests shall not result in an interruption of the assessment period.

§ 2, paragraph 4, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The [Bank] may extend the interruption referred to in paragraph 4 up to 30 working days if:

(a) the proposed acquirer is located or regulated outside the Community; or

§ 2, paragraph 5, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

§ 3. During the assessment period referred to in § 2, the [Bank] may oppose the proposed acquisition where there are reasonable grounds for considering, on the basis of the criteria laid down in paragraph 2, that the proposed acquirer does not have the necessary qualities regarding the need to ensure the sound and prudent management of the insurance company, or if the information supplied by the proposed acquirer is incomplete.

§ 3, paragraph 1, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

In assessing the notification and the information referred to in § 1, and the additional information referred to in § 2, the [Bank] shall, in order to ensure the sound and prudent management of the insurance company in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the insurance company, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

(a) the reputation of the proposed acquirer;

(b) the reputation and experience of any person referred to in Article 90 who will direct the business of the insurance company as a result of the proposed acquisition;
(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the insurance company in which the acquisition is proposed;

(d) whether the insurance company will be able to comply and continue to comply with the prudential requirements based on this law and its implementing decrees, 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 authorities, and determine the allocation of responsibilities among the competent authorities;

(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

§ 3, paragraph 2, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The [Bank] shall publish on its website a list specifying the information that is necessary to carry out the assessment and that must be provided to the Bank at the time of notification referred to in § 1. The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition.

§ 3, paragraph 3, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

If the [Bank], upon completion of the assessment, decides to oppose the proposed acquisition, it shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing. An appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer.

§ 3, paragraph 4, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

If, by the end of the assessment period, the [Bank] has not opposed the proposed acquisition, the latter shall be deemed approved.

§ 3, paragraph 5, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The [Bank] may fix a maximum period for the conclusion of the proposed acquisition and extend it if appropriate.
§ 3, paragraph 6, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

§ 4. The [Bank] shall conduct the assessment referred to in § 3 in full consultation with any other competent authority concerned [or, depending on the case, with the FSMA] if the proposed acquirer is:

(a) a credit institution, insurance company, reinsurance company, investment firm or management company of undertakings for collective investment authorised in another Member State [or, depending on the case, by the FSMA]; or

§ 4, paragraph 1, (a) amended by Article 28, 1° (c) of the Royal Decree of 3 March 2011 – MB 9 March 2011

(b) the parent company of a company as referred to in (a); or

(c) a natural or legal person controlling a company as referred to in (a).

In the cases referred to in the preceding paragraph, any decision by the [Bank] shall mention any opinions or reservations expressed by the competent authority responsible for the proposed acquirer [or, depending on the case, by the FSMA].

§ 4, paragraph 2, amended by Articles 4 and 28, 2° of the Royal Decree of 3 March 2011 – MB 9 March 2011

Where the prudential assessment of a proposed acquisition falls within the competence of the supervisory authority for credit institutions, insurance companies, reinsurance companies, investment firms or management companies of undertakings for collective investment of another Member State [or within the competence of the FSMA], the [Bank] shall, as promptly as possible, exchange with that authority all information essential or relevant for the assessment. In this connection it shall communicate all relevant information on request, and all essential information on its own initiative.

§ 4, paragraph 3, amended by Articles 4 and 28, 3° (a) and (b) of the Royal Decree of 3 March 2011 – MB 9 March 2011

§ 5. Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in an insurance company must first give notice to the [Bank] in writing, indicating the proposed size of that person’s holding. Such a person shall likewise give notice to the [Bank] of a decision to reduce that person’s qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20 %, 30 % or 50 % or so that the insurance company would cease to be a subsidiary of that person.

§ 5 amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

§ 6. In the event of failure to effect the prior notifications stipulated by § 1 or § 5, or in the event of a holding being acquired or increased despite the opposition of the [Bank] referred to in § 3, the president [of the competent court] in whose jurisdiction
the insurance company has its head office, ruling in interlocutory proceedings, may take the measures referred to in Article 516, § 1 of the Companies Code, and may also declare void all or part of the decisions of the general meeting held in the cases referred to above.

§ 6, paragraph 1, amended by Article 5 of the Law of 2 June 2010 – MB 1 July 2010 and by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The procedure shall be initiated by a summons issued by the [Bank].

§6, paragraph 2, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

Article 516, § 3 of the Companies Code shall apply.

§ 7. Without prejudice to Article 5 of the Law of 2 May 2007 on the disclosure of significant holdings, any natural or legal person, acting alone or in concert with others, who has acquired, directly or indirectly, a qualifying holding in an insurance company under Belgian law, or who has increased, directly or indirectly, such a qualifying holding in an insurance company under Belgian law, as a result of which the proportion of the voting rights or of the capital held would reach or exceed 5 %, but without obtaining a qualifying holding, must give notice to the [Bank] in writing within ten working days following the acquisition.

§7, paragraph 1, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The same notification must be made within ten working days by any natural or legal person, acting alone or in concert with others, who has ceased to possess, directly or indirectly, a holding of more than 5% in the capital or voting rights of an insurance company, which did not constitute a qualifying holding.

The notifications referred to in paragraphs 2 and 3 shall state the exact identity of the acquirer(s), the number of shares acquired or disposed of, and the percentage of the voting rights or capital of the insurance company held after the acquisition or disposal, and the necessary information as indicated in the list published by the [Bank] on its website in accordance with § 3, paragraph 3.

§7, paragraph 3, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

§ 8. Any insurance company must inform the [Bank] if it becomes aware of any acquisitions or disposals of its securities or shares that that cause those holdings either to exceed or to fall below one of the thresholds referred to in § 1, paragraph 1.

§8, paragraph 1, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011
Insurance companies shall also, at least once a year, inform the [Bank] of the names of shareholders and members who, directly or indirectly, acting alone or in concert, possess qualifying holdings in their capital, and the percentage of the capital and voting rights thus held. They shall likewise inform the [Bank] of the number of shares and associated voting rights the acquisition or disposal of which has been notified to them in compliance with Article 515 of the Companies Code in cases where the articles of association do not require their declaration to the [Bank].]

§ 8, paragraph 2, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011


[Article 24

If the [Bank] has reasons to believe that the influence exercised by a natural or legal person who, directly or indirectly, possesses a qualifying holding in an insurance company is likely to compromise the sound and prudent management of the company, the Bank may, without prejudice to any other measures provided for by this law:

1° suspend the exercise of the voting rights attaching to the shares held by the shareholder or member in question; at the request of any interested person, it may allow the lifting of the measures which it has ordered; its decision shall be notified by the most appropriate means to the shareholder or member in question; its decision shall be enforceable as soon as it has been notified; the [Bank] may make its decision public;

2° order the shareholder or member in question to assign his shareholder's or member's rights within a time limit set by the [Bank].

Paragraph 1, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

If the assignment is not effected within the set time limit, the [Bank] may order the sequestration of the shareholder's or member's rights, placing them in the hands of the institution or a person specified by the [Bank]. The sequestrator shall inform the insurance company which shall make the corresponding amendment to the record of registered shares and which shall allow the associated rights to be exercised only by the sequestrator. The sequestrator shall act in the interests of sound and prudent management of the insurance company and in the interests of the holder of the sequestered shareholder's rights. He shall exercise all the rights attaching to the shares. The sequestrator shall not hand over to the said holder the sums collected by way of dividend or otherwise until that holder has complied with the order referred to in paragraph 1, 2°. The consent of the said holder shall be required for the purpose of subscribing to capital increases or other securities, whether or not they confer voting rights, opting for a dividend payable in company shares, responding to public takeover or exchange offers, and paying up shares which are not fully paid. The shareholder's rights acquired by these operations shall be automatically subject to the sequestration provided for above. The sequestrator's remuneration shall be fixed by the [Bank] and shall be charged to the said holder. The sequestrator may deduct that
remuneration from the sums paid to him in his capacity as sequestrator by the said holder in anticipation or on completion of the aforesaid operations.

**Paragraph 2, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011**

If, following expiry of the time limit set in accordance with 2°, paragraph 1, first sentence, voting rights were exercised by the original holder or by a person other than the sequestrator acting on behalf of that holder, despite the suspension of their exercise in accordance with paragraph 1, 1°, the [competent court in whose jurisdiction the insurance company] has its seat may, at the request of the [Bank], declare that all or some of the decisions of the general meeting are void if, without the voting rights illegally exercised, the attendance or majority quorum required for those decisions would not have been achieved.


**Article [25]**

**Article renumbered by Article 14 of the Law of 31 July 2009 – MB 8 September 2009**

Except for payments which must be made abroad pursuant to insurance or reinsurance contracts […], any intention on the part of the Belgian agency or branch of a foreign company to transfer any sums or assets abroad must be notified to the [Bank] at least fifteen days before the operation takes place. [The Bank] may oppose the transfer if it considers that the financial position of the agency or branch in Belgium is not satisfactory.


**Article 26**

[§ 1. If the [Bank] finds that an insurance company does not operate in accordance with the provisions of this law and its implementing decrees and regulations, that its management or financial position does not offer adequate guarantees of the proper fulfilment of its commitments, or that its administrative or accounting organisation or its internal control has serious defects, it shall set the time limit within which the situation must be remedied.

§ 1, paragraph 1, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011**

If the situation has not been remedied on expiry of that time limit, the [Bank] may:
§ 1, introduction to paragraph 2, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

1° appoint a special inspector. In that case, the general or specific written authorisation of the special inspector shall be required for all acts and decisions of all bodies of the company and for those of the persons in charge of its management; the [Bank] may, however, limit the scope of the operations subject to authorisation. The special inspector may submit for consideration by all bodies of the company, including the general meeting, any proposals which he considers appropriate. The remuneration of the special inspector shall be set by the [Bank] and paid by the company.

§ 1, paragraph 2, 1°, paragraph 1, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

Members of the governing and management bodies and persons in charge of the management who take actions or decisions without obtaining the required authorisation of the special inspector shall be jointly and severally liable for any resulting detriment suffered by the company or by third parties.

If the [Bank] has published the appointment of the special inspector in the "Moniteur belge/Belgisch Staatsblad" (Belgian Official Gazette) and specified the actions and decisions subject to his authorisation, any actions and decisions taken without that requisite authorisation shall be void unless the special inspector ratifies them. Under the same conditions, any decisions of the general meeting passed without obtaining the requisite authorisation of the special inspector shall be void unless the special inspector ratifies them.

§ 1, paragraph 2, 1°, paragraph 3, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The [Bank] may appoint a substitute inspector.

§ 1, paragraph 2, 1°, paragraph 4, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

2° suspend, for the period which it shall determine, the direct or indirect exercise of all or some of the activities of the company, or prohibit such exercise; that suspension may imply, to the extent determined by the [Bank], the total or partial suspension of the execution of current contracts.

§ 1, paragraph 2, 2°, paragraph 1, amended by Article 2, 1° of the Law of 2 June 2010 – MB 14 June 2010, and by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

Members of the governing and management bodies and persons in charge of the management who take actions or decisions in violation of the [Bank's] decision shall be jointly and severally liable for any resulting detriment suffered by the company or by third parties.
§ 1, paragraph 2, 2°, paragraph 2, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

If the [Bank] has published the suspension [or prohibition] in the "Moniteur belge/Belgisch Staatsblad" (Belgian Official Gazette), any actions or decisions which are contrary to that suspension [or prohibition] shall be void.

§ 1, paragraph 2, 2°, paragraph 3, amended by Articles 4 and 29, 1° of the Royal Decree of 3 March 2011 – MB 9 March 2011

3° order the replacement of managers, directors or authorised agents of the insurance company within a time limit which it shall set and, if they are not replaced within that time limit, replace all the management bodies of the company with a temporary manager who shall possess the powers of the persons replaced. The [Bank] may publish its decision in the "Moniteur belge/Belgisch Staatsblad" (Belgian Official Gazette).

§ 1, paragraph 2, 3°, paragraph 1, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The remuneration of the temporary manager shall be fixed by the [Bank] and paid by the company concerned.

§ 1, paragraph 2, 3°, paragraph 2, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The [Bank] may at any time terminate the mandate of the temporary manager and replace him, either ex officio or at the request of a majority of the shareholders or members, if they demonstrate that his management no longer offers adequate guarantees.

§ 1, paragraph 2, 3°, paragraph 3, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

4° revoke the authorisation.

[In extremely urgent cases, the [Bank] may adopt the measures referred to in this § 1 without first stipulating a recovery period.]


[In the event of serious and systematic contravention of the rules referred to in Article 45, § 1, paragraph 1, 3°, or § 2 of the Law of 2 August 2002, the Bank may revoke the authorisation on the request of the FSMA in accordance with the procedure and conditions laid down by Article 36bis of that same law.

The Bank shall inform the FSMA of the measures which it has taken pursuant to the preceding paragraphs].
§ 1, paragraphs 4 and 5, inserted by Article 29, 2° of the Royal Decree of 3 March 2011 – MB 9 March 2011

§ 2. The decisions of the FSMA referred to in § 1 shall take effect in regard to the company from the date of notification to the latter by registered letter or by letter with advice of receipt. They shall take effect for third parties from the date of their publication in accordance with § 1.

[§ 2bis. If the Bank knows that an insurance company has set up a special mechanism with the aim or effect of promoting tax evasion by third parties, §§ 1 and 2 shall apply.]

§ 2bis inserted by Article 29, 3° of the Royal Decree of 3 March 2011 – MB 9 March 2011

§ 3. § 1, paragraph 1 and § 2 shall not apply where authorisation is withdrawn in the case of an insurance company declared bankrupt.

§ 4. At the request of any interested party, the [competent court] shall make the declarations of nullity provided for in § 1, paragraph 2, 1° and 2°.

§ 4, paragraph 1 amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The revocation action shall be brought against the company. Where justified on serious grounds, the applicant for revocation may, in interlocutory proceedings, seek temporary suspension of the contested actions or decisions. The suspension order and the nullity ruling shall take effect in regard to everyone. If the suspended or annulled action or decision was published, the suspension order and the nullity ruling shall be published in the same way in extract form.

If the nullity could affect rights acquired in good faith by a third party in relation to the company, the court may declare the nullity ineffective in regard to those rights, subject to any right of the applicant to claim damages.

The revocation action may no longer be brought after expiry of a period of six months from the date on which the actions or decisions in question have effect vis-à-vis the person invoking nullity, or the date on which they became known to that person.

§ 5. The [Bank] may restrict or prohibit the free disposal of the assets of an insurance company in the following cases:

§ 5, introduction to paragraph 1, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

a) if the insurance company does not comply with the provisions of Article 16 and its implementing decrees and regulations;
b) in the exceptional circumstance in which, when the [Bank] has required a recovery plan because the solvency margin no longer attains the level stipulated in Article 15, § 1 or 15quater, the [Bank] is of the opinion that the financial position of the insurance company will deteriorate further;

§ 5, paragraph 1, (b) amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

c) if the solvency margin no longer attains the level of the guarantee fund defined in Article 15ter or 15quater.

§ 6. In order to restore the financial position of a company whose solvency margin no longer attains the level stipulated in Article 15, § 1 or 15quater, the [Bank] shall require a recovery plan to be submitted to it for approval within the time limit which it shall specify.

§ 6, paragraph 1, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

If the solvency margin no longer attains the level of the guarantee fund defined in Articles 15ter or 15quater, the [Bank] shall require the company to submit a short-term finance scheme.

§ 6, paragraph 2, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

§ 7. Where compliance with the rights of policyholders and/or insured persons is threatened by the deterioration in the financial position of the insurance company, the [Bank] may require the company to submit a financial recovery plan. That plan shall, at least, include detailed particulars or evidence concerning the following items for the subsequent three financial years:

§ 7, introduction to paragraph 1, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

(a) estimates of management expenses, in particular current general expenses and commissions;

(b) a detailed forecast containing estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;

(c) a forecast balance sheet;

(d) estimates of the financial resources intended to cover the liabilities and the required solvency margin;

(e) the overall reinsurance policy.
§ 8. In the situation referred to in § 7, the [Bank] may require companies to establish a larger solvency margin so that they can continue to satisfy the solvency requirements in the future.

§ 8, paragraph 1, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The level of that larger required solvency margin shall be determined in accordance with the financial recovery plan referred to in § 7.

§ 9. Where the [Bank] has required a financial recovery plan in accordance with § 7, it cannot issue a solvency certificate as referred to in Articles 53 and 60 of the Law, in Article 16(1)(a) of Directive 88/357/EEC and in Article 42 of Directive 2002/83/EC as long as it considers that the rights of the policyholders and/or the insured persons are threatened.

§ 9, paragraph 1, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The [Bank] may adjust downwards the value of the elements of the available solvency margin, in particular if the market value of those elements has changed significantly since the end of the last financial year.

§ 9, paragraph 2, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The [Bank] may reduce the influence of reinsurance on the required solvency margin if the content or quality of the reinsurance contracts has changed significantly since the last financial year, or if there is no provision, or only limited provision, for risk transfer under those contracts.

§ 9, paragraph 3, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

§ 10. The Bank shall inform the FSMA of decisions which it has taken in accordance with §§ 1 and 7, and, if appropriate, it shall keep the FSMA informed of the outcome of appeals against those decisions in accordance with § 4.

§ 10 inserted by Article 29, 4° of the Royal Decree of 3 March 2011 – MB 9 March 2011


[Article 26bis]
§ 1. Where one of the situations referred to in Article 26, § 1 may affect the 
stability of the Belgian or international financial system owing to the volume of the 
liabilities of the insurance company concerned or its role in the financial system, the 
King may, by decree deliberated by the Council of Ministers, either at the request of 
the [Bank or on his own initiative, after obtaining the advice of the Bank], order any 
act of disposal in favour of the State or any other Belgian or foreign person, under 
public or private law, in particular any act of assignment, sale or contribution 
concerning:

§ 1 amended by Article 30 of the Royal Decree of 3 March 2011 – MB 9 March 
2011

1° the assets, the liabilities or one or more branches of activity and more 
generally, all or part of the rights and obligations of the insurance company 
concerned;

2° shares issued by the insurance company, whether or not those shares represent 
the capital and/or confer voting rights.

§ 2. The royal decree passed pursuant to § 1 shall define the compensation payable 
to the owners of the assets or the holders of the rights forming the subject of the act of 
disposal provided for by the decree. If the assignee designated by the royal decree is a 
person other than the State, the price due from the assignee under the agreement 
concluded with the State shall accrue to the said owners or holders by way of 
compensation, in accordance with the allocation formula defined by that same decree.

§ 3. The royal decree passed pursuant to § 1 shall be notified to the insurance 
company concerned. The measures provided for by that decree shall also be published 
in a notice in the "Moniteur belge/Belgisch Staatsblad" (Belgian Official Gazette).

As soon as the insurance company has received the notification referred to in the 
preceding paragraph, it shall lose the free disposal of the assets referred to in the acts 
of disposal provided for by the royal decree.

§ 4. The acts referred to in § 1 may not be declared unenforceable pursuant to 
Articles 17, 18 or 20 of the Law of 8 August 1997 on bankruptcies.

Notwithstanding any contractual provision to the contrary, the measures adopted by 
the King pursuant to § 1 may not have the effect of modifying the terms of an 
agreement concluded between the insurance company and one or more third parties, 
or terminating such an agreement, nor giving any party the right of unilateral 
cancellation.

Any clause in the articles of association or in an agreement concerning approval or 
pre-emption, any third party option to purchase and any clause in the articles of 
association or in an agreement preventing changes to the control of the insurance 
company shall be invalid in regard to the measures adopted by the King pursuant to § 
1.
The King shall have power to take all other provisions necessary to ensure the proper implementation of the measures taken pursuant to § 1.

§ 5. The civil liability of persons who, in the name of the State or at its request, are involved in the measures referred to by this Article, being incurred by or in connection with their decisions, actions and conduct concerning these measures, shall be limited to cases of wilful deception or gross negligence on their part. The existence of gross negligence must be assessed with due regard for the specific circumstances of the case, and in particular the urgency confronting those persons, financial market practices, the complexity of the case, the threats to the protection of savings and the risk of damage to the national economy which would result from the discontinuation of the insurance company concerned.

§ 6. Any disputes which may arise as a result of the actions referred to in this Article, and the liability referred to in § 5, shall fall within the exclusive competence of the Belgian courts, which will apply exclusively Belgian law.

§ 7. For the purposes of applying the provisions transposing Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of companies, businesses or parts of companies or businesses, the actions carried out pursuant to § 1, 1° shall be regarded as actions carried out by the insurance company itself.

§ 8. Without prejudice to the general legal principles which it may invoke, the board of directors of the insurance company may waive the restrictions on its management powers under the articles of association if one of the situations referred to in Article 26, § 1, paragraph 1, could affect the stability of the Belgian or international financial system owing to the volume of the commitments of the insurance company concerned or its role in the financial system. The board of directors shall produce a special report justifying recourse to this provision and setting out the decisions taken; that report shall be submitted to the general meeting within two months.

Article inserted by Article 3 of the Law of 2 June 2010 – MB 14 June 2010

[Article 26ter]

§ 1. For the purposes of this Article, the following definitions shall apply:

1° royal decree: the royal decree adopted following deliberation in the Council of Ministers pursuant to Article 26bis, § 1.

2° act of disposal: the assignment or other act of disposal provided for by the royal decree;

3° court: the Brussels court of first instance;
4° owners: the natural or legal persons who, on the date of the royal decree, own the assets or shares or hold the rights forming the subject of the act of disposal;

5° third assignee: the natural or legal person other than the Belgian State who, under the royal decree, is to acquire the assets, shares or rights forming the subject of the act of disposal;

6° compensation: the compensation provided for by the royal decree in favour of the owners in return for the act of disposal.

§ 2. The royal decree shall enter into force on the date of publication in the "Moniteur belge/Belgisch Staatsblad" (Belgian Official Gazette) of the judgment referred to in § 8.

§ 3. The Belgian State shall lodge at the court registry an application seeking confirmation that the act of disposal conforms to the law and that the compensation appears fair, taking account in particular of the criteria specified in § 7, paragraph 4.

Under penalty of being null and void, the application must include:

1° the identity of the insurance company concerned;
2° the identity of the third assignee, if appropriate;
3° the justification for the act of disposal in the light of the criteria referred to in Article 26bis, § 1;
4° the compensation, the basis on which it was determined, particularly in regard to its variable component and, if appropriate, the formula for allocation among the owners;
5° if appropriate, the public authority authorisations required and all the other suspensive conditions to which the act of disposal is subject;
6° if appropriate, the price agreed with the third assignee for the assets or shares forming the subject of the act of disposal and the mechanisms for revising or adjusting that price;
7° the date, month and year;
8° the signature of the person representing the Belgian State or the Belgian State's lawyer.

A copy of the royal decree shall be attached to the application.

The provisions of Part 4, Book II, Title Vbis of the Judicial Code, including Articles 1034bis to 1034sexies, shall not apply to the application.

§ 4. The procedure initiated by the application referred to in § 3 shall exclude all other simultaneous or future appeals or actions against the royal decree or against the act of disposal, with the exception of the application referred to in § 11. The lodging of the application shall render nugatory any other proceedings against the royal decree or act of disposal initiated previously and still pending before another ordinary or administrative court.

§ 5. Within seventy-two hours of the lodging of the application referred to in § 3, the president of the court shall determine, by order, the date and time of the hearing
referred to in § 7, which must take place within seven days following the lodging of the application. That order shall reproduce all the information provided for in § 3, paragraph 2.

The order shall be notified by the registry by registered missive to the Belgian State, the insurance company concerned and the third assignee, if any, and published simultaneously in the "Moniteur belge/Belgisch Staatsblad" (Belgian Official Gazette). That publication shall constitute notification to any owners other than the insurance company concerned.

Within twenty-four hours of the notification, the insurance company concerned shall also publish the order on its website.

§ 6. The persons referred to in § 5, paragraph 2, may consult the application referred to in § 3 and its annexes at the registry, free of charge, up to such time as the judgment referred to in § 8 is pronounced.

§ 7. At the hearing fixed by the president of the court and any subsequent hearings which the court considers useful to hold, the court shall hear the Belgian State, the insurance company concerned, any third assignee and the owners intervening voluntarily in the procedure.

Notwithstanding the provisions of Chapter II of Title III of Book II of Part IV of the Judicial Code, no person other than those referred to in the preceding paragraph may intervene in the procedure.

After hearing the observations of the parties, the court shall verify whether the act of disposal conforms to the law and whether the compensation appears fair.

The court shall take account of the actual situation of the insurance company concerned at the time of the act of disposal, and in particular its financial position as it was or would have been if the public aid which it received directly or indirectly had not been granted. For the purposes of this paragraph, advances of emergency liquidity and guarantees granted by a legal person under public law are regarded as equivalent to public aid.

The court shall decide by one and the same judgment which shall be passed within twenty days following the hearing fixed by the president of the court.

§ 8. The judgment whereby the court finds that the act of disposal is lawful and the compensation seems fair shall constitute the transfer of ownership of the assets or shares forming the subject of the act of disposal, but subject to the suspensive conditions referred to in § 3, paragraph 2, 5°.

§ 9. The judgment referred to in § 8 is not open to appeal or to an application to set it aside, including by a third party.

It shall be notified by registered missive to the Belgian State, the insurance company concerned and the third assignee, if any, and published simultaneously in extract form in the "Moniteur belge/Belgisch Staatsblad" (Belgian Official Gazette).
That publication shall constitute notification to any owners other than the insurance company concerned, and shall render the act of disposal enforceable against third parties, without further formalities.

Within twenty-four hours of the notification, the insurance company concerned shall likewise publish the judgment on its website.

§ 10. Following the notification of the judgment referred to in § 8, the Belgian State or the third assignee, if any, shall deposit the amount of the compensation with the Caisse des Dépôts et Consignations/Deposito- en Consignatiekas without any further formalities being required in that respect.

A notice confirming fulfilment of the suspensive conditions referred to in § 3, paragraph 2, 5° shall be published in the "Moniteur belge/Belgisch Staatsblad" (Belgian Official Gazette) by the Belgian State.

On publication of the notice referred to in paragraph 2, the Caisse des Dépôts et Consignations/Deposito- en Consignatiekas must pay to the owners, in accordance with the arrangements decreed by the King, the amount of the compensation deposited, without prejudice to any attachment orders or objections duly effected in respect of the amount deposited.

§ 11. The owners may file an application at the court seeking revision of the compensation payment within two months of the publication in the "Moniteur belge/Belgisch Staatsblad" (Belgian Official Gazette) of the judgment referred to in § 8, on pain of inadmissibility. That application shall not affect the transfer of ownership of the assets, securities or shares forming the subject of the act of disposal.

In other respects the application for revision shall be governed by the Judicial Code.
§ 7, paragraph 4, shall apply.]

Article inserted by Article 2 of the Law of 2 June 2010 – MB 14 June 2010

Article 27.

Where the results of a company could compromise the interests of insured persons and insurance beneficiaries, [the Bank] may recommend all appropriate measures to that company with a view to its merger with or absorption by an authorised company.


Any merger or absorption plan must be submitted for the approval of [the Bank] by the companies concerned.

If, despite the recommendations of [the Bank], a company fails to seek or take appropriate measures, and if that failure could seriously harm the interests of the company's creditors, [the Bank] may appoint a temporary manager in accordance with the provisions [of Article 26, § 1].


[Article 28

Where the competent authorities of another Member State in which an insurance company under Belgian law has established a branch or is pursuing business under the freedom to provide services notifies [the Bank or the FSMA, depending on the case] that this company has infringed the laws, regulations or administrative provisions which are applicable in that Member State and which come under the supervision of those authorities, [the Bank or the FSMA, depending on the case,] shall, at the earliest opportunity, take all appropriate measures from among those provided for in Articles 26 and 27 to ensure that the company concerned remedies that irregular situation. [It] shall inform the said supervisory authorities of the measures taken.]


Article 28|bis|

Article renumbered by Article 20 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[The directors, managers or authorised agents of insurance companies] shall be liable to the insured persons or any third beneficiaries of insurance contracts for any detriment resulting from the violation of the obligations imposed on insurance companies by this law and its implementing regulations.


In regard to infringements in which they were not involved, they shall not be discharged of that liability unless no fault can be attributed to them and unless they cannot be accused of failing to use all means at their disposal to prevent or limit the detriment.
Where more than one person is liable for the same detriment in accordance with the preceding paragraphs, joint and several liability may be invoked.

[CHAPTER III bis]
Law applicable to insurance contracts relating to risks located in the Member States [of the European Economic Area] and coming under the non-life group of activities


[Section I
General provisions

Article 28ter

§ 1. Notwithstanding any clause to the contrary, if the contract relates to risks located in Belgium and the policyholder has his habitual residence or central administration there, the law applicable shall be Belgian law.

By way of derogation from paragraph 1, if the contract relates to risks located in Belgium and the policyholder does not have his habitual residence or central administration there, the parties to the insurance contract may choose to apply either Belgian law or the law of the country where the policyholder has his habitual residence or central administration.

§ 1 replaced by Article 4 of the Royal Decree of 8 January 1993 – MB 9 February 1993

§ 2. [If the contract relates to risks located in a Member State [of the European Economic Area] other than Belgium and the parties have not chosen the applicable law, the contract shall be governed by the law of the Member State where the risk is located.]


§ 3. Where the policyholder is engaged in an industrial or commercial activity or in one of the liberal professions and the contract covers two or more risks relating to such activities located in Belgium and in one or more other Member States [of the European Economic Area], the parties to the contract may choose between application of the law of the Member States where those risks are located or the law of the country where the policyholder has is habitual residence or central administration.

§ 3 amended by Article 10 of the Law of 19 November 2004 – MB 28 December 2004
§ 4. Notwithstanding §§ 1, paragraph 2, §§ 2 and 3, if the Member States referred to in those §§ 1, 2 and 3 grant greater freedom of choice in respect of the law applicable to the contract, the parties may exercise that freedom.

§ 4 amended by Article 22, 1° of the Royal Decree of 12 August 1994 – MB 16 September 1994

§ 5. Notwithstanding §§ 1, 2 and 3, if the contract relates to risks located in Belgium but those risks are limited to claims which may arise in another Member State [of the European Economic Area], the parties to the contract may choose the law of that State.


§ 6. For large risks as defined by the King [on the advice of the Bank], the parties to the contract shall be free to choose the law applicable.

§ 6, paragraph 1, amended by Article 33 of the Royal Decree of 3 March 2011 – MB 9 March 2011

In that case, if all elements of the contract are located in Belgian territory at the time when the law is chosen, the choice by the parties of a law other than Belgian law shall be without prejudice to the mandatory provisions of Belgian law.

§ 7. The choice referred to in §§ 1, paragraph 2, and §§ 2 to 6] must be explicit or must be perfectly clear from the contract clauses or the circumstances of the case. If that is not so or if no choice has been made, the contract shall be governed by the law of the country selected from among the countries eligible pursuant to §§ 1, paragraph 2, and §§ 2 to 6] with which it has the closest links.

§ 7 amended by Article 22, 2° of the Royal Decree of 12 August 1994 – MB 16 September 1994

If one part of the contract can be separated from the rest of the contract and has a closer link with another of the countries eligible pursuant to the said §§ 1, paragraph 2, and §§ 2 to 6, the law of that other country may be applied to that part of the contract.

It is presumed that the contract has the closest links with the country where the risk is located.

§ 8. If a State comprises more than one territorial unit, each with its own legal rules on contractual obligations, each unit shall be regarded as a State for the purpose of identifying the law applicable under this chapter.]


[Article 28quater
§ 1. If a matter is referred to a Belgian court, the provisions of Article 28 ter shall
be without prejudice to the application of the mandatory Belgian legal rules governing
the situation, whatever the law applicable to the contract.

Mandatory provisions of the law of the Member State where the risk is located or of a
Member State imposing the insurance obligation may be put into effect if and in so far
as, according to the law of that State, the provisions are applicable whatever the law
governing the contract.

§ 2. The mandatory provisions of Belgian law shall apply whatever the law chosen
by the parties if the risk is located in Belgium or if Belgium imposes the insurance
obligation.

§ 3. If the contract covers risks located in more than one Member State the contract
shall be considered, for the purposes of this Article, as comprising multiple contracts
each of which relates to only one Member State.

Article inserted by Article 16 of the Royal Decree of 22 February 1991 – MB 11
April 1991

Section II
Special provisions on compulsory insurance

Article 28 quinquies

If, in the case of compulsory insurance, there is a contradiction between the law of the
Member State where the risk is located and the law of the Member State imposing the
obligation to take out insurance, the latter law shall prevail.

Article inserted by Article 16 of the Royal Decree of 22 February 1991 – MB 11
April 1991

[Article 28 sexies

Contracts intended to satisfy an insurance obligation imposed by Belgian law shall be
governed by Belgian law.

If the insurance contract provides cover in more than one Member State at least one of
which imposes an obligation to take out insurance, the contract shall be considered,
for the purposes of this Article, as comprising multiple contracts each of which relates
to only one Member State.

Article inserted by Article 16 of the Royal Decree of 22 February 1991 – MB 11
April 1991

[Article 28 septies

If, pursuant to the Belgian law imposing the insurance obligation, the insurance
company must give notice to the authorities of any cessation of cover, such cessation
may be invoked against injured third parties only in the circumstances laid down by
Belgian law.]

[Article 28octies]

The provisions of this chapter shall not apply to current contracts.]


[CHAPTER III ter

Law applicable to insurance contracts relating to risks located in Member States [of the European Economic Area] and coming under the life group of activities


[Article 28nonies]

§ 1. Notwithstanding any clause to the contrary, if the contract relates to risks located in Belgium, the law applicable shall be Belgian law.

By way of derogation from paragraph 1, if the policyholder is a natural person who has his habitual residence in Belgium but who is a national of a Member State [of the European Economic Area] other than Belgium, the parties may choose to apply the law of that State.

§ 1, paragraph 2, amended by Article 10 of the Law of 19 November 2004 – MB 28 December 2004

§ 2. If the contract relates to risks located in a Member State [of the European Economic Area] other than Belgium and the parties have not chosen the applicable law, the contract shall be governed by the law of the Member State where the risk is located.


§ 3. If a State comprises more than one territorial unit, each with its own legal rules on contractual obligations, each unit shall be regarded as a State for the purpose of designating the law applicable under this chapter.]

Article inserted by Article 5 of the Royal Decree of 8 January 1993 – MB 9 February 1993

[Article 28decies]
§ 1. If a matter is referred to a Belgian court, the provisions of Article 28 nonies shall be without prejudice to the application of the mandatory Belgian legal rules governing the situation, whatever the law applicable to the contract. Mandatory provisions of the law of the Member State where the risk is located may be put into effect if and in so far as, according to the law of that State, those provisions are applicable whatever the law governing the contract.

§ 2. The mandatory provisions of Belgian law shall apply whatever the law chosen by the parties if the risk is located in Belgium.

**Article inserted by Article 5 of the Royal Decree of 8 January 1993 – MB 9 February 1993**

**CHAPTER IV**

**The organisation of supervision**

**Section I**

[by the Bank and the FSMA]

**Heading replaced by Article 34 of the Royal Decree of 3 March 2011 – MB 9 March 2011**

Articles 29-35

[...]


**Article 36**

[...]

**Article abrogated by Article 35 of the Royal Decree of 3 March 2011 – MB 9 March 2011**

**Article 37**

[In order to ensure the effective, coordinated supervision of insurance companies, the Bank and the FSMA shall conclude a protocol which they shall publish on their respective websites.

That protocol shall determine the arrangements for collaboration between the Bank and the FSMA in all cases where the law provides for an opinion, a consultation, the provision of information or any other contact between the two institutions, and in cases where it is necessary for the two institutions to act in concert to ensure the uniform application of the legislation.]

[Article 37bis]

§ 1. [The Bank] shall inform the European Commission [and the supervisory authorities of the other Member States] of any authorisation granted to an insurance company which is a direct or indirect subsidiary, one or more of whose parent companies are governed by the laws of a State which is not a member [of the European Economic Area].


[The notification to the European Commission] shall also state the identity of such parent company(ies) and, if appropriate, contain an indication of the financial structure of the group controlling the authorised insurance companies.


In the cases referred to in § 4, paragraphs 2 to 4 of the aforesaid Articles 29b and 32b, [the Bank] shall limit or suspend its decisions on the authorisation of insurance companies referred to in paragraph 1, in accordance with the procedures laid down by the Council of the European Union or the European Commission pursuant to those provisions.


§ 2. Where a company governed by the law of a State which is not a member [of the European Economic Area] acquires a direct or indirect holding in an insurance company which would turn that insurance company into a subsidiary of that first undertaking, [the Bank] shall inform the European Commission [and the competent authorities of the other Member States].


[The notification to the European Commission] shall also state the identity of such parent undertaking, the amount of the holding and, if appropriate, it shall indicate the financial structure of the group acquiring the holding.


[The Bank] shall limit or prohibit the acquisition in the cases referred to in § 4, paragraphs 2 to 4 of the said Articles 29b and 32b, in accordance with the procedures and for the period laid down by the Council of the European Union or the European Commission pursuant to those provisions.]


[Article 37ter]

[The Bank] shall inform the Commission of the European Communities of any general difficulties encountered by Belgian insurance companies in establishing themselves or pursuing activities in a country outside [the European Economic Area].]


Section II
[Supervision by auditors]


Article 38

[[Without prejudice to Article 87ter of the Law of 2 August 2002,] in insurance companies under Belgian law [the function of the statutory auditor] laid down by the Companies Code may be assigned only to one or more auditors or audit firms accredited by the [Bank] in accordance with Article 40.

Paragraph 1, amended by Articles 4 and 38 of the Royal Decree of 3 March 2011 – MB 9 March 2011

In insurance companies under Belgian law which are not required by the Companies Code to have a statutory auditor, the general meeting of members or partners shall appoint one or more auditors or audit firms as provided for in paragraph 1. The latter shall exercise the function and bear the title of statutory auditor. The provisions of Title VII Book IV of the Companies Code on statutory auditors shall apply.

Insurance companies may appoint substitute statutory auditors who exercise the statutory auditor function in the event of long-term incapacity of the statutory auditor. The provisions of this Article and of Article 39 shall apply to these substitutes.

The accredited statutory auditors, appointed in accordance with this Article, shall certify the consolidated annual accounts of the insurance company.]

Article 39

[Accredited audit firms shall exercise the statutory auditor function, referred to in Article 38, through an accredited auditor whom they shall appoint in accordance with Article 132 of the Companies Code. The provisions of this law and its implementing decrees relating to the appointment, function, duties and prohibitions applicable to statutory auditors, and with regard to the sanctions, other than penal sanctions, applicable to auditors, shall apply to both the audit firms and to the accredited auditors representing them.

An accredited audit firm may appoint a substitute representative from among its members fulfilling the conditions for appointment.]


Article 40

Subject to the approval of the Minister of Finance and the Minister of Economic Affairs, [the Bank] shall establish the rules governing the accreditation of auditors and audit firms.

Paragraph 1, amended by Articles 4 and 39 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The rules governing accreditation are issued after consultation with the accredited auditors represented by their professional association.

The “Institut des réviseurs d’entreprises/Instituut der Bedrijfsrevisoren” [Belgian Institute of Auditors] will inform the Bank, indicating its reasons for doing so, whenever a disciplinary procedure is instituted against an accredited auditor or an accredited audit firm for any omission in the exercise of his or its function within an insurance company, and whenever a disciplinary measure is taken against an accredited auditor or an accredited audit firm.


Article 40bis

[The appointment of accredited statutory auditors and substitute accredited statutory auditors to insurance companies is subject to the prior approval of the Bank. This approval shall be applied for by the management body proposing the appointment.]
Where an accredited audit firm is appointed, the approval applies to both the firm and its representative.

**Paragraph 1, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011**

The renewal of the mandate shall also be subject to approval.

If, pursuant to the Law, the President of the Commercial Court or of the Court of Appeal nominates the statutory auditor, he will choose from a list of accredited auditors approved by the Bank.

**Paragraph 3, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011**

*Article replaced by Article 111 of the Law of 16 February 2009 – MB 16 March 2009*

[**Article 40ter**

The [Bank] may at any time revoke the approval given to an accredited statutory auditor, a substitute accredited statutory auditor, an accredited audit firm or a representative or substitute representative in accordance with Article 40bis, detailing the reasons based on their legal status or on the exercise of their functions as an accredited auditor or an accredited audit firm as provided for in or pursuant to this Law. This revoking of this approval terminates the mandate of the statutory auditor.

**Paragraph 1, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011**

If an accredited statutory auditor resigns, the [Bank] and the insurance company shall be informed in advance of the resignation and the reasons therefore.

**Paragraph 2, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011**

The accreditation rules set out the procedure to be followed.

In the absence of a substitute accredited statutory auditor, or a substitute representative of an accredited firm, the insurance company or the accredited audit firm shall provide a replacement within two months in compliance with Article 40bis.

The proposal to revoke the mandate of an accredited statutory auditor of an insurance company, as foreseen by Article 135, paragraph 1, and Article 136 of the Companies Code, shall first be submitted to the [Bank] for its opinion. This opinion is communicated to the General Meeting.

**Paragraph 5, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011**

[Article 40quater]

The accredited statutory auditors referred to in Article 40bis shall collaborate with the [Bank] in its supervision on their own personal and exclusive responsibility, and in accordance with this Article, their professional standards and the instructions of the [Bank]. To this end, they shall:

Introduction to paragraph 1, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

1° assess the internal control measures adopted by insurance companies in accordance with Article 14bis, § 3, paragraph 1, and shall communicate their conclusions on the subject to the [Bank];

Paragraph 1, 1° amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

2° report to the [Bank] on:

Paragraph 1, introduction to 2° amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

a) the results of the limited examination of the periodic statements forwarded to the [Bank] by the insurance companies at the end of the first half of the financial year, confirming that they have no knowledge of any facts which suggest that these periodic statements were not drawn up in all materially significant respects in accordance with the current instructions of the [Bank]. They shall also confirm that, as regards the accounting data, the periodic statements drawn up at the end of the half year conform in all materially significant respects to the accounts and inventories, in that they are complete, i.e. they mention all the data recorded in the accounts and inventories on which they were based, and that they are correct, i.e. they agree precisely with the accounts and inventories on which they were based; they shall likewise confirm that they have no knowledge of any facts which suggest that the periodic statements drawn up at the end of the half year were not prepared in accordance with the accounting and valuation rules governing the preparation of the annual accounts relating to the last financial year; the [Bank] may specify which periodic statements are meant in the particular case;

Paragraph 1, 2° (a) amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

b) the results of the audit of the periodic statements forwarded to the [Bank] by the insurance companies at the end of the financial year, confirming that those periodic statements were, in all materially significant respects, drawn up in
accordance with the current instructions of the [Bank]. They shall also confirm that, as regards the accounting data, the periodic statements drawn up at the end of the financial year conform in all materially significant respects to the accounts and inventories in that they are complete, i.e. they mention all the data recorded in the accounts and inventories on which they were based, and that they are correct, i.e. they agree precisely with the accounts and inventories on which they were based; they shall likewise confirm that the periodic statements drawn up at the end of the financial year were prepared in accordance with the accounting and valuation rules governing the preparation of the annual accounts; the [Bank] may specify which periodic statements are meant in the particular case;

**Paragraph 1, 2° (b) amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011**

3° submit to the [Bank], at its request, special reports on the organisation, activities and financial structure of the insurance company; the cost of producing those reports shall be borne by the insurance company in question;

**Paragraph 1, 3° amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011**

4° as part of their function at the insurance company or of an audit task at a company linked to an insurance company report to the [Bank], on their own initiative, where:

**Paragraph 1, introduction to 4° amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011**

a) decisions, facts or developments have come to their attention which have, or may have, a significant influence on the insurance company's financial position, its administrative and accounting organization or internal control systems;

b) decisions or facts have come to their attention which may be in violation of Companies Code, the articles of association, this Law and its implementing decrees and regulations;

c) other decisions or facts have come to their attention which may lead to a refusal to certify the accounts, or to reservations regarding the certification of the accounts.

No civil, criminal or disciplinary action shall be taken or any professional sanction be pronounced against accredited statutory auditors who have communicated in good faith such information as referred to in paragraph 1, 4°.

The accredited statutory auditors shall transmit to the insurance company's management all reports sent to the [Bank] in accordance with paragraph 1, 3°. These reports shall be subject to the conditions of professional secrecy indicated in Article 74 of the Law of 2 August 2002 on the supervision of the financial sector and on
financial services. They shall send the [Bank] a copy of any reports addressed to the insurance company's management which are relevant to the Bank's supervisory task.

**Paragraph 3, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011**

The accredited statutory auditors and the accredited audit firms may carry out the verifications and investigations forming part of their mandate, at foreign branches of the insurance company which they are auditing.

**Article inserted by Article 113 of the Law of 16 February 2009 – MB 16 March 2009**

**[Article 40quinquies**

The [Bank] may require one or more persons designated by the insurance company and possessing the necessary actuarial expertise to submit a report to it on the tariffs, retrocession and the amount of the technical reserves or provisions, if appropriate according to the frequency determined by the Bank.

**Paragraph 1, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011**

The [Bank] may, by regulation adopted in accordance with [Article 12bis, § 2 of the Law of 22 February 1998], lay down the conditions which such persons must satisfy.]

**Paragraph 2, amended by Articles 4 and 40 of the Royal Decree of 3 March 2011 – MB 9 March 2011**

**Article inserted by Article 114 of the Law of 16 February 2009 – MB 16 March 2009**

**Section III**

**Insurance Commission**

**Article 41**

§ 1. An advisory committee, to be named the Insurance Commission, shall be set up with the task of considering all questions submitted to it by the Minister or by [the FSMA].

**§ 1, paragraph 1, amended by Article 26 of the Royal Decree of 25 March 2003 – MB 31 March 2003**

The Commission may issue opinions on its own initiative on all questions concerning insurance operations [which fall within the competence of the FSMA]. […]

[§ 2. The Commission shall comprise twenty-six permanent members of Belgian nationality, appointed by the King.

Eleven members shall be chosen from among the representatives of authorised companies operating in Belgium, eight of whom shall be included on a duplicate list by the most representative professional associations.

Six members shall be chosen from among persons who can represent the interests of consumers; two of them shall be included on a duplicate list by the Consumers' Council. One of those six members shall represent the interests of industrial and commercial companies.

Three members shall be chosen from among the representatives of insurance intermediaries operating in Belgium, included on a duplicate list by the most representative professional associations.

The other six members, one of whom shall be appointed on the proposal of the Minister of Finance, must have professional experience and qualifications in the sphere of activities subject to the supervision of [the FSMA].

§ 2, paragraph 5 amended by Article 26 of the Royal Decree of 25 March 2003 – MB 31 March 2003

The Ministers responsible for dealing with issues concerning the prevention of accidental injury to persons or damage to property, and liability and compensation for such injury or damage, may send an observer to the Commission.

The King shall also appoint a substitute for each member. The deputies shall be chosen in the same way as the permanent members.]


§ 3. The Commission may set up sections specialising in particular insurance classes or groups of classes; sections dealing with mortgage lending or capitalisation may also be set up.

These sections shall be responsible for preparing the work of the Commission. The sections shall be formed with due regard for the technical characteristics of the operations in question, and for the balance between the interests of service providers and consumers. Each section shall comprise at least four Commission members. Both the Commission and the sections may call on experts who are not Commission members if they consider it appropriate to seek their advice.

§ 4. The term of office of Commission members shall be six years; it shall be renewable.
By way of exception, when the members are appointed for the first time, the term of office of seven members chosen by drawing lots shall be limited to two years. The term of office of eight other members, also chosen by drawing lots, shall be limited to four years.

The King shall designate the President of the Commission from among the members and determine the remuneration payable to Commission members and to any experts called in.

§ 5. [The FSMA] shall take charge of the secretariat of the Commission and of the sections.

§ 5, paragraph 1, amended by Article 26 of the Royal Decree of 25 March 2003 – MB 31 March 2003

[The members of the FSMA management committee], who may enlist the assistance of any member of the staff of [the FSMA], may attend all meetings of the Commission or of the sections.


The Commission shall draw up its own rules of procedure and submit them for the approval of the Minister.

[CHAPTER IVbis
Renunciation and revocation of authorisation]

Numbering and heading replaced by Article 34 of the Law of 6 December 2004 – MB 28 December 2004

[…]

Heading abrogated by Article 35 of the Law of 6 December 2004 – MB 28 December 2004

Article 42

Authorised companies may renounce their authorisation for any or all classes of insurance for which they have been authorised.

The renunciation shall be addressed to [the Bank].

[The Bank] shall record the renunciation and determine its effective date [on the advice of the FSMA].]


[...]


Article 43

§ 1. The authorisation granted to Belgian insurance companies may be revoked under the following conditions and in the following forms:

1° The authorisation shall be revoked [by reasoned decision of [the Bank]] if the company concerned:


[(a) does not make use of the authorisation within 12 months, or ceases to pursue business for more than six months, or no longer fulfils the conditions for authorisation;]

§ 1, 1° (a) replaced by Article 24, 1° of the Royal Decree of 12 August 1994 – MB 16 September 1994

(b) fails seriously in its obligations under this law or its implementing decrees, particularly as regards the formation and representation of the technical reserves or provisions referred to in Article 16;

(c) fails to carry out, within the time allowed, the measures specified by the recovery plan or the finance scheme referred to in Article 26.

The revocation may be pronounced for all classes of insurance offered or for one or more of them.

2° The authorisation shall be revoked automatically in the event of the bankruptcy or dissolution of the company.

Such revocation shall apply to all classes of insurance offered.

§ 2. The authorisation granted to foreign insurance companies may be revoked under the following conditions and in the following forms:
1° The authorisation shall be revoked [by reasoned decision of [the Bank]]:


(a) if the company concerned is in the circumstances referred to in § 1;

(b) if the company has had its authorisation withdrawn in the country where it has its head office […].

§ 2, 1° (b) replaced by Article 24, 2° of the Royal Decree of 12 August 1994 – MB 16 September 1994

2° The authorisation may be revoked [by reasoned decision of [the Bank]]:


(a) if the authorities of the country of origin of the company deprive Belgian companies of the benefit of equal treatment;

(b) if the company's articles of association no longer restrict its objects in accordance with Articles 9 and 12;

(c) if the development of non-conforming operations may compromise its situation or impede the exercise of supervision.

In addition, the authorisation may be revoked if the authorities [of the country of the head office […] ] of the company impose conditions on the free disposal of the capital belonging to it in Belgium, oppose the transfer of the capital or regulate that transfer in such a way as to prevent the company from fulfilling its commitments in Belgium.


3. The authorisation shall be revoked automatically if [in the country of the head office[…] ] the company is dissolved, made subject to compulsory winding-up or has its authorisation revoked for all its insurance operations.


§ 3. [The Bank shall inform the FSMA of its intention to revoke the authorisation.]
**New paragraph 1, inserted by Article 43 of the Royal Decree of 3 March 2011 – MB 9 March 2011**

[Any decision to revoke the authorisation shall be notified to the company [...]].


[Without prejudice to Article 4, the FSMA may, if it considers it necessary to safeguard the rights of members and beneficiaries, publish at the expense of the insurance company concerned and in the manner which it determines a notice announcing the revocation or automatic lapse of the authorisation. That notice shall mention the effective date of the revocation or automatic lapse.]

**§3, paragraph 2, replaced by Article 30, 2° of the Law of 17 December 2008 – MB 29 December 2008**

[...]

**Heading abrogated by Article 35 of the Law of 17 December 2008 – MB 29 December 2008**

**Article 44**

The renunciation or revocation of the authorisation for one or more classes of insurance shall carry with it a prohibition on the conclusion of new contracts in those classes. However, [the Bank] may, without prejudice to Articles 76, 77 and 78, grant permission for all or some of the rights and obligations under existing insurance contracts held by an insurance company which no longer has authorisation to be assigned to an insurance company which has renounced its authorisation, provided the assignee company has the necessary scope taking account of the assignment.]


[[The Bank] shall inform the competent authorities of the Member States where the insurance company conducts insurance operations, either via a branch or under freedom to provide services, of the renunciation or revocation of the authorisation. [It] shall request them to take appropriate measures to prevent the insurance company from concluding new insurance contracts in their territory.

[The Bank] may impose, if appropriate with the assistance of those competent authorities, all appropriate measures to safeguard the rights of policyholders, insured persons and insurance beneficiaries. [It] may in particular impose the assignment of the rights and obligations under lapsed or current insurance contracts, and of the assets representing security for those obligations, or terminate current contracts in accordance with the detailed arrangements and within the time which [it] shall determine.]


The companies referred to in this provision shall remain subject to the provisions of this Law and its implementing regulations until such time as all their insurance contracts have been liquidated […] and all the associated commitments have been settled.


[CHAPTER V
Reorganisation measures and winding-up procedures]

Heading inserted by Article 36 of the Law of 6 December 2004 – MB 28 December 2004

[Section I
Reorganisation measures]

Heading inserted by Article 36 of the Law of 6 December 2004 – MB 28 December 2004

[Subsection I
Belgian insurance companies]

Heading inserted by Article 36 of the Law of 6 December 2004 – MB 28 December 2004

Article 45

[Subject to Articles 26, 44, paragraph 3, and 48/1, the Belgian reorganisation authorities shall be competent to adopt reorganisation measures only in respect of insurance companies under Belgian law. Those measures shall be applied and take effect in accordance with the Belgian legislation, subject to the particular provisions and exceptions laid down by this Law. In particular, the Belgian reorganisation authorities cannot adopt a reorganisation measure concerning an insurance company governed by the law of another State, including the branch of such a company located in Belgium.]
Article replaced by Article 36 of the Law of 6 December 2004 – MB 28 December 2004

Article 46

The Belgian reorganisation authorities shall inform the [Bank] without delay of their decision to adopt a reorganisation measure, where possible before its adoption or failing that immediately thereafter. [The Bank shall immediately give notice to the FSMA and the competent authorities] of all other Member States, by any appropriate means, of that decision and of the possible practical effects of that measure.

Paragraph 1, amended by Article 45, 1° and 2 of the Royal Decree of 3 March 2011 – MB 9 March 2011

[To that end, the King shall keep the [Bank] informed of developments relating to the implementation of Article 26bis, § 1.]


Article 47

§ 1. Where the implementation of a reorganisation measure taken in accordance with Article 45 affects the rights of parties other than the insurance company itself, the [Bank] [or, in the case of acts of disposal as referred to in Article 26bis, § 1, the King] shall ensure publication of the decision in accordance with the legal provisions in force or, in the absence of such provisions, by publishing an extract in the "Moniteur belge/Belgisch Staatsblad" (Belgian Official Gazette) and in two regional daily papers or periodicals, and shall ensure that an extract of that decision is published at the earliest opportunity in the Official Journal of the European Union. That publication shall have no impact on the effects of the reorganisation measure, in particular in regard to the creditors of the insurance company. The extract shall mention at least the following data:


1° the subject and the legal basis of the decision taken, stating that the measure is governed by Belgian law;

2° the reorganisation authorities and the reorganisation inspector appointed, if any;
3° the periods for lodging an appeal, stating the expiry date of those periods and the details of the authority competent to deal with the appeal.

In regard to third parties having their domicile or habitual residence in another Member State, the period for lodging an appeal shall run from the date of publication in the Official Journal of the European Union.

§ 2. Where reorganisation measures affect exclusively the rights of shareholders, members or employees of an insurance company, considered in those capacities, the provisions of § 1 shall not apply. In the absence of legal provisions on the subject, the reorganisation authorities shall determine the manner in which those parties are to be informed.]

Article replaced by Article 38 of the Law of 6 December 2004 – MB 28 December 2004

Article 48

[...]

Article abrogated by Article 15 of the Law of 2 June 2010 – MB 14 June 2010

[Subsection II
Insurance companies governed by the law of States which are not members of the European Economic Area

Subsection inserted by Article 40 of the Law of 6 December 2004 – MB 28 December 2004

[Article 48/1
The [Bank] shall without delay, and by all appropriate means, inform the competent authorities of the other Member States where the insurance company has a branch of its decision to adopt a reorganisation measure pursuant to Articles 26 and 44, paragraph 3, and of the practical effects of that measure, where possible before its adoption or failing that immediately thereafter. The [Bank] shall endeavour to coordinate its action with that of the competent authorities and the reorganisation authorities of the insurance companies of the other Member States.]


[Section II
Bankruptcy and other winding-up proceedings based on insolvency

Section inserted by Article 41 of the Law of 6 December 2004 – MB 28 December 2004
Subsection I
Belgian insurance companies

Subsection inserted by Article 41 of the Law of 6 December 2004 – MB 28 December 2004

[Article 48/2]

The commercial court shall be competent to declare bankruptcy only in respect of insurance companies under Belgian law. In particular, the commercial court cannot declare the bankruptcy of an insurance company governed by foreign law, including the bankruptcy of such a company's branch located in Belgium.

Article inserted by Article 41 of the Law of 6 December 2004 – MB 28 December 2004

[Article 48/3]

Bankruptcy proceedings relating to an insurance company under Belgian law shall be governed by Belgian law, subject to the particular provisions and exceptions laid down by this Law.

Article inserted by Article 42 of the Law of 6 December 2004 – MB 28 December 2004

[Article 48/4]

Without prejudice to Article 48/12, the commercial court shall inform the [Bank] without delay of its decision to initiate bankruptcy proceedings and of the practical effects of the bankruptcy, where possible before the initiation of the proceedings or, failing that, immediately thereafter. The [Bank] shall communicate that information without delay, by all appropriate means, [to the FSMA and] to the competent authorities of all the other Member States.


[Article 48/5]

The receiver(s) appointed in accordance with Article 11 of the Law of 8 August 1997 shall ensure the publication referred to in Article 38 of that same Law, and shall also publish the extract in the Official Journal of the European Union. For that purpose a form shall be used bearing the headings "Invitation to lodge a claim; time-limits to be observed" in all the official languages.
The published information must mention at least:

1° that the winding-up proceedings are governed by Belgian law;
2° the particulars of the competent court and the receiver appointed.]

Article inserted by Article 44 of the Law of 6 December 2004 – MB 28 December 2004

[Article 48/6

Where the individual notification of creditors referred to in Article 62 of the Law of 8 August 1997 concerns creditors who have their domicile or their habitual residence in another Member State, the circular shall indicate, in addition to the information mentioned in the extract referred to in Article 48/5, the obligation on creditors whose claims are preferential or secured in rem to lodge their claims, and shall state the consequences of failure to comply with the deadlines provided for by Article 72 of the Law of 8 August 1997. In the case of insurance claims, the notice shall further indicate the general effects of the winding-up proceedings on insurance contracts, in particular the date on which the insurance contracts or operations cease to produce effects and the rights and duties of insured persons with regard to the contract or operation.

The circular, produced in the language of the proceedings or, in the case of creditors who hold an insurance and have their habitual residence, domicile or registered office in another Member State, in an official language of that Member State, shall bear the heading "Invitation to lodge a claim; time-limits to be observed" in all the official languages.]

Article inserted by Article 45 of the Law of 6 December 2004 – MB 28 December 2004

[Article 48/7

Creditors whose domicile or habitual residence is located in another Member State may lodge their claims or submit their observations in one of the official languages of that other Member State, bearing the heading "Lodgement of claim" or "Submission of observations relating to claims" in the official language of the proceedings in Belgium. Article 63 of the Law of 8 August 1997 shall apply. The preference granted to insurance claims in accordance with Article 18 need not be mentioned.]

Article inserted by Article 46 of the Law of 6 December 2004 – MB 28 December 2004

[Article 48/8
§ 1. The receiver(s) appointed in accordance with Article 11 of the Law of 8 August 1997 shall regularly inform the creditors of the progress of the proceedings in the form which they deem most appropriate.

§ 2. At the request of the competent authorities of the other Member States, the [Bank] shall supply the information on the progress of the winding-up proceedings. To that end, and without prejudice to Article 48/18, the commercial court shall keep the [Bank] informed of the progress of the proceedings.


[Subsection II

Insurance companies governed by the law of States which are not members of the European Economic Area


[Article 48/9

A foreign judicial decision concerning winding-up proceedings based on the insolvency of an insurance company governed by the law of a State which is not a member of the European Economic Area shall not be recognised or declared enforceable if it is incompatible with the application of the provisions of Articles 48/16 and 48/17.

Article inserted by Article 48 of the Law of 6 December 2004 – MB 28 December 2004

[Article 48/10

Where an insurance company has branches in Member States other than Belgium, the [Bank] and the winding-up authorities and the competent authorities of those Member States shall endeavour to coordinate their actions. Any liquidators shall likewise endeavour to coordinate their actions.


[Section III

Winding-up proceedings not based on insolvency]

Section inserted by Article 50 of the Law of 6 December 2004 – MB 28 December 2004

[Subsection I

Belgian insurance companies]
Before submitting a proposal for the dissolution of an insurance company under Belgian law within the meaning of Article 181 of the Companies Code, the management body of the insurance company shall consult the [Bank]. […]


Before giving a ruling on a case of judicial dissolution provided for by the Companies Code in respect of an insurance company, the commercial court shall address to the [Bank] a request for an opinion in accordance with the procedure laid down in Article 48/18.

Paragraph 2, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The dissolution of an insurance company and the ensuing winding-up within the meaning of the Companies Code shall not impede the possibility of adopting one of the measures provided for in Articles 26 and 44, paragraph 3.]

Article inserted by Article 50 of the Law of 6 December 2004 – MB 28 December 2004

[Article 48/12

§ 1. Where the revocation of the authorisation is pronounced in respect of all the insurance operations undertaken, the insurance companies or associations shall be dissolved automatically.

§ 2. In the event of voluntary dissolution or automatic dissolution of the insurance company, the liquidator designated in accordance with the articles of association or the legal rules may be appointed only with the approval of the [Bank].

§ 2, paragraph 1, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

Without prejudice to the legal provisions applicable to commercial companies […] the King shall determine [, on the advice of the Bank,] the powers and obligations of the liquidator, especially as regards the liquidation of insurance claims.

§ 3. [The Bank shall without delay inform the FSMA and] the competent authorities of all the other Member States of any dissolution and of its possible practical effects.]

§ 3 amended by Article 47, 2° of the Royal Decree of 3 March 2011 – MB 9 March 2011

Article inserted by Article 51 of the Law of 6 December 2004 – MB 28 December 2004

[Subsection II
Insurance companies governed by the law of States which are not members of the European Economic Area]

Subsection inserted by Article 52 of the Law of 6 December 2004 – MB 28 December 2004

[Article 48/13

Where a company governed by the law of a State which is not a member of the European Economic Area has its authorisation revoked or renounces its authorisation for all its operations in Belgium, the [Bank] may appoint a liquidator to realise all the assets of the company in Belgium and to settle all the commitments entered into in Belgium.

Paragraph 1, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

[The King shall determine, on the advice of the Bank,] the powers and obligations of such a liquidator.

Paragraph 2, inserted by Article 48 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The liquidation costs shall be borne by the company concerned.

The provisions of this Article shall not apply to insurance companies for which winding-up proceedings based on insolvency have been instituted at the time of revocation of the authorisation.]

Article inserted by Article 52 of the Royal Decree of 3 March 2011 – MB 9 March 2011

[Article 48/14

A decision concerning the winding-up of an insurance company governed by the law of a State which is not a member of the European Economic Area shall not be recognised or declared enforceable if it is incompatible with the application of the provisions of Articles 48/16 and 48/17.]
Article inserted by Article 53 of the Royal Decree of 3 March 2011 – MB 9 March 2011

[Article 48/15]
Where an insurance company governed by the law of a State which is not a member of the European Economic Area has branches in Member States other than Belgium, the [Bank] and the winding-up authorities and the competent authorities of those Member States shall endeavour to coordinate their actions. Any liquidators shall likewise endeavour to coordinate their actions.


[Section IV
Liquidation of segregated assets

Section inserted by Article 55 of the Law of 6 December 2004 – MB 28 December 2004

[Article 48/16]

§ 1. Any liquidation of segregated assets must be conducted with due regard for the rights of creditors holding an insurance claim and of the creditors referred to in paragraph 2, while respecting equality among all creditors having the same rank.

Notwithstanding Article 18, paragraph 1, the liquidator may in each case deduct from the segregated assets his own remuneration and that of his staff, and all other liquidation expenses in so far as they further the liquidation of those assets.

Where the segregated assets are insufficient to pay full compensation to creditors holding an insurance claim, those creditors shall also retain a preferential claim against the company. That preferential right is general; all other general or special preferential rights shall take precedence.

If the liquidation of any segregated assets leaves a positive balance, that balance shall be shared among the other segregated assets in proportion to the shortfall in those segregated assets.

If, following the liquidation of all the segregated assets, a balance still remains available, it shall be allocated to the general body of creditors.

§ 2. The provisions of § 1 shall also apply in respect of creditors who have their domicile or habitual residence in a State which is not a member of the European Economic Area, in so far as the law applicable in that State does not permit the institution of insolvency proceedings against the insurance company concerned, and the proceedings instituted in Belgium can produce their effects in that State. If that is
not the case, those creditors shall be treated in the same way as unsecured creditors for the purposes of the proceedings instituted in Belgium.]

*Article inserted by Article 55 of the Royal Decree of 3 March 2011 – MB 9 March 2011*

*[Article 48/17]*

The composition of the covering assets recorded in the permanent inventory in accordance with Article 16, § 2 at the time of the decision to institute the winding-up proceedings may no longer be altered from then on; no change can be made to the permanent inventory except for the correction of purely material errors, except with the permission of the winding-up authorities.

Notwithstanding paragraph 1, the liquidator shall add to the said assets their capital yield and the amount of the premiums (pure premiums) collected in respect of the separately managed activity concerned for the period between the institution of the winding-up proceedings and the payment of the insurance claims or up to the transfer of the portfolio.

If the proceeds from the realisation of the assets fall short of their valuation as recorded in the permanent inventory, the liquidator must justify the situation to the winding-up authorities.]

*Article inserted by Article 56 of the Law of 6 December 2004 – MB 28 December 2004*

*[Section V]*

*Rules common to reorganisation measures and winding-up proceedings*

*Section inserted by Article 57 of the Law of 6 December 2004 – MB 28 December 2004*

"*Subsection I*

*Collaboration between national authorities*

*Subsection inserted by Article 57 of the Law of 6 December 2004 – MB 28 December 2004*

*[Article 48/18]*

Before pronouncing […] on the institution of bankruptcy proceedings or on a provisional divestment of control within the meaning of Article 8 of the Law of 8 August 1997 in regard to an insurance company, the president of the commercial court shall address a request for an opinion to the [Bank]. The registrar shall forward that request without delay. He shall inform the public prosecutor accordingly.

The request shall be made in writing to the [Bank]. It shall be accompanied by the necessary documents for information. […]

Paragraph 2, amended by Articles 4 and 49, 1° of the Royal Decree of 3 March 2011 – MB 9 March 2011

The [Bank] shall give its opinion within fifteen days from the date of receipt of the request for an opinion [...]. In the case of proceedings relating to an insurance company which, in its view, may have significant systemic implications or which necessitates prior coordination with foreign authorities, the [Bank] may take longer to give its opinion, but the total period must not exceed thirty days. If it considers that it needs to use this exceptional period, the [Bank] shall give notice to the judicial authority which is to give a ruling. The period allowed for the [Bank] to give its opinion shall suspend the period in which the judicial authority has to give a ruling. In the absence of a response from the [Bank] within the time allowed, the court may pronounce judgment.

Paragraph 3, amended by Articles 4 and 49, 2° of the Royal Decree of 3 March 2011 – MB 9 March 2011

The [Bank] shall issue its opinion in writing. The opinion shall be forwarded by any means to the registrar, who shall pass it on to the president of the commercial court and the public prosecutor. The opinion shall be placed on the file. […]

Paragraph 4, amended by Articles 4 and 49, 3° of the Royal Decree of 3 March 2011 – MB 9 March 2011

Article inserted by Article 57 of the Law of 6 December 2004 – MB 28 December 2004

/Subsection II
Exceptions or modifications to the application of Belgian law as the law of the proceedings

Subsection inserted by Article 58 of the Law of 6 December 2004 – MB 28 December 2004

[Article 48/19

By way of derogation from Articles 45 and 48/3, the effects of a reorganisation measure or of winding-up proceedings shall be determined as follows:

1° employment contracts and employment relationships shall be governed exclusively by the law of the Member State applicable to the employment contract or relationship;
2° contracts conferring the right to make use of or acquire immovable property shall be governed exclusively by the law of the Member State where the immovable property is located. That law shall determine whether the property is movable or immovable;

3° the rights of the insurance company with respect to immovable property, a ship or an aircraft subject to registration in a public register shall be governed exclusively by the law of the Member State under the authority of which the register is kept;

4° transactions effected on a foreign regulated market within the meaning of Article 2, 6° of the Law of 2 August 2002 on the supervision of the financial sector and on financial services shall be governed exclusively by the law applicable to that market.

[The King may, on the advice of the Bank,] extend the rule referred to in paragraph 1, 4° to transactions effected on markets in financial instruments organised pursuant to Article 15 of the Law of 2 August 2002.]

Paragraph 2, amended by Article 50 of the Royal Decree of 3 March 2011 – MB 9 March 2011

Article inserted by Article 58 of the Law of 6 December 2004 – MB 28 December 2004

[Article 48/20

§ 1. The implementation of reorganisation measures or the institution of bankruptcy proceedings shall not affect the right in rem of creditors or third parties in respect of tangible or intangible assets, whether they are movable or immovable property – both specific assets and collections of indefinite assets the composition of which is subject to alteration – which belong to the insurance company and which are located in the territory of another Member State at the time of the implementation of any such measures or the instituting of proceedings.

§ 2. The rights referred to in § 1 include in particular:

1° the right to realise the property, or to have it realised, and to receive payment of the income or revenue from this property, in particular pursuant to a pledge or a mortgage;

2° the exclusive right to recover a claim, inter alia pursuant to the pledging or assignment of this claim as a guarantee;

3° the right to lay claim to the property and/or to claim that it be returned to the person who owns or has possession thereof against the wishes of the beneficiary;
§ 3. The right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of § 1 may be obtained, shall be considered to be a right in rem.

Article inserted by Article 59 of the Law of 6 December 2004 – MB 28 December 2004

[Article 48/21

§ 1. The implementation of reorganisation measures or the instituting of bankruptcy proceedings against an insurance company purchasing property shall not affect any of the rights of the vendor based upon retention of title, where, at the time of the implementation of any such measures or the instituting of any such proceedings, this property is located in the territory of a Member State other than that in which such measures are being implemented or these proceedings are being instituted.

§ 2. The implementation of reorganisation measures or the instituting of bankruptcy proceedings against an insurance company acting as vendor, after the delivery of the property to which the sale relates, shall not afford grounds for cancellation or termination of the sale and shall not stand in the way of the acquisition of the ownership of the property being sold by the purchaser, if, at the time of the implementation of these measures or the instituting of these procedures, this property is located on the territory of a Member State of the European Economic Area other than the State in which these measures are being implemented or these proceedings are being instituted.

Article inserted by Article 60 of the Law of 6 December 2004 – MB 28 December 2004

[Article 48/22

The implementation of reorganisation measures or the instituting of bankruptcy proceedings shall not affect the right of a creditor to claim that his or her claim be cleared with the claims of the insurance company, when this clearing is allowed by the law applicable to this claim.

insurance company.

Article inserted by Article 61 of the Law of 6 December 2004 – MB 28 December 2004
§ 1. Without prejudice to Article 48/19, paragraph 1, 1° to 3°, and subject to Article 48/24, Articles 48/20, § 1, 48/21 and 48/22 shall not preclude the application of Articles 17 to 20 of the Law of 8 August 1997.

§ 2. Article 1167 of the Civil Code and Articles 17 to 20 of the Law of 8 August 1997 shall not apply if the beneficiary of an act referred to in the said provisions produces proof that the act is subject to the law of a Member State other than Belgian law, and that law does not provide any means of contesting the act in such a case.


[Article 48/24

By way of derogation from Articles 26 and 44, paragraph 3, of this law […] and Article 16 of the Law of 8 August 1997, and notwithstanding Articles 17 to 20 of the latter law, where, after the adoption of a reorganisation measure or the instituting of bankruptcy proceedings, an insurance company disposes, for consideration, of any immovable assets property, ships or aircraft subject to registration in a public register, transferable or other securities, the existence or transfer of which presupposes entry in a register or account laid down by law or which are placed in a central deposit system governed by the law of a Member State, the nullity or unenforceability of that act shall be assessed in the light of the law of the Member State where the immovable property is located or under the authority of which the register, account or deposit system is kept.


/Subsection III
Reorganisation inspectors and liquidators

Subsection inserted by Article 64 of the Law of 6 December 2004 – MB 28 December 2004

[Article 48/25

[…] The receiver(s) appointed in accordance with Article 11 of the Law of 8 August 1997 shall take all the measures necessary to ensure the registration of winding-up proceedings in a public register of another Member State where such registration is mandatory under the law of that Member State.

Paragraph 1, amended by Article 19, 1° and 2° of the Law of 2 June 2010 – MB 14 June 2010
The costs of registration in a public register of another Member State shall be regarded as costs and expenses incurred in the proceedings, whether the registration is compulsory or whether it is initiated by the persons referred to in paragraph 1.]

Article inserted by Article 64 of the Law of 6 December 2004 – MB 28 December 2004

[CHAPTER Vbis
Special provisions on the pursuit of an insurance activity in a foreign country by an insurance company under Belgian law]

Chapter inserted by Article 26 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Article 49
The provisions of this chapter shall apply to insurance companies under Belgian law.]

Article inserted by Article 26 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Section I
Opening of a branch in another Member State [of the European Economic Area]]


[Article 50

§ 1. Any insurance company which plans to open a branch within the territory of another Member State [of the European Economic Area], for the purpose of pursuing an insurance activity for which it has been granted authorisation shall give notice of its intention to [the Bank].


§ 2. The insurance company must designate an authorised agent possessing sufficient powers to bind the insurance company in relation to third parties and to represent it in relations with the authorities and courts of the Member State of the branch.
If the authorised agent's mandate is renounced or revoked, or in the event of the death of the authorised agent, the insurance company must take the necessary steps to ensure that the successor is in post within the month.

Articles 9bis and 90, § 1, second sentence, and § 2 shall apply mutatis mutandis to the authorised agent and, if appropriate, to the other persons in charge of managing the branch. Article 28bis shall not apply to them.

§ 3. The notification referred to in § 1 must be accompanied by a file containing the following information:

1° the name of the Member State in the territory of which the insurance company plans to establish a branch;

2° the programme of operations setting out, in particular, the types of business envisaged and the organisational structure of the branch;

3° the address in the Member State of the branch, from which documents may be obtained and to which they may be delivered, on the understanding that the address must be the same as that to which all communications to the authorised agent are sent;

4° the name, address and powers of the authorised agent of the branch;

5° in the case of insurance companies wishing to provide compulsory insurance on third party motor vehicle liability, a declaration that the company has become a member of the national bureau and the national guarantee fund of the Member State of the branch.

**Article inserted by Article 26 of the Royal Decree of 12 August 1994 – MB 16 September 1994**

**[Article 51]**

[The Bank] may object to the company's plan [if it] considers that it will adversely affect the organisation, financial position or supervision of the insurance company. [It may also object to the plan if it has reasons to doubt] the professional integrity and qualifications or experience of the authorised agent or of the other persons responsible for managing the branch.


Such objection must be notified to the company by registered letter or by letter with advice of receipt no later than six weeks after receipt of the complete file containing the information referred to in Article 50, § 3.

If [the Bank] fails to give notice of its decision within this period, [it shall be deemed] to have no objection to the insurance company's plan.]

Article inserted by Article 26 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Article 52

[...]

Article abrogated by Article 51 of the Royal Decree of 3 March 2011 – MB 9 March 2011

[Article 53

If [the Bank] has no objection to the opening of a branch in another Member State, [it] shall communicate to the competent authorities of the Member State of the branch the file containing the following items:

Introductory sentence to paragraph 1, amended by Article 26 of the Royal Decree of 25 March 2003 – MB 31 March 2003 and by Articles 4 and 53 of the Royal Decree of 3 March 2011 – MB 9 March 2011

1° the information referred to in Article 50, § 3;
2° a certificate attesting the classes of insurance which the company has been authorised to offer;
3° a certificate attesting that the company covers the minimum solvency margin.

[It] shall inform the insurance company in writing of the sending of the file and of the date on which the competent authorities of the Member State of the branch acknowledged receipt.


Article inserted by Article 26 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Article 54

If the competent authorities of the Member State of the branch have not raised any objections, [the Bank] shall inform the insurance company that the branch can be established and start business, and shall forward to it any provisions in the general interest which must be complied with in the Member State of the branch as communicated by the competent authorities of that State.

If the insurance company has not received the communication referred to in paragraph 1, within two months following the date mentioned in Article 53, paragraph 2, the branch may be established and start business.]

*Article inserted by Article 26 of the Royal Decree of 12 August 1994 – MB 16 September 1994*

*Article 55*

Where the insurance company intends to change the information referred to in Article 50, § 3, it shall send written notification of that change to [the Bank] and to the competent authorities of the Member State of the branch at least one month before making the change.


[Article 51 of this law and Article 36/22, 12° of the Law of 22 February 1998] shall apply. For the purposes of this Article, the six-month period referred to in Article 51, paragraph 2, shall be replaced by a period of fifteen days [...] .]

*Paragraph 2, amended by Article 54, 1° and 2° of the Royal Decree of 3 March 2011 – MB 9 March 2011*

*Article inserted by Article 26 of the Royal Decree of 12 August 1994 – MB 16 September 1994*

*Article 56*

[The Bank] shall communicate to the European Commission the number and nature of the cases in which a final decision to object to the plan has been taken pursuant to Article 51 or 55.


*Section II
Freedom to provide services in another Member State [of the European Economic Area]*


*Article 57*
§ 1. An insurance company which plans to pursue in the territory of another Member State [of the European Economic Area], under the freedom to provide services, an insurance activity for which it has been granted authorisation, shall give notice of its plan to the [Bank].


§ 2. That notification must be accompanied by a file containing the following information:

1° the name of the Member State in the territory of which the insurance company plans to conduct its business;

2° the types of business envisaged;

3° in the case of insurance companies wishing to provide compulsory insurance on third party motor vehicle liability, the name and address of the representative responsible for settling claims, who must comply with the conditions laid down by the legislation of the Member State in which the services are provided, and a declaration that the company has become a member of the national bureau and the national guarantee fund of that Member State.

Article inserted by Article 26 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Article 58

[The Bank] may object to the company's plan [if it considers] that it will adversely affect the organisation, financial position or supervision of the insurance company.


Such objection must be notified to the company by registered letter or by letter with advice of receipt no later than fifteen days after receipt of the complete file containing all the information referred to in Article 57, § 2.]

Article inserted by Article 26 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Article 59

[…]]

[Article 60]

If [the Bank] has no objection to the said plan, [it] shall, within the time specified in Article 58, paragraph 2, communicate to the competent authorities of the Member State in which the services are to be provided the file containing the following items:

Introduction to paragraph 1, amended by Article 26 of the Royal Decree of 25 March 2003 – MB 31 March 2003 and by Articles 4 and 57 of the Royal Decree of 3 March 2011 – MB 9 March 2011

1° the information referred to in Article 57, § 2;
2° a certificate attesting the classes of insurance which the company has been authorised to offer;
3° a certificate attesting that the company covers the minimum solvency margin.

The insurance company may start business as soon as [the Bank] has notified it of the communication provided for in paragraph 1.]


Article inserted by Article 26 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Article 61]

If the insurance company intends to make changes to the information referred to in Article 57, § 2, Articles 57 to 60 shall apply.

Article inserted by Article 26 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Article 62]

[The Bank] shall communicate to the European Commission the number and nature of the cases in which a final decision to object to the plan has been taken pursuant to Article 58 or 61.]


[CHAPTER Vter]
**Special provisions for insurance companies governed by the law of another Member State [of the European Economic Area]**


**[Article 63]**

§ 1. The provisions of this chapter shall apply to insurance companies governed by the law of another Member State [of the European Economic Area].

§ 1 amended by Article 10 of the Law of 19 November 2004 – MB 28 December 2004

§ 2. Article 3, § 1, Articles 4 to 8, Articles 11 to 18, Article 19 in regard to the tariffs, Article 20, § 1, Article 21, except for § 2, Article 21 octies, § 2, Articles 22 to 24, Articles 26 and 27, Articles 38 to [40 quinquies], Articles 42 to 48/25 and Article 90 shall not apply to the companies referred to in this chapter.


**Article inserted by Article 27 of the Royal Decree of 12 August 1994 – MB 16 September 1994**

**[Section I]
Conditions for conducting business**

*Section inserted by Article 27 of the Royal Decree of 12 August 1994 – MB 16 September 1994*

**Subsection I
Provisions common to the conduct of business via a branch or via freedom to provide services**

*Subsection inserted by Article 27 of the Royal Decree of 12 August 1994 – MB 16 September 1994*

**[Article 64]**

§ 1. Insurance companies may conduct in Belgium, via a branch or via freedom to provide services, the insurance operations for which they have been authorised in their home Member State.

§ 2. The provisions of this chapter shall be without prejudice to compliance, in the conduct of insurance operations, with the statutory and regulatory provisions in the general interest applicable in Belgium to insurance companies and their operations.

[§ 3. On the advice of the FSMA within its sphere of competence, and in accordance with the detailed arrangements laid down in this section, the Bank shall**
inform the companies referred to in § 1 of the provisions which are in the general interest.]

§ 3 inserted by Article 58 of the Royal Decree of 3 March 2011 – MB 9 March 2011

Article inserted by Article 27 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Article 65

Insurance companies must communicate [to the Bank and] to [the FSMA] the general and special conditions of insurance made compulsory in Belgium before they are used.


The information and documents referred to in paragraph 1, must be produced in the language stipulated by law or by decree.]

Article inserted by Article 27 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Article 66

[The [Bank] shall draw up a list of all the insurance companies referred to in this chapter. That list and any changes to it shall be published on its website.]]


[Subsection II

Provisions on the opening of a branch]

Subsection inserted by Article 27 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Article 67

§ 1. Any insurance company referred to in Article 63 may establish a branch in Belgium provided the competent authorities of its home Member State have forwarded to [the Bank] a file containing at least the following information:

1° a certificate attesting the classes of insurance which the company has been authorised to offer;

2° a certificate attesting that the company covers the minimum solvency margin;

3° the programme of operations setting out, in particular, the types of business envisaged and the organisational structure of the branch;

4° the address in Belgium from which documents may be obtained and to which they may be delivered, on the understanding that the address must be the same as that to which all communications to the authorised agent are sent;

5° the name, address and powers of the authorised agent of the branch;

6° in the case of insurance companies wishing to provide compulsory insurance on third party motor vehicle liability, a declaration that the company has become a member of the Belgian Motor Insurance Guarantee Fund (FCGA/GMWF) and of the Belgian Motor Insurance Bureau (BBAA/BBAV);

[7° in the case of insurance companies wishing to provide insurance against accidents at work, proof that the Fonds des accidents du travail/Fonds voor Arbeidsongevallen [Belgian fund responsible for paying compensation for accidents at work] has been informed of the business envisaged and proof that a declaration has been submitted to that Fund stating that the insurance company will, immediately on the request of that Fund, provide a bank guarantee as referred to in Article 60 of the Law of 10 April 1971 on accidents at work, with a view to payment of compensation for accidents at work if the insurance company has defaulted.]

§ 1, 7° inserted by Article 5 of the Law of 10 August 2001 – MB 7 September 2001

§ 2. [The Bank] shall have two months from the receipt of the information referred to in § 1 to inform the competent authorities of the home Member State of the company concerned of the provisions in the general interest [referred to in Article 64, §§ 2 and 3].

§ 2 amended by Article 26 of the Royal Decree of 25 March 2003 – MB 31 March 2003 and by Article 60, 1° (a) and (b) of the Royal Decree of 3 March 2011 – MB 9 March 2011

§ 3. On receipt of those provisions in the general interest, and in any case on expiry of the two-month period referred to in § 2, the branch may be established and start business.

§ 4. In the event of a change in the content of any of the information referred to in § 1, the company shall send written notification of that change to the competent authorities of its home Member State and to [the Bank] at least one month before effecting the change.]

[§ 5. The Bank shall inform the FSMA within the period stipulated in § 2 of any new branch established in accordance with § 3, and shall communicate to it the file referred to in § 1 and any change made to the information which it contains.]

§ 5 inserted by Article 60, 2° of the Royal Decree of 3 March 2011 – MB 9 March 2011

Article inserted by Article 27 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Subsection III

Provisions on business pursued under the freedom to provide services]

Subsection inserted by Article 27 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Article 68

§ 1. Any insurance company referred to in Article 63 may conduct business in Belgium under the freedom to provide services, provided the competent authorities of its home Member State have forwarded to the Bank a file containing at least the following information:


1° a certificate attesting the classes of insurance which the company has been authorised to offer;

2° a certificate attesting that the company covers the minimum solvency margin;

3° the types of business envisaged;

4° in the case of insurance companies wishing to provide compulsory insurance on third party motor vehicle liability:

- a declaration that the company has become a member of the Belgian Motor Insurance Guarantee Fund (FCGA/GMWF) and of the Belgian Motor Insurance Bureau (BBAA/BBAV);

- the name and address of the representative responsible for settling claims, who must comply with the following conditions:

The representative must be domiciled or resident in Belgium and have the necessary professional integrity and experience for his tasks. He must collect all necessary information in relation to claims. He must have sufficient powers to represent the insurance company in relation to persons suffering damage who could pursue claims, including the payment of such claims. He must have sufficient powers to represent the
insurance company or, where necessary, to have it represented before the Belgian courts and authorities in relation to those claims.

The representative must also have power to represent the insurance company before the Belgian competent authorities with regard to checking the existence and validity of compulsory motor vehicle liability insurance policies.

 […]


The appointment by an insurance company of a representative for the purposes of this § 1 shall not in itself constitute the opening of a branch by that company.

[5° in the case of insurance companies wishing to provide insurance against accidents at work:

- proof that the Fonds des accidents du travail/Fonds voor Arbeidsongevallen has been informed of the business envisaged and proof that a declaration has been submitted to that Fund stating that the insurance company will, immediately on the request of that Fund, provide a bank guarantee as referred to in Article 60 of the Law of 10 April 1971 on accidents at work, with a view to payment of compensation for accidents at work if the insurance company has defaulted;
- the name and address of the representative responsible for settling claims, who must satisfy the following conditions:

The representative must be domiciled or resident in Belgium and have the necessary professional integrity and experience for his tasks. He must collect all necessary information in relation to claims. He must have sufficient powers to represent the insurance company in relation to persons suffering damage who could pursue claims, including the payment of such claims. He must also have sufficient powers to represent the insurance company or, where necessary, to have it represented before the Belgian courts and authorities in relation to those claims.

The representative must also have power to represent the insurance company before the Belgian competent authorities with regard to checking the existence and validity of contracts relating to insurance against accidents at work.

The representative may not conduct any direct insurance business on behalf of the insurance company which appointed him.

The appointment by an insurance company of a representative for the purposes of this § 1 shall not in itself constitute the opening of a branch by that company.]

§ 1, 5° inserted by Article 6 of the Law of 10 August 2001 – MB 7 September 2001
§ 2. The company may start business on the officially certified date on which it has been notified by the competent authorities of its home Member State of the communication to [the Bank] of the file referred to in § 1.


§ 3. Any change which the company intends to make to the information referred to in § 1 shall be subject to the procedure laid down in §§ 1 and 2.]

[§ 4. The Bank shall communicate to the FSMA every new file submitted in accordance with § 1 and any change made to the information which it contains.

§ 4 inserted by Article 61 of the Royal Decree of 3 March 2011 – MB 9 March 2011

Article inserted by Article 27 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Section II
Exercise of supervision]

Section inserted by Article 27 of the Royal Decree of 12 August 1994 – MB 16 September 1994 Subsection I General provisions

Subsection inserted by Article 27 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Article 69

At the request of [the FSMA] [or the Bank, each within its own sphere of competence], insurance companies must submit all information and supply all documents with a view to supervision of compliance with the statutory and regulatory provisions in the general interest which are applicable in Belgium to insurance companies and to their activities within the [respective] sphere of competence of [the FSMA] [and the Bank]. The information and documents referred to in this paragraph must be written in the language stipulated by law or by decree.

Paragraph 1, amended by Article 26 of the Royal Decree of 25 March 2003 – MB 31 March 2003 and by Article 62, 1° (a), (b) and (c) of the Royal Decree of 3 March 2011 – MB 9 March 2011

To the same end, [the FSMA and the Bank may, within their respective sphere of competence,] conduct on-site inspections in the Belgian branch or take copies of any information in the possession of the insurance company, after having duly informed the competent authorities of the home Member State.

To the same end, insurance agents, brokers or intermediaries shall be required to supply to [the Bank or] [the FSMA] on request all information concerning insurance contracts which they hold relating to risks located in Belgium.


For the purposes of implementing the three preceding paragraphs, [the FSMA and the Bank may] delegate officers from [their] institution or independent experts authorised for that purpose who shall report [to them].

Paragraph 4, amended by Article 26 of the Royal Decree of 25 March 2003 – MB 31 March 2003 and by Article 62, 4° (a) and (b) of the Royal Decree of 3 March 2011 – MB 9 March 2011

Article inserted by Article 27 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Article 70

If, after first informing [the Bank], the competent authorities of the home Member State proceed to verify in the Belgian branch the information necessary for the financial supervision of the insurance company, [the Bank] may participate in that verification.]


[Subsection II
Exceptional measures]

Subsection inserted by Article 27 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Article 71

§ 1. Where [the Bank or the FSMA establishes] that an insurance company does not conform to the statutory and regulatory provisions applicable in Belgium within [their respective sphere of competence], [they shall order] the insurance company to remedy that situation within a period [which they shall determine].
§ 1, paragraph 1, amended by Article 26 of the Royal Decree of 25 March 2003 – MB 31 March 2003 and by Article 63, 1° of the Royal Decree of 3 March 2011 – MB 9 March 2011

[The Bank and the FSMA shall inform one another of their intention to apply the preceding paragraph.]

Paragraph 2, inserted by Article 63, 1° (b) of the Royal Decree of 3 March 2011 – MB 9 March 2011

If the situation has not been remedied on expiry of that period, [the Bank or the FSMA, each within its own sphere of competence, shall inform] the competent authorities of the home Member State concerned.

§ 1, former paragraph 2, amended by Article 26 of the Royal Decree of 25 March 2003 – MB 31 March 2003 and by Article 63, 1° (c) of the Royal Decree of 3 March 2011 – MB 9 March 2011

In the event of persistent violations, [the Bank and the FSMA, each within its own sphere of competence] may, after informing the supervisory authorities of the home Member State, take appropriate measures to prevent further irregularities[.] [In particular, the Bank and the FSMA may,] if circumstances so require, prohibit that insurance company from continuing to conclude insurance contracts relating to risks located in Belgium. [The Bank and the FSMA may,] at the expense of the insurance company, arrange publication of the prohibition measure in the newspapers and periodicals of [their] choice or in places and for a period which [they shall determine].

§ 1, former paragraph 3, amended by Article 26 of the Royal Decree of 25 March 2003 – MB 31 March 2003 and by Article 63, 1° (d)(i), (ii) and (iii) of the Royal Decree of 3 March 2011 – MB 9 March 2011

[Article 26, § 2bis shall apply.

The Bank and the FSMA shall inform one another of the measures taken pursuant to the preceding paragraphs.]

Paragraphs 5 and 6, inserted by Article 63, 1° (e) of the Royal Decree of 3 March 2011 – MB 9 March 2011

§ 2. Without prejudice to the application of § 1, [the Bank and the FSMA may,] in an emergency situation, take appropriate measures to prevent violations of the rules applicable to insurance companies and falling [within their respective sphere of competence]. [The Bank and the FSMA may, in particular,] prevent insurance companies from continuing to conclude new insurance contracts relating to Belgian risks. [They may,] at the expense of the insurance company, arrange publication of the prohibition measure in the newspapers and periodicals of [their] choice or in places and for a period which [they shall determine].
§2, paragraph 1, amended by Article 26 of the Royal Decree of 25 March 2003 – MB 31 March 2003 and by Article 63, 2° (a)(i), (ii) and (iii) of the Royal Decree of 3 March 2011 – MB 9 March 2011

[The Bank and the FSMA shall] immediately [inform one another and] the competent authorities of the home Member State of the measures [taken].


§ 3. The prohibition decision referred to in §§ 1 and 2 must be notified to the insurance company concerned by registered letter or by letter with advice of receipt.

§ 4. At the request of the competent Belgian authorities, [the FSMA and the Bank may] apply §§ 1 and 3 in respect of an insurance company referred to in this title if it has committed infringements of the statutory and regulatory provisions in the general interest in Belgium, as referred to in Article 64, § 2.


Article inserted by Article 27 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Article 72

§ 1. If the competent authorities of the home Member State of an insurance company so require, [the Bank] shall restrict or prohibit in accordance with Article 17 the free disposal of the assets located in Belgian territory which those authorities have designated.


§ 2. If [the Bank] is informed that an insurance company conducting insurance operations in Belgium via a branch or via freedom to provide services has had its authorisation revoked, has renounced the authorisation or is in process of liquidation, [it shall give notice to the FSMA and], at the request of the competent authorities of the home Member State of that insurance company, [take] the most appropriate measures to safeguard the interests of the policyholders, insured persons and beneficiaries.]
Article 27 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Article 73

[The Bank] shall inform the European Commission of the number and nature of the cases in which measures have been taken in accordance with Article 71, § 1, paragraph 3, and § 2.]


[Section III
Reorganisation and winding-up procedures for insurance companies]

Section inserted by Article 66 of the Law of 6 December 2004 – MB 28 December 2004

[Article 73/1

Without prejudice to their possible announcement in Belgium, the reorganisation measures adopted by the reorganisation authorities of another Member State concerning an insurance company governed by the law of that State shall be effective in Belgium in accordance with the legislation of that State as soon as they are effective in the Member State where they were adopted. Those measures shall apply in Belgium without further formalities.]


[Article 73/2

Winding-up proceedings instituted by the winding-up authorities of another Member State concerning an insurance company governed by the law of that State shall be recognised in Belgium without any formality and shall be effective there as soon as the proceedings take effect in the Member State in which they are instituted.]


[Article 73/3
Paragraph 1, replaced by Article 65 of the Royal Decree of 3 March 2011 – MB 9 March 2011

That notice shall contain at least an extract of that decision and shall mention the competent authorities, the law applicable and, if appropriate, the designated liquidator or reorganisation inspector, and shall be published in at least one of Belgium's official languages.

Article inserted by Article 68 of the Law of 6 December 2004 – MB 28 December 2004

[Article 73/4

The Bank and the FSMA may] ask the competent authorities of the home Member State for information on the progress of the reorganisation measure or winding-up proceedings.


[Article 73/5

The appointment of a reorganisation inspector or a liquidator by an authority of another Member State shall be demonstrated by the presentation of a certified copy of the original decision making the appointment or by any other certificate issued by that authority. Although no legislation or similar formality is required, the document referred to in paragraph 1, must nevertheless be translated into the language or one of the languages of the language region in whose territory the reorganisation inspector or liquidator is to act.]

Article inserted by Article 70 of the Law of 6 December 2004 – MB 28 December 2004

[Article 73/6

§ 1. The reorganisation inspectors and liquidators appointed by an authority of another Member State may exercise in Belgium all the powers which they are authorised to exercise in the territory of that other State.
The same shall apply to the persons which they appoint in accordance with the law of that State to assist or represent them in the conduct of a reorganisation measure or winding-up proceedings.

§ 2. In the exercise of their powers in Belgium, the reorganisation inspectors and liquidators referred to in § 1 shall comply with Belgian law, particularly as regards the procedures for the realisation of assets and the information of workers. Their powers may not include the use of force or the right to rule on legal or other disputes.

§ 3. The reorganisation inspectors and liquidators referred to in § 1 shall communicate to the national business register referred to in Article 3 of the Law of 16 January 2003 creating a central business databank [Banque-Carrefour des Entreprises/Kruispuntbank van Ondernemingen], modernising the commercial register, creating approved business portals and containing miscellaneous provisions, the reorganisation measures and winding-up proceedings decided on by an authority of another Member State of the European Economic Area so that they can be registered.

Article inserted by Article 71 of the Law of 6 December 2004 – MB 28 December 2004

[CHAPTER V 
Transfers]

Chapter inserted by Article 28 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Section I
Transfer by an insurance company under Belgian law]

Section inserted by Article 28 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Article 74

§ 1 Subject to the prior approval of [the Bank], insurance companies under Belgian law may transfer all or part of the rights and obligations arising out of insurance contracts relating to risks located [in the European Economic Area] to an insurance company established [in the European Economic Area.]


§ 2. By way of derogation from § 1, transfers of contracts relating to risks located in Belgium to an insurance company governed by the law of a State which is not a
member [of the European Economic Area] shall be authorised only if they are
effectected to the Belgian branch of that insurance company.

§ 2 amended by Article 10 of the Law of 19 November 2004 – MB 28 December
2004 and

§ 3. In the cases referred to in this Article, [the Bank] shall authorise the transfer
only if the competent authorities of the Member State responsible for supervising the
solvency margin of the accepting company certify that, after taking account of the
transfer, the accepting company has the necessary margin.

§ 3, paragraph 1, amended by Article 26 of the Royal Decree of 25 March 2003 –
MB 31 March 2003, and by Article 4 of the Royal Decree of 3 March 2011 – MB 9
March 2011

Similarly, the said transfers may be authorised only if [the Bank] has consulted the
competent authorities of the Member State of the branch of the insurance company
under Belgian law making the transfer, and if the [Bank] has obtained the consent of
the competent authorities of the Member State where the risks are located.

§ 3, paragraph 2, amended by Article 26 of the Royal Decree of 25 March 2003 –
MB 31 March 2003, and by Article 4 of the Royal Decree of 3 March 2011 – MB 9
March 2011

[The Bank shall inform the FSMA of applications which it has received for
authorisation of the transfer of insurance contracts pursuant to § 1, and of its decision
on the matter.]

§ 3, paragraph 3, inserted by Article 67 of the Royal Decree of 3 March 2011 – MB
9 March 2011

Article inserted by Article 28 of the Royal Decree of 12 August 1994 – MB 16
September 1994

[Section II
Transfer by a Belgian branch of an insurance company governed by the law of a
State which is not a member of [the European Economic Area]

Section inserted by Article 28 of the Royal Decree of 12 August 1994 – MB 16
September 1994 and heading amended by Article 10 of the Law of 19 November
2004 – MB 28 December 2004

[Article 75

§ 1. Subject to the prior authorisation of [the Bank], branches established in
Belgium of insurance companies governed by the law of a State which is not a
member of the [European Economic Area] may transfer all or part of the rights and obligations arising out of contracts relating to risks located [in the European Economic Area] to an insurance company established [in the European Economic Area].


§ 2. By way of derogation from § 1, transfers of contracts relating to risks located in Belgium to an insurance company governed by the law of a State which is not a member [of the European Economic Area] shall be authorised only if they are effected to the Belgian branch of that insurance company.


§ 3. In the cases referred to in this Article, [the Bank] shall approve the transfer only if the competent authorities of the Member State responsible for supervising the solvency margin of the accepting company certify that, after taking account of the transfer, the accepting company has the necessary margin.


Similarly, the said transfers may be authorised only if [the Bank] has obtained the consent of the competent authorities of the Member State where the risks are located.


Article inserted by Article 28 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Section III
Special rules on transfers of contracts relating to risks located in Belgium]

Section inserted by Article 28 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Article 76

Transfers of rights and obligations arising out of contracts relating to risks located in Belgium shall be enforceable against policyholders, insured persons and any
interested third parties if they have been authorised by [the Bank] or by the competent authorities of another Member State.


That enforceability shall take effect on the date of publication referred to in Article 78.

Article inserted by Article 28 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Article 77

§ 1. Policyholders shall have the option of cancelling their contract within ninety days from the date of publication referred to in Article 78. [That cancellation shall take effect on the last day of the month following the month in which the letter of cancellation was sent, or on the annual premium due date, if earlier.]

§ 1, paragraph 1, amended by Article 34 of the Law of 26 April 2010 – MB 28 May 2010

§ 2. The provisions of § 1 shall not apply to mergers and demergers of insurance companies, or to transfers effected as part of a contribution of assets in general or a branch of activity, nor to other transfers between insurance companies belonging to the same consolidated entity.

Article inserted by Article 28 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[Article 78

[The Bank] may arrange the publication in the "Moniteur belge/Belgisch Staatsblad" (Belgian Official Gazette) of an extract of any decision approving a transfer referred to in this section.


[CHAPTER Vquinquies
Conversion of mutual insurance associations]

Chapter inserted by Article 34 of the Law of 3 May 1999 – MB 4 May 1999
[Article 78bis]

Where a mutual insurance association exercises the option provided for [in Articles 774 and 775 of the Companies Code], the rules of this chapter shall apply by way of derogation from [Articles 776 to 788 of that same Code], except in so far as express reference is made to it in this chapter.


[Article 78ter]

A mutual insurance association may be converted only into one of the forms of commercial company referred to in Article 9, § 1 of this law.

Article inserted by Article 34 of the Law of 3 May 1999 – MB 4 May 1999

[Article 78quater]

§ 1. The conversion proposal shall be explained in a report produced by the management body and announced in the agenda of the general meeting which is to pass a resolution on the conversion. That report shall also contain an exact description of, and justification for, the measures governing the rights of the members of the company in its new form, the resulting changes which have to be made to the insurance policies, the measures proposed so that the association in its new form retains its authorisations, and a description of and justification for the method of allocation of the shares representing the registered capital of the company in its new form. That report shall be accompanied by the draft articles of association of the company in its new form and a statement setting out the assets and liabilities of the association, drawn up at a date no more than three months previously and indicating what the association's registered capital will be following its conversion to a company. The registered capital may not exceed the net assets as shown in the said statement. The amount of the net assets may not be repaid or distributed to the shareholders or members on the occasion of the conversion.

§ 2. The auditor(s) of the association shall report on that statement and indicate in particular whether it offers a complete, true and fair view of the association's situation.

§ 3. The drafts of the reports referred to in §§ 1 and 2 above shall be communicated to [the Bank and] [the FSMA]. In the ensuing three weeks, [the Bank and the FSMA must] communicate to the association any observations [which they may have] on the conversion proposal. If those observations are disregarded and [the Bank and the FSMA consider it appropriate, they may] require the observations to be notified to the general meeting. Those observations and the response to them must be recorded in the minutes.
§ 4. With due regard for the rules laid down in the articles of association concerning amendments to the articles, or the rules on winding-up, if they are stricter, the association members shall be summoned to a general meeting to consider the decision on conversion. If the meeting is convened by letter, a copy of the reports of the management body and of the auditor(s) shall be attached to the summons. Those documents shall also be forwarded free of charge to association members requesting them in writing.

Article inserted by Article 34 of the Law of 3 May 1999 – MB 4 May 1999

[Article 78quinquies]

§ 1. The conversion of the association shall be decided by the general meeting. Unless the articles of association lay down stricter conditions concerning an attendance quorum and a majority, the general meeting may pass valid resolutions only if at least half of the members holding voting rights are present or represented at the meeting and if the resolution is accepted by at least four-fifths of the votes cast. If the quorum required by the articles of association or by law is not achieved, a second meeting must be convened. The second summons must satisfy the rules referred to in Article 78quater, § 4. The second general meeting shall pass a resolution regardless of the number of members holding voting rights who are present or represented, under the same voting conditions. Letters convening the general meeting shall reproduce the text of this § 1.

§ 2. The conversion shall require the unanimous consent of the members if the association has not been in existence for at least two years or if the articles of association stipulate that it cannot adopt any other form. Such a clause in the articles may be amended only subject to the same conditions.

§ 3. Immediately after the conversion decision, the articles of association of the company in its new form, including the clauses changing its company object and the initial composition of the bodies, shall be drawn up under the same quorum and majority conditions as those required for the conversion. Failing that, the conversion shall be ineffective.

§ 4. Once the decisions referred to in §§ 1 to 3 have been approved:

- the association shall be converted and its members shall automatically and immediately become shareholders or members of the company in its new form in the manner proposed in the report referred to in Article 78quater, § 1, those members being deemed to enjoy automatically all the authorisations which may be required to become members or shareholders of the company in its new form;
the association members shall lose any rights which they may still have,
including future or conditional rights, on account of their former status as
members;

- however, the policyholders, insured persons and any third parties to the
insurance contracts shall retain the rights acquired under the insurance
contracts at that date, those contracts being automatically adjusted, for the
future, in the manner proposed in the report referred to in Article 78quater,
§ 1;

- in so far as it complies with or continues to comply with the statutory or
regulatory requirements on the subject, the company in its new form shall
retain the authorisations to pursue insurance activities held by the
association before its conversion.]

Article inserted by Article 34 of the Law of 3 May 1999 – MB 4 May 1999

[Article 78sexies]

§ 1. Any conversion decision must be recorded by an authenticated document,
otherwise it shall be void. The authenticated document shall reproduce the conclusion
of the report by the auditor(s) drawn up in accordance with Article 78quater.

§ 2. The authenticated document recording the conversion and the articles of
association of the company in its new form shall be published simultaneously in
accordance with [Articles 67, §§ 1 to 3 and 73 of the Companies Code]. The
conversion document shall be published in full; the articles of association shall be
published in extract form in accordance with [Articles 67 to 69 and 72 of that same
Code].


§ 3. Without prejudice to the immediate effect of the contractual adjustments
referred to in Article 78quinquies, § 4, third indent, the conversion shall be effective
against third parties under the conditions laid down in [Article 76 of the Companies
Code].

§ 3 amended by Article 36, 2° of the Law of 26 April 2010 – MB 28 May 2010

§ 4. Powers of attorney and the reports of the management body and the auditor(s)
shall be lodged in the form of authentic copies or originals at the same time as the
document to which they relate. Anyone may inspect them or obtain copies under the
conditions laid down in [Article 67, § 3 of the Companies Code].

Article inserted by Article 34 of the Law of 3 May 1999 – MB 4 May 1999 and

[Article 78septies]
The provisions of Article 784 of the Companies Code shall apply to the exception in paragraph 1.]


[Article 78octies

The members of the management body of a mutual insurance association which has been converted shall be held jointly and severally liable towards interested parties, despite any stipulation to the contrary, for:

1° payment of any difference between the net assets of the company in its new form and the minimum registered capital prescribed by the [Companies Code] for the company concerned;

1° amended by Article 38, 1° of the Law of 26 April 2010 – MB 28 May 2010

2° any overvaluation of the net assets shown in the statement referred to in Article 78quater, § 1;

3° compensation for any loss or damage which is the immediate and direct consequence of either the nullity of the conversion operation on account of violation of the rules laid down [in Articles 403, 2° to 4° and 454, 2° to 4° of the Companies Code], applied mutatis mutandis, or in Article 78sexies, § 1, or the absence or inaccuracy of the statements prescribed by [Article 453, paragraph 1, with the exception of 6° and 9° to 12° of the same Code] or 78sexies, § 1.]


Article inserted by Article 34 of the Law of 3 May 1999 – MB 4 May 1999

[CHAPTER Vsexies
Merger by absorption of mutual insurance associations]


[Article 78nonies

A mutual insurance association may merge by absorption with another mutual insurance association.

Where a mutual insurance association merges by absorption with another mutual insurance association, the provisions of Book XI of the Companies Code governing merger by absorption shall apply, subject to the derogations and detailed provisions mentioned below. In that case, the terms "company" and "member(s)" used in the said Code shall mean respectively the "mutual insurance association" and its "members".]

By way of derogation from Article 671 of the Companies Code, the merger by absorption of mutual insurance associations shall be the operation whereby one or more mutual insurance associations transfer to another mutual insurance association, following dissolution without winding-up, the whole of their assets, and their rights and obligations, in return for acquisition by the members of the absorbed mutual insurance association(s) of the status of membership of the absorbing mutual insurance association.

The court of first instance shall have jurisdiction over the actions referred to in Article 689 of the Companies Code relating to the merger of mutual insurance associations.

By way of derogation from Article 693, paragraph 2, of the Companies Code, the merger proposal shall mention at least:

1° the legal form, name, object and head office of the insurance associations to be merged;

2° an exact description of, and justification for, the measures regulating the rights and obligations of the members of the absorbed insurance association in the absorbing insurance association, and the financial consequences of the merger for the members of the absorbed and absorbing insurance associations, particularly as regards the members' entitlement to rebates, the obligation to pay additional contributions in the event of a deficit, and the right of the members to the assets of the association;

3° the date from which the rights and obligations of the members of the absorbed insurance association in the absorbing insurance association take effect;

4° without prejudice to the Law of 25 June 1992 on non-marine insurance, an exact description of, and justification for, the adjustments to be made to the insurance policies on account of the merger;

5° an exact description of, and justification for, the measures proposed so that the absorbing insurance association retains the authorisations required for the insurance business transferred, being authorisations held by the absorbed insurance association;

6° the date from which the operations of the absorbed insurance association are considered from the accounting angle as being conducted for the absorbing insurance association;
7° the rights insured by the absorbing insurance association for members of the insurance association to be absorbed who have special rights, or the measures proposed in their respect;

8° the remuneration granted to the auditors responsible for producing the report provided for in Article 695 of the Companies Code;

9° any special benefits granted to members of the management bodies of the insurance associations to be merged.

At least six weeks before the general meeting convened to decide on the merger, the merger proposal must be lodged at the registry of the court of first instance by each of the insurance associations to be merged.


[Article 78terdecies]

By way of derogation from Article 694 of the Companies Code, the detailed, written report produced by the management body of each insurance association shall set out the asset position of the insurance associations to be merged and explain and justify, in legal and economic terms, the desirability of the merger, the conditions and arrangements for its implementation, its consequences and the measures governing the rights of the members of the absorbed insurance association in the absorbing insurance association, in particular the entitlement to rebates, the obligation to pay additional contributions in the event of a deficit, and the right of the members to the assets of the association.]


[Article 78quaterdecies]

By way of derogation from paragraphs 2 and 3 of Article 695 of the Companies Code, the statutory auditor, company auditor or designated accountant must, in particular, report on the financial consequences of the merger for the members of the absorbed insurance association and the absorbing insurance association.

That report must at least:

1° state whether the financial and accounting information contained in the report of the management body referred to in Article 694 of the Companies Code is true and sufficient to inform the general meeting which is to vote on the merger proposal;

2° describe the consequences of the merger for the members' entitlement to rebates, their obligations to pay additional contributions in the event of a deficit, and their right to the assets of the association.]

In each insurance association, the association members shall be summoned to a general meeting to consider the decision on conversion, with due regard for the rules laid down in the articles of association concerning amendments to the articles, or the rules on winding-up, if they are stricter.

Article 697, §1, paragraph 2, and § 2, paragraph 1, 4° of the Companies Code shall apply to mutual insurance associations.


For the merger by absorption of mutual insurance associations, the quorum and majority conditions referred to in Article 699, § 1, 1° of the Companies Code are as follows: those attending the meeting must represent at least half of the association's capital formed by its members. If that condition is not met, a new meeting must be convened. The deliberations and resolutions of the second meeting shall be valid so long as any percentage of the association's capital is represented.

Article 699, § 3 of the Companies Code shall not apply to the merger by absorption of mutual insurance associations.


By way of derogation from Article 701 of the Companies Code, any amendments to the articles of the absorbing insurance association, including clauses amending its object, shall be adopted subject to the quorum and majority conditions stipulated by the articles of the insurance association.


For the purposes of Article 704, paragraph 1, of the Companies Code, in regard to the merger by absorption of mutual insurance associations the date referred to in Article 693, paragraph 2, 5° of that Code shall be the date referred to in Article 78duodecies, 6°.


[Article 78noniesdecies]
Article 211 of the CIR/WIB [Income Tax Act] 1992 shall apply to the merger by absorption of mutual insurance associations in so far as the insurance associations concerned are subject to corporation tax.


**CHAPTER VI**  
Rules on compensation for certain damage caused by motor vehicles

**Article 79**

[...]

*Article abrogated by Article 12 of the Law of 22 August 2002 – MB 17 September 2002*

**Article 80**

[...]

*Article abrogated by Article 12 of the Law of 22 August 2002 – MB 17 September 2002*

**CHAPTER VII**  
Sanctions

**Article [81]**

*Article renumbered by Article 31, § 1 of the Royal Decree of 12 August 1994 – MB 16 September 1994*

If an insurance company[, an insurance holding company, a mixed-activity insurance holding company or a mixed financial holding company] fails to respond to the orders addressed to it under this law or its implementing regulations, [the Bank or the FSMA, depending on the case, may [at one month's notice, regardless of the other measures provided for by the law and the regulations, publish those orders in the "Moniteur belge/Belgisch Staatsblad" (Belgian Official Gazette).


[Article [82]]
§ 1. If [the FSMA] [or the Bank] has set a time limit [for a company] to comply with the law and its implementing decrees and regulations, [it may], if the company remains in default, impose an administrative fine on the company of not less than [25 euros] and not more than 3% of the technical and financial income, up to a maximum of [1,250,000 euros], according to a scale fixed by] an FSMA regulation or a Bank regulation, depending on the case. In the event of a repeat offence within five years, that maximum shall be increased to 5% of the technical and financial income, subject to a maximum of [1,875,000 euros].

The fine may be calculated as a daily amount.

[Without prejudice to the right to serve a writ before the competent court, the administrative fines may be recovered via coercive measures by the Land Registry and in accordance with the procedure laid down by the Code of Registration, Mortgage and Registry Fees.]

§ 1, paragraph 3, amended by Article 135, § 10 of the Law of 2 August 2002 – MB 4 September 2002

[§ 2. Administrative fines may be imposed only after [the company referred to in § 1 has been heard in its defence], or at least has been duly summoned.]]


Article [83]

Article renumbered by Article 31, § 1 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[The directors, the persons involved in the senior management and [the agents of the company] who, as insurers, have concluded or attempted to conclude insurance contracts relating to risks located in Belgium without the company being authorised to pursue such an activity under this law shall be punished by imprisonment for between one month and five years and a fine ranging from 1,000 to 10,000 [euros], or either one of these penalties.]

Article [84]

*Article renumbered by Article 31, § 1 of the Royal Decree of 12 August 1994 – MB 16 September 1994*

Agents, brokers and intermediaries involved in the conclusion of an insurance contract in contravention of Article 3, § 2 of this law shall be punished by imprisonment for between one month and five years and a fine ranging from 1,000 to 10,000 [euros], or either one of these penalties.

*Amended by Article 2 of the Law of 26 June 2000 – MB 29 July 2000*

Article [85]

*Article renumbered by Article 31, § 1 of the Royal Decree of 12 August 1994 – MB 16 September 1994*

Directors, managers or agents who knowingly and deliberately make untrue declarations to the FSMA [or to the Bank], [to their officers or to persons authorised by them], or who have refused to provide the information requested pursuant to this law and its implementing regulations shall be punished by imprisonment for between one month and five years and a fine ranging from 1,000 to 10,000 [euros], or either one of these penalties.


The same penalties shall apply to the directors, auditors, managers or authorised representatives of companies who fail to fulfil the obligations imposed on them by this law or by its implementing regulations.

Article [86]

*Article renumbered by Article 31, § 1 of the Royal Decree of 12 August 1994 – MB 16 September 1994*

All operations concerning savings, capitalisation or insurance and involving the accumulation of sums to be shared among the parties concerned, either by drawing lots or by the effect of a survival clause not based on any mathematically determined commitment according to the individual contributions or shares, shall be treated as lotteries and attract the penalties referred to in Articles 302 and 303 of the Penal Code.
Article [87]

Article renumbered by Article 31, § 1 of the Royal Decree of 12 August 1994 – MB 16 September 1994

All the provisions of Book I of the Penal Code, not excluding Chapter VII and Article 85, shall apply to the infringements described in this law.

Article [88]

Article renumbered by Article 31, § 1 of the Royal Decree of 12 August 1994 – MB 16 September 1994

Any complaint on account of contravention of this law against the managers, auditors, directors or authorised agents of […] insurance companies must be notified to [the Bank or the FSMA, depending on the case,] by the judicial or administrative body to which the matter is referred.


Any criminal proceedings on account of the infringements referred to in paragraph 1, must be notified to [the Bank and] the FSMA, [depending on the case,] by the registry of the criminal court to which the matter is referred.

Paragraph 2, amended by Article 72 of the Royal Decree of 3 March 2011 – MB 9 March 2011

Article [89]

[...]


Article [90]

Article renumbered by Article 31, § 1 of the Royal Decree of 12 August 1994 – MB 16 September 1994

[§ 1. The senior management of the insurance company must be entrusted to at least two natural persons. They shall have the required professional integrity and appropriate experience for the performance of that function.]
The persons involved in the management or strategy of the insurance company, without taking part in its senior management, must have the necessary expertise and appropriate experience for their function.

§ 1 replaced by Article 117 of the Law of 16 February 2009 – MB 16 March 2009

[§ 2. Article 19 of the Law of 22 March 1993 on the legal status and supervision of credit institutions shall apply.]


[§ 3. The articles of association of the insurance companies may authorise the board of directors to delegate some or all of the powers referred to in Article 522, § 1, paragraph 1, of the Companies Code to a management committee which it sets up, whose members it appoints and dismisses and whose remuneration it determines.

However, this delegation of powers may not include the determination of the general strategy nor the acts reserved for the board of directors by the other provisions of that same Companies Code.

§ 4. Without prejudice to Article 14bis, the directors or managers of an insurance company and all persons who, by whatever name or in whatever capacity, take part in the administration or management of the company, may, whether or not as representatives of the insurance company, act as director or manager or take part in the administration or management within a commercial company or a company having a legal commercial form, a company with another Belgian or foreign legal form, or a Belgian or foreign public institution with industrial, commercial or financial activities, subject to the conditions and within the limits laid down in this Article.

The external functions referred to in paragraph 1, shall be governed by the internal rules which the insurance company has to adopt and enforce with a view to the following objectives:

1° avoiding a situation where persons participating in the senior management of the insurance company are no longer adequately available to conduct that management because of their exercise of those functions;

2° to prevent the occurrence of conflicts of interest for the insurance company, and the risks associated with the performance of those functions, in particular in regard to insider dealing;

3° to ensure that those functions are properly publicised.

The [Bank] shall lay down detailed rules on those obligations via a regulation submitted for the approval of the King in accordance with Article 64 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services].
§ 4, paragraph 3, amended by Articles 4 and 74 of the Royal Decree of 3 March 2011 – MB 9 March 2011

If the [Bank] fails to enact the regulation referred to in paragraph 3, or to amend it in the future, the King has power to enact or amend that regulation himself.

§ 4, paragraph 4, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The managing agents appointed on the proposal of the insurance company must be persons involved in the senior management of the insurance company or persons who appoint such persons.

Directors not involved in the senior management of the insurance company may not be directors of a company in which the company holds shares unless they are not involved in the day-to-day running of that company. However, that prohibition shall not apply for a limited six-year period to directors appointed following the acquisition of shares in, or the takeover of the business of the company in which those same persons are involved in the senior management.

Persons involved in the senior management of the insurance company may not hold a mandate which entails involvement in the day-to-day management except in the case of a company referred to in Article 32, § 4 of the Law of 22 March 1993 on the legal status and supervision of credit institutions, with which the insurance company has close links, an undertaking for collective investment governed by articles of association or a management company of undertakings for collective investment within the meaning of the Law of 20 July 2004 on certain forms of collective management of investment portfolios, a company whose activity is connected with insurance business such as a brokerage or a claims settlement agency, an asset holding company in which such persons or their family hold a significant interest in connection with the normal management of their assets, or a company in which such persons are the sole directors and whose activity is confined to management services for the aforesaid companies or the activities of an asset holding company. [The persons involved in the senior management of a mutual benefit society referred to in Article 2, § 1ter may, in addition, take part in the day-to-day management of a private health insurance fund, a national union of such funds or another mutual benefit society referred to by the aforesaid Law of 6 August 1990 which members of the mutual benefit society referred to in Article 2, § 1ter may join.]


For the purposes of supervision of compliance with the provisions of this Article, insurance companies shall give notice to the [Bank] without delay of the functions exercised outside the insurance company by the persons referred to in paragraph 1.

§ 4, paragraph 8, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011
§ 5. In the event of the bankruptcy of an insurance company, all payments made by that company in cash or otherwise to its directors or managers in the form of bonuses or other shares in the profits in the two years preceding the date determined by the court as the date for cessation of its payments shall be invalid and shall not affect the assets available for distribution.

Paragraph 1 shall not apply if the court acknowledges that there was no serious, manifest misconduct on the part of those persons which contributed to the bankruptcy.


[Article 90bis

The insurance company shall inform the [Bank] in advance of the proposal for the appointment or renewal of the appointment and the non-renewal of the appointment or the dismissal of persons taking part in the direction, management or senior management of the insurance company.

In the case of a proposal for the appointment of a person to take part in the administration, management or senior management of the insurance company, insurance companies shall communicate to the [Bank] the information and documents which will enable it to judge whether the person has the necessary professional integrity and expertise and adequate experience as referred to in Article 90.

The [Bank] shall, within a reasonable period, give its opinion on any proposal for an appointment or renewal of an appointment. If the proposal for an appointment or renewal of an appointment concerns a person involved in the senior management of the business, the appointment or renewal of the appointment may only take place if the [Bank] has made a recommendation in favour.

[In the case of the appointment of a person who is proposed for the first time to exercise that function in a financial company subject to supervision by the Bank pursuant to Article 36/2 of the Law of 22 February 1998, the Bank shall first consult the FSMA.

The FSMA shall inform the Bank of its opinion within one week following receipt of the request for an opinion.]

Paragraphs 4 and 5, inserted by Article 75 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The insurance company shall also inform the [Bank] of any allocation of tasks among the persons involved in the administration, management or senior management of the insurance company, and of any allocation of tasks among the members of the management committee, as well as any significant changes in that allocation of tasks.]
The companies shall be liable for any fines imposed on their directors, auditors, executives, managers or agents pursuant to the foregoing provisions.
[CHAPTER VII bis
Special provisions on the supplementary supervision of Belgian insurance
companies in an insurance or reinsurance group]]

Chapter inserted by Article 3 of the Royal Decree of 14 March 2001 – MB 19 April
2001 and heading replaced by Article 119 of the Law of 16 February 2009 – MB 16
March 2009

[Section I
General provisions

Section inserted by Article 3 of the Royal Decree of 14 March 2001 – MB 19 April
2001

[Article 91bis

For the purposes of this chapter and its implementing decrees, the following
definitions shall apply:

1° insurance company: a company which has its registered office in [the
European Economic Area] and which has been authorised in accordance with the law
of its home Member State to pursue insurance activities;

1° amended by Article 10 of the Law of 19 November 2004 – MB 28 December 2004

2° non-member-country insurance company: a company which has its registered
office outside [the European Economic Area] and which would require authorisation
to pursue insurance activities if it had its registered office in [the European Economic
Area];


[3° reinsurance company: a company as defined in Article 82, 3° of the Law of 16
February 2009 on reinsurance;]

3° replaced by Article 120 (a) of the Law of 16 February 2009 – MB 16 March 2009

[3°bis non-member-country reinsurance company: a company as defined in Article
82, 4° of the Law of 16 February 2009 on reinsurance;]

3° bis inserted by Article 120 (b) of the Law of 16 February 2009 – MB 16 March
2009

4° parent company: a company which corresponds to the definition of a parent
company set out in Article 6 of the Companies Code and any company which, in the
opinion of the [Bank], effectively exercises a dominant influence over another
company;

5° subsidiary company: a company which corresponds to the definition of a subsidiary company set out in Article 6 of the Companies Code and any company over which, in the opinion of the [Bank], a parent company effectively exercises a dominant influence. All subsidiaries of subsidiary companies shall also be considered subsidiaries of the parent company which is at the head of those companies;


6° participation: the holding, directly or indirectly, of rights in other companies if that holding is intended, by the creation of a permanent, specific link with those companies, to enable the company to influence the management strategy of those companies, or the holding, directly or indirectly, of 20% or more of the voting rights or capital of any other company;

7° participating company: a company which is either a parent company or another company which holds a participation, and any company with which a consortium as defined in Article 10 of the Companies Code is formed;

7° replaced by Article 13, 1° of the Law of 20 June 2005 – MB 26 August 2005

8° related company: either a subsidiary or other company in which a participation is held, and any company with which a consortium as defined in Article 10 of the Companies Code is formed;


[9° insurance holding company: a parent company the main business of which is to acquire and hold participations in subsidiary companies, where those subsidiary companies are exclusively or mainly insurance companies, reinsurance companies or non-member-country insurance or reinsurance companies, one at least of such subsidiary companies being an insurance or reinsurance company, and not being a mixed financial holding company within the meaning of Article 91octiesdecies;

9° replaced by Article 120 (c) of the Law of 16 February 2009 – MB 16 March 2009

[10° mixed-activity insurance holding company: a parent company, other than an insurance company, a non-member-country insurance company, a reinsurance company or a non-member-country reinsurance company, an insurance holding company or a mixed financial holding company which includes at least one insurance or reinsurance company among its subsidiary companies;

10° replaced by Article 120 (d) of the Law of 16 February 2009 – MB 16 March 2009
[10°bis competent authorities: the national authorities which are empowered by law or regulation to supervise insurance or reinsurance companies;]

10° bis inserted by Article 120 (e) of the Law of 16 February 2009 – MB 16 March 2009


11° replaced by Article 120 (f) of the Law of 16 February 2009 – MB 16 March 2009

Article inserted by Article 3 of the Royal Decree of 14 March 2001 – MB 19 April 2001

[Article 91ter]

§ 1. The [Bank] shall exercise supplementary supervision over insurance companies under Belgian law:

Introduction to § 1 amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

[1° which are participating companies in at least one insurance or reinsurance company, or one non-member-country insurance or reinsurance company in accordance with sections II, III and IV of this chapter;]

1° replaced by Article 121 (a) of the Law of 16 February 2009 – MB 16 March 2009

[2° of which the parent company is an insurance holding company or an insurance or reinsurance company of a non-member country in accordance with sections II, III and V of this chapter;]

2° replaced by Article 121 (b) of the Law of 16 February 2009 – MB 16 March 2009

§ 2. The exercise of that supplementary supervision shall in no way imply that the [Bank] exercises individual supervision over companies other than those referred to in Article 2 of the law and included in the supplementary supervision.


§ 3. The supplementary supervision shall be exercised in compliance with the provisions of sections II, III, IV and V of this chapter in so far as they concern:
1° related companies of the Belgian insurance company;
2° participating companies in the Belgian insurance company;
3° related companies of a participating company in the Belgian insurance company.

§ 4. Where there are, in the home country of a company whose registered office is located outside the European Economic Area, legal impediments to the transfer of the necessary information, that company cannot be taken into account in the supplementary supervision. However, [on the advice of the Bank the King shall lay down] rules whereby such a company is to be taken into account for the purposes of sections V and VI of this decree.


§ 5. [The Bank] may decide on a case-by-case basis not to take a company into account in the supplementary supervision:


1° if the company which should be included is of negligible interest with respect to the objectives of the supplementary supervision;

2° if the inclusion of the financial position of the company would be inappropriate or misleading with respect to the objectives of the supplementary supervision.

Article inserted by Article 3 of the Royal Decree of 14 March 2001 - MB 19 April 2001

[Section I bis
Insurance holding companies under Belgian law]


[Article 91ter 1

1. Notwithstanding the provisions of Article 91ter, § 2:

1° the [Bank] must be notified of the identity of natural or legal persons who intend, directly or indirectly, to acquire a qualifying holding in an insurance holding company under Belgian law and of their intention to increase or reduce such a holding; [the provisions of Articles 23bis and 24 of the law shall apply mutatis mutandis];
2° the senior management of an insurance holding company under Belgian law must be entrusted to at least two persons;

the persons responsible for the senior management of the company, the managers and authorised agents, must have the required professional integrity and appropriate experience for the exercise of that function;

[If the articles of association of the insurance holding company under Belgian law provide for the formation of a management committee as referred to in Article 524bis of the Companies Code, that management committee shall comprise at least two directors.]

**Paragraph 3, inserted by Article 122, 1° of the Law of 16 February 2009 – MB 16 March 2009**

The provisions of [Articles 9bis, 90, §§ 2 to 5, and 90bis] shall apply mutatis mutandis.]

**Paragraph 4, amended by Article 122, 2° of the Law of 16 February 2009 – MB 16 March 2009**


[Section II

*Access to information*

*Section inserted by Article 3 of the Royal Decree of 14 March 2001 - MB 19 April 2001*

[Article 91quater

The [Bank] shall ensure that every insurance company subject to supplementary supervision has adequate risk management procedures and internal control mechanisms in place, including adequate reporting and accounting systems for the production of any data and information relevant for the purposes of such supplementary supervision. Those procedures and systems must permit the accurate identification, measurement and monitoring of the operations referred to in Article 91octies.]


[Article 91quinquies

Companies under Belgian law that are subject to the supplementary supervision shall be required to exchange with their related companies and participating companies any
information relevant for the purposes of such supplementary supervision, without any provisions under private law being able to preclude that.]

Article inserted by Article 3 of the Royal Decree of 14 March 2001 - MB 19 April 2001

[Article 91sexies]

§ 1. A Belgian insurance company which is in any of the situations referred to in Article 91ter, § 1 shall be required to communicate to [the Bank] upon request of the latter and within a period which the Bank shall determine any data and information relevant for the purposes of exercising supplementary supervision over that company.

§ 1, paragraph 1, amended by Article 26 of the Royal Decree of 25 March 2003 – MB 31 March 2003 and by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

Where an insurance company has not supplied the information requested within the period determined in paragraph 1, [the Bank] may request that information from:


1° related companies of the Belgian insurance company;
2° participating companies in the Belgian insurance company;
3° related companies of a participating company in the Belgian insurance company.

§ 2. The companies under Belgian law shall supply to the competent authority of another Member State [of the European Economic Area] the data and information which the latter considers relevant for the exercise of the supplementary supervision as provided for by the directive where, despite its own request to the insurance company concerned, it has been unable to obtain the information.]


Article inserted by Article 3 of the Royal Decree of 14 March 2001 – MB 19 April 2001

[Article 91septies]

§ 1. [The Bank] may carry out either [itself] or through the intermediary of persons [whom it appoints] for that purpose, on-the-spot verification of compliance with the obligations defined in this chapter and the accuracy and completeness of the data and information supplied to it at the following companies under Belgian law:
§ 1, paragraph 1, introductory sentence amended by Article 26 of the Royal Decree of 25 March 2003 – MB 31 March 2003 and by Articles 4 and 77 of the Royal Decree of 3 March 2011 – MB 9 March 2011

1° the insurance company itself;
2° subsidiary companies of that insurance company;
3° parent companies of that insurance company;
4° subsidiary companies of a parent company of that insurance company.

§ 2. Where, [the Bank] wishes, in specific cases, to verify information concerning a company located in another Member State which is a related insurance or reinsurance company, a subsidiary company, a parent company or a subsidiary of a parent company of a Belgian insurance company, it shall ask the competent authorities of that other Member State either to carry out that verification itself, or to authorise the Bank to carry out the verification itself or to have it carried out by an expert.


Where the companies in question have their registered office outside [the European Economic Area], the detailed arrangements for that on-the-spot verification shall be laid down in cooperation agreements concluded between [the Bank] and the foreign competent authority concerned.


§ 3. [Where, in connection with the supplementary supervision of insurance companies, foreign competent authorities submit a request to it in accordance with Directive 98/78/EC, the [Bank] shall carry out the on-the-spot verification of information concerning a company established in Belgium which is a related insurance or reinsurance company, a subsidiary company, a parent company or a subsidiary of a parent company of the insurance company, or shall grant those authorities permission to carry out the verification themselves, or to have it carried out by an expert.


Article inserted by Article 3 of the Royal Decree of 14 March 2001 – MB 19 April 2001

[Section III

Intra-group transactions

Section inserted by Article 3 of the Royal Decree of 14 March 2001 – MB 19 April 2001
[Article 91octies]

[The Bank] shall exercise general supervision over transactions between:


(a) a Belgian insurance company and:
- a related company of the insurance company;
- a participating company in the insurance company;
- a related company of a participating company in the insurance company;

(b) a Belgian insurance company and a natural person who holds a participation in:
- the insurance company or any of its related companies;
- a participating company in the insurance company;
- a related company of a participating company in the insurance company.

Intra-group transactions concern:

1° loans,
2° guarantees and off-balance-sheet transactions,
3° elements eligible for the solvency margin,
4° investments,
5° [reinsurance and retrocession] operations,

Paragraph 2, 5° amended by Article 124 (a) of the Law of 16 February 2009 – MB 16 March 2009

6° cost contribution agreements.

[The Belgian insurance companies shall establish adequate risk management and internal control procedures, including sound reporting and accounting procedures, to enable the [Bank] to identify, measure, monitor and supervise appropriately the transactions referred to in the preceding paragraphs. They shall also report to the [Bank] at intervals which it determines and at least once a year, all significant transactions carried out within the group.]


If, on the basis of this information, it appears that a transaction jeopardises, or may jeopardise, the solvency of a Belgian insurance company, the [Bank] shall take in respect of that insurance company the measures provided for in Article 26 of the law,
or require changes to the detailed arrangements of the transaction, or oppose its implementation.]


[Section IV

Adjusted solvency for the Belgian insurance companies referred to in Article 91ter, § 1, 1°]

Section inserted by Article 3 of the Royal Decree of 14 March 2001 – MB 19 April 2001

[Article 91nonies

§ 1. The participating Belgian insurance companies referred to in Article 91ter, § 1, 1° must establish a sufficient adjusted solvency margin, on an aggregate basis, in relation to all their activities and the activities of their related companies.

[They need not calculate an adjusted solvency margin if they are related companies of another participating Belgian insurance or reinsurance company and are taken into account in the calculation of the adjusted solvency margin of that insurance or reinsurance company.]}

Paragraph 2, replaced by Article 125, 1° of the Law of 16 February 2009 – MB 16 March 2009

However, the elements comprising the solvency margin of [insurance or reinsurance] companies taken into account in the calculation of the adjusted solvency margin must be adequately distributed among the said companies, to the satisfaction of [the Bank].


[Where a participating Belgian insurance company is a related company of another insurance company, reinsurance company or insurance holding company which has its registered office in another Member State of the European Economic Area, the [Bank] may exempt the Belgian insurance company from the obligation to calculate an adjusted solvency if the [Bank] and the competent authority of the other State agree that the latter shall take charge of the supplementary supervision.]

§ 2. [The King shall determine, on the advice of the Bank] the method of calculating the adjusted solvency margin required according to the commitments of the participating Belgian company and of its related companies, and the elements to be taken into account.

§ 2 amended by Article 78 of the Royal Decree of 3 March 2011 – MB 9 March 2011

[§ 2bis. Credit institutions and financial institutions within the meaning of the Law of 22 March 1993 on the legal status and supervision of credit institutions, investment firms and financial institutions within the meaning of the Law of 6 April 1995 on the legal status and supervision of investment firms, intermediaries and investment advisers, and management companies of undertakings for collective investment, within the meaning of the Law of 20 July 2004 on certain forms of collective management of investment portfolios shall be included in the supplementary supervision of insurance companies for the calculation of the adjusted solvency under the conditions and in accordance with the rules set out below:

a) if the parent company or the company which holds the participation is an [insurance or reinsurance company] or an insurance holding company which is at the head of a financial services group subject to supplementary supervision in accordance with the provisions of Chapter VIIter, the companies in question shall be omitted from the supplementary supervision for the purpose of calculating the adjusted solvency;

§ 2bis (a) amended by Article 125, 3° of the Law of 16 February 2009 – MB 16 March 2009

b) if the parent company or the company which holds the participation is not at the head of a financial services group within the meaning of Chapter VIIter, the companies in question shall be included in the supplementary supervision for the purpose of calculating the adjusted solvency; the [Bank] may permit or require the use of one of the calculation methods specified in Chapter VIIter for financial services groups, or the application of the deduction rule referred to in Article 15bis, § 4.]


§ 3. The participating Belgian insurance companies shall calculate the adjusted solvency margin [within the same periods and with the same frequency as the calculation of the solvency margin of the insurance companies.]
§ 3 amended by Article 125,4° of the Law of 16 February 2009 – MB 16 March 2009

They shall apply that calculation for the first time when drawing up the annual accounts for the financial year commencing on 1 January 2001 or during that calendar year.]

Article inserted by Article 3 of the Royal Decree of 14 March 2001 – MB 19 April 2001

[Article 91decies

§ 1. For the purposes of calculating the adjusted solvency margin, the preparation of the consolidated annual accounts of a participating Belgian insurance company shall be governed by the rules laid down in this Article.

§ 2. The sub-consolidation exemption provided for in [Article 113 of the Companies Code] shall, in addition to the conditions referred to in that Article, be subject to the condition that the parent company of the exempt insurance company must be an [insurance or reinsurance company] under Belgian law.


§ 3. [Where it] considers it necessary for the exercise of supplementary supervision, [the Bank] may require:


a) that a company which is not a subsidiary but in which a participation is held or with which there is another form of capital link shall also be included in the consolidated position or treated in accordance with the equity method;

b) that a company over which a significant influence is exercised regarding the management strategy, without any participation or other capital link, shall be included in the consolidated position either by being taken into account on a proportional basis or by the equity method.

In its assessment for the purposes of paragraph 1, [the Bank] shall take account of the risks which arise for the consolidating company from its link with the company concerned, and in particular the liability incurred by the consolidating company on account of its participation, its capital link or the significant influence which it exerts.

§ 4. In the cases referred to in [Articles 107, 108 and 109 of the Royal Decree of 30 January 2001 implementing the Companies Code], the non-inclusion of a subsidiary in the consolidated position shall be subject to the prior authorisation of [the Bank].


For the purposes of [Article 107, paragraph 1, 1°, of the said Royal Decree of 30 January 2001], one or more companies shall be regarded as of negligible significance if their individual or joint balance sheet total is less than 10 million euros and represents less than 1% of the balance sheet total of the consolidating company.


Where a credit institution which is a subsidiary of an insurance company is itself the parent company of an insurance company, it shall be included in the consolidated position.

Article inserted by Article 3 of the Royal Decree of 14 March 2001 – MB 19 April 2001

[Article 91undecies]

Without prejudice to the application of other measures laid down in Article 26 of the law, [the Bank] may, in order to restore the aggregate financial position of a participating insurance company whose adjusted solvency margin no longer meets the level prescribed in Article 91nonies, §§ 1 and 2, require the company to submit a recovery plan within a period [which it shall specify].


[...]
Article inserted by Article 3 of the Royal Decree of 14 March 2001 – MB 19 April 2001

[Article 91duodecies]

With a view to the exercise of the supplementary supervision referred to in this section, the auditor(s) appointed to audit the consolidated accounts in accordance with [Article 146 of the Companies Code] shall be the accredited auditor(s) designated by the consolidating company pursuant to Article 38.


[Section V
Method of supplementary supervision of the Belgian companies referred to in Article 91ter, § 1, 2°

Section inserted by Article 3 of the Royal Decree of 14 March 2001 – MB 19 April 2001

[Article 91terdecies]

§ 1. Belgian insurance companies which are in the situation referred to in Article 91ter, § 1, 2° shall be subject to a supplementary supervision method the details of which shall be laid down by the King.

In the case of successive participations, the supplementary supervision method shall be applied only to the ultimate parent company under Belgian law of the Belgian insurance company.

§ 2. Belgian insurance companies shall not be subject to the supplementary supervision method if they are in any of the following situations:

[1° the Belgian insurance company is a related company of another Belgian insurance or reinsurance company and is taken into account in the method of supplementary supervision exercised over that other company in accordance with this section;]

§ 2, 1° replaced by Article 128, § 1 (a) of the Law of 16 February 2009 – MB 16 March 2009

[2° the Belgian insurance company and one or more other Belgian insurance or reinsurance companies have as their parent company the same insurance holding company or the same non-member-country insurance or reinsurance company and the Belgian insurance company is taken into account in the method of supplementary supervision exercised over one of those other Belgian companies in accordance with this section;]
§ 2, 2° replaced by Article 128, § 1 (b) of the Law of 16 February 2009 – MB 16 March 2009

[3° the Belgian insurance company and one or more other insurance or reinsurance companies authorised in another Member State have as their parent company the same insurance holding company or the same non-member-country insurance or reinsurance company, and an agreement assigning the exercise of the supplementary supervision referred to in this section to the competent authorities of another Member State has been concluded in accordance with Article 91sexiesdecies.]

§ 2, 3° replaced by Article 128, § 1 (c) of the Law of 16 February 2009 – MB 16 March 2009

[In the case of successive participations, the [Bank] may permit the Belgian insurance company to be subjected to the supplementary supervision method only at the level of the ultimate parent company of that Belgian company which is an insurance holding company or a non-member-country insurance or reinsurance company in regard to which the [Bank] exercises supplementary supervision.]

§ 2, paragraph 2, replaced by Article 128, § 1 (d) of the Law of 16 February 2009 – MB 16 March 2009

§ 3. Related Belgian insurance companies shall apply the supplementary supervision method [within the same periods and with the same frequency as for the calculation of the solvency margin of the insurance companies.]

§ 3, paragraph 1, replaced by Article 128, § 2 of the Law of 16 February 2009 – MB 16 March 2009

They shall apply that method for the first time when drawing up the annual accounts for the financial year commencing on 1 January 2001 or during that calendar year.

Article inserted by Article 3 of the Royal Decree of 14 March 2001 – MB 19 April 2001

[Article 91quaterdecies]

If, on the basis of the supplementary supervision method, [the Bank] is of the opinion that the solvency of a Belgian insurance company is or may be jeopardised, [it may] take in respect of that insurance company the measures provided for in [Articles 24 and 26 of the law].]

Article 91quinquiesdecies

With a view to the exercise of the supplementary supervision referred to in this section, the auditor(s) appointed to audit the consolidated accounts in accordance with Article 146 of the Companies Code shall be one or more statutory auditors accredited by the [Bank].


[Where a Belgian insurance company has as its parent company an insurance holding company located outside Belgium or a non-member-country insurance or reinsurance company, and the supplementary supervision referred to in this section is exercised by the [Bank], the verification and auditing tasks shall be similarly carried out by the accredited auditor(s) designated at the Belgian insurance company.]


Article inserted by Article 3 of the Royal Decree of 14 March 2001 – MB 19 April 2001

[Section VI
Cooperation between competent authorities]

Section inserted by Article 3 of the Royal Decree of 14 March 2001 – MB 19 April 2001

Article 91sexies decies

[Where insurance companies established in different Member States have as their parent company the same insurance holding company, the same non-member-country insurance or reinsurance company, or the same mixed-activity insurance holding company, the [Bank] may conclude an agreement with the competent authorities of those Member States in order to define as efficiently as possible their respective responsibilities in respect of the supplementary supervision of the insurance companies.


Article 91septies decies
Where insurance companies established in different Member States are directly or indirectly related or have a common participating company, the [Bank] shall communicate to the competent authorities of each Member State on request all relevant information which may allow or facilitate the exercise of the supplementary supervision, and shall communicate on its own initiative any information which appears to it to be essential for the other competent authorities.

*Paragraph 1, amended by Article 26 of the Royal Decree of 25 March 2003 – MB 31 March 2003 and by Articles 4 and 82 of the Royal Decree of 3 March 2011 – MB 9 March 2011*

Where a Belgian insurance company and either a credit institution or an investment firm or foreign investment firm, or both, are directly or indirectly related or have a common participating company, [the Bank] and the authorities with public responsibility for the supervision of those other companies shall cooperate closely. Without prejudice to their respective responsibilities, [the Bank] and those authorities shall provide one another with any information likely to simplify their task, in particular within the framework of the supplementary supervision.


[The Bank] shall cooperate closely with the authorities responsible in Belgium for the supervision of the legislation on accidents at work. Those authorities shall supply to [the Bank] any information likely to simplify its task within the framework of the supplementary supervision.


The exchange of information referred to in this Article may be extended on a reciprocal basis to the authorities of a State which is not a member of the [European Economic Area].

*Paragraph 4, amended by Article 10 of the Law of 19 November 2004 – MB 28 December 2004*

The [Bank] may conclude cooperation agreements with those authorities with a view to the application of the provisions of this Article.

*Paragraph 5, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011*

*Article inserted by Article 3 of the Royal Decree of 14 March 2001 – MB 19 April 2001*
[CHAPTER VIIter
Special provisions on the supplementary supervision of Belgian insurance companies in a financial services group]


[Article 91 octies decies]

§ 1. For the purposes of this Article, the following definitions shall apply:

1° "group": a group of companies comprising a parent company, its subsidiaries, companies in which the parent company or its subsidiaries hold, directly or indirectly, a participation, as well as companies with which a consortium is formed and companies controlled by the latter or in which the latter hold a participation;

2° "financial services group": a group which satisfies the following conditions:

a) the group comprises, either at the head of the group or as a subsidiary, at least one regulated company having the legal status of a credit institution, insurance company[, reinsurance company] or investment firm;

§ 1, 2° (a) amended by Article 131 (a) of the Law of 16 February 2009 – MB 16 March 2009

b) if the company at the head of the group is a regulated company, it is either the parent company of a company belonging to the financial sector, or a company which, directly or indirectly, holds a participation in a company belonging to the financial sector, or a company which forms a consortium with a company belonging to the financial sector;

c) if the company at the head of the group is not a regulated company, the group's activities occur mainly in the financial sector; the King shall determine the meaning of the term "mainly";

d) the group conducts its activities in both the insurance sector and the banking sector and/or the investment services sector;

e) the group's activities in the insurance sector and the group's activities in the banking sector and the investment services sector are significant; the King shall determine the meaning of the term "significant";

3° "regulated company": a legal person which is either an insurance company as defined in Article 91bis, 1° and 2° of this law, [or a reinsurance company as defined in Article 82, 3° and 4° of the Law of 16 February 2009 on reinsurance,] or a credit institution as defined in Article 1, paragraph 2, of the Law of 22 March 1993 on the legal status and supervision of credit institutions, or an investment firm as defined in Article 44 of the Law of 6 April 1995 on the legal status and supervision of investment firms, and on intermediaries and investment advisers, or a management company of undertakings for collective investment as defined in Article 138 of the
Law of 20 July 2004 on certain forms of collective management of investment portfolios, and any other company established in accordance with foreign law which, if it had its registered office in Belgium, would require authorisation to pursue its activities as an investment firm or management company of undertakings for collective investment;

§ 1, 3° amended by Article 131 (b) of the Law of 16 February 2009 – MB 16 March 2009

4° "financial sector": a sector comprising one or more of the following companies:

a) a regulated company which is a credit institution, a financial institution within the meaning of Article 3, § 1, 5° of the Law of 22 March 1993, an ancillary banking services company within the meaning of Article 1, points 5 and 23 of Directive 2000/12/EC of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions; these companies form part of the same financial sector, named the "banking sector";

b) a regulated company which is an insurance [or reinsurance] company, an insurance holding company within the meaning of Article 91bis, 9° of this law; these companies form part of the same financial sector, named the "insurance sector";

§ 1, 4° (b) amended by Article 131 (c) of the Law of 16 February 2009 – MB 16 March 2009

c) a regulated company which is an investment firm, a company providing ancillary services within the meaning of Article 46, 2° of the Law of 6 April 1995, a financial institution within the meaning of Article 46, 7° of the same law; these companies form part of the same financial sector, named the "investment services sector";

d) a mixed financial holding company;

5° "mixed financial holding company": a parent company other than a regulated company which is at the head of a financial services group;

6° "parent company", "subsidiary", "control", "consortium", "participation": the concepts within the meaning of their definition in Chapter VIIbis of this law, [Article 82 of the Law of 16 February 2009 on reinsurance.] Article 49 of the Law of 22 March 1993 or Article 95 of the Law of 6 April 1995.

§ 1, 6° amended by Article 131 (d) of the Law of 16 February 2009 – MB 16 March 2009

§ 2. Insurance companies under Belgian law which form part of a financial services group headed by a regulated company shall be subject to supplementary supervision at group level in accordance with the provisions of this § 2.
Where a regulated company under Belgian law is at the head of a financial services group, the supplementary group supervision shall be exercised by the [Bank].

§ 2, paragraph 2, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The supplementary supervision shall concern the financial position of the financial services group in general and the solvency of the group in particular, the risk concentration, intra-group transactions and the internal control systems and risk management procedures for the group as a whole.

The King shall determine the rules applicable pursuant to paragraphs 2 and 3.

All financial services group companies which belong to the financial sector shall be included in the supplementary group supervision in accordance with the detailed arrangements determined by the King.

The King may extend the supplementary group supervision to other spheres and to group companies outside the financial sector, in accordance with the European regulations.

The [Bank] may stipulate that regulated and unregulated companies included in the supplementary group supervision shall provide it with all information necessary for the exercise of the supplementary group supervision. The [Bank] may, for the purposes of that supplementary supervision and at the expense of the regulated company concerned, carry out the on-the-spot verification of the information received, or have that verification carried out by accredited auditors or, if appropriate, by foreign experts which it has approved for the purpose, in all companies included in the supplementary group supervision. The [Bank] shall carry out a verification, or have a verification carried out, in a company established in another Member State of the European Economic Area only after giving notice to the competent supervisory authority of that other State and only if that authority does not itself carry out that verification or allow an auditor or expert to do so. If the [Bank] does not carry out the verification itself, it may nonetheless take part in it if the court considers that desirable.

§ 2, paragraph 7, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The supplementary group supervision shall not entail individual supervision by the [Bank] of the companies included in that supervision. The supplementary group supervision shall also be without prejudice to the supervision on a company basis and the supplementary supervision exercised in accordance with the other provisions of this law.

§ 2, paragraph 8, amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

The King may determine the conditions under which Belgian companies forming part of a financial services group and included in the supplementary group supervision
exercised by a foreign supervisory authority may be required to supply information to that supervisory authority for the exercise of the supplementary group supervision, and may be subject to on-the-spot verification of that information by that authority or by auditors or experts which it has appointed.

§ 3. Insurance companies under Belgian law forming part of a financial services group headed by a mixed financial holding company shall be subject to supplementary supervision at group level.

The supplementary group supervision shall be exercised pursuant to the provisions of § 2 mutatis mutandis. In that case the supplementary supervision shall also include, from the point of view of sound and prudent management, supervision of the shareholder structure of the mixed financial holding company and the appropriateness of the senior management of the mixed financial holding company.

The King may define and supplement the detailed arrangements for the supplementary group supervision, and in particular specify which other provisions of this law shall apply to mixed financial holding companies.


§ 5. In special cases, with a view to the attainment of the objectives of this Article, the [Bank] may authorise reasoned derogations from the decrees and regulations adopted pursuant to this Article in so far as such derogations apply to all regulated companies in similar circumstances. The use of that right must not contravene the provisions of European law.

§ 5 amended by Article 4 of the Royal Decree of 3 March 2011 – MB 9 March 2011

[§ 6. The King shall enact the decrees referred to in this Article on the advice of the Bank.]

§ 6 inserted by Article 83 of the Royal Decree of 3 March 2011 – MB 9 March 2011


CHAPTER VIII

Transitional provisions

Article [92]

Article renumbered by Article 32, § 1 of the Royal Decree of 12 August 1994 – MB 16 September 1994
Insurance companies operating in Belgium before the entry into force of Article 3 of this law may continue their activities in the classes of insurance which they offer.

With effect from the entry into force of this law, those companies shall be provisionally authorised and shall be subject, in the pursuit of their activities, to the obligations and supervision provided for by this law.

Companies granted provisional authorisation and wishing to obtain the authorisation referred to in Article 3 must, within three months from the date of entry into force of that Article, submit for each insurance class or group of classes, the application referred to in Article 5, and form the covering assets referred to in Article 16.

Within a maximum of three years following the end of the three-month period referred to in the preceding paragraph, the King must decide whether to grant or refuse the authorisation application.

The King shall revoke the provisional authorisation if, on expiry of the three-month period referred to in the preceding paragraph, the application has not been submitted or the covering assets have not been formed.

The provisional authorisation shall not cease until a decision has been made on the application submitted.

If the provisional authorisation is terminated, Articles 44, 45 and 46 of this law shall apply.

The list of companies granted provisional authorisation as referred to in this Article shall be published every three months in the "Moniteur belge/Belgisch Staatsblad" (Belgian Official Gazette) for as long as necessary.

**Article [93]**

[...]


[Article 93bis]

[...]

*Article abrogated by Article 84 of the Royal Decree of 3 March 2011 – MB 9 March 2011*

[Article 93ter]

§ 1. By way of derogation from the provisions of Articles 92, 93 and 93bis of this law, the provisions of this Article shall apply to insurance companies offering compulsory insurance against accidents at work at the time of the entry into force of
the said Law of 10 August 2001 and not authorised for that purpose in accordance with Chapter II.

§ 2. The insurance companies referred to in § 1 may continue their activities.

Within three months from the entry into force of the said Law of 10 August 2001, they must submit the application referred to in Article 5, form the covering assets mentioned in Article 16, and provide proof of the declaration stating that, immediately on request by the Fund for Accidents at Work, they will constitute the bank guarantee referred to in Article 60 of the Law of 10 April 1971 on accidents at work.

Before expiry of a period of six months commencing on expiry of the three-month period referred to in paragraph 2, the King shall decide whether to grant or refuse the authorisation. In the meantime, the insurance companies may continue their activities unless they fail to submit, within the said three months, their application for authorisation or their declaration relating to the bank guarantee, or to form the covering assets.

If they have to cease their activities pursuant to this Article, Articles 44, 45 and 46 shall apply.

§ 3. The authorisation may be granted to the insurance companies referred to in § 1 even if they do not fulfil the obligations imposed by Articles 15 to 15ter.

To fulfil the aforesaid obligations, they shall have a period of three years from 31 December of the year in which the said Law of 10 August 2001 enters into force.

Article inserted by Article 8 of the Law of 10 August 2001 – MB 7 September 2001

Article [94]

Article renumbered by Article 32, § 1 of the Royal Decree of 12 August 1994 – MB 16 September 1994

Reinsurance contracts current at the time of entry into force of this law must be adapted to the provisions of this law within two years from the end of the calendar year in which the law enters into force.

Once that period has expired, any clause derogating from the provisions of Article 16 of this law shall be automatically void.

[Article 95]

Insurance companies which are governed by the law of another Member State [of the European Economic Area] and which, on 1 July 1994, are authorised under this law to pursue an insurance activity in Belgium via a branch or under freedom to provide services shall be deemed to have complied with Article 67 or 68.
CHAPTER IX
Miscellaneous provisions

Article [96]

Article renumbered by Article 33 of the Royal Decree of 12 August 1994 – MB 16 September 1994

§ 1. [On the advice of the Bank or the FSMA, each within its own sphere of competence,] and after the latter has requested the opinion of the Insurance Commission, the King shall enact the necessary decrees for the implementation of this law. In particular, he shall determine:

§ 1, introduction to paragraph 1, amended by Article 85, 1° (a) of the Royal Decree of 3 March 2011 – MB 9 March 2011

1° the rules on the establishment of the balance sheet and the profit and loss account, and on the valuation of the various asset and liability items and the presentation of the reports on the separately managed activities;

2° the rules to be complied with by companies regarding profit-sharing for insured persons;

3° the insurers' obligations regarding the keeping and submission of books, policies, accounting documents and other documents, and the information which must be supplied in prospectuses, circulars, notices and other documentation intended for the public.

Consultation of the Insurance Commission shall not be required in regard to the rules to be laid down by the King pursuant to [Article 2, § 1ter].


The Minister of Economic Affairs may set the periods within which [the Bank,] the FSMA and the Insurance Commission must issue their opinion. Similarly, the FSMA may set a period within which the Insurance Commission must issue its opinion. In the event of failure to meet either of those deadlines, the corresponding opinion shall no longer be required.

§ 1 replaced by Article 181 of the Law of 27 October 2006 – MB 10 November 2006 and amended by Article 85, 1° (c) of the Royal Decree of 3 March 2011 – MB 9 March 2011
[The directors or managers shall be jointly and severally liable either towards the company or towards third parties for all losses resulting from infringements of the provisions adopted pursuant to paragraph 1, 1°.]

§ 1, paragraph 4, inserted by Article 3 of the Law of 28 July 2011 – MB 31 August 2011

[Paragraph 4 shall also apply to the members of the management committee.]

§ 1, paragraph 5, inserted by Article 3 of the Law of 28 July 2011 – MB 31 August 2011

[In regard to infringements in which they were not involved, the directors, managers and members of the management committee shall not be released from the liability referred to in paragraphs 4 and 5 unless they cannot be blamed for any misconduct and unless they reported those infringements, depending on the case, at the first general meeting or the first board of directors meeting after becoming aware of the infringements.]

§ 1, paragraph 6, inserted by Article 3 of the Law of 28 July 2011 – MB 31 August 2011

§ 2. In order to ensure the effectiveness of the supervision established by this law, the King shall be authorised to enact, under the same conditions, [on the advice of the FSMA,] the necessary decrees relating to the obligations of insurance agents and brokers and the arrangements for the supervision of their conduct.

§ 2 amended by Article 85, 2° of the Royal Decree of 3 March 2011 – MB 9 March 2011

Article [97]

Article renumbered by Article 33 of the Royal Decree of 12 August 1994 – MB 16 September 1994

The King[, on the advice of the Bank and the FSMA, each within its own sphere of competence,] may, by decree deliberated by the Council of Ministers, adapt the provisions of this law to the obligations arising for Belgium from international agreements or treaties.

Amended by Article 86 of the Royal Decree of 3 March 2011 – MB 9 March 2011

Article [98]

Article renumbered by Article 33 of the Royal Decree of 12 August 1994 – MB 16 September 1994
The King[, on the advice of the Bank,] shall align the following with the provisions of this law:

*Introduction to paragraph 1, amended by Article 87 of the Royal Decree of 3 March 2011 – MB 9 March 2011*

1° Royal Decree No 43 of 15 December 1934 on the supervision of capitalisation companies;

[…]

*Paragraph 1, 2° abrogated by Article 57 of the Law of 4 August 1992 – MB 19 August 1992*

If the King makes use of the option available to him under Article 2, § 3, he shall align with the provisions of this law the laws relating to subjects to which this law will apply.

*Article [99]*

[…]


*Article [100]*

[…]