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LAW ON THE LEGAL STATUS AND SUPERVISION OF INSURANCE OR REINSURANCE COMPANIES

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Unofficial consolidated text


BOOK I

GENERAL PROVISIONS

TITLE I — PURPOSE

Article 1. This Law regulates a matter as referred to in Article 74 of the Constitution.

Article 2. This Law provides for the partial transposition of:


Article 3. This Law regulates the establishment, activity and supervision of insurance or
reinsurance companies operating in Belgium, including certain methods and conditions specific for insurance or reinsurance policies and operations, in order to protect policyholders, insureds, and beneficiaries of insurance policies and operations and to safeguard the robustness and proper functioning of the financial system.

Article 4. The present Law is without prejudice to the obligations of insurance or reinsurance companies arising from special laws that regulate their activity.

Article 5. For the purposes of this Law and its implementing decrees and regulations, the following definitions shall apply:

1° insurance company: a company which pursues the business of insurance for its own account, namely the business of entering into insurance policies or executing insurance operations;

2° reinsurance company: a company which pursues the business of reinsurance for its own account, namely:

a) the business of underwriting risks ceded by an insurance company or another reinsurance company;

b) in the case of the group of underwriters known by the name of ‘Lloyd’s’: the activity consisting in accepting risks, ceded by any member of Lloyd’s, by an insurance or reinsurance company other than Lloyd’s;

The business of reinsurance is equivalent to the cover that a reinsurance company offers for its own account to an Institution for Occupational Retirement Provision subject to Title II and III of the Law of 27 October 2006 on the supervision of institutions for occupational retirement provision.

**Title II - Scope**

**Chapter I - General provisions**

Article 6. The present law applies to insurance or reinsurance companies governed by Belgian or foreign law that operate or wish to operate in Belgium through a branch or without being established in Belgium.

Article 7. § 1. In regard to the business of non-life insurance and life insurance, the present Law shall apply to the activities of the classes set out in Annex I or Annex II to the present Law.

§ 2. The non-life insurance business also includes the activity which consists of assistance provided for persons who get into difficulties while travelling, while away from their home or their habitual residence. It shall comprise an undertaking, against prior payment of a premium, to make aid immediately available to the beneficiary under an assistance contract where that person is in difficulties following the occurrence of a chance event, in the cases and under the conditions set out in the contract.

The aid may comprise the provision of benefits in cash or in kind. The provision of benefits in kind may also be effected by means of the staff and equipment of the person providing them.

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

**Chapter II - Exclusions**

**Section I - Statutory systems**

Article 8. The present Law does not apply to insurance policies and operations that form part of a
statutory system of social security and for which companies do not act on their own risk.

More particularly, the present Law does not apply to:

1° mutual health funds (‘maatschappij van onderlinge bijstand/société mutualiste’ under Belgian law) recognized pursuant to the Law of 23 June 1894 that do not fall under the Law of 6 August 1990 on sickness funds and national unions of private sickness funds;

2° sickness funds, national unions of private sickness funds and mutual health funds as referred to in the aforementioned Law of 6 August 1990 that may not offer insurance and the services of which, as referred to in Article 3, paragraph 1, b) and c) of the aforementioned Law of 6 August 1990 meet all the conditions of Article 67, first paragraph of the Law of 26 April 2010 laying down miscellaneous provisions on the organization of supplementary health insurance (I);

3° mutual funds, private companies with fixed premiums and public institutions, as regards the operations referred to in the laws on retirement and survivors’ pensions for workers, private sector employees, miners, seafarers and the self-employed.

Section II - Non-life insurance

Article 9. In regard to the business of non-life insurance, the present Law shall not apply to the companies that carry out the following operations:

1° operations of provident and mutual benefit institutions whose benefits vary according to the resources available and in which the contributions of the members are determined on a flat-rate basis;

2° operations carried out by organizations not having a legal personality with the purpose of providing mutual cover for their members without there being any payment of premiums or constitution of technical reserves;

3° export credit insurance operations for the account of or guaranteed by the State, or where the State is the insurer.

Article 10. § 1. The present Law shall not apply to companies that pursue an assistance activity which fulfils all of the following conditions:

1° the assistance is provided in the event of an accident or breakdown involving a road vehicle when the accident or breakdown occurs in the territory of Belgium;

2° the liability for the assistance is limited to the following operations:

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

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

c) the conveyance of the vehicle, possibly accompanied by the driver and passengers, to their home, point of departure or original destination within the Belgian territory;

3° the assistance is not carried out by a company subject to the present Law through other activities that justify it being subject to the present Law.

§ 2. In the cases referred to in § 1, 2°, a) and b), the condition that the accident or breakdown must have happened in the territory of Belgium shall not apply where the company is an institution of
which the beneficiary is a member, and the breakdown service or conveyance of the vehicle is provided simply on presentation of a membership card, without any additional premium being paid, by a similar institution of the country concerned on the basis of a reciprocal agreement.

**Article 11.** The present Law shall not apply to mutual insurance associations which pursue non-life insurance activities and which have concluded with another mutual insurance association an agreement which provides for the full reinsurance of the insurance policies issued by them or under which the accepting undertaking is to meet the liabilities arising under such policies in the place of the ceding undertaking. In such a case, the accepting undertaking shall be subject to the rules of the present Law.

**Section III - Life insurance**

**Article 12.** In regard to the business of life insurance, the present Law shall not apply to the following companies:

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

2° operations carried out by organizations, other than undertakings referred to in Article 6, whose object is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity, whether or not the commitments arising from such operations are fully covered at all times by mathematical provisions;

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

**Section IV — Reinsurance**

**Article 13.** The present Law shall not apply to activity of reinsurance pursued or fully guaranteed by a Member State, for reasons of substantial public interest, in the capacity of reinsurer of last resort, including in circumstances where such a role is required by a situation in the market in which it is not feasible to obtain adequate commercial cover.

**Article 14.** The present Law shall not apply to reinsurance companies which by 10 December 2007 ceased to conduct new reinsurance contracts and exclusively administer their existing portfolio in order to terminate their activity.

These companies must make themselves known to the Bank and state under what sort of reinsurance activity the insurance portfolio they administer falls.

The Bank shall draw up a list of the reinsurance companies referred to in the present Article and communicate that list to the supervisory authorities of the other Member States.

**Title III – Definitions**

**Article 15.** The following definitions shall apply for the purposes of this Law and its implementing decrees and regulations:


8°/1 inserted by Article 137 of the Law of 7 December 2016 - Belgian Official Gazette, 13 December 2016

9° ‘the Mortgage Law’: the Law of 16 December 1851 which forms Title XVIII of Book III of the Civil Code;

10° ['Law of 25 October 2016: the Law of 25 October 2016 on access to the activity of investment services and on the legal status and supervision of portfolio management and investment advice companies];


12° ‘Law of 2 August 2002’: the Law of 2 August 2002 on the supervision of the financial sector and on financial services;

13° ‘the Insurance Law’: the Law of 4 April 2014 on insurance;
14° ['Law of 25 April 2014': the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms;]


15° ‘insurance policy’:

a) either a policy as defined in Article 5, 14° of the Insurance Law, with the exception of the capitalization agreements that come under class 26 as set out in Annex II;  
b) or a policy that falls under classes 24 to 28 as set out in Annex II;  
c) or an operation that falls under class 29 as set out in Annex II;  
d) or any commitment undertaken by an insurance company and which includes a benefit similar to that provided for in the policies and operations that fall under classes 21 to 29 as set out in Annex II;

16° ‘non-life insurance’: insurance activity relating to classes 1 to 18 as set out in Annex I;  
17° ‘life insurance’: insurance activity relating to classes 21 to 29 as set out in Annex II;  
18° ‘policyholder’: the person who enters into an agreement with the insurance company;  
19° ‘insured’: the person as defined in Article 5, 17° of the Insurance Law;  
20° ‘beneficiary’: the person in whose benefit the insurance services are obtained;  
21° ‘captive insurance company’: an insurance company, owned either by a financial undertaking other than an insurance or reinsurance company or a group of insurance or reinsurance companies within the meaning of Article 339, 2° or by a non-financial undertaking, the purpose of which is to provide insurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member;  
22° ‘captive reinsurance company’: a reinsurance company, owned either by a financial undertaking other than an insurance or reinsurance company or a group of insurance or reinsurance companies within the meaning of Article 339, 2° or by a non-financial undertaking, the purpose of which is to provide reinsurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member;  
23° ‘non-life reinsurance’: reinsurance activity relating to classes 1 to 18 as set out in Annex I;  
24° ‘life reinsurance’: reinsurance activity relating to classes 21 to 29 as set out in Annex II;  
25° ‘special purpose vehicle’: any undertaking, whether incorporated or not, other than an existing insurance or reinsurance company, which assumes risks from insurance or reinsurance companies and which fully funds its exposure to such risks through the proceeds of a debt issuance or any other financing mechanism where the repayment rights of the providers of such debt or financing mechanism are subordinated to the reinsurance obligations of such an undertaking;  
26° ‘mutual insurance association’: an insurance or reinsurance company with the legal form as provided for in Articles 244 to 271 of the present Law;  
27° ‘Member State’: a State that is a party to the European Economic Area (EEA) Agreement;
28° ‘third country’: a State that is not a party to the European Economic Area Agreement;

29° ‘home Member State’: one of the following Member States:

a) for non-life insurance: the Member State where the registered office of the insurance company that covers the risk is established;

b) for life insurance: the Member State where the registered office of the insurance company that enters into the commitment is established;

c) for reinsurance: the Member State where the registered office of the reinsurance company is established;

30° ‘home country’: one of the following third countries:

a) for non-life insurance: the third country where the registered office of the insurance company that covers the risk is established;

b) for life insurance: the third country where the registered office of the insurance company that enters into the commitment is established;

c) for reinsurance: the third country where the registered office of the reinsurance company is established;

31° ‘host Member State’: the Member State where an insurance or reinsurance company has a branch or provides insurance or reinsurance services and that is not the home Member State; for life and non-life insurance, the ‘Member State of the provision of services’ means either the Member State of the commitment or the Member State in which the risk is situated, where that commitment or risk is covered by an insurance company or a branch situated in another Member State;

32° ‘host country’: the third country where an insurance or reinsurance company has a branch or provides insurance or reinsurance services and that is not the home Member State or country; for life and non-life insurance ‘third country of the provision of services’ means either the third country of the commitment or the third country in which the risk is situated, where that commitment or risk is covered by an insurance company or a branch situated in another country;

33° ‘branch’: an agency or branch of an insurance or reinsurance company established on the territory of a Member State other than the home Member State or on the territory of a third country;

Any permanent presence of an undertaking in the territory of a State other than its home Member State or on the territory of a third country shall be treated in the same way as a branch, even where that presence does not take the form of a branch, but consists merely of an office managed by the own staff of the undertaking or by a person who is independent but has permanent authority to act for the undertaking as an agency would.

34° ‘establishment’ of an insurance or reinsurance company: the registered office of an undertaking or of one of its branches;

35° ‘freedom to provide services’: the activity by way of which an insurance or reinsurance company covers risks situated in another Member State or in another third country, from its registered office or from a branch situated in a Member State or in a third country;

36° ‘Member State or third country in which the risk is situated’: depending on the case, one of the following Member States or third countries:
a) the Member State or third country in which the property is situated, where the insurance relates either to buildings or to buildings and their contents, insofar as the contents are covered by the same insurance policy;

b) the Member State or third country of registration, where the insurance relates to vehicles of any type;

By way of derogation from the previous paragraph, where a motor vehicle as referred to in Article 1 of the Law of 21 November 1989 on the compulsory liability insurance in respect of motor vehicles is sent from one Member State to another Member State, the destination Member State is considered the Member State in which the risk is situated, for a period of thirty days from the acceptance of the delivery by the buyer, even if the motor vehicle is not officially registered in the destination Member State;

c) the Member State or third country where the policyholder took out the policy in the case of policies of a duration of four months or less covering travel or holiday risks, whatever the class concerned;

d) in all cases not explicitly covered by a), b) or c): the Member State or third country in which either of the following is situated:

i) the habitual residence of the policyholder;

ii) if the policyholder is a legal person, that policyholder’s establishment to which the contract relates;

37° ‘Member State or third country of the commitment’: depending on the case, the Member State or third country in which either of the following is situated:

a) the habitual residence of the policyholder;

b) if the policyholder is a legal person, that policyholder’s establishment to which the contract relates;

38° ‘authorized agent’: a natural person to whom sufficient powers have been granted to bind the insurance or reinsurance company or, in the case of Lloyd’s, the underwriters concerned, vis-à-vis third parties and to represent them before the authorities and judicial bodies of the Member State or host country.

39° ‘parent undertaking’: an undertaking that has the characteristics of a parent company as defined in Article 6 of the Companies Code;

40° ‘subsidiary’: an undertaking that has the characteristics of a subsidiary as defined in Article 6 of the Companies Code; every subsidiary of a subsidiary is also deemed a subsidiary of the parent undertaking that heads up these undertakings;

41° ‘close links’: a situation in which two or more natural or legal persons are linked by control or participation, or a situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship;

42° ‘control’: the relationship between a parent undertaking and a subsidiary, as set out in Article 5 of the Companies Code, or a similar relationship between any natural or legal person and an undertaking;

43° ‘participation’: the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;
44° ‘qualifying holding’: a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights attached to the securities issued by this undertaking or which makes it possible to exercise a significant influence over the management of that undertaking; the voting rights are calculated in accordance with the provisions of the Law of 2 May 2007 on disclosure of major holdings, and of its implementing decrees; no account is taken of voting rights or shares held as a result of firm commitment underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis, unless these rights are exercised or otherwise used to intervene in the management of the issuing institution, provided that these rights are disposed of within one year of acquisition;

45° ‘intra-group transaction’: any transaction by which an insurance or reinsurance company relies, either directly or indirectly, on other companies within the same group or on any natural or legal person linked to the companies within that group by close links, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment;

46° ‘regulated market’: one of the following markets:

a) in the case of a market situated in a Member State: a regulated market within the meaning of Article 2, first paragraph, 5° or 6° of the Law of 2 August 2002;

b) in the case of a market situated in a third country: a financial market which fulfils the following conditions:


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

47° ['investment firm': an investment firm within the meaning of Article 3, § 1 of the Law of 25 October 2016;]


48° ‘financial institution’: an institution other than a credit institution [or stockbroking firm], the principal activity of which is to acquire holdings or to pursue one or more of the activities listed in points 2 to 12 and 15 of the list in Article 4 of the Law of 25 April 2014;


49° ‘financial undertaking’: one of the following entities:

a) an insurance or reinsurance company or an insurance holding company within the meaning of Article 338, 5°, or a mixed financial holding company within the meaning of Article 2, point 15) of Directive 2002/87/EC;

b) a credit institution within the meaning of Article 1, § 3, of the Law of 25 April 2014, a financial institution or an ancillary banking services undertaking within the meaning of Article 89, paragraph 1, under b) ii), of Regulation No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;
c) an investment firm;


52° ‘Alternative Investment Fund or ‘AIF’’: an alternative investment fund within the meaning of Article 3, 2° of the Law of 19 April 2014 on alternative investment funds and their managers;

53° ‘Alternative Investment Fund Manager’: a manager of Alternative Investment Funds within the meaning of Article 3, 13° of the Law of 19 April 2014 on Alternative Investment Funds and their managers, hereinafter also referred to as ‘AIFMs’;

54° ‘outsourcing’: an arrangement of any form between an insurance or reinsurance company and a service provider, whether a supervised entity or not, by which that service provider performs a process, a service or an activity, whether directly or by sub-outsourcing, which would otherwise be performed by the insurance or reinsurance company itself;

55° ‘function’, within a system of governance: an internal capacity to undertake practical tasks; a system of governance includes the risk management function, the compliance function, the internal audit function and the actuarial function;

56° ‘underwriting risk’: the risk of loss or of adverse change in the value of insurance obligations, due to inadequate pricing and provisioning assumptions;

57° ‘market risk’: the risk of loss or of adverse change in the financial situation resulting, directly or indirectly, from fluctuations in the level and in the volatility of market prices of assets, liabilities and financial instruments;

58° ‘credit risk’: the risk of loss or of adverse change in the financial situation, resulting from fluctuations in the credit standing of issuers of securities, counterparties and any debtors to which insurance or reinsurance companies are exposed, in the form of counterparty default risk, or spread risk, or market risk concentrations;

59° ‘qualified central counterparty’: a central counterparty to which authorization has been granted in accordance with Article 14 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories or recognized in accordance with Article 25 of that Regulation;

60° ‘operational risk’: the risk of loss arising from inadequate or failed internal processes, personnel or systems, or from external events;

61° ‘liquidity risk’: the risk that insurance or reinsurance companies are unable to realize investments and other assets in order to settle their financial obligations when they fall due;

62° ‘concentration risk’: all risk exposures with a loss potential which is large enough to threaten the solvency or the financial position of insurance and reinsurance companies;

63° ‘risk-mitigation techniques’: all techniques which enable insurance or reinsurance companies to transfer part or all of their risks to another party;
64° ‘diversification effects’: the reduction in the risk exposure of insurance or reinsurance companies and groups related to the diversification of their business, resulting from the fact that the adverse outcome from one risk can be offset by a more favourable outcome from another risk, where those risks are not fully correlated;

65° ‘probability distribution forecast’: a mathematical function that assigns to an exhaustive set of mutually exclusive future events a probability of realization;

66° ‘risk measure’: a mathematical function which assigns a monetary amount to a given probability distribution forecast and increases monotonically with the level of risk exposure underlying that probability distribution forecast;

67° ‘External Credit Assessment Institution’ or ‘ECAI’: a credit rating agency registered or certified pursuant to Regulation (EC) No 1060/2009 of the European Parliament and of the Council, or a central bank that issues credit assessments exempt from the application of that Regulation;

68° ‘technical provisions’: reserves kept by the undertaking to fulfil its insurance or reinsurance obligations vis-à-vis policyholders, insureds or beneficiaries of insurance or reinsurance policies as regards both the current and expired policies that are not yet fully settled;

69° ‘financial information’: the quantitative details requested pursuant to the present Law or the implementing measures of Directive 2009/138/EC, including accounting information;

70° ‘reorganization measures’: measures which are intended to preserve or restore the financial situation of an insurance company, and which could affect third parties' pre-existing rights. For companies governed by Belgian law, these measures consist of:

a) deeds of assignment as referred to in Article 519 of the present Law;

b) the measures referred to in Article 517, § 1, 4° and 7° of the present Law;

c) the measures referred to in Articles 546 and 547 established outside winding-up proceedings;

71° ‘winding-up proceedings’: collective proceedings involving the realization of the assets of an insurance company and the distribution of the proceeds among the creditors, shareholders or members as appropriate, which necessarily involve any intervention by the administrative or judicial authorities, whether or not they are founded on insolvency or are voluntary or compulsory. For companies governed by Belgian law, this procedure is in line with a bankruptcy as governed by the Bankruptcy Law of 8 August 1997 and with the collective winding-up proceedings as referred to in Book IV, Title IX of the Companies Code;

72° ‘reorganization authorities’: the administrative or judicial authorities competent in the area of reorganization measures. For companies governed by Belgian law, these are the King and the Bank as regards their respective powers for reorganization measures;

73° ‘winding-up authorities’: the administrative or judicial authorities competent in the area of winding-up proceedings. For companies governed by Belgian law, this is the Commercial Court as regards its powers in the area of bankruptcy and compulsory dissolution and the Bank as regards its powers for all other winding-up proceedings;

74° ‘commissioner in reorganization’: any person or body appointed by a reorganization authority whose task is to administer reorganization measures;

75° ‘liquidator’: any person or any body appointed by winding-up authorities or designated in accordance with the legal rules or those in the articles of association to administer winding-up
proceedings;

76° ‘insurance claim’: an amount which is owed by an insurance company to insureds, policyholders, beneficiaries or to any injured party having direct right of action against the insurance company, and which arises from an insurance policy, including an amount set aside for those persons, when some elements of the debt are not yet known. The premium owed by an insurance company as a result of the non-conclusion, cancellation or termination of an insurance policy in accordance with the law applicable to such policies before the opening of the winding-up proceedings, shall also be considered an insurance claim.

77° ‘strategic decision’: a decision of a certain importance, that can therefore have a more global impact on a company, insofar as various functions of the insurance or reinsurance company would be involved or affected by such a decision, and with a bearing on all investments, divestments, participations or strategic collaborations of the company, in particular a decision to acquire or establish another company, to establish a joint venture, to establish in another Member State or third country, to enter into a cooperation agreement, to contribute or acquire a branch of activity, or to embark on a merger or division. By means of a regulation pursuant to Article 12bis, § 2 of the Law of 22 February 1998, the Bank may further stipulate which decisions shall be considered strategic within the meaning of the present Law, in particular bearing in mind the risk profile and the nature of the companies’ activity. It shall publish these further stipulations;

78° ‘profit-sharing’: amount of all or part of the profits of the insurance company granted to the insurance policies;

79° ‘mutual insurance fund’: a fund as referred to in Articles 43bis, § 5 and 70, §§ 6, 7 and 8 of the Law of 6 August 1990 on sickness funds and national unions of private sickness funds;

80° ‘supervisory authority’: the public authority or public authorities empowered under the national law of a Member State pursuant to Directive 2009/138/EC to exercise supervision on insurance or reinsurance companies;

81° ‘authority of a third country’: an authority that is tasked with the supervision of insurance or reinsurance companies in a third country;

82° the ‘Bank’: the National Bank of Belgium as referred to in the Law of 22 February 1998;

83° the ‘FSMA’, the Financial Services and Markets Authority as referred to in Article 44 of the Law of 2 August 2002;

84° the ‘Supervisor of mutual health funds’: the Supervisor of mutual health funds and of national unions of mutual health funds as referred to in Article 49 of the Law of 6 August 1990 on sickness funds and national unions of private sickness funds;


86° ‘Belgian Bureau’: the Belgian Motor Insurance Bureau as referred to in Article 19bis-1 of the Law of 21 November 1989 on the compulsory liability insurance in respect of motor vehicles;

87° ‘Industrial Accidents Fund’: the Industrial Accidents Fund as referred to in Article 57 of the Law of 10 April 1971 on industrial accidents;

89° ‘EIOPA’: the European Insurance and Occupational Pensions Authority as referred to in Regulation 1094/2010;


91° ‘financial holding company’: a financial institution, the subsidiaries of which are exclusively or mainly credit institution(s), stockbroking firms or financial institutions, at least one of such subsidiaries being a credit institution, and which is not a mixed financial holding company.


TITLE IV – RESERVED NAMES

Article 16. Only the following companies may make public use in Belgium of the terms “insurance company”, “reinsurance company”, “insurer”, or “reinsurer” or more generally of terms that refer to the status of an insurance or reinsurance company, in particular in their name, statement of corporate purpose, securities, assets, documents or advertising:

1° insurance or reinsurance companies established in Belgium;

2° insurance or reinsurance companies governed by foreign law that operate in Belgium in accordance with Articles 556 and 600.

However,

1° for the terms “insurance” and “reinsurance”, the first paragraph shall not apply to organizations governed by public international law active in the insurance or reinsurance sector and to which one or more Member States are affiliated;

2° for the terms “insurance company”, and “reinsurance company”, the first paragraph shall not apply to insurance or reinsurance companies governed by foreign law that may not pursue insurance or reinsurance activities in Belgium and that offer investment instruments to the public or that apply to admit investment instruments to trading on a regulated market within the meaning of the Law of 16 June 2006 on public offers of investment instruments and admission of investment instruments to trading on regulated markets, as regards the aforementioned public offerings or applications for admission of financial instruments;

3° insurance holding companies may make use of the term “insurance” in the expression “insurance holding company” or similar expressions, and mixed financial holding companies and mixed-activity insurance holding companies may make use of the term “assurance” or “insurance” in the expression “bancassurance holding company”, “bank insurance” or similar expressions.

In the event of a risk of confusion, the Bank may request that insurance or reinsurance companies governed by foreign law and that have the right to use the terms referred to in the first paragraph in Belgium, add an explanatory statement to their name.

This Article is without prejudice to Article 265 of the Law of 4 April 2014 on insurance.

BOOK II

INSURANCE OR REINSURANCE COMPANIES GOVERNED BY BELGIAN LAW
TITLE I - TAKING-UP OF BUSINESS

Chapter I - Authorization

Section I - Authorization requirement

Article 17. Every insurance or reinsurance company that wishes to pursue an insurance or reinsurance activity that comes under the present Law in Belgium must obtain an authorization prior to doing so.

Article 18. The authorization referred to in Article 17 shall be granted:

1° as regards the insurance business, for one or more classes as referred to in Annex I or Annex II; the authorization shall cover the entire class, unless the applicant wishes to cover only some of the risks pertaining to that class;

2° as regards the reinsurance business, for the ‘non-life’ reinsurance activity, for the ‘life’ reinsurance activity or for both types of reinsurance activity.

The authorization referred to in the first paragraph, 1° may be cumulated, within the limits laid down by the Bank, with the authorization referred to in the first paragraph, 2°.

Article 19. Every insurance or reinsurance company which has received an authorization pursuant to Article 17 must previously apply for an extension to its authorization if it wishes to extend its activity:

1° to one or more insurance classes; or

2° to parts of insurance classes; or

3° to reinsurance activities,

other than those covered by the authorization already granted.

Article 20. The insurance companies that come under the application of the present Law, without prejudice to Article 21, § 2, may only pursue the assistance activity referred to in Article 10 if they have obtained an authorization for class 18 as set out in Annex I. In such a case, the present Law shall apply to that activity.

Article 21. § 1. The risks included in a class shall not be included in any other class except in the cases referred to in the present Article.

§ 2. An insurance company that has obtained authorization for a principal risk pertaining to a class set out in Annex I may also insure risks pertaining to another class without the need to obtain authorization in respect of such risks, provided that these risks can be regarded as ancillary risks, and fulfil all of the following conditions:

1° they are connected with the principal risk;

2° they concern the person, property or object which is covered against the principal risk;

3° they are covered by the same policy as a principal risk or by a related policy that only exists and has effect insofar as the principal insurance policy exists and has effect.

§ 3. By way of derogation from § 2, the risks pertaining to classes 14, 15 and 17 as set out in Annex I, may not be deemed ancillary risks from other classes.
Legal expenses insurance referred to in class 17 as set out in Annex I may, however, be regarded as a risk ancillary to class 18, where the conditions laid down in § 2 and either of the following two conditions are fulfilled:

1° the principal risk relates solely to the assistance provided for persons who fall into difficulties while travelling, while away from their home or their habitual residence; or

2° the insurance concerns disputes or risks arising from, or in connection with, the use of sea-going vessels.

Section II — Procedure

Article 22. With the application for authorization submitted to the Bank, an administrative dossier must be included which complies with the conditions laid down by the Bank and which includes, inter alia, the scheme of operations referred to in Article 35, as well as a description of the governance system of the insurance or reinsurance company and of the close links it has with other persons. Applicants must provide all the information needed for the assessment of their application.

When determining the conditions referred to in the first paragraph, the Bank takes into account the conditions laid down by the FSMA as regards the organization and procedures that fall under its supervision pursuant to Article 45, § 1, first paragraph, 3° and § 2 of the Law of 2 August 2002.

Article 23. Applicants must also notify the Bank of the identity of any natural or legal persons who, alone or in concert, directly or indirectly, have a qualifying holding, which confers voting rights or not, in the capital of the insurance or reinsurance company. The notification must detail the proportion of capital and the amount of voting rights these persons hold.

Where there are no qualifying holdings, the notification referred to in the first paragraph must detail the identity of the twenty largest shareholders and their proportion of capital.

Article 24. § 1. Where the risks to be covered pertain to class 10 as set out in Annex I, the company applying for the authorization shall also include in its application:

1° the proof of its membership of the Belgian Bureau and of the Belgisch Gemeenschappelijk Waarborgfonds/Fonds Commun de Garantie;

2° insofar as the risks to be covered do not pertain only to the carrier’s liability, the name and address of all claims representatives appointed, pursuant to Article 12 of the aforementioned Law of 21 November 1989, in each other Member State, as well as the proof that these claims representatives fulfil the conditions of Article 12, § 1, second paragraph in fine and § 5 of the aforementioned Law of 21 November 1989.

§ 2. Where the risks to be covered pertain to accidents at work as referred to in the Law of 10 April 1971 on accidents at work, the company shall include in its application:

1° the proof that the Industrial Accidents Fund was notified of the envisaged activity;

2° the proof that the Industrial Accidents Fund was provided with a declaration from the company that, at the Industrial Accidents Fund’s first request, it shall establish a bank guarantee as referred to in Article 60 of the Law of 10 April 1971 on accidents at work.

Article 25. If the company pursued an insurance activity prior to the application for authorization, for which no authorization is required pursuant to the present Law, it shall also include the following documents in its application:

1° a detailed register of technical reserves and corresponding investments at the time the application for authorization is submitted;
2° a register of the as yet unsettled claims that were declared prior to the start of the calendar year in which the application is submitted.

If the company pursued another activity before submitting the application, the Bank may ask for any information regarding its financial situation and any of its operations.

**Article 26.** The Bank shall consult the FSMA prior to deciding on a request for authorization concerning an insurance or reinsurance company which is either the subsidiary of a company that has received an authorization from the FSMA, or the subsidiary of the parent undertaking of a company that has received an authorization from the FSMA, or is controlled by the same natural or legal persons as a company that has received an authorization from the FSMA.

Where the application for authorization concerns an insurance or reinsurance company that is either the subsidiary of another insurance or reinsurance company, credit institution, investment firm, AIFM, or management company of undertakings for collective investment to which an authorization has been granted pursuant to the law of another Member State, or the subsidiary of the parent undertaking of another insurance or reinsurance company, credit institution, investment firm, AIFM, or management company of undertakings for collective investment to which an authorization has been granted pursuant to the law of another Member State, the Bank shall consult the authorities competent for the supervision of insurance or reinsurance companies, credit institutions, investment firms, AIFMs or management companies of undertakings for collective investment in those other Member States prior to making a decision on the application.

The Bank shall also previously consult the authorities referred to in the first or second paragraph to determine the suitability of the shareholders, management, and those responsible for independent control functions in accordance with Articles 39 and 40, where these shareholders are undertakings as referred to in the first or second paragraph, or the person involved in the management of the insurance or reinsurance company is also involved in the management of one of the undertakings referred to in the first or second paragraph or of an undertaking belonging to the same group, or where the person responsible for an independent control function exercises such a function in one of the undertakings referred to in the first or second paragraph or in an undertaking belonging to the same group. These authorities shall share all information with each other that is relevant for determining the suitability of the shareholders referred to in the present paragraph, of the persons involved in the management and of the persons responsible for independent control functions.

**Article 27.** § 1. The Bank shall make a decision on the application for authorization based on the opinion of the FSMA as regards:

1° the adequacy of the insurance or reinsurance company’s organization, in particular its integrity policy, as referred to in Articles 42 to 60, as regards compliance with the rules referred to in Article 45, § 1, first paragraph, 3°, and § 2 of the Law of 2 August 2002;

2° the professional integrity of the persons who are members of the statutory governing body of the insurance or reinsurance company, of the management committee or, where there is no management committee, that of the persons who are tasked with the senior management, and that of the persons responsible for the independent control functions if these persons are nominated for such a function for the first time in an undertaking that falls under the supervision of the Bank pursuant Article 36/2 of the Law of 22 February 1998.

The FSMA shall provide its opinion on the aforementioned matters within a period of one month to be counted from the date on which the request for an opinion, containing all the documents received from the company applying for the authorization, is received from the Bank. An absence of opinion by this date serves as a positive opinion. Prior to the expiry of the deadline of one
month, the FSMA may however inform the Bank that it will communicate its opinion at the latest within 15 days from the expiry of the said deadline.

§ 2. If the Bank does not take into account the opinion of the FSMA on the matters referred to in § 1, first paragraph, this fact shall be communicated, including reasons, in the explanation accompanying the decision on the application for authorization. The aforementioned opinion of the FSMA under point 1°, § 1, first paragraph, shall be attached to the notification of the decision on the application for authorization.

**Article 28.** The Bank shall grant authorization to insurance or reinsurance companies that fulfil the conditions under Chapter II of the present Title.

The Bank shall provide its opinion on an application within six months of submission of the full dossier.

Decisions on authorization shall be notified to the applicants within fifteen days by registered letter or letter with recorded delivery with due regard to the deadlines referred to in the second paragraph.

**Article 29.** The Bank may, given the need for sound and prudent management, attach conditions to the authorization for the pursuit of some of the envisaged activities and, inter alia, restrict the authorization submitted for a class to only some of the activities included in the scheme of operations referred to in Article 35.

**Article 30.** Where an insurance or reinsurance company is granted authorization, the Bank shall provide the information referred to in Article 22 and any changes thereto to the FSMA to allow the FSMA to exercise the powers referred to in Article 45, § 1, 3° and § 2 of the Law of 2 August 2002.

**Article 31.** The Bank shall draw up a list of insurance or reinsurance companies to which authorization has been granted pursuant to this Book. This list and any subsequent changes made to it shall be published on its website and communicated to EIOPA and the FSMA.

The publication shall set out the insurance classes or parts thereof, or the reinsurance activities for which the authorization is granted and, where applicable, the restrictions imposed pursuant to Article 29.

Where the authorization is granted to an insurance or reinsurance company that is a direct or indirect subsidiary of an insurance or reinsurance company governed by the law of a third country, the Bank shall also notify the European Commission, EIOPA and the supervisory authorities of the other Member States. This notification shall include the structure of the group concerned.

**Chapter II - Conditions for authorization**

**Section I – General provisions**

**Article 32.** Aside from the conditions laid down in this Chapter, the Bank shall also take into consideration the applicant company’s capacity to meet the conditions for pursuing activity referred to in Title II of this Book and to achieve its development objectives under the conditions necessary for the proper functioning of the insurance and reinsurance sector and the financial system, as well as for the protection of policyholders, insureds and beneficiaries.

**Section II — Legal form and purpose**

**Article 33.** An insurance or reinsurance company shall be established in the form of a public limited company (naamloze vennootschap/société anonyme), a cooperative, a mutual insurance association, a European company or a European Cooperative Society.
Insurance companies which pursue a non-life insurance activity pursuant to Article 34, § 2 may also be established in the form of a mutual insurance fund.

The obligations of public limited companies (naamloze vennootschap/société anonyme) by virtue of Articles 67, 68, 73, 74, 75, 76, 98, 100, 101, 102, 173, 179, 195 and 1012 of the Companies Code do nevertheless apply to insurance or reinsurance companies established in one of the forms referred to in the present Article without being subject to the Companies Code.

**Article 34.** § 1. Without prejudice to Article 18, third paragraph,

1° insurance companies shall limit their purpose to the activity of insurance and the operations directly arising therefrom, with the exclusion of any other business activity;

2° reinsurance companies shall limit their purpose to the activity of reinsurance and associated operations, including the function of holding and activities relating to the financial sector within the meaning of Article 2, point 8, of Directive 2002/87/EC.

§ 2. By way of derogation from § 1, mutual insurance funds shall limit their activities to health insurance within the meaning of class 2 as set out in Annex I and, additionally, to assistance that pertains to class 18 as set out in Annex I.

Affiliation to the insurance referred to in the first paragraph is reserved to the following persons:

1° as regards mutual health funds established pursuant to Article 43bis, § 5 of the Law of 6 August 1990 on sickness funds and national unions of private sickness funds, the persons who are affiliated to the sickness fund(s) which are affiliated to the mutual insurance fund;

2° as regards mutual insurance funds established pursuant to Article 70, §§ 6, 7 and 8 of the aforementioned Law of 6 August 1990, the persons referred to in those same paragraphs.

**Section III - Scheme of operations**

**Article 35.** § 1. The scheme of operations referred to in Article 22 shall include particulars or evidence of:

1° the nature of the risks or commitments that the insurance or reinsurance company proposes to cover;

2° the kind of reinsurance arrangements that the reinsurance company proposes to enter into with ceding undertakings;

3° the guiding principles of the insurance company as to reinsurance and of the reinsurance company as to retrocession;

4° the basic own-fund items constituting the absolute floor of the minimum capital requirement;

5° estimates of the costs of setting up the governance system, especially the costs of setting up the administrative services and the organization for securing business, the technical and financial resources intended to meet those costs, and where the risks to be covered belong to class 18 as set out in Annex I, the resources at the disposal of the insurance company for the provision of the assistance promised.

§ 2. Aside from the requirements under § 1, the scheme of operations shall, for the first three financial years, include:

1° a forecast balance sheet;

2° estimates of the solvency capital requirement as referred to in Article 151 on the basis of the
forecast balance sheet referred to in 1°, as well as the calculation method used to derive those estimates;

3° estimates of the minimum capital requirement as referred to in Article 189, on the basis of the forecast balance sheet referred to in 1°, as well as the calculation method used to derive those estimates;

4° estimates of the financial resources intended to cover technical provisions, the minimum capital requirement and the solvency capital requirement;

5° for non-life insurance and reinsurance, also the following:

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

b) estimates of premiums or contributions and claims;

6° for life insurance, also a plan setting out detailed estimates of income and expenditure in respect of direct insurance business, reinsurance acceptances and reinsurance cessions.

**Article 36.** Where an insurance or reinsurance company to which an authorization is granted applies for an authorization for the extension of its activity pursuant to Article 19, it shall submit a scheme of operations pursuant to Article 35.

**Section IV - Own funds**

**Article 37.** Insurance or reinsurance companies shall provide evidence that:

1° they hold sufficient eligible basic own funds to cover the absolute floor of the minimum capital requirement referred to in Article 189, § 1, 4°;

2° they are in a position to hold sufficient eligible own funds continuously to cover the solvency capital requirement in accordance with Article 151;

3° they are in a position to hold sufficient eligible basic own funds continuously to cover the minimum capital requirement referred to in Article 189.

**Article 38.** § 1. Every insurance or reinsurance company that applies for an authorization for the extension of its activities pursuant to Article 19, shall provide evidence that it possesses sufficient eligible own funds to maintain the solvency capital requirement under Article 151 and the minimum capital requirement under Article 189.

§ 2. Without prejudice to § 1, every insurance company which pursues life insurance activities and which applies for an authorization for the extension of its activities in accordance with Article 223, second paragraph, to the risks belonging to classes 1 or 2 as set out in Annex I, shall provide evidence of the following:

1° that it possesses sufficient eligible basic own funds to cover the absolute floor of the minimum capital requirement for life insurance companies and the absolute floor of the minimum capital requirement for non-life insurance companies as referred to in Article 189, § 1, 4°, d);

2° that it commits continuously to fulfil the minimum obligations of point 1° in accordance with Article 225, § 2, second paragraph.

§ 3. Without prejudice to § 1, every insurance company which pursues non-life insurance activities for the risks belonging to classes 1 or 2 as set out in Annex I, and which applies for an authorization for the extension of its activities to life insurance risks in accordance with Article
20.

223, second paragraph, shall provide evidence of the following:

1° that it possesses sufficient eligible basic own funds to cover the absolute floor of the minimum capital requirement for life insurance companies and the absolute floor of the minimum capital requirement for non-life insurance companies as referred to in Article 189, § 1, 4°, d);

2° that it commits continuously to fulfil the minimum obligations of point 1° in accordance with Article 225, § 2, second paragraph.

Section V — Shareholders or members

Article 39. Where the Bank is not satisfied as to the suitability of the natural or legal persons referred to in Article 23 to guarantee the sound and prudent management of the insurance or reinsurance company, authorization shall be refused.

The decision as to the suitability to guarantee the sound and prudent management of the insurance or reinsurance company shall be made on the basis of the following criteria:

1° the integrity of the natural or legal persons referred to in Article 23;

2° the professional integrity and expertise of each of the persons referred to in Article 40 who will manage the business of the insurance or reinsurance company;

3° the financial soundness of the natural or legal persons referred to in Article 23 especially in light of the nature of the activity pursued and envisaged within the insurance or reinsurance company;

4° whether the insurance or reinsurance company will be able to comply and continuously comply with the prudential obligations arising from the present Law and its implementing decrees and regulations, and the implementing measures of Directive 2009/138/EC, especially whether the group to which they belong is structured in such a way as to permit effective supervision and effective sharing of information between the supervisory authorities, and to determine the distribution of responsibilities between the supervisory authorities;

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

Section VI - Management

Article 40. § 1. The members of the statutory governing body and of the management committee of the insurance or reinsurance company, the persons tasked with the senior management thereof and the persons responsible for independent control functions may only be natural persons.

The persons referred to in the first paragraph must at all times possess the professional integrity and appropriate expertise required for their role.

§ 2. The senior management of the insurance or reinsurance company must be entrusted to at least two natural persons.

Article 41. Article 20 of the Law of 25 April 2014 shall apply to the persons referred to in Article 40.

Section VII - Organization

Subsection I - General principles

Article 42. § 1. To guarantee effective and prudent management, every insurance or reinsurance company shall have an appropriate governance system, including supervisory measures, based in
particular on:

1° an appropriate management structure which is based, at the highest level, on the existence of a clear division between the senior management of the insurance or reinsurance company and the supervision of this management and which ensures that there is an adequate separation of functions within the company and a clear, transparent and coherent structure for allocating responsibilities;

2° appropriate administrative and accounting procedures and internal control, especially including control procedures that provide a reasonable level of assurance of the reliability of the reporting process;

3° effective procedures for the identification, measurement, administration, monitoring and internal reporting of risks that the company is exposed to and for the prevention of conflicts of interest;

4° independent control functions, namely appropriate independent key staff for internal audit, risk management, compliance and actuarial work;

5° an appropriate integrity policy;

6° a remuneration policy that guarantees sound and effective risk management, and discourages risk-taking that exceeds the level of tolerated risk established by the company;

7° appropriate IT control and security measures for the company’s activities;

8° an appropriate internal warning system which in particular provides for a specific independent and autonomous alert for breaches to the rules and codes of conduct of the company;

9° the introduction of appropriate measures for business continuity to guarantee that the critical functions can be preserved or restored as quickly as possible and that the normal activities can be resumed within a reasonable timescale;

10° the introduction of appropriate structures and systems to comply with the requests for information that the Bank addresses to the company pursuant to Articles 201 and 312.

11° the introduction of procedures to identify a deterioration in the financial circumstances and to immediately inform the Bank where such a deterioration occurs.

§ 2. The governance system referred to in § 1 shall be exhaustive and proportionate to the nature, scale and complexity of the risks inherent to the business model and activity of the insurance or reinsurance company.

§ 3. The insurance or reinsurance company shall draw up a governance memorandum which includes, for the company in question and, where applicable, for the group or subgroup of which it is the ultimate parent undertaking, the entire governance system referred to in § 1 and, in particular, written policy lines for risk management, internal control, internal audit and, where applicable, outsourcing.

If the insurance or reinsurance company forms part of a group which comes under the supervision of the Bank, the memorandum drawn up at the level of the insurance or reinsurance company may form part of the group memorandum, without prejudice to the implementation measures of Directive 2009/138/EC.

§ 4. In Subsections II to IV the scope of the general obligations referred to in §§ 1 and 2 is determined for specific domains.

Article 43. If the insurance or reinsurance company has close links with other natural or legal persons, or if the insurance or reinsurance company forms part of a group, such links or the legal structure of the group must not hinder the individual prudential supervision of the company or the
supervision of the group to which the company belongs.

If the insurance or reinsurance company has close links with natural or legal persons governed by the law of a third country, the laws, regulations and administrative provisions that apply to that person or the implementation thereof must not hinder the individual prudential supervision of the company or the supervision of the group to which the company belongs.

Subsection II. - Governing bodies

Article 44. The statutory governing body holds the final responsibility for the insurance or reinsurance company.

The statutory governing body shall determine and control in particular

1° the company’s strategy and objectives;

2° the risk policy, including the overall risk tolerance.

Article 45. § 1. Every insurance or reinsurance company established as a public limited company (naamloze vennootschap/société anonyme) shall set up a management committee within the meaning of Article 524bis of the Companies Code to which all management powers of the board of directors shall be transferred. This delegation of powers may under no circumstances relate to the determination of the general policy or to actions reserved for the board of directors pursuant to the Companies Code or to the present Law.

Subject to the application of Article 56, § 3, the management committee shall be composed of at least three persons who are members of the board of directors.

§ 2. The majority of members of the board of directors shall not be members of the management committee.

§ 3. The role of Chair of the board of directors may not be exercised by a member of the management committee.

§ 4. A non-executive member of the board of directors may not be tasked with day-to-day management as referred to in Article 525 of the Companies Code.

Article 46. § 1. The articles of association of insurance or reinsurance companies established with a legal form other than that of public limited company (naamloze vennootschap/société anonyme), shall provide for the establishment of a body, which shall be called the “management committee”, to which all management powers of the statutory governing body shall be transferred, with the exception of the establishment of the general policy and of the actions reserved for the statutory governing body pursuant to the Companies Code or to the present Law.

Subject to the application of Article 56, § 3, the management committee shall be composed of at least three persons who are members of the statutory governing body.

§ 2. The majority of members of the statutory governing body shall not be members of the management committee referred to in § 1.

§ 3. The role of Chair of the statutory governing body may not be exercised by a member of the management committee.

§ 4. The day-to-day management may not be entrusted to a non-executive member of the statutory governing body.

Article 47. The Bank may allow derogation from some or all of the obligations contained in Articles 45 and 46 based on the scale and risk profile of an insurance or reinsurance company, in
particular having regard to the group to which it belongs.

This derogation may, inter alia, relate to:

1° the obligation to set up a management committee without prejudice to compliance with Article 40, § 2; in such a case the obligations laid down by or pursuant to the present Law to the management committee and its members shall be fulfilled by the persons tasked with senior management;

2° combining the role of member of the management committee and Chair of the statutory governing body.

Subsection III — Establishment of committees within the statutory governing body

Article 48. Without prejudice to the tasks of the statutory governing body, all insurance or reinsurance companies shall establish the following committees within this body:

1° an audit committee;

2° a remuneration committee;

3° a risk committee;

which shall be exclusively composed of members of the statutory governing body who are not executive members thereof and with at least one member being independent within the meaning of Article 526ter of the Companies Code;

[The majority of the members of the audit committee are independent within the meaning of Article 526ter of the Companies Code. The Chair of the audit committee is nominated by the members of the committee.]

paragraph 2 inserted by Article 138 of the Law of 7 December 2016 - Belgian Official Gazette, 13 December 2016

Article 49. § 1. In addition to the requirements of Article 48, members of the audit committee shall have collective expertise in the field of the insurance or reinsurance company’s activities as well as in the area of accounting and audit. At least one member of the audit committee shall be an expert in the field of accounting and/or audit.

§ 2. [The audit committee has at least the tasks included in Article 526bis, § 4 of the Companies Code.]

§ 2, first paragraph replaced by Article 139, 1° of the Law of 7 December 2016 - Belgian Official Gazette, 13 December 2016

The audit committee shall regularly report to the statutory governing body on the performance of its tasks and at least when the statutory governing body draws up the annual accounts and consolidated annual accounts referred to in Article 199, second paragraph, and Article 201 as well as the periodic statements which the insurance or reinsurance company submits at the end of the financial year and at the end of the first half-year respectively.

The Bank can, by means of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998, make technical clarifications and add to [the items referred to in this paragraph].

§ 2, third paragraph amended by Article 139, 2° of the Law of 7 December 2016 - Belgian Official Gazette, 13 December 2016
§ 3. [The accredited statutory auditor is tasked with the work included in Article 526bis, § 6, paragraphs 1 to 3 of the Companies Code.]

§ 3 replaced by Article 139, 3° of the Law of 7 December 2016 - Belgian Official Gazette, 13 December 2016

Article 50. § 1. The remuneration committee shall be constituted in such a way as to ensure it can give sound and independent advice on the remuneration policy as well as the remuneration practices and incentives arising therefrom for the risk control, own funds requirements, and liquidity position.

§ 2. The remuneration committee shall provide an opinion on the remuneration policy that must be established by the statutory governing body and on any changes made thereto.

§ 3. The remuneration committee is tasked with preparing decisions on remuneration, in particular decisions that have consequences for the risks and risk management of the insurance or reinsurance company in question and on which the statutory governing body must decide. For the preparation of such decisions, the remuneration committee shall take into account the long-term interests of shareholders, investors and other interested parties of the insurance or reinsurance company, as well as with the general interest.

The first paragraph is also applicable to decisions on the remuneration of persons who are responsible for the independent control functions. In addition, the remuneration committee shall exercise direct supervision of the remuneration of those responsible for the independent control functions.

Article 51. The members of the risk committee shall individually possess the necessary knowledge, expertise, experience and proficiency to understand and comprehend the insurance or reinsurance company’s strategy and risk tolerance.

The risk committee shall provide advice to the statutory governing body on current and future risk tolerance and risk strategy. It shall assist the statutory governing body in exercising supervision of the implementation of this strategy by the management committee.

Article 52. § 1. An insurance or reinsurance company that meets, on a consolidated basis, at least two of the following three criteria:

a) fewer than an average of 250 employees over the financial year concerned,

b) a balance sheet total less than or equal to EUR 43 000 000,

c) an annual net turnover less than or equal to EUR 50 000 000,

is not obliged to set up the committees referred to in Article 48 within its statutory governing body but in such a case the tasks entrusted to those committees shall be carried out by the statutory governing body as a whole. If pursuant to a derogation permitted under Article 47, the person chairing this body is an executive member, [he/she shall not exercise the role of Chair where the statutory governing body fulfils the role of one of the committees referred to in Article 48].

§ 1, second paragraph amended by Article 140, 1° of the Law of 7 December 2016 - Belgian Official Gazette, 13 December 2016

§ 2. The Bank may grant an exemption to companies that do not meet the conditions of § 1 but that are organized in such a way that the statutory governing body and the management committee are sufficiently supported in their respective tasks as regards remuneration policy as referred to in Articles 77, § 5 and 80, § 3, from the obligation to set up a remuneration committee within the statutory governing body.
§ 3. The Bank may permit that an insurance or reinsurance company that is a subsidiary or a sub-
subsidiary of a mixed financial holding company, a mixed-activity insurance holding company, an
insurance holding company, a financial holding company, another insurance or reinsurance
company, a credit institution, an investment firm, an AIFM or a management company of
undertakings for collective investment, derogate from the provisions of this Subsection and may lay
down specific conditions for granting such derogations, insofar as one or more committees are set
up within the groups or subgroups in question within the meaning of Articles 49 to 51, which are
competent for the insurance or reinsurance company and satisfy the requirements of the present
Law.

[Irrespective of the conditions determined by the Bank in application of the first paragraph, the
accredited statutory auditor shall provide the additional report referred to in Article 11 of
Regulation No 537/2014 on an annual basis to the recipients provided for in Article 79.

Where the conditions determined by the Bank in application of the first paragraph lead to the set-up
of an audit committee, the methods referred to Article 16, § 5 of Regulation No 537/2014 for the
proposal for appointment of an accredited statutory auditor apply.

The tasks of the accredited statutory auditor included in Article 49, § 3, remain applicable, but
apply vis-à-vis the statutory governing body where the conditions determined by the Bank do not
lead to the set-up of an audit committee.]

§ 3, second, third and fourth paragraphs inserted by Article 140, 2° of the Law of 7 December
2016 - Belgian Official Gazette, 13 December 2016

§ 4. Without prejudice to Articles 49, § 1 and 51, first paragraph, insurance or reinsurance
companies may decide that one single committee shall be responsible for the tasks of the risk
committee and audit committee.

Article 53. The provisions of this Subsection are without prejudice to the provisions of the
Companies Code on the audit committee and remuneration committee in listed companies within
the meaning of Article 4 of that Code.

Subsection IV - Independent control functions

Article 54. § 1. Every insurance or reinsurance company shall take the necessary measures to have
the following appropriate independent control functions at all times:

1° a compliance function;

2° a risk management function;

3° an internal audit function;

4° an actuarial function.

The persons performing the functions referred to in the first paragraph shall be independent from
the company’s business units and operational functions and have the necessary powers to duly
exercise their functions. The remuneration of these persons shall be based on achieving the
objectives upon which their functions are based, irrespective of the results of the activity
supervised.

The persons responsible for the functions referred to in the first paragraph shall report at least once
a year directly to the statutory governing body on the performance of their task, and shall inform
the management committee; for the internal audit function this can, where applicable, occur
through the audit committee.
§ 2. When assessing the appropriate nature of the functions referred to in § 1, the Bank shall take into account the provisions of Article 42, § 2.

Article 55. § 1. The compliance function must ensure that the company, the members of its statutory governing body, the members of its management committee, its senior management, employees, representatives and insurance and reinsurance agents and subagents, comply with the legal and regulatory provisions governing the insurance or reinsurance activity, especially the rules pertaining to integrity and conduct that apply to that activity.

The compliance function shall also assess the possible consequences of changes to the legal framework for the activities of the insurance or reinsurance company and identify and assess compliance risks.

The first paragraph is without prejudice to the provisions of Article 87bis of the Law of 2 August 2002.

§ 2. Alongside the reporting referred to in Article 54, § 1, third paragraph, the person responsible for the compliance function shall regularly inform the statutory governing body and the management committee on compliance with the legal and regulatory provisions referred to in § 1 and address recommendations on the subject to these bodies.

Article 56. § 1. The risk management function shall be set up in such a way as to ensure that the risk management system as referred to in the second paragraph can be implemented.

The risk management system shall consist of strategies, processes and reporting procedures that are necessary to continuously, at an individual and aggregate level, identify, calculate, monitor, manage and report risks that the company is exposed to or could be exposed to, as well as the interdependence between those risks.

§ 2. The risk management system shall be effective and properly integrated within the organizational structure and the decision-making process of the insurance or reinsurance company, and shall appropriately be taken into account by the persons who actually manage the company or have a key role therein.

More particularly, the persons tasked with the risk management function shall be actively involved in mapping out the company’s risk strategy as well as in all management decisions that have a significant influence on the risks, and shall be able to give a full picture of the whole range of risks run by the company.

§ 3. The head of the risk management function shall be a member of the management committee, the risk management function being the only function for which he/she is individually responsible.

By way of derogation from the first paragraph,

1° by virtue of the nature, scale and complexity of the risks inherent to the activity of an insurance or reinsurance company, and taking into account the appropriate organization of the risk management function at the level of the group to which the company belongs, the Bank may allow a member of the senior staff of the company to fulfil the risk management function as long as no conflict of interest exists as regards that person;

2° the member of the management committee responsible for the risk management function may also take the responsibility for the compliance function as well as for the tasks of the actuarial function that cannot entail any risks, on the condition that the three independent control functions are exercised separately from each other and that this does not cause any conflicts of interest.

For insurance or reinsurance companies with a balance sheet total of more than EUR 3 billion, the Bank must be asked in advance for authorization for the application of paragraph 2, 2°.
Article 57. Alongside the reporting referred to in Articles 54, § 1, third paragraph and 55, § 2, the persons responsible for the risk management function and the compliance function may, of their own accord and without needing to refer the matter to the management committee, inform the statutory governing body of their concerns, and where applicable alert it, where specific developments related to risk have or could have a negative influence on the company, or in particular could be damaging to its reputation.

The first paragraph is without prejudice to the responsibilities of the statutory governing body arising from the present Law and the European legislation and regulations.

Article 58. § 1. The internal audit function shall provide the statutory governing body and the management committee with an independent assessment of the quality and effectiveness of the company’s internal control, risk management and governance system.

All insurance or reinsurance companies shall at least ensure, by way of an audit charter, that the internal audit function is independent and that the tasks pertaining thereto relate to all of the company’s activity and entities, including in the case of outsourcing.

§ 2. The person responsible for the internal audit function shall share his/her findings and recommendations to the statutory governing body and the management committee.

Article 59. § 1. The actuarial function includes the following tasks:

1° coordinating the calculation of technical provisions;

2° ensuring that the methodologies, underlying models and assumptions used for the calculation of the technical provisions are suitable;

3° assessing the sufficiency and quality of the data used in the calculation of technical provisions;

4° comparing best estimates against experience;

5° informing the statutory governing body and the management committee of the reliability and adequacy of the calculation of technical provisions;

6° overseeing the calculation of technical provisions in the cases set out in Article 137, second paragraph;

7° expressing an opinion on the overall underwriting policy;

8° expressing an opinion on the adequacy of reinsurance arrangements;

9° contributing to the effective implementation of the risk management system referred to in Article 84, in particular with respect to the risk modelling underlying the calculation of the capital requirements as referred to in Articles 74 and 75, and as regards the assessment referred to in Article 91;

10° expressing an opinion on the profit-sharing and rebate policy as well as on compliance with the legislation and regulations on the matter.

§ 2. The actuarial function shall be carried out by persons who have knowledge of actuarial and financial mathematics, commensurate with the nature, scale and complexity of the risks inherent in the business of the insurance or reinsurance company, and who are able to demonstrate their relevant experience with applicable professional and other standards.

Article 60. Without prejudice to the provisions of Articles 48 to 59, the Bank may, by means of a Regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998, further determine
what must be understood by an appropriate management structure, appropriate internal control, an appropriate independent risk management function, an appropriate independent internal audit function and, upon the recommendation of the FSMA, an appropriate independent compliance function, and establish more detailed rules in accordance with European regulations.

**Section VIII — Central administration**

**Article 61.** The central administration of an insurance or reinsurance company shall be established in Belgium.

**Section IX - Protection of insurance creditors**

**Article 62.** Insurance companies shall join a scheme for the protection of life insurance policies, which they finance and which guarantees, in the case of default, that the insurance creditors are indemnified under the conditions of these schemes, as regards life insurance policies with guaranteed return that come under class 21 as referred to in Annex II or as regards all other categories of policies that fall under a similar scheme set up by or pursuant to the law.

**Title II - Conditions for the pursuit of business**

**Chapter I - General provisions**

**Article 63.** All insurance or reinsurance companies must continuously comply with the conditions laid down by or pursuant to Chapter II of Title I of the present Book.

**Chapter II — Changes in the capital structure**

**Article 64.** Without prejudice to the Law of 2 May 2007 on disclosure of major holdings, all natural or legal persons who, acting alone or in concert, decide to, directly or indirectly, acquire or increase a qualifying holding in an insurance or reinsurance company governed by Belgian law, by way of which the percentage of the voting rights or capital shares held would reach or cross the threshold of 20%, 30%, or 50%, or by way of which it would become the insurance or reinsurance company’s subsidiary, shall previously notify the Bank thereof in writing, specifying the size of the envisaged participation and the relevant information referred to in the second paragraph.

The Bank shall publish a list on its website with the relevant information required for assessment, relating to and in line with the nature of the candidate acquirer and the envisaged acquisition, which must be provided along with the notification referred to in the first paragraph.

**Article 65.** § 1. The Bank shall send the candidate acquirer a written confirmation of receipt promptly and in all cases within two working days of receipt of the notification and of all the information referred to in Article 64, as well as upon receipt at a later date, where applicable, of the information referred to in § 2. This shall include the date on which the assessment period shall close.

The Bank shall complete the assessment referred to in Article 66 within a maximum of sixty days from the date of confirmation of receipt of the notification and of all the documents required pursuant to the list referred to in Article 64, second paragraph.

§ 2. During the assessment period, although no later than the fiftieth day thereof, the Bank may request any additional information necessary to complete its assessment. This request shall be made in writing and shall specify the additional information needed.

In the period between the date of request for information by the Bank and the receipt of a response thereto from the candidate acquirer, the assessment period shall be suspended. This suspension shall last for a maximum of twenty working days. The Bank is free to formulate additional requests to complete or clarify information after the deadline stipulated in the previous paragraph, although
such requests shall not lead to suspension of the assessment period.

§ 3. The Bank may extend the suspension referred to in § 2, second paragraph to a maximum of thirty working days where:

1° the candidate acquirer is established outside the European Economic Area or is not subject to EU legislation;

or

2° the candidate acquirer is a natural or legal person not subject to supervision pursuant to:

a) Directive 2009/138/EC;


**Article 66.** In the assessment of the notification and information referred to in Article 64 and the additional information referred to in Article 65, § 2 the Bank shall review the suitability of the candidate acquirer and the financial soundness of the envisaged acquisition based on the criteria referred to in Article 39, second paragraph, in order to ensure the sound and prudent management of the insurance or reinsurance company targeted by the envisaged acquisition and taking into consideration the expected influence of the candidate acquirer on the insurance or reinsurance company.

The Bank may, during the assessment period referred to in Article 65, oppose the envisaged acquisition if it has reasonable grounds for believing, by virtue of the criteria of Article 39, second paragraph, that the candidate acquirer is not suitable to guarantee sound and prudent management of the insurance or reinsurance company targeted by the envisaged acquisition, and taking into consideration the expected influence of the candidate acquirer on the insurance or reinsurance company.

If the Bank decides, once the assessment is complete, to oppose the envisaged acquisition, it shall inform the candidate acquirer thereof in writing within two working days and without exceeding the assessment period deadline. An appropriate explanatory note on the decision may be made accessible to the public at the request of the candidate acquirer.

If the Bank does not oppose the envisaged acquisition by the assessment deadline, the acquisition shall be deemed to be approved.

The Bank may establish a deadline for the completion of the envisaged acquisition and extend that deadline where applicable.

**Article 67.** To carry out the assessment referred to in Article 65, the Bank shall work in close collaboration with any other supervisory authority concerned or, depending on the circumstances,
in collaboration with the FSMA, if the candidate acquirer is one of the following persons or institutions:

1° an insurance company, a reinsurance company, a credit institution, an investment firm, an alternative investment fund manager or a management company of undertakings for collective investment to which an authorization is granted pursuant to the law of another Member State or, depending on the circumstances, by the FSMA;

2° the parent undertaking of an undertaking as referred to in point 1°;

3° a natural or legal person with the control of an undertaking as referred to in point 1°.

For this purpose, the Bank shall as rapidly as possible share information relevant or essential to the assessment with these authorities. It shall share all relevant information upon request and all essential information of its own accord.

In the cases referred to in the first paragraph, in its decision the Bank shall always communicate any of the positions or considerations of the competent authority that is responsible for the candidate acquirer or, depending on the circumstances, of the FSMA.

**Article 68.** All natural or legal persons who have decided to cease to have a direct or indirect qualifying holding in an insurance or reinsurance company, shall previously notify the Bank thereof in writing, specifying the amount of the intended holding after disposal. A decision by such a person to reduce the size of a qualifying holding shall also be notified to the Bank if such a reduction would result in the percentage of voting rights or capital shares held by that person to fall under the threshold of 20%, 30%, or 50%, or would result in the insurance or reinsurance company ceasing to be its subsidiary.

**Article 69.** If the previous notifications described in Articles 64 and 68 are not made or if a holding is acquired or increased despite the opposition referred to in Article 66, second paragraph, the President of the Commercial Court of the jurisdiction in which the insurance or reinsurance company has its registered office, ruling as in summary judgment, can take the measures referred to in Article 516, §§ 1 and 4 of the Companies Code.

The procedure shall be initiated by way of a summons by the Bank.

**Article 70.** Without prejudice to the Law of 2 May 2007 on disclosure of major holdings, all natural or legal persons who, acting alone or in concert, have directly or indirectly acquired a holding in an insurance or reinsurance company governed by Belgian law, or have directly or indirectly increased their holding in an insurance or reinsurance company governed by Belgian law, by way of which the percentage of the voting rights or capital shares held would reach or cross the threshold of 5% of the voting rights or capital shares without thereby acquiring a qualifying holding, shall notify the Bank thereof in writing within a period of ten working days after the acquisition or increase of that holding.

A similar notification must be provided within a period of ten working days by all natural or legal persons who, acting alone or in concert cease to have a direct or indirect holding of more than 5% of the voting rights or the capital of an insurance or reinsurance company, which did not constitute a qualifying holding.

The notifications referred to in the first and second paragraphs shall disclose the exact identity of the acquirer or acquirers, the number of shares acquired or disposed of and the percentage of the voting rights and of the capital of the insurance or reinsurance company that shall be held after the acquisition or disposal as well as the required information as detailed in the list that the Bank publishes on its website in accordance with Article 64, paragraph 2.
Article 71. Insurance or reinsurance companies shall notify the Bank as soon as they are made aware of acquisitions or disposals of their shares resulting in a downward or upward crossing of one of the thresholds referred to in Article 64.

They shall also inform the Bank immediately of all information of which they are aware and that can have an influence on the situation of their shareholders or members with respect to the assessment criteria referred to in Article 39, second paragraph. These information obligations also apply to the persons referred to in Article 23.

Under the same conditions and at least once a year, they shall communicate to the Bank the identity of shareholders or members who, acting alone or in concert, directly or indirectly hold a qualifying holding in their capital, as well as the proportion of capital and how many voting rights they hold. They shall also notify the Bank of how many shares and how many voting rights attached thereto they have received notifications of acquisition or disposal for in accordance with Article 515 of the Companies Code in the event that such a notification to the Bank is not prescribed under the articles of association.

Article 72. If the Bank has grounds to believe that the influence of a natural or legal person who directly or indirectly holds a qualifying holding in an insurance or reinsurance company, could hinder the sound and prudent management of that insurance or reinsurance company, without prejudice to the other measures provided for in the present Law, it may:

1° suspend the exercise of the voting rights attached to the shares that are held by the shareholder or member in question; the Bank can, at the request of all interested parties, permit the revocation of the measures it has ordered; the Bank’s decision shall be communicated to the shareholder or member concerned in the most appropriate manner; the Bank’s decision shall be enforceable as soon as it is notified; the Bank may make its decision public;

2° order the shareholder or member concerned to dispose of the shareholder rights it/he/she holds within a term determined by the Bank.

Should these not be disposed of within the established term, the Bank may request the sequestration of the shareholder rights from the institution or from the person it determines. The sequestrator shall notify the insurance or reinsurance company, which shall amend the register of registered shares accordingly and only accept the exercise of the rights attached thereto through the sequestrator. The sequestrator shall act in the interest of the sound and prudent management of the insurance or reinsurance company and in the interest of the holder of the sequestered shareholder rights. It shall exercise all rights attached to the shares. The amounts collected by the sequestrator as a dividend or otherwise shall only be transferred to the aforementioned holder where that holder has complied with the order referred to in the first paragraph, 2°.

The consent of the aforementioned holder is required to subscribe to capital increases or other (voting) securities, to opt for a dividend payout in company shares, to agree to takeover or exchange bids and to pay up as yet non-paid-up shares.

The shareholder rights acquired as part of such transactions shall be added, ipso jure, to the aforementioned sequestration.

The remuneration for the sequestrator shall be established by the Bank and paid by the aforementioned holder. The sequestrator can deduct this remuneration from the amounts paid to it in its capacity of sequestrator or paid to it by the aforementioned holder in anticipation of, or after completion of the transactions referred to in this Article.

If voting rights are exercised by the original holder or by another person outside the sequestration who acts on behalf of this holder, after the term established in accordance with the first paragraph, 2°, first sentence, notwithstanding the suspension of their exercise in accordance with the first paragraph, 1°, the Commercial Court of the jurisdiction in which the insurance company has its
Article 73. Where the participation in an insurance or reinsurance company is acquired through a company governed by the law of a third country, as a result of which the insurance or reinsurance company becomes a subsidiary of this company, the Bank shall inform the European Commission, EIOPA and the supervisory authorities of the other Member States thereof.

Chapter III — General conditions

Section I — Minimum own funds

Article 74. All insurance or reinsurance companies shall hold eligible own funds within the meaning of Articles 140 to 150 to continuously cover the solvency capital requirement established pursuant to Article 151.

Article 75. All insurance or reinsurance companies shall additionally hold eligible basic own funds within the meaning of Articles 140 to 150 to continuously cover the minimum capital requirement established pursuant to Article 189.

Section II - Record-keeping

Article 76. All insurance or reinsurance companies shall keep all documents relating to their activities at their registered office or any other location approved in advance by the Bank in consultation with the FSMA.

Without prejudice to other legal provisions on record-keeping, the Bank may determine the term and methods for keeping the documents referred to in the first paragraph by means of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998.

Section III — Management and managers

Subsection I - Supervision and assessment by the statutory governing body

Article 77. § 1. The statutory governing body shall regularly and at least once a year assess the effectiveness of the company’s governance system referred to in Article 42, and the extent to which it complies with the obligations laid down by or pursuant to the present Law and, where applicable, by the implementing measures of Directive 2009/138/EC. The statutory governing body shall ensure that the management committee take the necessary measures to tackle any non-conformity.

§ 2. The statutory governing body shall exercise effective supervision on the management committee and be responsible for the supervision of the decisions made by the management committee and by the senior management of the company.

§ 3. The statutory governing body shall in particular assess the proper functioning of the independent control functions referred to in Article 54.

§ 4. In the annual report of the statutory governing body, the individual and collective expertise of the members of the committees referred to in Articles 48 shall be documented.

§ 5. The statutory governing body shall lay down the general principles of the remuneration policy and assess it regularly and at least once a year, and supervise the implementation thereof. The statutory governing body may make use of the independent control functions for such an assessment.

§ 6. The statutory governing body shall ensure that the governance memorandum referred to in
Article 42, § 3, is updated and that the updated governance memorandum is forwarded to the Bank.

§ 7. The statutory governing body shall approve a written policy that guarantees that the information communicated to the Bank pursuant to Articles 312 to 316 is always sufficient;

§ 8. The statutory governing body shall approve the solvency and financial condition report referred to in Article 95 prior to its publication. It shall ensure that this report is updated and that the updated report is forwarded to the Bank.

§ 9. The statutory governing body shall decide which measures must be taken as a result of the findings and recommendations of the internal audit and shall ensure that these measures are taken.

Article 78. § 1. The statutory governing body shall in particular ensure the integrity of the accounting and financial reporting systems, including the rules for operational and financial control. The statutory governing body shall evaluate the internal control function at least once a year and ensure that this control offers a reasonable degree of certainty as to the reliability of the reporting process in such a way as to ensure that the annual accounts and financial information comply with the legislation and regulations in force.

§ 2. The statutory governing body shall supervise the process for publication and communications laid down by or pursuant to the present Law and, where applicable, by European legislation and regulations.

Article 79. [The accredited statutory auditor shall, on an annual basis, provide the additional report as referred to in Article 11 of Regulation No 537/2014 to the audit committee if such a committee has been set up, or to the statutory governing body. This report shall in particular relate to important matters which have been detected during the exercise of the statutory audit of the annual accounts, and more specifically serious deficiencies in the internal control as regards financial reporting. This additional report shall be sent at the latest on the date of submission of the audit report as referred to in Article 325, in Articles 144 and 148 of the Companies Code and in Article 10 of Regulation No 537/2014.

At the Bank’s request, the audit committee or, where applicable, the statutory governing body, shall provide the additional report referred to in the first paragraph.]

Article replaced by Article 141 of the Law of 7 December 2016 - Belgian Official Gazette, 13 December 2016

Subsection II - Measures to be taken by the management committee

Article 80. § 1. Without prejudice to the powers of the statutory governing body, the management committee shall, under the supervision of the statutory governing body, take the necessary measures to ensure compliance with—and implementation of—the provisions of Article 42.

§ 2. The management committee shall report at least once a year to the statutory governing body, the accredited statutory auditor and the Bank on the evaluation of the effectiveness of the governance system referred to in Article 42 and on the measures that, where applicable, are taken to tackle any non-conformity. The report shall substantiate why these measures comply with the legal and regulatory provisions.

§ 3. Without prejudice to its other tasks, the management committee shall, in particular, implement the remuneration policy established by the statutory governing body.

§ 4. The management committee shall also take the necessary measures to ensure that the insurance or reinsurance company manages the risks referred to in Section IV of this Chapter.

§ 5. The management committee of the insurance or reinsurance company shall declare to the Bank that the information provided to it in accordance with Articles 312 to 316 is complete and
accurately reflects the situation of the company, taking into account its risk profile, and that it is established in accordance with the rules established by or pursuant to the present Law, the implementing measures of Directive 2009/138/EC and the instructions of the Bank.

Subsection III - Appointments, dismissals and exercise of external functions

**Article 81.** § 1. Insurance or reinsurance companies shall previously inform the Bank of any proposal to appoint members of the statutory governing body and members of the management committee or, in the absence of a management committee, persons tasked with the senior management, as well as managers of independent control functions.

Under the terms of the notification required pursuant to the first paragraph, the insurance or reinsurance companies shall provide the Bank with all documents and information that enable it to determine whether the persons whose appointment is recommended have the requisite professional integrity and appropriate expertise required pursuant to Article 41.

The first paragraph also applies to the proposed renewal of the appointment of the persons referred to in the first paragraph as well as to their non-renewals, removals from office and dismissals.

§ 2. The appointment of the persons referred to in § 1 shall previously be submitted for approval to the Bank.

Where the appointment relates to persons put forward for a function as referred to in § 1 for the first time in a company that falls under the supervision of the Bank pursuant to Article 36/2 of the Law of 22 February 1998, the Bank shall first consult the FSMA.

The FSMA shall communicate its opinion to the Bank within a week of receipt of the request for an opinion.

§ 3. Insurance or reinsurance companies shall inform the Bank of any distribution of tasks between the members of the statutory governing body, members of the management committee or, in the absence of a management committee, between persons tasked with the senior management.

Material changes in the distribution of tasks as referred to in the first paragraph, shall give rise to the application of §§ 1 and 2.

**Article 82.** The persons responsible for the independent control functions referred to in Article 54 may not be removed from their function without the prior approval of the statutory governing body.

**Article 83.** § 1. Members of the statutory governing body, members of the management committee and, in the absence of a management committee, persons tasked with the senior management shall devote sufficient time to the exercise of their function in the company.

§ 2. Without prejudice to § 1 and Article 42, members of the governing bodies of the insurance or reinsurance company and all persons who take part in the management or running of the company, regardless of the title under which or capacity in which they do so, may, whether or not in representation of the insurance or reinsurance company, exercise a mandate as administrator or manager or take part in the management or running of a commercial company or a company with a commercial legal form, an undertaking with another Belgian or foreign legal form or a Belgian or foreign public institution with industrial, commercial or financial activity under the conditions and within the limits established in the present Article.

§ 3. The external functions referred to in § 2 shall be governed by the internal rules that the insurance or reinsurance company introduces and enforces to:

1° prevent persons involved in the senior management of the insurance or reinsurance company no longer being sufficiently available to exercise their senior management role by exercising such a
function;

2° prevent conflicts of interest occurring in the insurance or reinsurance company as well as risks associated with the exercise of their function, inter alia in the area of insider dealing;

3° ensure appropriate publication of such functions.

By means of a regulation passed pursuant to Article 12bis § 2 of the Law of 22 February 1998, the Bank shall stipulate how these obligations must be enforced.

§ 4. Company executives entrusted with management who are appointed on the recommendation of the insurance or reinsurance company must be members of the management committee of the insurance or reinsurance company or persons designated by the management committee.

§ 5. Members of the statutory governing body who are not members of the management committee of the insurance or reinsurance company may not exercise a mandate in a company in which the insurance or reinsurance company has a holding unless they do not take part in the day-to-day management of that company.

§ 6. Managers of the management committee or, in the absence of a management committee, persons involved in the senior management of the insurance or reinsurance company, may not exercise a mandate that includes involvement in the day-to-day management, except in:

1° a company as referred to in Article 89, paragraph 1 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, with which the insurance or reinsurance company has close links;

2° a Financial Vehicle Corporation in the form of a company within the meaning of the Law of 3 August 2012 on certain forms of collective management of investment portfolios that fulfil the conditions of Directive 2009/65/EC and Financial Vehicle Corporations or an undertaking for collective investment in the form of a company within the meaning of the aforementioned Law of 3 August 2012 or the Law of 19 April 2014 on alternative investment funds and their managers;

3° a company with an activity that is an extension to the insurance or reinsurance business, such as insurance intermediation or management of claims.

4° a family estate company in which they or their family have a significant interest as part of the normal management of their assets.

Persons who take part in the senior management of a mutual insurance fund may additionally take part in the day-to-day management of a mutual health fund, a national union of mutual health funds or of another mutual fund as referred to in the aforementioned Law of 6 August 1990 which the members of this mutual insurance fund can join.

§ 7. Insurance or reinsurance companies shall promptly notify the Bank of the functions exercised by persons referred to in § 1 outside the insurance or reinsurance company for the purposes of supervision of compliance with the provisions of this Article.

The Bank shall determine the methods for the notification referred to in the first paragraph.

Section IV — Risk management

Article 84. All insurance or reinsurance companies shall ensure that their risks are managed in accordance with the provisions of this Section.

Article 85. § 1. The risk management system provided for by Article 56 shall cover the risks that must be taken into consideration when calculating the solvency capital requirement in accordance
with Article 151, § 4, as well as the risks that are not—or not fully—taken into consideration in this calculation.

§ 2. Moreover, the risk management system shall cover at least the following areas:

1° underwriting and reserves;
2° asset-liability management (ALM);
3° investments, in particular in derivatives and similar commitments;
4° liquidity and concentration risk management;
5° operational risk management;
6° reinsurance and other risk-mitigation techniques.

The written risk management policy lines referred to in Article 42, § 3 shall consist of policy lines for the areas listed in this paragraph.

Article 86. Where insurance or reinsurance companies apply the matching adjustment referred to in Article 129 or the volatility adjustment referred to in Article 131, they shall draw up a liquidity plan with an estimate of the incoming and outgoing cash flows relating to the assets and liabilities on which these adjustments are applied.

Article 87. As regards asset-liability management, insurance or reinsurance companies shall make a regular assessment of:

1° the sensitivity of their technical provisions and their eligible own funds for the assumptions at the basis of the extrapolation of the relevant risk-free interest rate term structure as referred to in Article 126, § 2;
2° in case of application of the matching adjustment specified in Article 129:
   a) the sensitivity of their technical provisions and their eligible own funds for the assumptions at the basis of the calculation of the matching adjustment, including the calculation of the fundamental spread as referred to in Article 130, § 1, 2°, and the potential effect of a forced sale of assets on their eligible own funds;
   b) the sensitivity of their technical provisions and eligible own funds to changes in the composition of the assigned portfolio of assets;
   c) the impact of a reduction of the matching adjustment to zero;
3° in case of the application of the volatility adjustment referred to in Article 131:
   a) the sensitivity of their technical provisions and their eligible own funds for the assumptions at the basis of the calculation of the volatility adjustment, and the potential effect of a forced sale of assets on their eligible own funds;
   b) the impact of a reduction of the volatility adjustment to zero;

Insurance or reinsurance companies shall submit the assessments referred to in the first paragraph annually to the Bank as part of the provision of information referred to in Article 312. Where the reduction of the matching adjustment or the volatility adjustment to zero would result in non-compliance with the solvency capital requirement, the company shall also submit an analysis of the measures it could apply in such a situation to re-establish the level of eligible own funds covering the solvency capital requirement or to reduce its risk profile to restore compliance with the
solvency capital requirement.

Where the volatility adjustment referred to in Article 131 is applied, the written policy on risk management referred to in Article 42, § 3, shall comprise a policy on the criteria for the application of the volatility adjustment.

**Article 88.** As regards investment risk, insurance or reinsurance companies shall show that they comply with the provisions of Articles 190 to 198.

**Article 89.** In order to avoid overreliance on external credit assessment institutions when they use external credit rating assessment in the calculation of technical provisions and the solvency capital requirement, insurance or reinsurance companies shall assess the appropriateness of those external credit assessments as part of their risk management by using additional assessments wherever practicably possible in order to avoid any automatic dependence on external assessments.

**Article 90.** For insurance or reinsurance companies that make use of an internal model or partial internal model approved in accordance with Articles 167 and 168, the risk management function shall also fulfil the following extra tasks:

1° designing and applying the internal model;

2° testing and validating the internal model;

3° keeping information on the internal model and any changes made thereto;

4° analysing the operation of the internal model and drawing up summary reports thereon.

5° providing information to the statutory governing body and the management committee on the operation of the internal model and stating where improvements need to be made, as well as keeping these bodies informed of the progress made with remedying the weaknesses previously established.

**Section V - Own Risk and Solvency Assessment**

**Article 91.** § 1. As part of its risk management system, each insurance or reinsurance company shall assess its own risk and solvency by way of an Own Risk and Solvency Assessment, or ‘ORSA’.

This assessment must at least contain:

1° the overall solvency needs, taking into account the specific risk profile, overall risk tolerance limits and the business strategy of the company, which have been approved by the statutory governing body;

2° whether the capital requirements laid down in Section II of Chapter VI and the requirements on technical provisions laid down in Section I, Subsection II of Chapter VI are complied with on a continuous basis;

3° the extent to which the risk profile of the company concerned deviates from the assumptions underlying the solvency capital requirement as laid down in Article 151, calculated using the standard formula in accordance with Articles 153 to 166 or an internal model or partial internal model in accordance with Articles 167 to 188.

§ 2. For the purposes of § 1, second paragraph, 1° the company concerned shall have in place processes which are proportionate to the nature, scale and complexity of the risks inherent to its business and which enable it to properly identify and assess the risks it faces in the short- and long-term and to which it is or could be exposed. The company shall demonstrate the methods used in
that assessment.

§ 3. Where the insurance or reinsurance company applies the matching adjustment referred to in Article 129, the volatility adjustment referred to in Article 131 or the transitional measures referred to in Articles 668 and 669, it shall perform the assessment of compliance with the capital requirements referred to in § 1, second paragraph, 2° with and without taking into account those adjustments and transitional measures.

§ 4. In the case referred to in § 1, second paragraph, 3° when an internal model is used, the assessment shall be performed together with the recalibration that transforms the internal risk numbers into the solvency capital requirement risk measure and calibration.

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

§ 6. Insurance or reinsurance companies shall perform the assessment referred to in § 1 regularly and forthwith following any significant change in their risk profile.

§ 7. The insurance or reinsurance companies shall inform the Bank of the results of each Own Risk and Solvency Assessment as part of the provision of information pursuant to Article 312.

§ 8. The own-risk and solvency assessment shall not serve to calculate a capital requirement. The solvency capital requirement shall be adjusted only in accordance with Articles 323, 373, 379 and 383.

Section VI — Outsourcing

Article 92. All insurance or reinsurance companies that outsource functions, activities or operational tasks shall remain fully responsible for discharging all of their obligations under the present Law or the measures taken in application of Directive 2009/138/EC.

Outsourcing of operational tasks shall not lead to any of the following:

1° materially impairing the quality of the governance system of the insurance or reinsurance company;

2° unduly increasing the operational risk;

3° impairing the ability of the Bank to monitor compliance by the insurance or reinsurance company with the obligations laid down by or pursuant to the present Law or by the implementing measures of Directive 2009/138/EC;

4° undermining continuous and satisfactory service to policyholders, insureds and beneficiaries of insurance policies or the persons concerned by the execution of reinsurance policies.

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

Section VII — Transactions subject to limitation or prohibition and payments subject to being declared null and void

Article 93. § 1. Insurance or reinsurance companies may directly or indirectly grant loans, credits or guarantees to, and enter into insurance policies for

1° members of their statutory governing body, members of their management committee or persons involved in their senior management and authorized agents;
2° persons referred to in Article 23, first paragraph, as well as members of their various bodies, and persons involved in their senior management;

3° companies or institutions in which the persons referred to in 1° have a qualifying holding or exercise a function as referred to in 1°;

4° persons related to the persons referred to in 1°. In this respect, the following shall be deemed “related persons”: spouses, partners deemed equivalent to spouses pursuant to their national law, and first-degree relatives,

under the conditions, for the amounts and with the guarantees that are standard for the market.

A notification must expressly be made of the loans, credits or guarantees under the first paragraph within a term that permits the statutory governing body to oppose them if they amount to more than EUR 100,000 on a cumulative basis for a particular person, company or institution. Members who have a direct or indirect personal or functional interest may not vote, irrespective of the body tasked with making the decision.

The loans, credits and guarantees referred to in the second paragraph shall be notified to the Bank in accordance with the frequency and rules that it determines.

Where the arrangements referred to in the first paragraph are not entered into under normal market conditions, the Bank may require that the conditions agreed be adjusted on the date on which these arrangements came into effect. Failing that, the members of the statutory governing body who have made the decision shall be jointly and severally liable vis-à-vis the company for any difference.

§ 2. By way of derogation from the provisions of the Companies Code and notwithstanding § 1, no loans, credits or guarantees, including by way of a credit or surety insurance agreement may be granted, directly or indirectly, to persons to enable them to directly or indirectly subscribe to shares or other securities that confer the right to dividends of the insurance or reinsurance company or of a company with which a close link exists, or that confer the right to acquire such securities, or to acquire such shares or other securities.

Article 94. In the event of bankruptcy of an insurance or reinsurance company and with respect to the inventory, all payments made by the company in cash or in any other way to the members of its statutory governing body and the members of its management committee in the form of directors’ fees (tantièmes) or of other profit sharing over the two years previous to the moment established by the courts for suspension of payment, shall be null and void and have no further effect.

The first paragraph does not apply where the courts establish that no gross negligence whatsoever by these persons has contributed to that bankruptcy.

Subsection VIII — Communication of information on the situation of the insurance or reinsurance company

Article 95. Taking into account the information required under Article 312, § 3 and the principles of Article 312, § 4, insurance or reinsurance companies shall annually publish a Solvency and Financial Condition Report, or ‘SFCR’.

Article 96. § 1. The solvency and financial condition report referred to in Article 95 shall contain the following information:

1° a description of the activities and results of the company;

2° a description of the governance system and an assessment of the extent to which it is in line with the company’s risk profile;

3° a description, separately for each category of risk, of the risk exposure, concentration, mitigation
and sensitivity;

4° a description, separately for assets, technical provisions, and other liabilities, of the bases and methods used for their valuation, together with an explanation of any major differences in the bases and methods used for their valuation in the financial statements;

5° a description of how the regulatory capital is managed, including at least the following:

a) the structure and amount of capital, including the quality thereof;

b) the amounts of the solvency capital requirement and of the minimum capital requirement;

c) the option set out in Article 162 used for the calculation of the solvency capital requirement;

d) information allowing a proper understanding of the main differences between the assumptions underlying the standard formula and those of any internal model used by the company for the calculation of its solvency capital requirement;

e) the amount of any non-compliance with the minimum capital requirement or any significant non-compliance with the solvency capital requirement during the reporting period, even if subsequently resolved, with an explanation of its origin and consequences as well as any remedial measures taken.

§ 2. Where the matching adjustment is applied as referred to in Article 129, the description referred to in § 1, 4° shall also include a description of the matching adjustment and of the portfolio of liabilities and assigned assets to which the matching adjustment is applied, as well as a quantification of the effect of a change to the matching adjustment to zero on the company’s financial situation.

The description referred to in § 1, 4° shall also include a declaration stating whether the volatility adjustment referred to in Article 131 is applied by the company, as well as a quantification of the effect of a change to the volatility adjustment to zero on the company’s financial situation.

§ 3. The description referred to in § 1, 5°, a) shall include an analysis of all major changes as compared with the previous reporting period, and an explanation of all major differences in the value of the items concerned in the financial statements, as well as a short description of the transferability of capital.

§ 4. In the information referred to in § 1, 5°, b) on the solvency capital requirement, the amount calculated in accordance with the provisions of Section II of Chapter VI, and the amount of any capital add-on laid down in accordance with Article 323, or the effect of the specific parameters that the insurance or reinsurance company must use pursuant to Article 166, shall be specified separately. Along with this, concise information shall be included on the reasons why the Bank has laid down that capital add-on.

In the information on the solvency capital requirement it shall be stated, where applicable, that the definitive amount thereof must be assessed under the supervision exercised by the Bank.

§ 5. The information required pursuant to the present Article shall be published in full or, as long as the Bank so allows, by reference to information that is equivalent in nature and tenor and that is published pursuant to other legal or regulatory provisions.

Article 97. § 1. In the event of any major development significantly affecting the relevance of the information disclosed in accordance with Articles 95 and 96, insurance or reinsurance companies shall disclose appropriate information on the nature and effects of that major development.

§ 2. For the purposes of § 1, at least the following shall be regarded as major developments:
1° non-compliance with the minimum capital requirement is observed and the Bank either considers that the company will not be able to submit a realistic short-term finance scheme or it does not receive such a scheme within one month of the date when non-compliance was observed;

2° significant non-compliance with the solvency capital requirement is observed and the Bank does not obtain a realistic reorganization plan within two months of the date when non-compliance was observed.

In the case referred to in the first paragraph, 1°, the company shall immediately disclose the amount the non-compliance relates to and provide an explanation as to the origin and consequences thereof, including any corrective measures taken. Where, in spite of a short-term finance scheme initially considered to be realistic, non-compliance with the minimum capital requirement has not been resolved three months after its observation, the amount the non-compliance relates to shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measures taken as well as any further remedial measures planned.

In the case referred to in the first paragraph, 2°, the company shall immediately disclose the amount the non-compliance relates to and provide an explanation as to the origin and consequences thereof, including any remedial measures taken. Where, in spite of a reorganization plan initially considered to be realistic, clear non-compliance with the solvency capital requirement has not been resolved six months after its observation, the amount the non-compliance relates to shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measures taken as well as any further remedial measures planned.

Article 98. Insurance and reinsurance companies may disclose, on a voluntary basis, any information or explanation related to their solvency and financial condition which is not already required to be disclosed in accordance with Articles 95 to 97.

Article 99. Insurance or reinsurance companies shall have appropriate structures and systems to comply with the requirements of Articles 95 to 97, and a written policy that guarantees that the information disclosed pursuant to Articles 95 to 97 is always sufficient.

Article 100. The Bank may permit an insurance or reinsurance company not to disclose the information as referred to in Article 96, § 1, 1° to 4°; and § 2, if:

1° by disclosing such information, the company’s competitors would gain significant undue advantage;

2° there are obligations to policyholders or other counterparty relationships binding the company to secrecy or confidentiality.

Where non-disclosure of information is permitted by the Bank, companies shall make a statement to this effect in their report on solvency and financial condition and shall state the reasons.

In the case of an insurance company, the permission referred to in the present Article may only be granted or refused after the Bank has asked the FSMA’s opinion. The latter shall deliver its opinion at the latest fifteen days after receipt of the request for an opinion. An absence of opinion by this date serves as a positive opinion.

Article 101. The Bank may stipulate the content of and manner in which the information referred to in this Section is submitted by means of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998.

Chapter IV - Transfer of portfolio and other special transactions

Article 102. The Bank’s prior authorization is required for:
1° strategic decisions by an insurance or reinsurance company;

2° mergers concerning an insurance or reinsurance company, as well as demergers of insurance or reinsurance companies;

3° transfers of all or part of the activities, including the full or partial transfer of a portfolio, as a result of which the rights and obligations arising from the insurance or reinsurance policy are transferred.

The Bank shall make a decision within three months after receipt of a full dossier of the plan. It may not withhold its consent except on grounds relating to the company’s capacity to meet the provisions stipulated in or by virtue of the present Law or the implementing measures of Directive 2009/138/EC or relating to the sound and prudent management of the company, or if the decision is likely to significantly affect the stability of the financial system. If it does not intervene within the aforementioned period, consent shall be deemed to have been granted, without prejudice to Article 104, § 1, 2°.

Where they relate to insurance policies covering risks or commitments situated in Belgium, the transfers referred to in the first paragraph, 3° in favour of an insurance company from a third country shall only be permitted if the Belgian branch of that insurance company acts as purchaser and is therefore bound to comply with the legal and regulatory restrictions inherent to the transferred risks and commitments.

Article 103. The Bank determines on a case-by-case basis, depending on the specific characteristics of the transaction and on the company or companies in question, the content of the dossier on the transactions referred to in Article 102. The dossier on the transactions referred to in Article 102, first paragraph, 3° shall at least include;

1° the identification of the counterparty in the transfer agreement;

2° a description of the agreements to be transferred;

3° a description of the asset and liability components to be transferred;

4° mention of the Member States and third countries in which the risks and obligations to be transferred are situated;

5° mention of the Member States in which the transferring company has a branch concerned by the transfer;

6° all other information requested by the Bank for approval of the transfer.

Article 104. § 1. Except for the conditions referred to in Article 102, second paragraph, permission may only be granted by Bank for transactions as referred to in Article 102, paragraph 1, 3° if the following conditions are met:

1° if the accepting company is governed by the law of another Member State, the supervisory authorities of that Member State must certify that after taking the proposed transfer into account the accepting company possesses the necessary eligible own funds to cover the solvency capital requirement referred to in the legislation that applies to this company;

2° where permission is asked by an insurance company, in its capacity of transferring company, prior agreement is also required from the supervisory authorities of the host Member States concerned for full or partial transfer of a portfolio of insurance policies entered into via a branch established in another Member State or under the free provision of services. The Bank shall, to this end, communicate the proposal of transfer to the supervisory authorities of the Member States concerned forthwith. If the supervisory authorities have not reacted within a period of three months
after they were consulted, they shall be deemed to have agreed.

§ 2. Where the Bank is consulted by the supervisory authorities of a Member State on a transaction as referred to in Article 102, first paragraph, 3° in which an insurance or reinsurance company governed by Belgian law acts as accepting company, the Bank shall deliver a certificate within three months after receiving the request, confirming whether or not the accepting company, after taking the proposed transfer into account, possesses the eligible own funds to cover the solvency capital requirement as referred to in Article 151.

Article 105. The Bank shall inform the FSMA of the applications for permission for transfers from insurance companies that it receives pursuant to Article 102, first paragraph, 3°, as well as its decisions thereon.

Article 106. The Bank shall publish an extract of each decision to approve a merger or transfer of rights and obligations arising from insurance or reinsurance policies in the Belgian Official Gazette, pursuant to Article 102, first paragraph, 2° and 3°. Without prejudice to Articles 17 and 18 of the Insurance Law, each full or partial transfer of rights and obligations arising from these transactions shall be enforceable to third parties, in particular to policyholders, insureds and beneficiaries, as soon as the approval from the Bank is published in the Belgian Official Gazette.

The extracts referred to in the first paragraph shall also be published on the website of the Bank for information purposes.

The transfers approved by the Bank pursuant to Article 102, first paragraph, 2° and 3° may not be declared null or unenforceable pursuant to Article 1167 of the Civil Code or Articles 17, 18, or 20 of the Bankruptcy Law of 8 August 1997.

Chapter V - Pursuit of insurance or reinsurance activity abroad

Section I - Establishing or acquiring subsidiaries abroad

Article 107. All insurance or reinsurance companies that wish to directly or indirectly acquire or establish a subsidiary abroad that pursues the business of insurance or reinsurance shall notify the Bank thereof.

The insurance or reinsurance company concerned shall include information on the activities, organization, management and shareholder structure of the company concerned in the notification referred to in the first paragraph.

Section II - Opening branches abroad

Subsection I - Opening branches abroad - insurance companies

Article 108. § 1. All insurance companies that wish to establish a branch on the territory of another Member State to pursue insurance activity there for which they have an authorization in Belgium, shall notify the Bank thereof.

This notification shall include a dossier with the following details:

1° the Member State on the territory of which the insurance company intends to establish the branch;

2° the scheme of operations describing at least the nature of the envisaged transactions and the organizational structure of the branch;

3° the name, address and responsibilities of the authorized agent of the branch referred to in § 2 and, where applicable, of the other persons tasked with the senior management of the branch, as
well as the responsibilities for the independent control functions of the branch;

4° the address in the host Member State where documents may be requested from—and delivered to—the insurance company, in particular communications to the authorized agent;

5° if the insurance company wishes to have its branch cover the risks belonging to class 10 as set out in Annex I, with the exception of the carrier’s liability, a declaration that it is affiliated to the national bureau and the national guarantee fund of the host Member State;

6° if the insurance company wishes to have its branch cover industrial accident risks, proof—if this is required by the host Member State—that the specific rules of national law in that Member State as regards coverage of that type of risk are complied with.

§ 2. Insurance companies as referred to in § 1 shall designate an authorized agent for the branch. In the event of revocation of the mandate—or dismissal—of the authorized agent, or in case of his/her death, the insurance company shall take the necessary measures to organize a replacement within a month.

The authorized agent as well as, where applicable, the other people tasked with the senior management of the branch and the persons responsible for the independent control functions of the branch must at all times possess the professional integrity and appropriate expertise required for the exercise of their function. Articles 41, 81 and 82 shall apply mutatis mutandis.

§ 3. The Bank may oppose the implementation of the plan by way of a decision motivated by non-compliance of the requirements of § 2 or the negative consequences for the governance system, the financial situation, especially relating to the risks related to the envisaged activity, or the supervision of the insurance company.

The decision of the Bank shall be notified to the insurance company, by registered mail or letter with recorded delivery, at the latest three months after receipt of the complete dossier including all data referred to in § 1, second paragraph. If the Bank does not notify its decision within this period, it shall be deemed not to object to the insurance company’s plan.

§ 4. The Bank shall notify the European Commission and EIOPA of the number and nature of the cases in which a definitive decision of opposition was made pursuant to § 3.

§ 5. With the exception of § 4, this Article shall apply mutatis mutandis to the opening of branches in a third country, with the proviso that the Bank may also oppose the implementation of the insurance company’s plan if it has reasons to doubt compliance with the rules for taking-up of business provided for by the legislation of the third country or, taking into account the envisaged activity and the rules relating to the cooperation with the supervisory authorities of the third country, the possibility of exercising effective supervision of the branch established on the territory of the third country.

Article 109. Where the country of establishment of the branch is a Member State, the Bank shall send, if it has not opposed the implementation of the plan in accordance with Article 108, § 3, all the information required under Article 108, § 1, second paragraph to the competent authority of the host Member State concerned, within three months after receipt thereof, as well as a declaration that the insurance company covers the solvency capital requirement and minimum capital requirement as calculated in accordance with Articles 100 and 129 of Directive 2009/138/EC.

The Bank shall inform the insurance company concerned in writing of the communication of the dossier referred to in the first paragraph and of the date on which the competent authorities of the host Member State have confirmed receipt thereof.

Where the supervisory authorities of the host Member State have communicated the conditions under which the activity of the branch may be conducted for reasons of general interest, the Bank
shall communicate this information to the insurance company concerned.

**Article 110.** Where the country of establishment of the branch is a third country, the Bank may, in consultation with the authority of the third country concerned, lay down rules for the opening and the supervision of the branch as well as for the desired sharing of information, with due regard to the provisions of Chapter IV/1, Section 4 of the Law of 22 February 1998.

**Article 111.** Where the country of establishment of the branch is a Member State, the activities of the branch may commence from the date on which the Bank has received the communication referred to in Article 109, third paragraph, and at the latest once a term of two months has elapsed starting on the date of the supervisory authorities’ receipt of the information communicated pursuant to Article 109, first paragraph, from the host Member State.

Where the country of establishment of the branch is a third country, the activities of the branch may commence from the date on which no opposition was registered in accordance with Article 108, § 3 against the intention to open a branch, without prejudice to compliance with the legal provisions of this country as regards taking-up of the insurance business.

**Article 112.** The insurance company shall inform the Bank and, where applicable, the supervisory authorities of the host Member States concerned at least a month in advance of any changes that it wishes to make to the information communicated pursuant to Article 108, § 1, second paragraph, 2°, 3° and 4°. Article 108, § 3 shall apply to these changes.

**Subsection II - Opening branches abroad - reinsurance companies**

**Article 113.** All reinsurance companies that wish to establish a branch on the territory of another Member State to pursue reinsurance activity there for which they have an authorization in Belgium, shall notify the Bank thereof.

**Article 114.** Articles 108, § 1, second paragraph, 1° to 4° and §§ 2, 3 and 5, 110, 111, second paragraph and 112 apply mutatis mutandis to the opening of branches abroad by a reinsurance company, with the proviso that:

1° memoranda of understanding, as referred to in Article 110, may also be entered into by the Bank with the supervisory authorities of the host Member States;

2° Article 111, second paragraph also applies where the country of establishment of the branch is a Member State.

**Section III - Provision of insurance or reinsurance services abroad**

**Subsection I - Provision of services abroad by an insurance company**

**Article 115.** § 1. Every insurance company that wishes to pursue, on the territory of another Member State, an insurance activity for which it has an authorization in Belgium, without establishing a branch in that Member State, shall notify the Bank thereof.

This notification shall include a dossier with the following details:

1° the Member State on the territory of which the insurance company intends to exercise its activity;

2° the type of insurance operations it plans to exercise as part of the free provision of services and the classes to which these operations belong;

3° if the insurance company wishes to cover, under the free provision of services, the risks belonging to class 10 as set out in Annex I, with the exception of the carrier’s liability, and if the host Member State requires that these details be communicated, a declaration that the insurance
company is affiliated to the national bureau and the national guarantee fund of the host Member State;

§ 2. The Bank may oppose the implementation of the plan by way of a decision motivated by the negative consequences of the cross-border insurance activity on the governance system, the financial situation, especially taking into consideration the risks related to the envisaged activity, or the supervision of the insurance company.

The decision of the Bank shall be notified to the insurance company by registered mail or letter with recorded delivery, at the latest one month after receipt of the complete dossier including all data referred to in § 1, second paragraph. If the Bank does not notify its decision within this period, it shall be deemed not to object to the insurance company’s plan.

§ 3. The Bank shall notify the European Commission and EIOPA of the number and nature of the cases in which a final decision of opposition was made pursuant to § 2.

§ 4. With the exception of § 3, this Article applies mutatis mutandis to the pursuit of insurance business on the territory of a third country without establishing a branch thereon, with the proviso that

1° the Bank may also oppose the implementation of the insurance company’s plan if it has reasons to doubt compliance with the rules for taking-up of business provided for by the legislation of the third country or, taking into account the envisaged activity and the rules relating to the cooperation with the supervisory authorities of the third country, the possibility of exercising effective supervision of the cross-border activity pursued on the territory of the third country.

2° the term referred to in § 2, second paragraph, shall in such a case be three months.

Article 116. Where the State on the territory of which the cross-border insurance activity is pursued is a Member State, the Bank, if it has not opposed the implementation of the plan in accordance with Article 115, § 2, shall send all the information required under Article 115, § 1, second paragraph, to the supervisory authority of the host Member State concerned within one month after receipt thereof, including a declaration that the insurance company covers the solvency capital requirement and minimum capital requirement as calculated in accordance with Articles 100 and 129 of Directive 2009/138/EC. It shall also communicate the insurance classes for which the insurance company has received an authorization from the Bank.

The Bank shall inform the insurance company concerned in writing of the communication referred to in the first paragraph.

Where the supervisory authorities of the host Member State have communicated the conditions under which the cross-border activity may be conducted for reasons of general interest, the Bank shall communicate this information to the insurance company concerned.

Article 117. Where the State on the territory of which the cross-border insurance activity is pursued is a third country, the Bank may, in consultation with the authority of the third country concerned, lay down rules for the supervision of the activity as well as for the desired sharing of information, with due regard to the provisions of Chapter IV/1, Section 4 of the Law of 22 February 1998.

Article 118. Where the State on the territory of which the cross-border insurance activity is pursued is a Member State, the cross-border activity may commence from the date on which the company was notified by the Bank of the communication referred to in Article 116, first paragraph.

Where the State on the territory of which the cross-border insurance activity is pursued is a third country, the cross-border activity may commence from the date on which no opposition was registered in accordance with Article 115, § 2 against the intention to pursue cross-border activity, without prejudice to compliance with the legal provisions of that country as regards taking-up of
the insurance business.

**Article 119.** Every insurance company that pursues insurance activity on the territory of another Member State or of a third country without establishing a branch there, shall inform the Bank in advance of all changes it wishes to make to the information communicated pursuant to Article 115, § 1, second paragraph. Article 115, § 2 shall apply to these changes.

**Subsection II - Provision of services abroad by a reinsurance company**

**Article 120.** Every reinsurance company that wishes to pursue, on the territory of another Member State or of a third country, a reinsurance activity for which it has an authorization in Belgium, without establishing a branch in that Member State, shall notify the Bank thereof.

**Article 121.** Articles 115, § 1, second paragraph, and §§ 2 and 4, 117, 118, second paragraph and 119 apply mutatis mutandis to the pursuit of cross-border reinsurance activity abroad without establishing a branch there, with the proviso that:

1° memoranda of understanding, as referred to in Article 117, may also be entered into by the Bank with the supervisory authorities of the host Member States in which the cross-border reinsurance activity is pursued;

2° the term referred to in Article 115, § 2, second paragraph shall amount in such a case to three months;

3° Article 118, second paragraph also applies where the State in which the cross-border reinsurance activity is pursued is a Member State.

**Section IV — Common rules for the pursuit of business in another Member State**

**Article 122.** All insurance or reinsurance companies shall notify the Bank of the amount of premiums, claims and provisions, gross of reinsurance, and separately for operations that form part of the opening of a branch and those carried out under the free provision of services, per country of establishment of a branch and per Member State on the territory of which a cross-border insurance or reinsurance activity is pursued as follows:

1° for non-life insurance: per business line, in accordance with the implementing measures of Directive 2009/138/EC;

2° for life insurance: per business line, in accordance with the implementing measures of Directive 2009/138/EC;

3° for ‘non-life’ reinsurance;

4° for ‘life’ reinsurance;

As regards class 10 as referred to in Annex I, with the exception of carrier’s liability, the insurance company concerned shall also notify the Bank of the frequency and average costs of the claims.

The Bank shall provide the information referred to in the first and second paragraph within a reasonable period of time in aggregate form to the supervisory authorities of each of the Member States concerned which so request.
Chapter VI - Regulatory standards and obligations

Section I — Valuation rules

Subsection I - General principles

Article 123. With a view to compliance with the requirements laid down by or pursuant to this Chapter, insurance or reinsurance companies shall value their assets and liabilities as follows:

1° the assets are valued at the amount for which they could be exchanged as part of a closed transaction, under normal competitive conditions, between well-informed parties prepared to enter into a transaction;

2° the liabilities are valued at the amount for which they could be transferred or settled as part of a closed transaction, under normal competitive conditions, between well-informed parties prepared to enter into a transaction.

In the valuation of the liabilities referred to in point 2°, there is no correction for the insurance or reinsurance company’s own credit rating.

Subsection II - Rules relating to technical provisions

§ 1 - General provisions

Article 124. Insurance or reinsurance companies shall calculate and record all their insurance or reinsurance commitments vis-à-vis policyholders, insureds and beneficiaries of insurance or reinsurance agreements under the entry ‘technical provisions’.

Technical provisions relate both to current commitments and to commitments that have lapsed but have not yet been fully settled.

Article 125. Technical provisions shall be calculated in a prudent, reliable and objective manner.

The value of technical provisions shall correspond to the current amount that an insurance or reinsurance company would have to pay if it were to transfer its insurance or reinsurance obligations immediately to another insurance or reinsurance company.

The calculation of technical provisions shall make use of—and be consistent with—information provided by the financial markets and generally available data on underwriting risks (market consistency).

The calculation of technical provisions shall be carried out in accordance with Articles 126 to 137, their implementing measures and the implementing regulations of Directive 2009/138/EC, based on the principles established in this Article and taking into account the principles laid down in Article 123.

Article 126. § 1. The value of technical provisions shall be equal to the sum of a best estimate and a risk margin as set out in §§ 2 and 3.

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

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

The cash-flow projection used in the calculation of the best estimate shall take account of all the
cash in- and out-flows required to settle the insurance and reinsurance obligations over the lifetime thereof.

The best estimate shall be calculated gross, without deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles. In accordance with Article 136, these amounts are calculated separately.

§ 3. The risk margin shall be such as to ensure that the value of the technical provisions is equivalent to the amount that insurance or reinsurance companies would be expected to require in order to take over and meet the insurance and reinsurance obligations.

Article 127. § 1. Insurance or reinsurance companies shall value the best estimate and the risk margin separately.

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

§ 2. Where insurance or reinsurance companies value the best estimate and the risk margin separately, the risk margin shall be calculated by determining the cost of providing an amount of eligible own funds equal to the solvency capital requirement necessary to support the insurance and reinsurance obligations over the lifetime thereof.

The rate used in the determination of the cost of providing that amount of eligible own funds (Cost-of-Capital rate) shall be the same for all insurance or reinsurance companies. A regulation implementing Directive 2009/138/EC establishes this percentage and reviews it periodically.

The Cost-of-Capital rate used shall be equal to the additional rate, above the relevant risk-free interest rate, that an insurance or reinsurance company would incur holding an amount of eligible own funds, as set out in Subsection III of this Chapter, equal to the solvency capital requirement necessary to support insurance and reinsurance obligations over the lifetime of those obligations.

§ 2 - Extrapolation of the relevant risk-free interest rate term structure

Article 128. The determination of the relevant risk-free interest rate term structure referred to in Article 126, § 2 shall make use of, and be consistent with, information derived from relevant financial instruments. That determination shall take into account relevant financial instruments of those maturities where the markets for those financial instruments as well as for bonds are deep, liquid and transparent. For maturities where the markets for the relevant financial instruments or for bonds are no longer deep, liquid and transparent, the relevant risk-free interest rate term structure shall be extrapolated.

The extrapolated part of the relevant risk-free interest rate term structure shall be based on forward rates converging smoothly from one or a set of forward rates in relation to the longest maturities for which the relevant financial instruments and the bonds can be observed in a deep, liquid and transparent market to an ultimate forward rate.

§ 3 - Matching adjustment to the relevant risk-free interest rate term structure

Article 129. § 1. Insurance or reinsurance companies may apply a matching adjustment to the relevant risk-free interest rate term structure to calculate the best estimate of a portfolio of life insurance or reinsurance obligations, including annuities stemming from non-life insurance or reinsurance contracts, subject to prior approval by the Bank where the following conditions are met:

1° the insurance or reinsurance company has assigned a portfolio of assets, consisting of bonds and
other assets with similar cash-flow characteristics, to cover the best estimate of the portfolio of insurance or reinsurance obligations and maintains that assignment over the lifetime of the obligations, except for the purpose of maintaining the replication of expected cash flows between assets and liabilities where the cash flows have materially changed;

2° the portfolio of insurance or reinsurance obligations to which the matching adjustment is applied and the assigned portfolio of assets are identified, organised and managed separately from other activities of the companies, and the assigned portfolio of assets cannot be used to cover losses arising from other activities of the companies;

3° the expected cash flows of the assigned portfolio of assets replicate each of the expected cash flows of the portfolio of insurance or reinsurance obligations in the same currency, and any mismatch does not give rise to risks which are material in relation to the risks inherent in the insurance or reinsurance business to which the matching adjustment is applied;

4° the contracts underlying the portfolio of insurance or reinsurance obligations do not give rise to future premium payments;

5° the only underwriting risks connected to the portfolio of insurance or reinsurance obligations are longevity risk, expense risk, revision risk and mortality risk;

6° where the underwriting risk connected to the portfolio of insurance or reinsurance obligations includes mortality risk, the best estimate of the portfolio of insurance or reinsurance obligations does not increase by more than 5% under a mortality risk stress that is calibrated in accordance with Article 151, §§ 2 to 5;

7° the contracts underlying the portfolio of insurance or reinsurance obligations include no options for the policyholder or only a surrender option where the surrender value does not exceed the value of the assets, valued in accordance with Article 123, covering the insurance or reinsurance obligations at the time the surrender option is exercised;

8° the cash flows of the assigned portfolio of assets are fixed and cannot be changed by the issuers of the assets or any third parties;

9° the insurance or reinsurance obligations of an insurance or reinsurance contract are not split into different parts when composing the portfolio of insurance or reinsurance obligations for the purpose of this paragraph.

Without prejudice to the first paragraph, 8°, insurance or reinsurance companies may use assets where the cash flows are fixed except for a dependence on inflation, provided that those assets replicate the cash flows of the portfolio of insurance or reinsurance obligations that depend on inflation.

In the event that issuers or third parties have the right to change the cash flows of an asset in such a manner that investors can generate the same cash flows by re-investing in assets of an equivalent or better credit quality with the compensation, this right shall not disqualify the asset for admissibility to the assigned portfolio as referred to in the first paragraph, 8°.

§ 2. Insurance or reinsurance companies that apply the matching adjustment to a portfolio of insurance or reinsurance obligations shall not revert back to an approach that does not include a matching adjustment. Where an insurance or reinsurance company that applies the matching adjustment is no longer able to comply with the conditions set out in § 1, it shall inform the Bank forthwith and take the necessary measures to restore compliance with those conditions. Where the company is not able to restore compliance with those conditions within two months of the date of non-compliance, it shall cease to apply the matching adjustment to any of its insurance or reinsurance obligations and shall not apply the matching adjustment for a period of a further 24 months.
§ 3. The matching adjustment shall not be applied with respect to insurance or reinsurance obligations where the relevant risk-free interest rate term structure to calculate the best estimate for those obligations includes a volatility adjustment under Article 131 or a transitional measure on the risk-free interest rates under Article 668.

Article 130. § 1. For each currency, the matching adjustment referred to in Article 129 shall be calculated in accordance with the following principles:

1° the matching adjustment must be equal to the difference of the following:

a) the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of insurance or reinsurance obligations, results in a value that is equal to the value in accordance with Article 123 of the portfolio of assigned assets;

b) the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of insurance or reinsurance obligations, results in a value that is equal to the value of the best estimate of the portfolio of insurance or reinsurance obligations where the time value of money is taken into account using the basic risk-free interest rate term structure;

2° the matching adjustment must not include the fundamental spread reflecting the risks retained by the insurance or reinsurance company;

3° notwithstanding point 1°, the fundamental spread must be increased where necessary to ensure that the matching adjustment for assets with sub-investment grade credit quality does not exceed the matching adjustments for assets of investment grade credit quality and the same duration and asset class;

4° the use of external credit assessments in the calculation of the matching adjustment must be in accordance with the specifications laid down pursuant to Article 111, paragraph 1, under n) of Directive 2009/138/EC.

§ 2. For the purposes of the application of § 1, 2° the fundamental spread must be:

1° equal to the sum of:

a) the credit spread corresponding to the probability of default of the assets;

b) the credit spread corresponding to the expected loss resulting from downgrading the assets;

2° for exposures to Member States' central governments and central banks, no lower than 30% of the long-term average of the spread over the risk-free interest rate of assets of the same duration, credit quality and asset class, as observed in financial markets;

3° for assets other than exposures to Member States' central governments and central banks, no lower than 35% of the long-term average of the spread over the risk-free interest rate of assets of the same duration, credit quality and asset class, as observed in financial markets.

The probability of default referred to in point 1°, a) of the first paragraph shall be based on long-term default statistics that are relevant for the asset in relation to its duration, credit quality and asset class.

Where no reliable credit spread can be derived from the default statistics referred to in the second paragraph, the fundamental spread shall be equal to the portion of the long-term average of the spread over the risk-free interest rate set out in points 2° and 3°.

§ 4 - Volatility adjustment to the relevant risk-free interest rate term structure
Article 131. § 1. Where insurance or reinsurance companies wish to apply a volatility adjustment to the relevant risk-free interest rate term structure to calculate the best estimate referred to in Article 126, § 2, they shall previously inform the Bank thereof.

The Bank may prohibit or restrict the application of the volatility adjustment referred to in the first paragraph, or attach conditions thereto, if it establishes that the insurance or reinsurance company does not comply with the conditions of the present Article or of the European regulations established pursuant to Article 86, paragraph 1, under i) of Directive 2009/138/EC or that its risk profile differs considerably from the conditions for the application of the volatility adjustment provided for by the provisions of the regulations referred to.

§ 2. For each currency, the volatility adjustment of the relevant risk-free interest rate term structure shall be based on the spread between the interest rate that can be earned on the assets that form part of a reference portfolio for that currency and the interest rates that apply to the relevant risk-free interest rate term structure for that currency.

The reference portfolio for a currency is representative for the assets in that currency in which the insurance or reinsurance companies have invested to cover the best estimate of insurance or reinsurance obligations in that currency.

§ 3. The amount of the volatility adjustment to risk-free interest rates shall correspond to 65% of the risk-corrected currency spread.

The risk-corrected currency spread shall be calculated as the difference between the spread referred to in § 2 and the portion of that spread that is attributable to a realistic assessment of expected losses or unexpected credit or other risk of the assets.

The volatility adjustment shall apply only to the relevant risk-free interest rates of the term structure that are not derived by means of extrapolation in accordance with Article 128. The extrapolation of the relevant risk-free interest rate term structure shall be based on those adjusted risk-free interest rates.

§ 4. For each relevant country, the volatility adjustment to the risk-free interest rates referred to in § 3 for the currency of that country shall, before application of the 65% factor, be increased by the difference between the risk-corrected country spread and twice the risk-corrected currency spread, whenever that difference is positive and the risk-corrected country spread is higher than 100 basis points.

The increased volatility adjustment shall be applied to the calculation of the best estimate for insurance and reinsurance obligations of products sold in the insurance market of that country. The risk-corrected country spread is calculated in the same way as the risk-corrected currency spread for the currency of that country, but based on a reference portfolio that is representative for the assets in which insurance or reinsurance companies have invested to cover the best estimate for insurance and reinsurance obligations of products sold in the insurance market of that country and expressed in the currency of that country.

§ 5. The volatility adjustment shall not be applied with respect to insurance obligations where the relevant risk-free interest rate term structure to calculate the best estimate for those obligations includes a matching adjustment under Article 129.

§ 6. By way of derogation from Article 151, the solvency capital requirement shall not cover the risk of loss of basic own funds resulting from changes in the volatility adjustment.

§ 5. - Miscellaneous provisions relating to technical provisions

Article 132. If the technical information as referred to in Article 77sexies, paragraph 1 of Directive 2009/138/EC is established by the European Commission in accordance with paragraph 2 of the
same Article, insurance or reinsurance companies shall use that technical information for calculating the best estimate in accordance with Articles 126 and 127, for calculating the matching adjustment in accordance with Article 130, and for calculating the volatility adjustment in accordance with Article 131.

If the adjustment referred to in Article 77sexies, paragraph 1 under c) of Directive 2009/138/EC for currencies and national markets is not included in the implementing acts as referred to in paragraph 2 of that same Article, no volatility adjustment shall be applied to the relevant risk-free interest rate term structure for the calculation of the best estimate.

**Article 133.** Alongside the provisions of Articles 126 and 127, insurance or reinsurance companies shall take the following into consideration in the calculation of their technical provisions:

1° all costs incurred by compliance with insurance and reinsurance obligations;

2° inflation, including inflation on costs and claims;

3° all the payments expected to be made by the insurance or reinsurance companies to policyholders and beneficiaries, including future discretionary profit-sharing, irrespective of whether or not these payments are contractually guaranteed, unless they fall under Article 145, second paragraph.

**Article 134.** In the calculation of their technical provisions, insurance or reinsurance companies shall take into account the value of the financial guarantees and contractual options in insurance or reinsurance policies.

As regards the chance that policyholders will make use of the contractual options offered to them, such as the right to reduction of benefits and the right of redemption, insurance or reinsurance companies shall use realistic assumptions based on current and reliable information. These assumptions shall explicitly or implicitly take into account the possible consequences of future changes in the financial and non-financial circumstances for the use of these options.

**Article 135.** In the calculation of their technical provisions, insurance or reinsurance companies shall share their insurance or reinsurance obligations among homogeneous risk groups and at least among business lines.

**Article 136.** Where the insurance or reinsurance companies calculate the receivables arising from reinsurance policies and special purpose vehicles, they shall take Articles 125 to 135 into account.

When calculating receivables arising from reinsurance policies and special purpose vehicles, insurance or reinsurance companies shall take into account the time difference between receivables and direct payments.

The result from that calculation shall be adjusted to take account of expected losses due to default of the counterparty. That adjustment shall be based on an assessment of the probability of default of the counterparty and the average loss resulting therefrom (loss-given-default).

**Article 137.** Insurance or reinsurance companies shall have internal processes and procedures in place to ensure the appropriateness, completeness and accuracy of the data used in the calculation of their technical provisions.

Where, in specific circumstances, insurance or reinsurance companies have insufficient data of appropriate quality to apply a reliable actuarial method to a set or subset of their insurance and reinsurance obligations, or amounts receivable from reinsurance contracts and special purpose vehicles, appropriate approximations, including case-by-case approaches, may be used in the calculation of the best estimate.

**Article 138.** Insurance or reinsurance companies shall have processes and procedures in place to
ensure that best estimates, and the assumptions underlying the calculation of best estimates, are regularly compared against experience.

Where the comparison identifies systematic deviation between experience and the best estimate calculations of insurance or reinsurance companies, the company concerned shall make appropriate adjustments to the actuarial methods being used and/or the assumptions being made.

**Article 139.** At the Bank’s request, insurance or reinsurance companies shall provide evidence that their technical provisions are sufficient, that the methods used are applicable and relevant and that the underlying statistical data are suitable.

**Subsection III - Own funds**

**Article 140.** Own funds are the sum of the basic own funds referred to in Article 141 and the ancillary own funds referred to in Article 142.

**Article 141.** Basic own funds are made up of the following items:

1° the positive difference between assets and liabilities valued in accordance with Article 123 and Subsection II of this Section;

2° subordinated liabilities.

The amount of own shares held by the insurance or reinsurance company shall be deducted from the difference referred to in 1°.

**Article 142.** § 1. Ancillary own funds shall consist of items other than basic own funds which can be called up to absorb losses.

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

1° unpaid share capital or company funds that have not been called up;

2° letters of credit and guarantees;

3° any other legally binding commitments received by insurance or reinsurance companies.

In the case of mutual insurance associations with variable contributions, ancillary own funds may also comprise any future claims which that association may have against its members by way of a call for supplementary contribution, within the following 12 months.

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

**Article 143.** § 1. The amounts of ancillary own-fund items to be taken into account when determining own funds shall be subject to prior approval from the Bank.

§ 2. The amount ascribed to each ancillary own-fund item shall reflect the loss-absorbency of the item and shall be based upon prudent and realistic assumptions. Where an ancillary own-fund item has a fixed face value, the amount of that item shall be equal to its face value, as long as it appropriately reflects its loss-absorbency.

§ 3. The Bank shall approve the following:

1° a monetary amount for each ancillary own-fund item;

2° a method by which to determine the amount of each ancillary own-fund item, in which case
Bank approval of the amount determined in accordance with that method shall be granted only for a specified period of time.

§ 4. For each ancillary own-fund item, the Bank shall base its approval on assessment of the following:

1° the status of the counterparties concerned, in relation to their ability and willingness to pay;

2° the recoverability of the funds, taking account of the legal form of the item, as well as any conditions which would prevent the item from being successfully paid in or called up;

3° any information on the outcome of past calls which insurance or reinsurance companies have made for such ancillary own funds, to the extent that information can be reliably used to assess the expected outcome of future calls.

**Article 144.** Alongside the requirements of Article 68 of Regulation 2015/35, direct, indirect and synthetic holdings of own funds instruments of entities in the financial sector shall be deducted from the own funds items of an insurance or reinsurance company if these entities have a mutual participation in the insurance or reinsurance company, which according to the Bank is intended to artificially increase the insurance or reinsurance company’s own funds.

For the purposes of this Article, the following definitions apply:

1° ‘financial sector’: the financial sector as defined in Article 338, 9°;

2° ‘synthetic holdings’: investments in a financial instrument the value of which is directly related to the value of the capital instruments issued by the entity in the financial sector.

**Article 145.** Surplus funds are accumulated profits not yet made available for payout to policyholders and beneficiaries.

Surplus funds are not deemed insurance or reinsurance obligations where these meet the criteria of Article 147, § 1.

**Article 146.** § 1. Own funds items are classified into three tiers. The classification of those items shall depend upon whether they are basic own-fund or ancillary own-fund items and the extent to which they possess the following characteristics:

1° the item is available, or can be called up on demand, to fully absorb losses on a going-concern basis, as well as in the case of winding-up (permanent availability);

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

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

In addition, the following features shall be considered:

1° whether the item is free from requirements or incentives to redeem the nominal sum (absence of incentives to redeem);
2° whether the item is free from mandatory fixed charges (absence of mandatory servicing costs);

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

**Article 147.** § 1. Basic own-fund items shall be classified in Tier 1 where they substantially possess the characteristics set out in Article 146, § 1, 1° and 2°, taking into consideration the features set out in Article 146, § 2.

§ 2. Basic own-fund items shall be classified in Tier 2 where they substantially possess the characteristic set out in Article 146, § 1, 2°, taking into consideration the features set out in Article 146, § 2.

Ancillary own-fund items shall be classified in Tier 2 where they substantially possess the characteristics set out in Article 146, § 1, 1° and 2°, taking into consideration the features set out in Article 146, § 2.

§ 3. Any basic and ancillary own-fund items which do not fall under §§ 1 and 2 shall be classified in Tier 3.

**Article 148.** Insurance or reinsurance companies shall classify their own funds items on the basis of the criteria in Article 147.

To this end, insurance or reinsurance companies shall, where applicable, make reference to the list of own funds items as referred to in Articles 69, 72, 74, 76, and 78 of Regulation 2015/35.

Where an own funds item does not appear in this list, it shall be assessed pursuant to the first paragraph and classified by the insurance or reinsurance companies. This classification shall be submitted to the Bank for approval.

**Article 149.** Without prejudice to Article 148 and the list of own funds items as referred to in Articles 69, 72, 74, 76 and 78 of Regulation No 2015/35, the following classifications shall apply for insurance-specific own funds:

1° surplus funds that fall under Article 145, second paragraph shall be classified as Tier 1;

2° letters of credit and guarantees held in trust for insurance creditors by an independent trustee and issued by credit institutions to which authorization has been granted in accordance with Directive 2013/36/EU, shall be classified as Tier 2;

3° future claims which mutual insurance associations of shipowners with variable contributions solely insuring risks listed in classes 6, 12 and 17, as set out in Annex I, may have against their members by way of a call for supplementary contributions, within the following 12 months, shall be classified in Tier 2.

In accordance with Article 147, § 2, second paragraph, any future claims which mutual insurance associations with variable contributions may have against their members by way of a call for supplementary contributions, within the following twelve months, not falling under the first paragraph, 3° shall be classified in Tier 2 where they substantially possess the characteristics set out in Article 146, § 1, 1° and 2°, taking into consideration the features set out in Article 146, § 2.

**Article 150.** § 1. As far as the compliance with the solvency capital requirement is concerned, the eligible amounts of Tier 2 and Tier 3 items shall be subject to quantitative limits. Those limits shall be such as to ensure that at least the following conditions are met:

1° the proportion of Tier 1 items in the eligible own funds is higher than one third of the total amount of eligible own funds;
2° the eligible amount of Tier 3 items is less than one third of the total amount of eligible own funds.

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

§ 3. The eligible amount of own funds to cover the solvency capital requirement set out in Article 151 shall be equal to the sum of the amount of Tier 1, the eligible amount of Tier 2 and the eligible amount of Tier 3.

§ 4. The eligible amount of basic own funds to cover the minimum capital requirement set out in Article 189 shall be equal to the sum of the amount of Tier 1 and the eligible amount of basic own-fund items classified in Tier 2.

Section II — Capital requirements

Subsection I – General provisions regarding the solvency capital requirement

Article 151. § 1. The solvency capital requirement with which insurance or reinsurance companies must comply shall be calculated in accordance with §§ 2 to 5.

§ 2. The solvency capital requirement shall be calculated on the presumption that the company will pursue its business as a going concern.

The solvency capital requirement may be calculated, either in accordance with the standard formula or using internal models, following the rules set out in Subsections II and III respectively.

§ 3. The solvency capital requirement shall be calibrated so as to ensure that all quantifiable risks to which an insurance or reinsurance company is exposed are taken into account.

It shall cover existing business, as well as the new business expected to be written over the following 12 months. With respect to existing business, it shall cover only unexpected losses.

The solvency capital requirement shall correspond to the Value-at-Risk of the basic own funds of an insurance or reinsurance company subject to a confidence level of 99.5% over a one-year period.

§ 4. The solvency capital requirement shall cover at least the following risks:

1° ‘non-life’ underwriting risk;

2° ‘life’ underwriting risk;

3° health underwriting risk;

4° market risk;

5° credit risk;

6° operational risk.

The operational risk referred to up to the first paragraph, 6° shall include legal risks, and exclude risks arising from strategic decisions and reputational risks.

By way of a Royal Decree deliberated on in the Council of Ministers, the King may determine that
the solvency capital requirement should include risks other than those referred to in the first paragraph.

§ 5. When calculating the solvency capital requirement, insurance or reinsurance companies shall take account of the effect of risk-mitigation techniques, provided that credit risk and other risks arising from the use of such techniques are properly reflected in the solvency capital requirement.

Article 152. § 1. Insurance or reinsurance companies shall calculate their solvency capital requirement at least once a year and report the result of that calculation to the Bank.

To meet the provisions of Articles 74 and 151, insurance or reinsurance companies shall monitor the amount of eligible own funds and the solvency capital requirement on an ongoing basis.

If the risk profile of an insurance or reinsurance company deviates significantly from the assumptions underlying the last reported solvency capital requirement, the company concerned shall recalculate the solvency capital requirement forthwith and report it to the Bank.

§ 2. Where there is evidence to suggest that the risk profile of the insurance or reinsurance company has altered significantly since the date on which the solvency capital requirement was last reported, the Bank may require the company concerned to recalculate the solvency capital requirement.

Subsection II - Solvency capital requirement calculated using the standard formula

Article 153. The solvency capital requirement calculated on the basis of the standard formula shall be the sum of the following items:

1° the basic solvency capital requirement, as laid down in Article 154;
2° the capital requirement for operational risk, as laid down in Article 163;
3° the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes, as laid down in Article 164.

Article 154. § 1. The basic solvency capital requirement shall comprise individual risk modules, which are aggregated in accordance with point 1 of Annex III.

It shall consist of at least the following risk modules:

1° ‘non-life’ underwriting risk;
2° ‘life’ underwriting risk;
3° health underwriting risk;
4° market risk;
5° counterparty default risk.

By way of a decree deliberated on in the Council of Ministers, the King may determine that modules other than those referred to in the first paragraph must be used.

§ 2. For the purposes of § 1, 1°, 2° and 3°, insurance or reinsurance companies shall be allocated to the underwriting risk module that best reflects the technical nature of the underlying risks.

§ 3. The correlation coefficients for the aggregation of the risk modules referred to in § 1, as well as the calibration of the capital requirements for each risk module, shall result in an overall solvency capital requirement which complies with the principles set out in Article 151.
§ 4. Each of the risk modules referred to in § 1 shall be calibrated using a Value-at-Risk measure, with a 99.5% confidence level, over a one-year period.

Where appropriate, diversification effects shall be taken into account in the design of each risk module.

§ 5. The same design and specifications for the risk modules shall be used for all insurance or reinsurance companies, both with respect to the basic solvency capital requirement and to any simplified calculations as laid down in Article 165.

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

§ 7. Subject to approval by the Bank, insurance or reinsurance companies may, within the design of the standard formula, replace a subset of its parameters by parameters specific to the company concerned when calculating the life, non-life and health underwriting risk modules.

Such parameters shall be calibrated on the basis of the internal data of the undertaking concerned, or of data which is directly relevant for the operations of that undertaking using standardized methods.

When granting supervisory approval, the Bank shall verify the completeness, accuracy and appropriateness of the data used.

**Article 155.** The basic solvency capital requirement is calculated in accordance with Articles 156 to 160.

**Article 156.** § 1. The non-life underwriting risk module relates to the risk arising from non-life insurance obligations in relation to the perils covered and the processes used in the conduct of business.

This module shall take account of the uncertainty in the results of insurance or reinsurance companies related to the existing insurance and reinsurance obligations as well as to the new business expected to be written over the following 12 months.

§ 2. It shall be calculated, in accordance with point 2 of Annex III, as a combination of the capital requirements for at least the following submodules:

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

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

**Article 157.** The life underwriting risk module shall reflect the risk arising from life insurance obligations, in relation to the perils covered and the processes used in the conduct of business.

It shall be calculated, in accordance with point 3 of Annex III, as a combination of the capital requirements for at least the following submodules:

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

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

3° the risk of loss, or of adverse change in the value of insurance obligations, resulting from changes in the level, trend or volatility of disability, sickness and morbidity rates (disability – morbidity risk);

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

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

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

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

Article 158. The health underwriting risk module shall reflect the risk arising from the underwriting of health insurance obligations, whether it is pursued on a similar technical basis to that of life insurance or not, following from both the perils covered and the processes used in the conduct of business.

The module shall cover at least the following risks:

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

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

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

Article 159. The market risk module shall reflect the risk arising from the level or volatility of market prices of financial instruments which have an impact upon the value of the assets and liabilities of the company concerned. It shall properly reflect any structural mismatch between assets and liabilities, in particular with respect to the duration thereof.

It shall be calculated, in accordance with point 4 of Annex III, as a combination of the capital requirements for at least the following submodules:

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

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

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

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

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

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

**Article 160.** The counterparty default risk module shall reflect possible losses due to unexpected default or deterioration in the credit rating of the counterparties and debtors of insurance or reinsurance companies over the following 12 months.

The counterparty default risk module shall cover risk-mitigating contracts, such as reinsurance arrangements, securitizations and derivatives, and receivables from intermediaries, as well as any other credit risks which are not covered in the ‘spread risk’ submodule. It shall take appropriate account of collateral or other security held by or for the account of the insurance or reinsurance company and the risks associated therewith.

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

**Article 161.** The equity risk submodule calculated in accordance with the standard formula shall include a symmetric adjustment to the equity capital charge applied to cover the risk arising from changes in the level of equity prices.

The symmetric adjustment made to the standard equity capital charge, calibrated in accordance with Article 154, § 4, covering the risk arising from changes in the level of equity prices shall be based on a function of the current level of an appropriate equity index and a weighted average level of that index. The weighted average shall be calculated over an appropriate period of time which shall be the same for all insurance or reinsurance companies.

The symmetric adjustment made to the standard equity capital charge covering the risk arising from changes in the level of equity prices shall not result in an equity capital charge being applied that is more than 10 percentage points lower or 10 percentage points higher than the standard equity capital charge.

**Article 162.** § 1. Life insurance companies may, for the calculation of the solvency capital requirement, apply a ‘duration-based equity risk’ submodule where:

1° these companies grant retirement benefits paid at the time of retirement or imminent retirement, the premiums paid for which are tax-deductible for policyholders in accordance with the national legislation of the Member State that has granted authorization to the company;

2° and where all of the following conditions are met:

a) all assets and liabilities corresponding to the business are ring-fenced, managed and organized separately from the other activities of the insurance companies without any possibility of transfer;
b) the activities of the company as referred to in 1° and 2°, in relation to which the approach referred to in this paragraph is applied, are pursued only in the Member State where the company concerned is authorized;

c) the average duration of the obligations relating to these activities of the company is more than 12 years.

§ 2. The ‘duration-based equity risk’ submodule referred to in this Article shall be calibrated using a VaR measure, over a time period consistent with the typical holding period of equity investments for the company concerned, with a confidence level providing the policyholders and beneficiaries with a level of protection equivalent to that set out in Article 151, where the approach provided for in this Article is used only in respect of those assets and liabilities referred in § 1, 2°, a). In the calculation of the solvency capital requirement those assets and liabilities shall be fully considered for the purpose of assessing the diversification effects, without prejudice to the need to safeguard the interests of policyholders and beneficiaries in other Member States.

Subject to the approval of the Bank, the approach set out in the first paragraph shall be used only where the solvency and liquidity position as well as the strategies, processes and reporting procedures of the company concerned with respect to asset–liability management are such that they ensure, on an ongoing basis, that it is able to hold equity investments for a period which is consistent with the typical holding period of equity investments for the company concerned. The company shall be able to demonstrate to the Bank that this condition is met with the level of confidence necessary to provide policyholders and beneficiaries with a level of protection equivalent to that set out in Article 151.

Insurance or reinsurance companies that use the provisions of the present Article shall not revert to applying the approach set out in Articles 155 to 160, except in duly justified circumstances and subject to the approval of the Bank.

Article 163. The capital requirement for operational risk shall reflect operational risks to the extent they are not already reflected in the risk modules referred to in Article 154. That requirement shall be calibrated in accordance with Article 151, § 3.

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

With respect to insurance and reinsurance operations other than those referred to in the second paragraph, the calculation of the capital requirement for operational risk shall take account of the volume of those operations, in terms of earned premiums and technical provisions which are held in respect of those insurance and reinsurance obligations. In this case, the capital requirement for operational risks shall not exceed 30% of the basic solvency capital requirement relating to those insurance and reinsurance operations.

Article 164. The adjustment referred to in Article 153, 3° for the loss-absorbing capacity of technical provisions and deferred taxes shall reflect potential compensation of unexpected losses through a simultaneous decrease in technical provisions or deferred taxes or a combination of the two.

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

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

**Article 165.** Insurance or reinsurance companies may use a simplified calculation for a specific submodule or risk module where the nature, scale and complexity of the risks they face justifies it and where it would be disproportionate to require all insurance or reinsurance companies to apply the standardized calculation.

Simplified calculations shall be calibrated in accordance with Article 151, § 3.

**Article 166.** Where it is inappropriate to calculate the solvency capital requirement in accordance with the standard formula referred to in Subsection II because the risk profile of the insurance or reinsurance company concerned deviates significantly from the assumptions underlying the calculation according to the standard formula, the Bank may oblige the company concerned, by way of a reasoned decision, to replace a subset of its parameters by parameters specific to the company concerned (undertaking-specific parameters) when calculating the life, non-life and health underwriting risk modules according to the standard formula as referred to in Article 154, § 7. Those specific parameters shall be calculated in such a way to ensure that the company complies with Article 151, § 3.

*Subsection III - Solvency capital requirement calculated using full or partial internal models*

**Article 167.** § 1. Insurance or reinsurance companies may calculate their solvency capital requirement using a full or partial internal model approved by the Bank.

§ 2. Insurance or reinsurance companies may use partial internal models for the calculation of one or more of the following:

1° one or more risk modules, or submodules, of the basic solvency capital requirement, as set out in Articles 154 to 160;

2° the capital requirement for operational risk, as laid down in Article 163;

3° the adjustment referred to in Article 164.

In addition, partial modelling may be applied to the whole business of insurance or reinsurance companies, or only to one or more major business units.

§ 3. In any application for approval, insurance or reinsurance companies shall submit, as a minimum, documentary evidence that the internal model fulfils the requirements set out in Articles 174 to 187.

Where the application for that approval relates to a partial internal model, the requirements set out in Articles 174 to 187 shall be adapted to take account of the limited scope of the application of the model.

§ 4. The Bank shall decide on the application within six months from the receipt of the complete application.

§ 5. The Bank shall grant approval to the application only if it is satisfied that the systems of the insurance or reinsurance company for identifying, measuring, monitoring, managing and reporting risk are adequate and in particular, that the internal model fulfils the requirements referred to in § 3.

§ 6. A decision by the Bank to reject the application for the use of an internal model shall state the reasons on which it is based.

§ 7. After having received approval from the Bank to use an internal model, insurance or reinsurance companies may, by means of a decision stating the reasons, be required to provide an estimate of their solvency capital requirement determined in accordance with the standard formula,
as set out in Subsection II.

**Article 168.** § 1. In the case of a partial internal model, Bank approval shall be given only where that model fulfils the requirements set out in Article 167 and the following additional conditions:

1° the reason for the limited scope of application of the model is properly justified by the company;

2° the resulting solvency capital requirement reflects more appropriately the risk profile of the company and in particular complies with the principles set out in Subsection I;

3° its design is consistent with the principles set out in Subsection I so as to allow the partial internal model to be fully integrated into the solvency capital requirement standard formula.

§ 2. When assessing an application for the use of a partial internal model which only covers certain submodules of a specific risk module, or some of the business units of an insurance or reinsurance company with respect to a specific risk module, or parts of both, the Bank may require the insurance or reinsurance companies concerned to submit a realistic transitional plan to extend the scope of the model.

The transitional plan shall set out the manner in which insurance or reinsurance companies plan to extend the scope of the model to other submodules or business units, in order to ensure that the model covers a predominant part of their insurance operations with respect to that specific risk module.

**Article 169.** As part of the initial approval process of an internal model, the Bank shall approve the policy line for changing the model of the insurance or reinsurance company. Insurance or reinsurance companies may change their internal model in accordance with that policy line.

The policy line shall include a specification of minor and major changes to the internal model.

Major changes to the internal model, as well as changes to that policy line, shall always be subject to prior Bank approval, as laid down in Article 167.

Minor changes to the internal model shall not be subject to prior Bank approval, insofar as they are developed in accordance with that policy line.

**Article 170.** The insurance or reinsurance company’s statutory governing body shall approve the application to the Bank for approval of the internal model referred to in Article 167, as well as the application for approval of any subsequent major changes made to that model.

The statutory governing body shall have responsibility for putting in place systems which ensure that the internal model operates properly on a continuous basis.

**Article 171.** After having received approval in accordance with Article 167, insurance or reinsurance companies shall not revert to calculating the whole or any part of the solvency capital requirement in accordance with the standard formula, as set out in Subsection II, except in duly justified circumstances and subject to the approval of the Bank.

**Article 172.** If, after having received approval from the Bank to use an internal model, insurance or reinsurance companies cease to comply with the requirements set out in Articles 174 to 187, they shall, forthwith, either present the Bank a plan to restore compliance within a reasonable period of time, or demonstrate that the effect of non-compliance is immaterial.

In the event that insurance or reinsurance companies fail to implement the plan referred to in the first paragraph, the Bank may require them to revert to calculating the solvency capital requirement in accordance with the standard formula, as set out in Subsection II.

**Article 173.** Where it is inappropriate to calculate the solvency capital requirement in accordance
with the standard formula as set out in Subsection II because the risk profile of the insurance or reinsurance company concerned deviates significantly from the assumptions underlying the standard formula calculation, the Bank may, by means of a decision stating the reasons, require the company concerned to use an internal model to calculate the solvency capital requirement, or the relevant risk modules thereof.

**Article 174.** Insurance or reinsurance companies shall demonstrate that the internal model is widely used—and plays an important role—in their system of governance, referred to in Article 42, in particular:

1° their risk-management system as laid down in Article 84 and their decision-making processes;

2° their economic and solvency capital assessment and allocation processes, including the assessment referred to in Article 91.

In addition, insurance or reinsurance companies shall demonstrate that the frequency of calculation of the solvency capital requirement using the internal model is consistent with the frequency with which they use their internal model for the other purposes covered by the first paragraph.

The statutory governing body shall be responsible for ensuring the ongoing appropriateness of the design and operations of the internal model, and that the internal model continues to appropriately reflect the risk profile of the insurance or reinsurance companies concerned.

**Article 175.** The internal model, and in particular the calculation of the probability distribution forecast underlying it, shall comply with the criteria set out in Articles 176 to 183.

**Article 176.** The methods used to calculate the probability distribution forecast shall be based on adequate, applicable and relevant actuarial and statistical techniques and shall be consistent with the methods used to calculate technical provisions.

The methods used to calculate the probability distribution forecast shall be based upon current and credible information and realistic assumptions.

Insurance or reinsurance companies shall be able to justify the assumptions underlying their internal model to the Bank.

**Article 177.** Data used for the internal model shall be accurate, complete and appropriate.

Insurance or reinsurance companies shall update the data sets used in the calculation of the probability distribution forecast at least annually.

**Article 178.** No particular method for the calculation of the probability distribution forecast is prescribed.

Regardless of the calculation method chosen, the ability of the internal model to rank risk shall be sufficient to ensure that it is, in accordance with Article 174, widely used—and plays an important role—in the governance system of the insurance or reinsurance companies concerned, in particular their risk-management system and decision-making processes, and in their capital allocation.

The internal model shall cover all of the material risks to which insurance or reinsurance companies are exposed. Internal models shall cover at least the risks set out in Article 151, § 4.

**Article 179.** As regards diversification effects, insurance or reinsurance companies may take account in their internal model of dependencies within and across risk categories, provided that the Bank is satisfied that the system used for measuring those diversification effects is adequate.

**Article 180.** Insurance or reinsurance companies may take full account of the effect of risk-mitigation techniques in their internal model, as long as credit risk and other risks arising from the
use of risk-mitigation techniques are properly reflected in the internal model.

**Article 181.** Insurance or reinsurance companies shall accurately assess the particular risks associated with financial guarantees and any contractual options in their internal model, where material. They shall also assess the risks associated with both policyholder options and contractual options for insurance or reinsurance companies. For that purpose, they shall take account of the impact that future changes in financial and non-financial conditions may have on the exercise of those options.

**Article 182.** In their internal model, insurance or reinsurance companies may take account of future management actions that they would reasonably expect to carry out in specific circumstances.

In the case set out in the first paragraph, the company concerned shall make allowance for the time necessary to implement such actions.

**Article 183.** In their internal model, insurance or reinsurance companies shall take account of all payments to policyholders and beneficiaries which they expect to make, whether or not those payments are contractually guaranteed.

**Article 184.** Insurance or reinsurance companies may use a different time period or risk measure than that set out in Article 151, § 3 for internal modelling purposes as long as the outputs of the internal model can be used by those companies to calculate the solvency capital requirement in a manner that provides policyholders and beneficiaries with a level of protection equivalent to that set out in Article 151.

Where practicable, insurance or reinsurance companies shall derive the solvency capital requirement directly from the probability distribution forecast generated by the internal model of those companies, using the Value-at-Risk measure set out in Article 151, § 3.

Where insurance or reinsurance companies cannot derive the solvency capital requirement directly from the probability distribution forecast generated by the internal model, the Bank may allow approximations to be used in the process to calculate the solvency capital requirement, as long as those companies can demonstrate to the Bank that policyholders are provided with a level of protection equivalent to that provided for in Article 151.

The Bank may require insurance or reinsurance companies to run their internal model on relevant benchmark portfolios and using assumptions based on external rather than internal data in order to verify the calibration of the internal model and to check that its specification is in line with generally accepted market practice.

**Article 185.** Insurance or reinsurance companies shall review, at least annually, the causes and sources of profits and losses for each major business unit.

They shall demonstrate how the categorization of risk chosen in the internal model explains the causes and sources of profits and losses. The categorization of risk and attribution of profits and losses shall reflect the risk profile of the insurance or reinsurance companies.

**Article 186.** Insurance or reinsurance companies shall have a regular cycle of model validation which includes monitoring the performance of the internal model, reviewing the ongoing appropriateness of its specification, and testing its results against experience.

The model validation process shall include an effective statistical process for validating the internal model which enables the insurance or reinsurance companies to demonstrate to the Bank that the resulting capital requirements are appropriate.

The statistical methods applied shall test the appropriateness of the probability distribution forecast compared not only to loss experience but also to all material new data and information relating
The model validation process shall include an analysis of the stability of the internal model and in particular the testing of the sensitivity of the results of the internal model to changes in key underlying assumptions. The process shall also include an assessment as to the accuracy, completeness and appropriateness of the data used by the internal model.

**Article 187.** Insurance or reinsurance companies shall document the design and operational details of their internal model.

The documentation shall demonstrate compliance with Articles 174 to 186.

The documentation shall provide a detailed outline of the theory, assumptions, and mathematical and empirical bases underlying the internal model.

The documentation shall indicate any circumstances under which the internal model does not work effectively.

Insurance or reinsurance companies shall document all major changes to their internal model, as set out in Article 169.

**Article 188.** The use of a model or data obtained from a third party shall not be considered to be a justification for exemption from any of the requirements for the internal model set out in Articles 174 to 187.

### Subsection IV — Minimum capital requirement

**Article 189.** § 1. The insurance or reinsurance companies shall comply with the minimum capital requirement calculated in accordance with the following principles:

1° it shall be calculated in a clear and simple manner, and in such a way as to ensure that the calculation can be audited;

2° it shall correspond to an amount of eligible basic own funds below which policyholders and beneficiaries are exposed to an unacceptable level of risk were the insurance or reinsurance companies allowed to continue their operations;

3° the linear function referred to in § 2 used to calculate the minimum capital requirement shall be calibrated to the Value-at-Risk of the basic own funds of an insurance or reinsurance company subject to a confidence level of 85% over a one-year period;

4° it shall have an absolute floor of:

a) EUR 2 500 000 for non-life insurance companies, including captive insurance companies, except in the case where all or some of the risks included in one of the classes 10 to 15 listed in Part A of Annex I are covered, in which case it shall be no less than EUR 3 700 000,

b) EUR 3 700 000 for life insurance companies including captive insurance companies;

c) EUR 3 600 000 for reinsurance companies, except in the case of captive reinsurance companies, in which case the minimum capital requirement shall be not less than EUR 1 200 000,

d) the sum of the amounts set out in points a) and b) for insurance companies as referred to in Article 223, first paragraph.

§ 2. Subject to § 3, the minimum capital requirement shall be calculated as a linear function of a set or subset of the following variables: the company’s technical provisions, written premiums, capital-at-risk, deferred tax and administrative expenses. The variables used shall be measured net of
§ 3. Without prejudice to § 1, 4°, the minimum capital requirement shall neither fall below 25% nor exceed 45% of the company’s solvency capital requirement, calculated in accordance with Subsection II or Subsection III of this Chapter and including any capital add-on imposed in accordance with Article 323.

§ 4. Insurance or reinsurance companies shall calculate the minimum capital requirement at least quarterly and report the results of that calculation to Bank.

Where either of the limits referred to in § 3 determines a company’s minimum capital requirement, the company shall provide to the Bank information allowing a proper understanding of the reasons therefor.

**Section III – Investments**

*Subsection I - "Prudent person” principle*

**Article 190.** Insurance or reinsurance companies shall invest all their assets in accordance with the “prudent person” principle described in the present Subsection.

By means of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998, and after consulting the FSMA as regards class 23 as referred to in Annex II, the Bank may clarify what should be understood by “prudent person”.

**Article 191.** With respect to the whole portfolio of assets, insurance or reinsurance companies shall only invest in assets and instruments the risks of which the company concerned can properly identify, measure, monitor, manage, control and report, and appropriately take into account in the assessment of its overall solvency needs in accordance with Article 91, § 1, second paragraph, 1°.

All assets, in particular those covering the minimum capital requirement and the solvency capital requirement, shall be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole. In addition, the localization of those assets shall be such as to ensure their availability.

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

In the case of a conflict of interest, insurance companies, or the entity which manages their asset portfolio, shall ensure that the investment is made in the best interest of policyholders and beneficiaries.

**Article 192.** Without prejudice to Article 191 and Articles 19 and 20 of the Insurance Law, the provisions of this Article shall apply to assets held for life insurance policies in which the investment risk is borne by the policyholder.

Where the benefits provided by a policy are directly linked to the value of units in a UCITS within the meaning of Directive 2009/65/EC, or to the value of assets contained in an internal fund held by the insurance companies, usually divided into units, the technical provisions in respect of those benefits must be represented as closely as possible by those units or, in the case where units are not established, by those assets.

Where the benefits provided by a policy are directly linked to a share index or some other reference value other than those referred to in the second paragraph, the technical provisions in respect of those benefits must be represented as closely as possible either by the units deemed to represent the reference value or, in the case where units are not established, by assets of appropriate security and
marketability which correspond as closely as possible with those on which the particular reference value is based.

Where the benefits referred to in the second and third paragraphs include a guaranteed return or some other guaranteed benefit, Article 193 shall apply to the assets held to cover the corresponding additional technical provisions.

**Article 193.** Without prejudice to Article 191, the second to the fifth paragraphs of this Article shall apply to the assets other than those which fall under Article 192.

The use of derivative instruments shall be possible insofar as they contribute to a reduction of risks or facilitate efficient portfolio management.

Investments and assets which are not admitted to trading on a regulated financial market shall be kept to prudent levels.

Assets shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of companies, or geographical area and excessive accumulation of risk in the portfolio as a whole.

Investments in assets issued by the same issuer, or by issuers belonging to the same group, shall not expose the insurance companies to excessive risk concentration.

**Subsection II - Keeping a running inventory**

**Article 194.** Insurance companies shall at all times keep assets that are free from charges and valued in accordance with Article 123, for an amount that covers the insurance obligations vis-à-vis insurance creditors as these would be owed in the case of winding-up proceedings under which the insurance policies would be terminated. For policies that come under classes as set out in Annex II, this amount shall correspond to the asset value, the method of calculation for which may be determined by the King, upon the recommendation of the Bank and of the FSMA, based on their respective powers.

**Article 195.** Insurance companies shall keep at their registered office a special register named ‘running inventory’ of the assets referred to in Article 194 for each separate management as referred to in Article 230.

Where the assets included in the running inventory are encumbered with a right in rem for the benefit of a third party, as a result of which part of the amount of those assets is unavailable to cover the obligations, this shall be specified in the register and the unavailable amount shall not be taken into account in the calculation as referred to in Article 194.

Insurance companies shall communicate the status of the running inventory of each separate management to the Bank with due regard to the form and content it prescribes, and to the support and term it determines.

**Subsection III - Localization of assets**

**Article 196.** The assets of insurance or reinsurance companies shall be localized inside or outside of the European Economic Area.

**Article 197.** § 1. By way of derogation from Article 196, insurance or reinsurance companies may only localize the assets that they hold to cover technical provisions relating to risks situated in the European Economic Area within this Area where they are:

1° immovable assets;
2° securities and where

a) the rights arising for the insurance or reinsurance company from the deposit of these securities with an intermediary depository form a right in rem on the basis of which a claim could be made on these securities, with the exception of a simple right of action; and

b) the intermediary depository concerned submits a declaration to the Bank that it commits to complying with all decisions to limit or withdraw free disposal of the assets of the insurance or reinsurance company made pursuant to Articles 513 and 517, § 1, 6°.

§ 2. By way of derogation from Article 196, the Bank may, by means of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998 require that the assets held to cover technical provisions relating to insurance risks incurred outside the European Economic Area, be localized within this Area.

Failing this, the rules on covering technical provisions for these risks and relating to their localization shall be established following the rules of the country of the risk.

**Article 198.** For reinsurance policies entered into with a company governed by the law of a third country which has a supervisory system that is not deemed equivalent within the meaning of Article 600, the Bank may, by means of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998, require that:

1° the technical provisions be established gross of reinsurance and that the assets to cover technical provisions be provided as collateral or that the ceding undertaking provide an equivalent guarantee;

2° the assets to cover the debts by virtue of these policies be situated within the European Economic Area.

**Chapter VII - Periodic provision of information and accounting rules**

**Article 199.** Insurance or reinsurance companies shall submit their annual accounts to the Bank.

Without prejudice to Article 200, the King determines, upon the recommendation of the Bank and the FSMA, in accordance with their respective powers:

1° the rules on the basis of which insurance or reinsurance companies do their bookkeeping, estimate the various balance sheet items and prepare their annual accounts and draw up their annual report;

2° the rules that insurance or reinsurance companies must take into account in drawing up, supervising and publishing their consolidated annual accounts, as well as in drawing up and publishing the reports on the management and audit of those consolidated annual accounts.

The Bank may, by means of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998, lay down the mode of application of the rules contained in the Royal Decrees referred to in the second paragraph.

**Article 200.** The insurance companies referred to in Article 223 shall draw up their annual accounts in such a way as to show the sources of the results for life insurance and non-life insurance separately. All income, in particular premiums, payments by reinsurers and investment income, and expenditure, in particular insurance settlements, additions to technical provisions, reinsurance premiums and operating expenses in respect of insurance business, shall be broken down according to origin. Items common to both activities shall be entered in the accounts in accordance with methods of apportionment to be accepted by the Bank.
Article 201. In addition to the reporting obligations provided for by the implementing measures of Directive 2009/138/EC, and without prejudice to Articles 312 to 316, insurance or reinsurance companies shall periodically submit to the Bank the financial information that it determines and that is drawn up in accordance with the rules established by the Bank, which also determines the frequency of reporting. The Bank may also prescribe regular communication of any other figures or explanations to be able to ascertain whether the rules under the present Law, under the implementing decrees and regulations thereof or under the implementing measures of Directive 2009/138/EC are complied with.

Article 202. Without prejudice to Article 80, § 5, the management committee or, in the absence of a management committee, the persons tasked with the senior management of the insurance or reinsurance company, shall declare to the Bank that the periodic information referred to in Article 201 that it has provided to the Bank at the end of the first half year and at the end of the financial year is drawn up in accordance with the rules established by or pursuant to the law, the implementing measures of Directive 2009/138/EC and the instructions of the Bank.

To this end, it is required that periodic information, as regards accounting data:

1° be complete; it must include all data from the accounting and the inventories on the basis of which it was drawn up, and

2° be accurate; it must be in exact agreement with the data from the accounting and inventories on the basis of which the periodic information was drawn up.

Article 203. For certain categories of insurance or reinsurance company or in exceptional circumstances, the Bank may permit derogations from the rules referred to in Article 199, second paragraph and Article 201.

Chapter VIII – Recovery plans

Section I — Drawing up recovery plans

Article 204. If they consider this justified in light of the potential risks of significant deterioration of an insurance or reinsurance company’s financial situation, in particular by virtue of its business model, its legal structure, inherent characteristics of the group to which it belongs, its risk profile, or the characteristics of the products it markets, the Bank may oblige the insurance or reinsurance company to draw up a recovery plan with measures that can be implemented by the company to restore its financial situation after a significant deterioration thereto, and to update this plan.

The recovery plan shall cover various scenarios of serious macroeconomic or financial crisis, including systemic events, crises specific to the company, and, if necessary, crises affecting entities within the group to which the insurance or reinsurance company belongs.

The recovery plan shall cover the insurance or reinsurance company and its Belgian and foreign subsidiaries.

Where it imposes such a plan, the Bank shall take account of the fact that the insurance or reinsurance company is, where applicable, included in group supervision within the meaning of Article 343 or in supplementary supervision of a financial conglomerate within the meaning of Article 451, of another insurance or reinsurance company, an insurance holding company, a mixed-activity insurance holding company or a mixed financial holding company governed by the law of another Member State and for which a recovery plan has been approved by the competent authority concerned.

Article 205. In the recovery plan, the insurance or reinsurance company shall include the necessary conditions and procedures to ensure prompt and effective implementation of the measures and thereby restore its financial situation, without this having significant negative effects on the Belgian
or international financial system.

The recovery plan shall contain quantitative and qualitative indicators concerning a potential deterioration in the financial situation of the company, with details of the deadlines by which it shall investigate whether the corrective measures provided for in the plan are to be taken.

To this end, the recovery plan shall define appropriate procedures for regular monitoring of changes to the indicators mentioned in the second paragraph, and in order to examine the corrective measures to be taken, including any subsequent escalation procedure.

The recovery plan shall not take into account any exceptional government intervention.

Article 206. The insurance or reinsurance company shall update the recovery plan at least once a year and in any case after any changes in its legal or organizational structure, its activities or financial situation that could have a significant impact on the implementation of the plan.

The Bank may require the company to update the recovery plan more regularly.

Article 207. Depending on the circumstances, the Bank may determine more detailed rules for:

1° the minimum contents of the recovery plan;

2° the information to be submitted to the Bank by the insurance or reinsurance company and the frequency of transmission of that information.

Section II — Assessment of recovery plans

Article 208. § 1. The recovery plan required pursuant to Article 204 shall be examined and approved by the statutory governing body of the insurance or reinsurance company before it is submitted to the Bank.

§ 2. The insurance or reinsurance company shall submit the recovery plan as referred to in § 1 to the Bank within four months from the decision it received notification of pursuant to Article 204.

Subject to the provisions of the third paragraph, the insurance or reinsurance company shall submit an updated plan to the Bank no later than two months after the occurrence of the event that gave rise to the obligation to update the plan, it being understood that the supervisory authority may extend this term up to a maximum of six months.

If the event that gave rise to the obligation to update the plan was a change in the financial situation of the insurance or reinsurance company, such that it would have a significant impact on the plan, the insurance or reinsurance company shall inform the Bank forthwith and shall submit an updated plan by the deadline communicated by the Bank.

Article 209. § 1. During the three months after receipt of the recovery plan, the Bank shall examine it and consider whether or not it meets the requirements provided in or by virtue of Articles 204 to 207.

To that end the Bank shall, in particular, evaluate whether or not the recovery plan enables it to be reasonably expected that:

1° the implementation of the measures set out in the plan are of a nature to maintain or restore the viability and financial situation of the insurance or reinsurance company or of the group to which it belongs;

2° the plan, and the different options provided for therein, can be implemented quickly and effectively in financial crisis situations, avoiding wherever possible any adverse effects on the financial system, including in scenarios that involve simultaneous implementation of recovery
When evaluating the recovery plan, the Bank will pay particular attention to the adequacy of the insurance or reinsurance company’s financing, in particular as regards its capital structure, in relation to the level of complexity of its organization and to its risk profile.

§ 2. If the Bank considers that there are significant omissions in the recovery plan or that there are significant impediments to its implementation, it will inform the insurance or reinsurance company and, having given the institution an opportunity to express its point of view, will ask it to within two months submit a revised plan that eliminates the omissions or impediments. The Bank may prolong the aforementioned period by up to one month.

§ 3. If the Bank considers that the plan, revised in accordance with § 2, does not sufficiently remedy the omissions or impediments identified, it may ask the insurance or reinsurance company to, within thirty days from notification of its findings, make specific changes to its recovery plan.

Article 210. If the insurance or reinsurance company fails to follow up the request made under Article 209, § 2, within the stipulated period, or if the Bank considers that the recovery plan revised and submitted in accordance with Article 209, § 2, does not remedy the omissions or impediments that it has identified and that these cannot duly be remedied by an order issued in accordance with Article 209, § 3, or if no response has been received to the order issued in accordance with Article 209, § 3, the Bank shall inform the insurance or reinsurance company.

In these cases, the Bank can ask the insurance or reinsurance company to take every measure it considers necessary and proportionate to put an end to these omissions or impediments and in particular require that the insurance or reinsurance company take measures to:

1° adjust its risk profile, in particular by changing its pricing policy and/or its underwriting policy, or even its reinsurance and retrocession policy;

2° allow rapid recapitalization measures;

3° modify its financing strategy and/or its investment policy;

4° modify its governance system.

The decision of the Bank shall be communicated to the insurance or reinsurance company in writing.

Section III – Implementation of recovery plans

Article 211. § 1. The insurance or reinsurance company shall inform the Bank forthwith of any decision to take corrective measures following the investigation pursuant to Article 205 as part of the implementation or—where applicable—partial implementation of its recovery plan and of each decision not to do so.

§ 2. Without prejudice to other powers conferred on it by the present Law, the Bank can task the insurance or reinsurance company with taking one or more of the corrective measures included in its recovery plan if it fails to take appropriate measures on its own initiative.

Chapter IX - Specific provisions regarding the insurance or reinsurance business

Section I - Special provisions for insurance

Subsection 1 - Special provisions for non-life insurance

Article 212. No profit-sharing or rebates may in any way be guaranteed prior to the date of
distribution of profits.

Upon the recommendation of the Bank and the FSMA, the King may determine the rules that insurance companies should follow for profit sharing and allocation, including for categories of agreements or obligations to which rules apply, as well as the information required for supervisory purposes and which the insurance companies must provide to the Bank. The Bank may add to these categories of agreements or obligations by means of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998.

**Subsection II - Special provisions for life insurance**

**Article 213.** For the purposes of this Subsection and its implementing decrees and regulations, the following definitions apply:

1° technical interest rate: an investment law annual compound interest rate used to determine the current value of a deferred premium or benefit;

2° law of occurrence (of an insured event): a law relating to the probability of occurrence of the insured event;

3° supplement: any aspect of the pricing taken into account in the relationship between the insurance company’s obligations and the premiums that apply thereto other than the technical interest rate and the laws of occurrence of insured events;

4° technical bases: the sum of the technical interest rates, laws of occurrence and supplements taken into account when devising the prices or the constitution of reserves;

5° surrender (of a policy): cancellation of the policy by the policyholder;

6° reduction (of a policy): reduction of the current value of the insured benefits as a result of stopping the payment of premiums;

7° surrender value (at a certain time): the payment due from the insurance company at the time of the policy’s surrender;

8° reduction value (at a certain time): payment that remains insured in the case of reduction;

9° profit distribution: assignment of profit-sharing to the policies;

10° profit allocation: final yet, where applicable, conditional allocation of profit-sharing to certain policies.

**Article 214.** For each type of product that forms part of their activity, insurance companies shall communicate to the Bank the bases and methods they use to determine their pricing, and to calculate the surrender values, reduction values and technical provisions, as well as the fees they apply, prior to applying them. The Bank shall provide this information to the FSMA.

By means of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998, the Bank may specify the types of products referred to in the first paragraph.

**Article 215.** Premiums for new business shall be sufficient, on reasonable actuarial assumptions, to enable life insurance companies to meet all their commitments and, in particular, to establish adequate technical provisions.

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

**Article 216.** § 1. For life insurance policies, insurance companies may not guarantee a technical interest rate that is higher than a maximum established in accordance with the provisions of this paragraph.

The maximum technical interest rate is equal to 85% of the average yield over the last 24 months of 10-year Belgian government linear bonds, with the result rounded to the nearest 25 basis points. The maximum technical interest rate is calculated on 1 June every year. It may not be higher than 3.75% or lower than 0.75%.

If the maximum technical interest rate calculated in accordance with the second paragraph lies at least 25 basis points higher or lower than the maximum technical interest rate in force, the Bank shall inform the FSMA thereof. The FSMA shall provide the Bank with its opinion within fifteen days as to the change in the maximum technical interest rate for the policies referred to in the first paragraph.

Within fifteen days after receiving the opinion of the FSMA or, in the absence of such an opinion, within fifteen days after the date referred to in the third paragraph, the Bank shall make a reasoned proposal to the Minister responsible for insurance, for the amendment of the maximum technical interest rate for the policies referred to in the first paragraph. The opinion of the FSMA shall be included in the Bank’s proposal.

Within two months after receipt of the Bank’s proposal, the Minister responsible for insurance shall, in a reasoned decision, refuse the amendment or amend the maximum technical interest rate proposed by the Bank. In the event of refusal, the maximum technical interest rate shall be that which was in force at the time of the refusal.

As soon as the Bank has received the Minister’s decision, or in the absence of a decision, at the end of the term referred to in the fifth paragraph, it shall publish the new maximum technical interest rate for the insurance policies referred to in the first paragraph, in the Belgian Official Gazette and on its website. This interest rate shall enter into force from 1 January after that publication.

§ 2. By way of derogation from § 1, insurance companies may, for a maximum period of eight years and for a specific benefit established on the date of the commitment, guarantee a technical interest rate higher than the maximum technical interest rate referred to in § 1, insofar as the maturity date of—and income from—the company’s assets allow.

Upon the recommendation of the Bank and the FSMA, the King determines the conditions for the application of this paragraph.

§ 3. If the maximum technical interest rate is amended pursuant to § 1, this interest rate shall apply to:

1° the agreements entered into from the date of entry into force of the new interest rate;

2° the agreements entered into before the date of entry into force of the new interest rate for which the benefit to be established is not determined at the time at which it was entered into, as regards the premiums paid from the date of entry into force of the new interest rate;

3° the agreements entered into before the date of entry into force of the new interest rate for which the benefit to be established is determined at the time at which it was entered into, as regards the premiums paid from the date of entry into force of the new interest rate and which correspond to an increase or review of the guarantee that applies from that date.

Where the policy belongs to different categories to those referred to in the first paragraph, or where the benefit to be established is only determined for a duration shorter than the total duration of the policy, the provisions of the first paragraph shall apply to all parties to this policy as though it were
a single policy.

§ 4. Transactions with flexible premiums shall be deemed, for pricing purposes, to be a set of single-premium transactions and no guarantee with regard to pricing may be granted for flexible premiums prior to their payment.

**Article 217.** No profit-sharing or rebates may in any way be guaranteed prior to the date of distribution of profits.

**Article 218.** A life insurance policy may be linked to one or more dedicated asset funds. In such a case, the insurance company undertakes to distribute and allocate, over and above the rate bases, part of the profits realized from investments in these dedicated assets, in the form of a profit share.

**Article 219.** A life insurance policy may be linked to one or more investment funds managed by one or more insurance companies. In such a case, the investment risk shall be borne by the policyholder and no profits from the investments may be granted as a profit share.

**Article 220.** As part of the management of collective pension funds belonging to class 27 as set out in Annex II, an insurance company may only manage funds relating to pension liabilities and solidarity commitments of:

1° an institution for occupational retirement provision as referred to in Article 2, 1° of the Law of 27 October 2006 on the supervision of institutions for occupational retirement provision;

2° a public administration as referred to in Article 134, 1° of the aforementioned Law of 27 October 2006;

3° a public body as referred to in Article 138, first paragraph of the aforementioned Law of 27 October 2006;

4° an institution or external service of a public administration or a public body established in accordance with Articles 136, § 1, and 138 of the aforementioned Law of 27 October 2006;

5° a legal entity tasked with managing a solidarity commitment, as referred to in Article 47 of the Law of 28 April 2003 on supplementary pensions and on tax regulations applicable to such pensions and to certain additional social security benefits;

6° a legal entity tasked with managing a solidarity scheme as referred to in Article 56 of the Programme Law (I) of 24 December 2002.

The insurance company may attach a guaranteed return or capital guarantee to the management of collective pension funds.

**Article 221.** With a view to the application of the present Law, upon the recommendation of the Bank and the FSMA, the King determines the rules that must be followed by insurance companies for the pursuit of life insurance business as set out in Annex II.

In particular, the King establishes rules for:

1° the components of the technical bases and the manner in which these components are established;

2° the terms ‘surrender value’ and ‘reduction value’ as well as the method of calculation thereof;

3° the calculation of the benefits in the event of cancellation or surrender of the policy;

4° the calculation of the benefits in the event of death resulting from a risk that is not covered;
5° the restrictions to advances on and pledging of insured benefits;

6° the profit distribution and allocation and the granting of rebates, including determination of the categories of policies or obligations to which these rules apply, as well as the information necessary for supervisory purposes that the insurance companies must provide to the Bank. The Bank may add to these categories of policies or obligations by means of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998.

7° the inventory of the composition of each dedicated asset fund;

8° the insurance policies for the granting of extra-statutory benefits to employees referred to in Royal Decree No 50 of 24 October 1967 on the retirement and survival pension of employed workers.

Subsection III - Simultaneous pursuit of life and non-life insurance activity

Article 222. Insurance companies are not allowed simultaneously to pursue the non-life insurance activity set out in Annex I and the life insurance activity referred to in Annex II.

Article 223. By way of derogation from Article 222, life insurance companies that, on 15 March 1979, pursued non-life and life insurance activity simultaneously may continue these activities.

By way of derogation from Article 222, companies to which authorization is granted to pursue life insurance activity may also receive an authorization for non-life insurance activity relating to the risks from classes 1 and 2 as set out in Annex I.

Companies to which authorization is granted exclusively for the risks under class 1 and 2 as set out in Annex I, may also obtain authorization to pursue life insurance activity.

Article 224. The companies referred to in Article 223 shall separately manage life and non-life insurance activity.

If these companies also pursue reinsurance activities, they shall also separately manage ‘non-life’ insurance and reinsurance activity on the one hand and ‘life’ insurance and reinsurance activity on the other.

The companies referred to in Article 223 shall ensure that they respect the interests of life insurance policyholders and non-life insurance policyholders respectively. This means, in particular, that they shall only grant profit-sharing, premium rebates or similar benefits to life insurance policies by virtue of the income related to the life insurance activity as though the company pursued only this activity. The same applies to non-life insurance.

Article 225. § 1. Without prejudice to Article 37, 2° and 3°, the insurance companies referred to in Article 223 shall calculate:

1° a notional ‘life’ minimum capital requirement for their life insurance or reinsurance activity as if the company concerned only pursued that activity;

2° a notional ‘non-life’ minimum capital requirement for their non-life insurance or reinsurance activity as if the company concerned only pursued that activity;

§ 2. As a minimum, the insurance companies referred to in Article 223 shall cover the following by an equivalent amount of eligible basic own-fund items:

1° the notional life minimum capital requirement, in respect of the life activity;

2° the notional non-life minimum capital requirement, in respect of the non-life activity.
The minimum financial obligations referred to in the first paragraph, in respect of the life insurance activity and the non-life insurance activity, shall not be borne by the other activity.

§ 3. As long as the minimum financial obligations referred to in § 2 are fulfilled and provided the Bank is informed, the company may use to cover the solvency capital requirement referred to in Article 37, 2° the eligible own-fund items which are still available for one or the other activity.

**Article 226.** The insurance companies referred to in Article 223 shall draw up a document in which the eligible basic own-fund items to cover each of the notional minimum capital requirements referred to in Article 225 are clearly distinguished between in accordance with Article 150, § 4.

By means of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998, the Bank may specify the form and content of the document referred to in the first paragraph.

**Article 227.** Where the amount of eligible basic own-fund items for one of the activities is insufficient to cover the minimum financial obligations referred to in Article 225, § 1, the Bank may apply the measures as referred to in Articles 508 to 517, excluding Article 510, to the activity concerned, irrespective of the results of the other activity.

By way of derogation from Article 225, § 2, these measures may include an approval for transfer of eligible basic own-fund items from one activity to the other.

**Article 228.** Where a non-life insurance company has financial, commercial or administrative links with a life insurance company, the Bank shall ensure that the distribution of the costs and income between non-life and life insurance activity is not distorted as a result of agreements or arrangements between these companies.

**Article 229.** By means of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998, the Bank may require that the insurance companies keep all documents and records that enable it to supervise compliance with the requirements of Article 224 to 228.

**Subsection IV - Separate management**

**Article 230.** Alongside the obligation to separately manage life and non-life insurance activities in accordance with Article 224, insurance companies shall make a distinction in their management of investment funds between insurance activities belonging to classes 23, 26 and 27 as set out in Annex II, where the investment risk is borne by the policyholder, and the other activities included in the aforementioned Annex, and which form one single separately managed activity.

**Article 231.** The insurance or reinsurance company shall at all times specify to which separately managed activity each policy and each claim relates.

Upon the recommendation of the Bank and the FSMA, as regards their respective powers, the King determines the obligations of the insurance or reinsurance companies to collect data on separate management, including the methods for the splitting of technical provisions and assets across the different separately managed activities and the conditions under which the assets to cover the technical provisions may be transferred from one separately managed activity to another separately managed activity.

**Subsection V - Community co-insurance**

**§ 1 - Scope**

**Article 232.** This Subsection applies to Community co-insurance transactions relating to one or more risks classified under classes 3 to 16 as set out in Annex I and which fulfil the following conditions:
1° the risk is a large risk as defined in Article 233;

2° the risk is covered by a single contract at an overall premium and for the same period by two or more insurance companies each for its own part as co-insurer, one of them being the leading insurance company;

3° the risk is situated within the Belgian territory or on the territory of several Member States, one of which is Belgium;

4° for the purpose of covering the risk, the leading insurance company is treated as if it were the insurance company covering the whole risk;

5° at least one of the co-insurers participates in the contract through a head office or a branch established in a Member State other than that of the leading insurance company;

6° the leading insurance company fully assumes the leader’s role in co-insurance practice and in particular determines the terms and conditions of insurance and pricing.

Article 233. For the purposes of Article 232, the following shall be understood to be large risks:

1° risks classified in classes 4, 5, 6, 7, 11 and 12 as set out in Annex I;

2° risks classified in classes 14, and 15 as set out in Annex I, where the policyholder is engaged professionally in an industrial or commercial activity or in one of the liberal professions and the risks relate to such activity;

3° risks classified in classes 3, 8, 9, 10, 13 and 16 as set out in Annex I, insofar as the policyholder exceeds at least two of the three following criteria:

a) a balance sheet total of EUR 6 200 000;

b) net turnover of EUR 12 800 000;

c) an average number of 250 employees during the financial year.

Where the policyholder forms part of a group of companies for which consolidated annual accounts are drawn up in accordance with Directive 83/349/EEC, the criteria set out in the first paragraph, 3° shall be applied on the basis of the consolidated annual accounts.

Article 234. The provisions of the present Law, with the exception of those in this Subsection shall continue to apply to co-insurance transactions that do not meet the conditions of Article 232.

§ 2 – Pursuit of business

Article 235. Articles 556 to 561 shall apply only to the leading insurer that wishes to pursue Community co-insurance transactions as referred to in this Subsection.

Article 236. The amount of technical provisions shall be determined by the co-insurers established in Belgium following the rules set out by or pursuant to the present Law.

The technical provisions shall however be at least equal to those established by the leading insurer following the rules that apply in its home Member State.

Article 237. The co-insurers established in Belgium shall provide the Bank, for each country, with statistics showing the scale of the Community insurance operations in which they participate.

By means of a regulation passed pursuant to Article 12bis § 2, of the Law of 22 February 1998, the Bank shall stipulate the nature of the aforementioned statistics as well as the frequency with which
they are communicated and the medium on which they are sent.

**Article 238.** In the event of an insurance company being wound up, liabilities arising from participation in Community co-insurance contracts shall be met in the same way as those arising under the other insurance contracts of that company without distinction as to the nationality of the insured and of the beneficiaries.

**Subsection II - Special provisions for reinsurance**

**Subsection I - Finite reinsurance**

**Article 239.** For the purposes of this Subsection, ‘finite reinsurance’ means reinsurance under which the explicit maximum loss potential, expressed as the maximum economic risk transferred, arising both from a significant underwriting risk and timing risk transfer, exceeds the premium over the lifetime of the contract by a limited but significant amount, together with at least one of the following features:

1° explicit and material consideration of the time value of money;

2° contractual provisions to moderate the balance of economic experience between the parties over time to achieve the target risk transfer.

**Article 240.** Insurance or reinsurance companies may only enter into finite reinsurance policies or pursue finite reinsurance activities, if they are able to properly identify, measure, monitor, manage, control and report the risks arising from those policies or activities.

**Article 241.** § 1 Without prejudice to the powers of the European Commission as referred to in Article 210, paragraph 2 of Directive 2009/138/EC, the King may add to or specify the requirements referred to in Article 240.

§ 2. Under the same conditions, the King may, upon the recommendation of the Bank, establish, for the exercise of finite reinsurance activities, specific provisions relating to:

1° mandatory conditions to be included in all contracts issued;

2° sound administrative and accounting procedures, adequate internal control mechanisms and risk-management requirements;

3° accounting, prudential and statistical information requirements;

4° the constitution of technical provisions to ensure that they are adequate, reliable and objective;

5° investments in assets to cover technical provisions to ensure that account is taken of the nature of the activities conducted by the reinsurance company, especially the nature, amount and duration of the expected payments in relation to claims, to guarantee the sufficiency, liquidity, security and profitability as well as the matching of its assets;

6° the rules on own funds and on solvency capital requirements and the minimum capital requirement with which the reinsurance company must comply as regards its finite reinsurance activities.

**Subsection II — Special purpose vehicles**

**Article 242.** Special purpose vehicles that wish to establish themselves on the Belgian territory must obtain prior authorization from the Bank.

**Article 243.** Without prejudice to the powers of the European Commission as referred to in Article 211, paragraph 2 of Directive 2009/138/EC, the King may, upon the recommendation of the Bank,
establish the conditions for granting authorization to special purpose vehicles.

The King may in particular establish provisions for:

1° the scope of the authorization;

2° mandatory conditions to be included in all contracts issued;

3° fit and proper requirements as referred to in Article 40 of the persons running the special purpose vehicle;

4° fit and proper requirements for shareholders or members having a qualifying holding in the special purpose vehicle;

5° sound administrative and accounting procedures, adequate internal control mechanisms and risk-management requirements;

6° accounting, prudential and statistical information requirements;

7° solvency requirements for special purpose vehicles.

The Bank may, by means of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998, make clarifications and additions to the requirements referred to in this Article on technical and non-essential points.

**TITLE III - SPECIAL PROVISIONS FOR CERTAIN CATEGORIES OF INSURANCE COMPANIES**

**Chapter I - Mutual insurance associations**

**Section I – General provisions**

**Article 244.** This Chapter applies to insurance or reinsurance companies governed by Belgian law which have adopted the legal form of mutual insurance association.

**Article 245.** Mutual insurance associations have a civil nature.

They have legal personality. This is acquired from the day on which their articles of association are published in the manner prescribed by Article 247.

The powers vested in the Commercial Court by the present Law shall, in the case of mutual insurance associations, be exercised by the court of first instance.

**Article 246.** A mutual insurance association may be named ‘mutual insurance fund’ if it executes transactions governed by:

1° the Law of 10 April 1971 on accidents at work;

2° the Law of 3 July 1967 on the prevention of or the compensation for occupational accidents, for accidents on the way to and from work, and for occupational illnesses in the public sector;

3° the Royal Decree of 14 November 2003 on the granting of extra-statutory benefits to the employees referred to in Royal Decree No 50 of 24 October 1967 on the retirement and survival pension of employed workers and to the persons referred to in Article 32, first paragraph, 1° and 2° of the 1992 Income Tax Code, employed without an employment contract.

**Article 247.** The articles of association of mutual insurance associations shall state, under penalty of nullity:
1° the name and the registered office of the association;

2° the purpose for which the association was set up;

3° the conditions and method for entry, dismissal and exclusion of members;

4° the scale of the personal commitments entered into by the members relating to the composition and maintenance of a company fund;

5° the fact that only payments to members may be made from the accounts of members if this is consistent with the capital requirements established pursuant to Articles 151 to 189 or, after dissolution of the company, if all other debts are paid;

6° the fact that the Bank is informed at least one month in advance of each payment from member accounts for purposes other than the individual cancellation of membership and that it may prohibit the envisaged payment during this term;

7° the organization and management of the association, the manner of appointment, the powers and the duration of the mandate of the persons tasked with that management;

8° the method for establishing and collecting contributions or premiums, as well as any supplements for the settlement of claims;

9° the method for opening and approving accounts;

10° the procedure that must be followed in the case of changes to the articles of association or the liquidation of the association, without prejudice to the provisions of the present Law.

Upon the recommendation of the Bank and the FSMA, the King may lay down any other provisions that must be included in the articles of association of Belgian mutual insurance associations.

The articles of association and any amendments thereto shall be published in the Annexes of the Belgian Official Gazette.

Section II – Conversion of mutual insurance associations

Article 248. Mutual insurance associations may make use of the option offered in Articles 774 and 775 of the Companies Code to take on another legal form.

Where a mutual insurance association makes use of the aforementioned option, the provisions of this Section shall apply. These provisions shall apply by way of derogation from Articles 776 to 788 of the same Code, except when they are expressly referred to in this Section.

Article 249. A mutual insurance association may only be converted into one of the legal forms for commercial companies as referred to in Article 33.

Article 250. The proposal for conversion shall be explained in a report drawn up by the statutory governing body and indicated in the agenda of the general meeting which must make a decision as to this conversion. This report shall also include a clear description and justification of:

1° the measures governing the rights of members of the association in its new form;

2° without prejudice to the Law of 4 April 2014 on insurance, the changes that must be made to the insurance or reinsurance policies in this respect;

3° the manner of distribution of the shares or the units representing the association’s share capital.
This report shall include draft articles of association of the association in its new form, as well as a balance sheet of the association’s assets and liabilities, drawn up no earlier than three months beforehand and specifying how much the share capital of the association is after its conversion into a company.

The share capital may not be higher than the net assets as stated in the aforementioned report.

The net asset amount may not be refunded or distributed after conversion between the shareholders or members.

**Article 251.** The accredited statutory auditor of the mutual insurance association shall report on the balance sheet referred to in Article 250 and in particular state whether it completely, reliably and accurately reflects the associations’ financial situation.

**Article 252.** The draft reports referred to in Articles 250 and 251 shall be sent to the Bank.

Where the mutual insurance association concerned is an insurance company, the Bank shall send the reports referred to in the first paragraph forthwith to the FSMA for its opinion. The latter shall provide its opinion to the Bank within two months after receipt of the reports referred to in the first paragraph. If no opinion is provided within this period, the FSMA shall be deemed not to object to the anticipated conversion.

Within three months after receipt of the reports referred to in the first paragraph, the Bank shall oppose the anticipated conversion where:

1° in the FSMA’s opinion, it is concluded that the anticipated conversion violates the rights of the insureds, policyholders or beneficiaries;

2° the Bank is of the opinion that the insurance or reinsurance company no longer complies, as a result of the anticipated conversion, with its obligations set out by or pursuant to the present Law.

The Bank shall communicate its opposition by registered letter, including the reasons for its decision, and, where applicable, the opinion of the FSMA.

**Article 253.** The members of the mutual insurance association shall be convened with due regard to the rules for amendments to articles of association or for liquidation should these latter rules be stricter, to a general meeting which must deliberate on the conversion decision.

In the case of a convocation by letter, a copy of the reports of the statutory governing body and of the statutory auditor shall be included in the letter of convocation. These documents shall also be provided free-of-charge to the members of the association who submit a request in writing for them.

**Article 254.** The general meeting shall decide on the conversion of the mutual insurance association. Except where the articles of association have stricter rules relating to quorum and majorities, the general meeting may only validly deliberate if at least half of the members with voting rights are present or represented at the meeting, and where the decision receives at least four fifths of the votes cast.

If the quorum required under the law or articles of association is not achieved, a second meeting shall be convened. This second meeting shall comply with the rules of Article 253. The second general meeting shall deliberate according to the same voting conditions irrespective of the number of members with voting rights present or represented. The text of this article shall be included in the convocation to the general meeting.

**Article 255.** The conversion requires the unanimous vote of the members present if the mutual insurance association has not existed for at least two years or if the articles of association specify
that they may not take on another legal form. Such a provision in the articles of association may only be amended under the same conditions.

**Article 256.** Immediately after the conversion decision, the articles of association of the company in its new form, including the provisions amending its purpose and the original composition of the bodies, shall be established following the same rules regarding attendance and majority as those specified for the conversion. If this does not occur, the conversion shall not be pursued.

**Article 257.** As soon as the decisions as referred to in Articles 253 to 256 are approved:

1° the mutual insurance association shall be converted and its members shall, ipso jure and with immediate effect, become shareholders or members of the company in its new form, in the manner specified in the report referred to in Article 250, the members being deemed to meet, ipso jure, any possible conditions to become a member or shareholder of the company in its new form;

2° the members of the association shall lose all rights that they may still retain, even future or conditional rights, pursuant to their previous capacity of member;

3° the policyholders, insureds and all third parties to the insurance or reinsurance policies shall also retain their rights acquired on that date under the insurance or reinsurance policies; these agreements shall, ipso jure, be updated for the future in the manner proposed in the report referred to in Article 250;

4° insofar as the company meets the legal and regulatory requirements on the matter or continues to meet them, it shall retain all authorizations in its new form for the pursuit of insurance or reinsurance activity which the association held prior to its conversion.

**Article 258.** Every conversion decision shall be established by public deed on pain of nullity. The public deed shall also include the conclusion from the report drawn up by the accredited statutory auditor pursuant to Article 251.

The public deed for 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 public deed of conversion shall be published in its entirety; the articles of association shall be published in summary form in accordance with Articles 67 to 69 and 72 of the same Code.

Without prejudice to the immediate enforceability of the contractual amendments referred to in Article 257, 3°, the conversion may be enforceable on third parties following the provisions of Article 76 of the Companies Code.

The original or a copy of the powers of attorney as well as the reports of the statutory governing body and of the accredited statutory auditor shall be submitted simultaneously with the deed to which they pertain. Anyone can find out about this or obtain a copy in accordance with the conditions of Article 67, § 3 of the Companies Code.

**Article 259.** The provisions of Article 784 of the Companies Code shall apply with the exception of the first paragraph.

**Article 260.** The members of the statutory governing body of the mutual insurance association under conversion shall, notwithstanding any stipulation to the contrary, be jointly and severally liable vis-à-vis the interested parties for:

1° payment of any difference between the net assets included in the balance sheet referred to in Article 250 and the share capital of the company in its new form;

2° any overvaluation of the net assets included in the balance sheet referred to in Article 250;

3° compensation for damage immediately and directly ensuing from either the nullity of the
conversion transaction as a result of non-compliance with the rules provided for in Articles 403, 2° to 4° and 454, 2° to 4° of the Companies Code which apply mutatis mutandis, or in Article 258, first paragraph, or from the absence or inaccuracy of the statements prescribed in Article 453, first paragraph, with the exception of 6° and 9° to 12° of the same Code or of Article 258, first paragraph.

Section III - Merger by absorption of mutual insurance associations

Article 261. Without prejudice to Article 102 to 106, a mutual insurance association may merge with another mutual insurance association by absorption.

Where a mutual insurance association merges by absorption with another mutual insurance association, the provisions contained in Book XI of the Companies Code regarding merger by absorption shall apply. These provisions shall apply subject to the derogations and with due regard to the further provisions included in this Section. In such a case, the terms ‘company’ and ‘partner(s)’ used in the aforementioned Code shall mean the ‘mutual insurance association’ and its ‘members’.

Article 262. By way of derogation from Article 671 of the Companies Code, merger by absorption of mutual insurance associations shall be the legal act by which all of the assets of one or more mutual insurance associations, including rights and obligations, are transferred as a result of winding up without liquidation to another mutual insurance association and by which the members of the ceding association(s) as a consideration acquire the capacity of members of the absorbing mutual insurance association.

Article 263. The court of first instance is the competent court for the lodging of the claims referred to in Article 689 of the Companies Code relating to the merger of mutual insurance associations.

Article 264. By way of derogation from Article 693, second paragraph, of the Companies Code, the merger proposal shall at least contain:

1° the legal form, the name, the purpose and the registered office of the mutual insurance associations to be merged;

2° an accurate description of—and a justification for—the measures for the settlement of rights and obligations of the members of the ceding association within the absorbing association, as well as an accurate description of—and a justification for—the financial consequences of the merger for the members of the ceding and absorbing associations, in particular as regards the right of members to rebates, the obligation to pay additional contributions in the event of a deficit and the right of members to the assets of the association;

3° the date from which the rights and obligations of the members of the ceding association enter into effect within the absorbing association;

4° without prejudice to the Law of 4 April 2014 on insurance, an accurate description of—and a justification—for the adjustments that must be made as part of the merger in the insurance or reinsurance policies;

5° the date from which the operations of the ceding association are deemed to be undertaken for the account of the absorbing association;

6° the rights that the absorbing association grants to the members with special rights of the association to be merged, or the proposed measures vis-à-vis those members;

7° the remuneration granted to the accredited statutory auditor for drawing up the report referred to in Article 266;

8° any special advantage granted to the members of the management and governing bodies of the
associations to be merged.

The merger proposal shall be submitted by all associations involved in the merger at the latest six weeks prior to the general meeting that should decide on the merger, to the office of the clerk of the court of first instance.

**Article 265.** By way of derogation from Article 694 of the Companies Code the detailed written report drawn up by the statutory governing body of each mutual insurance association shall include an explanation of the position of the assets of the associations to be merged, and a legal and economic standpoint shall be explained and justified: the appropriateness of the merger, the conditions and manner in which it shall occur and the consequences thereof, as well as the measures regulating the rights of the members of the ceding association within the absorbing association, especially the right to rebates, the obligation to pay additional contributions in the event of a deficit and the rights to the association’s assets.

**Article 266.** By way of derogation from Article 695, second and third paragraphs of the Companies Code, the accredited statutory auditor shall in particular report on the financial consequences of the merger for the members of the ceding and absorbing mutual insurance association.

This report must at least:

1° show whether the financial and accounting information in the report by the statutory governing body referred to in Article 265 are truthful and sufficient to lend clarity to the general meeting that must vote on the merger proposal;

2° describe the consequences of the merger for the right of members to rebates, for their obligation to pay additional contributions in the event of a deficit and for their right to the association’s assets.

**Article 267.** In each mutual insurance association, the members of the association, with due regard to the rules under the articles of association for making amendments to those articles, or for settlement if these are stricter, shall be convened to a general meeting that must deliberate on the merger decision.

Article 697, § 1, second paragraph and § 2, first paragraph, 4° of the Companies Code shall apply to the mutual insurance associations.

**Article 268.** For mergers by absorption of mutual insurance associations, the rules referred to in Article 699, § 1, 1° of the Companies Code regarding quorum and majority shall apply with the proviso that the words ‘share capital’ and ‘capital’ must be replaced by the words ‘share fund’.

Article 699, § 3, of the Companies Code shall not apply to mergers by absorption of mutual insurance associations.

**Article 269.** By way of derogation from Article 701 of the Companies Code, any amendments to the articles of association of the absorbing mutual insurance association, including the provisions to amend its purpose, shall be established following the rules on attendance and majority required pursuant to the articles of association of the absorbing association.

**Article 270.** For the purposes of Article 704, first paragraph of the Companies Code, the date for the merger by absorption of mutual insurance associations referred to in Article 264, 5° shall apply as the date referred to in Article 693, second paragraph 5° of the same Code.

**Article 271.** Article 211 of the 1992 Income Tax Code shall apply to mergers by absorption of mutual insurance associations to the extent that the associations concerned are subject to corporation tax.
Chapter II - Companies subject to special arrangements due to their size

Section I — Scope

Article 272. This Chapter applies to insurance companies that meet the following conditions:

1° the company’s annual income gross written premium income does not exceed EUR 5,000,000;

2° the total of the company’s technical provisions, or those of the group, within the meaning of Article 339, 2°, to which it belongs gross of the accounts receivable from reinsurance contracts and special purpose vehicles, as referred to in Article 125, does not exceed EUR 25,000,000;

3° the business of the company does not include insurance activity covering liability, credit and suretyship insurance risks, unless they constitute ancillary risks within the meaning of Article 21, § 2;

4° the business of the company does not include reinsurance operations;

5° the company neither directly nor indirectly pursues activity abroad.

Article 273. An insurance company that exceeds one of the amounts referred to in Article 272 for three consecutive years may no longer invoke the provisions of this Chapter.

A company which applies for an authorization as an insurance company in accordance with Chapter I of Title II of this Book may not invoke the provisions of this Chapter if one of the amounts referred to in Article 272 is expected to be exceeded in the next five years.

Article 274. An insurance company which has received an authorization pursuant to Chapter I of Title II of this Book may seek the application of the provisions of this Chapter where the Bank is of the opinion that this company meets, in addition to the provision of Article 272, the following conditions:

1° none of the amounts referred to in Article 272 were exceeded in the three years prior to the application;

2° it is expected that none of the amounts referred to in Article 272 will be exceeded in the five years after the application.

In support of its application, the company shall provide the information required to ascertain whether the conditions of the first paragraph are complied with.

Section II - Companies that have entered into an agreement providing for full and systematic reinsurance of the insurance policies or for transfer of obligations

Article 275. § 1. The present Law, with the exception of the provisions referred to in this Section and Books IV and V, shall not apply to non-life insurance companies that meet the conditions of Articles 272 and 273 and which have concluded an agreement with other insurance or reinsurance companies to which an authorization is granted pursuant to Title II of this Book or to which consent is granted pursuant to Title I of Book III, providing for the full and systematic reinsurance of the insurance policies issued by them or under which the accepting undertaking is to meet the liabilities arising under such policies in the place of the ceding undertaking.

That agreement includes the obligation for the accepting undertaking to inform the Bank at least three months before the expiry date of the termination or non-renewal thereof, as well as of any provision that could ensue in the ceding undertaking losing the advantage of the application of this paragraph.
§ 2. The advantage from the provisions of § 1 may only be granted if an advance registration has taken place.

With the application for registration addressed to the Bank, an administrative dossier must be included which complies with the conditions laid down by the Bank and which includes the proof that the conditions of § 1 have been met, as well as a copy of the agreement with the identity details of the accepting undertaking.

The Bank shall provide its opinion on the application for registration within two months after submission of a full dossier.

Decisions on registration shall be notified to the applicants within fifteen days by registered letter or letter with recorded delivery with due regard to the deadline referred to in the third paragraph.

The Bank shall draw up a list of the insurance companies registered pursuant to this Article. This list and any subsequent changes made thereto shall be published on the Bank’s website.

Articles 22, 23, 27, and 30 shall apply.

§ 3. The insurance companies referred to in this Section shall provide the Bank, at its request, with all the information necessary to ascertain whether the registration conditions referred to in this Section are met.

For the purposes of the first paragraph, the Bank may determine on an individual basis or by way of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998, the nature, scale, format, frequency and manner of submission of the information that must be provided to it by the local insurance companies.

The companies shall communicate to the Bank at their own initiative and forthwith all factors that could lead to them no longer meeting the registration conditions.

Articles 304, second paragraph, 1° and 305 to 307 shall apply.

§ 4. Where the Bank finds that an insurance company referred to in this Section is not operating in accordance with the provisions of the present Article, or its implementing measures, or where it has information indicating that this company runs the risk, in the following twelve months, of no longer working in accordance with these provisions, it shall lay down the term by which this situation should be remedied.

If the company has not remedied the situation at the end of the term laid down pursuant to the first paragraph, the Bank may take one or more of the measures listed in Article 517, § 1, 1° to 7°. §§ 2 to 7 of the same Article and Article 518, first paragraph, shall apply mutatis mutandis.

Article 293 shall apply.

§ 5. Articles 102, first paragraph, 2° and 3° and second paragraph and Articles 105 and 106 shall apply.

Section III - Other insurance companies

Article 276. For the insurance companies referred to in this Chapter that are not eligible for the application of the provisions of Article 275, the provisions of the present Law shall apply under the conditions and with due regard to the specifications and restrictions included in this Section.

Moreover, the King determines, with due regard to the specifications and restrictions that He lays down, which provisions of the implementing measures of Directive 2009/138/EC shall apply to the insurance companies referred to in this Chapter.
The companies referred to in this Article shall be listed separately in the list referred to in Article 31.

**Article 277.** Articles 37 and 38 shall apply with the proviso that references to Articles 151 and 189 should be interpreted as references to Articles 286 and 287 respectively.

**Article 278.** Articles 45 and 46 shall not apply.

The senior management shall be entrusted to at least two natural persons.

The obligations laid down by or pursuant to the present Law to the management committee shall be fulfilled by the persons tasked with senior management.

By way of derogation from the first paragraph, the Bank may, by virtue of the size and risk profile of the insurance company, require that a management committee be set up in accordance with Articles 45 and 46.

**Article 279.** Without prejudice to the obligations provided for in the Companies Code for listed companies, Articles 48 to 53 and 56, § 3 shall not apply.

The tasks allocated to the audit committee, the remuneration committee and the risk committee pursuant to Articles 49 to 51 shall be carried out by the statutory governing body as a whole, with the exception of those members thereof who are tasked with the senior management or, where applicable, the executive members thereof.

**Article 280.** Articles 74 and 75 shall apply with the proviso that references to Articles 151 and 189 should be interpreted as references to Articles 285 and 286 respectively.

**Article 281.** § 1. Article 83 shall not apply.

§ 2. The companies referred to in this Section shall ensure that the members of the statutory governing body, the senior management and where applicable, the management committee, exhibit sufficient availability in the exercise of their tasks, taking into account the nature and complexity of the transactions executed by the company officers, and that they do not find themselves in a situation of conflict of interest, taking into account the various offices or functions that they occupy.

The company shall set out internal rules and supervise compliance with these rules, with a view to compliance with the objectives of the first paragraph and the disclosure of exercise of external functions by the persons referred to in the first paragraph.

By means of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998, the Bank may stipulate the manner in which the obligations referred to in this paragraph should be fulfilled.

**Article 282.** Articles 86 to 91 shall not apply.

**Article 283.** Articles 95 to 97 and 99 to 101 shall not apply.

The Bank may, by means of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998, require that the companies referred to in this Section disclose information on their solvency and their financial situation at the frequency which it determines.

**Article 284.** Articles 107 to 122 shall not apply.

**Article 285.** § 1. By way of derogation from Articles 151 to 188, the solvency capital requirement with which the companies referred to in this Section must comply, shall be at least equal to the sum
of the following amounts:

1° for non-life insurance activities, with the exception of those relating to current interests and to cover for natural disasters, storms, hail or frost: 25% of the average burden of claims from the last three finalized financial years;

2° for non-life insurance activities relating to cover for natural disasters, storms, hail and frost: 25% of the average burden of claims from the last seven finalized financial years;

3° for life insurance activities with the exception of those relating to cover for ancillary risks within the meaning of Article 21, § 2, and for current interests from non-life insurance activities, the sum of:

a) 4% of the technical provisions of the previous financial year, with the proviso that this percentage is reduced to 1% for activities in which the investment risk is borne by the policyholder and for activities belonging to class 25 of Annex II;

b) 0.3% of the non-negative risk capital of the previous financial year.

4° for life insurance activities relating to cover for ancillary risks within the meaning of Article 21, § 2: 25% of the average burden of claims from the last three finalized financial years;

The solvency capital requirement shall at least be equal to the amount established pursuant to Article 189, § 1, 4° irrespective of the amount established pursuant to the first paragraph.

§ 2. For the purposes of this Article, the Bank shall determine, by means of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998:

1° the method for calculation of the burden of claims;

2° the limits within which the payments of the reinsurance companies and the special purpose vehicles take account of the calculation of the burden of claims, technical provisions and risk capital referred to.

Article 286. By way of derogation from Article 189, the companies referred to in this Section shall meet a minimum capital requirement at least equal to 60% of the solvency capital requirement calculated pursuant to Article 285.

Article 287. § 1. Articles 140 to 150 shall not apply.

§ 2. The following elements shall be taken into account for the composition of the solvency capital requirement referred to in Article 285:

1° the paid-up share capital, plus the issue premiums or, for mutual insurance associations, the paid-up part of the share fund plus the member accounts;

2° the statutory and free reserves that do not correspond to obligations or that are not classified as equalization and disaster reserves;

3° the transferred results;

4° the funds for the future allocations where this can be used to cover any potential losses and where it is not made available for payment to the policyholders;

5° the subordinated loans;

6° half of the unpaid part of the share capital or of the share fund, as soon as the paid-up part amounts to 25% of that capital or fund;
7° in the case of mutual insurance associations with variable contributions, the future claims that they can make on their members in the following twelve months;

8° the deferred net gains arising from the valuation of assets, insofar as these deferred net gains do not have an exceptional nature.

The insurance company’s own shares as well as the elements referred to in the first paragraph, 5°, which are issued by and held directly by the insurance company, shall be deducted from the elements referred to in the first paragraph.

The elements referred to in the first paragraph, 5° to 8°, may only be taken into account if the Bank has granted its consent in advance and if the total of those elements does not come to more than 60% of the solvency capital requirement. The Bank shall grant its approval by virtue of:

1° the status of the counterparties concerned, in relation to their ability and willingness to pay;

2° the recoverability of the funds, taking account of the legal form of the item, as well as all conditions which could prevent the item from being successfully paid in or called up;

3° any information on the outcome of past calls which insurance companies have made for such ancillary own funds, to the extent that information can be reliably used to assess the expected outcome of future calls.

§ 3. The elements in § 1, first paragraph, 1° to 4° may be taken into account for the composition of the minimum capital requirement.

§ 4. The Bank may, by means of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998, determine the other conditions which must be met by the own funds items referred to in this Article.

Article 288. By way of derogation from Articles 125 to 139, the companies referred to in this Section shall calculate and record their technical provisions following the rules of Royal Decree of 17 November 1994 on annual accounts of insurance and reinsurance companies.

The technical provisions referred to in the first paragraph must at all times be covered by similar assets that are fully owned by the insurance company

By way of derogation from Article 123, the Bank may, by means of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998, determine the rules for the valuation of covering assets.

Article 194 shall apply, with the proviso that the assets are valued pursuant to the third paragraph.

Article 289. Articles 204 to 211 shall not apply.

Article 290. Articles 313 to 316 shall not apply.

For the purposes of Article 312, the following rules shall apply:

1° the frequency of the previously established timeframes as referred to in § 2, 1°, a) of the aforementioned Article 312 may not be higher than annual;

2° the Bank may restrict the regular provision of information necessary for supervisory purposes;

3° the Bank may exempt a company from the obligation to provide itemized information as referred to in the aforementioned Article 312, on the condition that the company is in a position to provide this information to the Bank at its first request.
Article 291. Article 324 shall not apply.

Article 292. Articles 510 and 511 shall apply with the proviso that the references to Articles 151 and 189 must be interpreted as references to Articles 285 and 286 respectively.

Article 293. If a company to which the provisions of this Section apply, notwithstanding the geographical limitation of its activity, pursues business abroad, the Bank shall inform the supervisory authorities of the Member States in which business is pursued and ask them to take the appropriate measures to prevent the company continuing to pursue this business on their territory.

Chapter III - Local insurance companies

Section I — Scope

Article 294. This Chapter applies to the insurance companies that limit their insurance business to the municipality in which their registered office is established or to that municipality and the surrounding Belgian municipalities. These companies are referred to as ‘local insurance companies’.

Article 295. With the exception of the provisions of this chapter and of Books IV and V, the local insurance companies shall be exempt from the application of the present Law.

Section II – Registration

Article 296. The taking-up of the business of insurance by a local insurance company is dependent on obtaining prior registration.

With the application for registration addressed to the Bank, an administrative dossier must be included which complies with the conditions laid down by the Bank and which includes, in particular, a description of the company’s management structure and the proof that the conditions of Article 298 are met.

The Bank shall provide its opinion on the application for registration within six months after submission of a full dossier.

Decisions on registration shall be notified to the applicants within fifteen days by registered letter or letter with recorded delivery with due regard to the terms referred to in the third paragraph.

The Bank shall draw up a list of the local insurance companies registered pursuant to this Chapter. This list and any subsequent changes made thereto shall be published on the Bank’s website.

Articles 22, 23, 27, and 30 shall apply.

Article 297. An insurance company that has received an authorization pursuant to Title I of this Book may waive its authorization and ask to be registered in accordance with this Chapter if:

1° it meets all the conditions listed in Article 298;

2° the floor referred to in Article 298, 3°, d) was not exceeded in the last three years prior to the application and is not expected to be exceeded in the five years after the request;

3° it waives its authorization pursuant to Article 538, with the proviso that § 6 of the aforementioned Article 538 does not apply where the company is registered pursuant to this Chapter.

Section III - Conditions for granting and maintaining the registration

Article 298. To be able to be registered, local insurance companies must meet the following
conditions:

1° being established in the form of a mutual insurance association or a cooperative;

2° having established senior management composed of at least two persons who act jointly and to which Article 40, § 1, second paragraph of the present Law and Article 20 of the Law of 25 April 2014 apply;

3° limiting their business in the following way:

   a) the insured goods come under the definition of ordinary risks as referred to in Article 5 of Royal Decree of 24 December 1992 implementing the Law of 25 June 1992 on non-marine insurance contracts, and are situated in the municipality in which the local insurance company has its registered office or in the surrounding Belgian municipalities;

   b) the insured risks belong to classes 8, 9 and 16 as set out in Annex I and, on the conditions that they are ancillary to the aforementioned risks within the meaning of Article 21, § 2, to classes 1, 3, 13, 17 and 18 as set out in the same Annex;

   c) they limit their purpose to direct insurance operations as referred to in a) and b) and the operations directly arising therefrom, with the exclusion of any other business activity;

   d) the annual income from the operations referred to in a) and b) does not come to more than one million euros.

4° reinsuring all of their direct insurance activity at a company that may pursue the reinsurance business in Belgium, to at least 90% or 100% for liability risks and natural disasters;

5° pursuing insurance business prior to 1 January 2016 in accordance with the provisions under 3° and 4°.

Section IV - Supervision

Article 299. § 1. The local insurance companies referred to in this Section shall provide the Bank, at its request, with all the information necessary to ascertain whether the registration conditions referred to in Article 298 are met.

For the purposes of the first paragraph, the Bank may determine on an individual basis or by way of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998, the nature, scale, format, frequency and manner of submission of the information that must be provided to it by the local insurance companies.

The local insurance companies shall communicate to the Bank at their own initiative and forthwith all factors that could lead to them no longer meeting the registration conditions.

Articles 304, second paragraph, 1° and 305 to 307 shall apply.

§ 2. Articles 102, first paragraph, 2° and 3° and second paragraph and Articles 105 and 106 shall apply.

Section V — Exceptional measures

Article 300. Where the Bank finds that a local insurance company is not operating in accordance with the provisions of the present Chapter, or its implementing measures, or where it has information indicating that this company runs the risk, in the following twelve months, of no longer working in accordance with these provisions, it shall lay down the term by which this situation should be remedied.
If the local insurance company has not remedied the situation at the end of the term laid down pursuant to the first paragraph, the Bank may take one or more of the measures listed in Article 517, § 1, 1° to 7°. §§ 2 to 7 of the same Article and Article 518, first paragraph, shall apply mutatis mutandis.

Section VI - Termination of the registration

Article 301. § 1. A registered local insurance company may waive the registration for all of its business.

Article 538, §§ 2 to 5 shall apply mutatis mutandis.

§ 2. If the local insurance company has not remedied the situation at the end of the term laid down pursuant to Article 300, first paragraph, the Bank may revoke the registration for all of the insurance classes that it pursues.

In the case referred to in the first paragraph, the local insurance company shall be dissolved ipso jure and put into liquidation pursuant to Articles 183 et. seq. of the Companies Code.

§ 3. Bankruptcy or voluntary or judicial winding-up, within the meaning of Articles 181 and 182 of the Companies Code, of a local insurance company shall result in the deletion of its registration for all of the insurance classes that it pursues.

Article 302. § 1. The termination of the registration entails the prohibition to enter into new insurance policies.

In accordance with the first paragraph and Article 301, § 3, Article 187 of the Companies Code and Article 46 of the bankruptcy law of 8 August 1997 allow only current insurance policies to be pursued, with the exclusion of entry into new insurance policies.

§ 2. If the local insurance company, notwithstanding the geographical limitation of its activity, pursues business abroad, the Bank shall inform the supervisory authorities of the Member States in which business is pursued and ask them to take the appropriate measures to prevent the local insurance company from continuing to pursue this business on their territory.

§ 3. Article 545 shall apply mutatis mutandis.

TITLE IV - SUPERVISION OF COMPANIES

Chapter I - Supervision by the Bank

Section I – General principles

Article 303. § 1. The Bank oversees that each insurance or reinsurance company works in accordance with the provisions of the present Law, its implementing decrees and regulations and directly applicable European regulations, without prejudice to the powers conferred on the FSMA by virtue of Article 45, § 1, first paragraph, 3° and § 2, of the Law of 2 August 2002.

§ 2. In the exercise of its general tasks, the Bank shall

1° duly take into consideration the effects that its decisions may have on the stability of the financial system of all other Member States concerned, especially in emergency situations, based on the information available at the time; where exceptional movements occur on the financial markets, the Bank must take into account the potential procyclical effects of its actions;

2° base its supervision on a forward-looking, risk-based approach;
³ apply the legal and regulatory requirements pursuant to the principle of proportionality, taking into account the nature, scale and complexity of the risks inherent to the insurance or reinsurance company’s business.

§ 3. By way of derogation from § 1, the supervisory task laid down by the present Law and the associated prerogatives laid down by or pursuant to the present Law and the implementing measures of Directive 2009/138/EC, shall be entrusted to the Supervisor of mutual health funds as regards mutual insurance funds.

Article 304. The Bank may request all information for the fulfilment of its task, on the organization, operation, situation and transactions of insurance or reinsurance companies in addition to the information that the insurance or reinsurance companies provide pursuant to the provisions of Section III.

It may undertake on-site inspections, take cognizance of and copy, on the spot, any data in the possession of the company,

1° in order to assess compliance with the legal and regulatory provisions and the provisions of the directly applicable European regulations relating to the status of insurance or reinsurance companies, in particular the provisions on solvency requirements, technical provisions, assets and eligible own funds, and whether the accounting and annual accounts, and the statements and information submitted to it by the company, are accurate and truthful;

2° in order to verify the appropriate nature of the governance system, and especially the management structures, the administrative and accounting procedures, the internal control and the policy with regard to the prospective management of the company’s own funds requirements and liquidity;

3° in order to ascertain that the management of the company is sound and prudent and that its position or its transactions are not of a nature so as to be able to endanger its liquidity, profitability or solvency.

The prerogatives referred to in the first and second paragraphs also include access to the agendas and minutes of the meetings of the various bodies of the companies and of their internal committees as well as all associated documents and the results of the internal and/or external opinions on the operation of the aforementioned bodies.

Article 305. As part of the supervision and in particular the inspections conducted by the Bank, the Bank’s staff are authorized to obtain any information and explanation from the managers and staff of the insurance or reinsurance company that they deem necessary for the exercise of their tasks and can request meetings to this end with the managers or staff of the company they indicate.

Article 306. The inspection reports and, more generally, all documents issued by the Bank which state that they are confidential, may not be disclosed by the insurance or reinsurance companies without the Bank’s express consent.

Any breach of this obligation shall be punishable with the penalties provided for by Article 458 of the Criminal Code.

Article 307. Without prejudice to Article 92, second paragraph, ³ the Bank may, in the case of outsourcing, also exercise its inspection prerogatives as referred to in Article 304, second paragraph, at the undertakings which insurance or reinsurance companies call on in their capacity of service providers (subcontracting - outsourcing), to ascertain whether or not the conditions under which the services are provided could prejudice the insurance or reinsurance companies’ compliance with their legal and regulatory obligations. The prerogatives referred to in Articles 305 and 310 may also be exercised mutatis mutandis vis-à-vis those service providers.
The supervisory authorities of another Member State which have supervisory powers over insurance or reinsurance companies that call on service providers (subcontracting - outsourcing) established in Belgium may exercise the prerogatives referred to in the first paragraph vis-à-vis these service providers, where applicable through persons which they authorize thereto. If they so request, the Bank may exercise these prerogatives on behalf of these supervisory authorities.

Article 308. The Bank and the FSMA on one side and the Supervisor of mutual health funds on the other, shall enter into a memorandum of understanding with a view to the efficient and consolidated supervision of insurance companies. This MoU shall be published on their respective websites.

These agreements shall determine the methods of cooperation between the Bank and the FSMA on one side and the Bank and the Supervisor of mutual health funds on the other in all cases in which the law provides for opinion, consultation, information or any other contact between these institutions or in which consultation between these institutions is necessary to ensure a uniform application of the law.

Article 309. Relations between an insurance or reinsurance company and a particular client do not come under the powers of the Bank unless the supervision of the company so requires.

Section II - Supervision of activity conducted in another Member State

Article 310 § 1. The Bank may undertake the inspections referred to in Article 304, second paragraph, at branches of insurance or reinsurance companies governed by Belgian law established in another Member State, after prior notification to the supervisory authorities of that State, as well as all inspections undertaken with the aim of collecting data on-site or of assessing the management of the branch as well as all data that could facilitate the supervision of the insurance or reinsurance company. The supervisory authorities of the host Member State may take part in this assessment.

The Bank may, for the same purpose and after having informed the authorities referred to in the first paragraph, appoint an expert to carry out any verification and investigation deemed necessary. The remuneration and costs of that expert shall be borne by the company.

The Bank may also ask the authorities concerned to carry out the checks and investigations referred to in the first paragraph.

Where the authorities of the host Member State nonetheless hinder it from exercising its right to conducting such inspections or where the authorities of that Member State cannot take part in those inspections, the Bank may submit the matter to EIOPA to ask for its assistance, in accordance with Article 19 of Regulation 1094/2010.

§ 2. Where the service providers referred to in Article 307, first paragraph are established in another Member State, § 1 shall apply mutatis mutandis to the inspections conducted on their sites.

Article 311. Where the supervisory authorities of a host Member State establish that an insurance or reinsurance company with a branch on their territory or doing business on their territory on the basis of the free provision of services does not comply with the legal provisions of that Member State that apply to it, the Bank shall, at the request of those supervisory authorities, take all appropriate measures forthwith to ensure that the company puts an end to this irregular situation.

The Bank may, in particular, take one or more of the measures referred to in Articles 517 and 603.

The Bank shall inform the supervisory authorities of the host Member State of any measures taken.

In the cases referred to in Article 155, paragraph 3 of Directive 2009/138/EC, the Bank may submit the matter to EIOPA to ask for its assistance pursuant to Article 19 of Regulation 1094/2010.
Section III - Information to be provided for supervisory purposes

Article 312. § 1. Insurance or reinsurance companies shall provide the Bank with all the information necessary for supervisory purposes, taking into account the purpose of the supervision established in Article 303. This information includes at least the information necessary to exercise the following tasks as part of the enforcement of the supervisory process referred to in Section IV:

1° assessing the governance system used by the companies, the business they pursue, the valuation principles used for solvency purposes, the risks to which they are exposed and their risk management systems, their capital structure, capital requirements and capital management;

2° making any appropriate decision as part of the exercise of its rights and functions relating to the supervision.

§ 2. For the purposes of the application of § 1, the Bank may:

1° determine the nature, scale, format, frequency and manner of submission of the information referred to in § 1, on an individual basis or by way of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998, and request this information from the insurance and reinsurance companies:

a) at timeframes determined in advance;

b) when events described in advance occur;

c) when investigating the situation of an insurance or reinsurance company;

2° obtain all information on agreements in the possession of intermediaries, or agreements entered into with third parties;

3° request information from external experts;

4° require regular communication of any figures or explanations other than those referred to in § 1, if it needs this information to be able to ascertain whether the rules under the present Law, under the implementing decrees and regulations thereof or under the implementing measures of Directive 2009/138/EC are complied with.

§ 3. The information referred to in §§ 1 and 2 shall comprise the following:

1° qualitative or quantitative items or an appropriate combination thereof;

2° historical, current or prospective items or an appropriate combination thereof;

3° data from internal or external sources, or an appropriate combination thereof.

§ 4. The information referred to in §§ 1 and 2 shall comply with the following principles:

1° it must reflect the nature, scale and complexity of the business of the company concerned, and in particular the risks inherent in that business;

2° it must be accessible, complete in all material respects, comparable and consistent over time;

3° it must be relevant, reliable and comprehensible.

Article 313. Notwithstanding the timeframes determined in advance as referred to in Article 312, § 2, 1°, a) but without prejudice to Article 189, § 4, the Bank may allow an insurance or reinsurance company to disclose the information needed for supervisory purposes no more than once a year where the provision of that information would constitute a burden incommensurate
with the nature, scale and complexity of the risks associated with the company’s business.

**Article 314.** The Bank may restrict the regular provision of information necessary for supervisory purposes or exempt the insurance or reinsurance companies from this obligation to provide itemized information where:

1° the provision of that information would constitute a burden incommensurate with the nature, scale and complexity of the risks associated with the company’s business.

2° the provision of that information is not necessary for effective supervision of the company;

3° the exemption is not damaging to the stability of the financial systems concerned in the European Union; and

4° the company can provide information on an ad-hoc basis.

**Article 315.** Articles 313 and 314, insofar as they refer to the itemized provision of information, shall not apply where the insurance or reinsurance company forms part of a group within the meaning of Article 339, 2°, unless that company demonstrates to the Bank that the provision of information more frequently than once a year or the itemized provision of information is not appropriate given the nature, scale and complexity of the risks associated with the group’s business and taking into account the goal of financial stability.

The exemption referred to in the first paragraph may only be granted to the following companies:

1° companies that together represent no more than 20% of the Belgian non-life insurance or reinsurance market, basing the market share of those companies on gross written premiums;

2° companies that together represent no more than 20% of the Belgian life insurance or reinsurance market, basing the market share of those companies on gross technical provisions.

When determining whether companies are eligible for this exemption, the Bank shall give priority to the smallest companies.

**Article 316.** For the purposes of Articles 313 and 314, the Bank shall assess, as part of the prudential supervision process, whether the provision of information constitutes a burden incommensurate with the nature, scale and complexity of the risks to which the company is exposed, taking at least the following into account:

1° the volume of premiums, technical provisions and assets of the company;

2° the volatility of the claims and compensation covered by the company;

3° the market risks arising from the company’s investments;

4° the risk concentration;

5° the total of life and non-life insurance classes for which an authorization has been granted;

6° the possible effects of the management of the company’s assets on financial stability;

7° the company’s systems and structures for the provisions of information for supervisory purposes, and the written policy line referred to in Article 77, § 7;

8° the suitability of the company’s governance system;

9° the level of own funds to cover the solvency capital requirement and the minimum capital requirement;
10° whether or not the company is a captive insurance or reinsurance company that only covers the risks of the industrial or commercial group to which it belongs.

**Article 317.** § 1. At least three weeks before the general meeting or, in the absence thereof, the meeting of the decision-making body of the company, insurance or reinsurance companies shall inform the Bank of the subjects of amendments to the articles of association as well as of the decisions they plan to make during that meeting and which could have an impact on the policies as a whole.

The Bank may require that any remarks it makes concerning these drafts be brought to the attention of the general meeting, or in the absence thereof, of the decision-making body of the company.

§ 2. Within a month after approval thereof by the general meeting, or in the absence thereof, by the decision-making body of the company, the insurance or reinsurance companies shall inform the Bank of amendments to the articles of association and of decisions which could have an impact on the policies.

Within one month from the date on which the Bank has been informed, it may oppose the execution of all decisions or amendments as referred to in the first paragraph which could contravene the provisions of the present Law or its implementing measures or the implementing measures of Directive 2009/138/EC.

**Section IV — Prudential supervision procedure**

**Subsection I - Prudential review and evaluation process**

**Article 318.** As part of its task as referred to in Article 303, the Bank shall regularly investigate and evaluate the strategies, processes and reporting procedures that the insurance or reinsurance companies have established to comply with the provisions laid down by or pursuant to the present Law and with the provisions of the implementing measures of Directive 2009/138/EC.

This includes assessment of the qualitative requirements as regards the governance system, of the risks to which the companies concerned are exposed or could be exposed, and of the capacity of these companies to assess these risks taking into account the environment in which they operate.

**Article 319.** The Bank shall in particular investigate and evaluate whether, in accordance with the implementing measures of Directive 2009/138/EC, the following is complied with:

1° the requirements described in Article 42 as regards the governance system, in particular the internal assessment of own risk and solvency;

2° the requirements described in Articles 124 to 139 as regards the technical provisions;

3° the capital requirements as described in Articles 151 to 189;

4° the investment rules as described in Articles 190 to 198;

5° the requirements described in Articles 140 to 150 as regards the quantity and quality of own funds;

6° where the insurance or reinsurance company uses a full or partial internal model: the requirements for full or partial internal models as described in Articles 167 to 188.

In this respect, the Bank shall have in place appropriate monitoring tools that enables it to identify deteriorating financial conditions in an insurance or reinsurance company and to monitor how that deterioration is remedied.
Article 320. The Bank shall also assess the adequacy of the methods and practices of the insurance or reinsurance companies designed to identify possible events or future changes in economic conditions that could have adverse effects on the overall financial situation of the company concerned.

It shall assess the ability of the companies to withstand those possible events or future changes in economic conditions.

Article 321. The Bank shall determine the frequency and the nature of the investigations referred to in Articles 318 to 320, taking into account the size of the insurance or reinsurance companies concerned and the nature, scale and complexity of their business.

Subsection II — Stress tests

Article 322. If it is of the opinion that the stress tests carried out in accordance with Article 23 of Regulation No 1094/2010 produce unsatisfactory results, the Bank shall subject the insurance or reinsurance companies to specific prudential stress tests, taking into consideration the idiosyncrasies of the insurance and reinsurance sector in Belgium, in order to facilitate the review and evaluation procedure referred to in Articles 318 to 321 and the exercise of group supervision as referred to in Chapter II of Title V.

Subsection III - Prudential measures - Capital add-on

Article 323. § 1. On the basis of the results of the review and evaluation procedure or of the stress tests carried out pursuant to Articles 318 to 322, the Bank may set a specific capital add-on for an insurance or reinsurance company over and above the requirements laid down by or pursuant to the present Law or the implementing measures of Directive 2009/138/EC, to take into account the risks to which this company is—or could be—exposed.

§ 2. The capital add-on as referred to in § 1 may only be imposed in the following exceptional cases:

1° the Bank concludes that the risk profile of the insurance or reinsurance company deviates significantly from the assumptions underlying the solvency capital requirement, as calculated using the standard formula in accordance with Articles 153 to 166 and:

a) the requirement to use an internal model under Article 173 is inappropriate or has been ineffective; or

b) while a partial or full internal model is being developed in accordance with Article 170;

2° the Bank concludes that the risk profile of the insurance or reinsurance company deviates significantly from the assumptions underlying the solvency capital requirement, as calculated using an internal model or partial internal model in accordance with Articles 167 to 188, because certain quantifiable risks are captured insufficiently and the adaptation of the model to better reflect the given risk profile has failed within an appropriate timeframe;

3° The Bank concludes that the governance system of an insurance or reinsurance company deviates significantly from the standards laid down in Article 42, that those deviations prevent it from being able to properly identify, measure, monitor, manage and report the risks that it is or could be exposed to and that the application of other measures is in itself unlikely to improve the deficiencies sufficiently within an appropriate timeframe.

4° the insurance or reinsurance company applies the matching adjustment referred to in Article 129, the volatility adjustment referred to in Article 131 or the transitional measures referred to in Articles 668 and 669, and the Bank concludes that the risk profile of that company deviates significantly from the assumptions underlying the adjustments and transitional measures.
§ 3. In the cases referred to in § 2, 1° and 2°, the capital add-on shall be calculated in such a way as to ensure that the company complies with Article 151, § 3.

In the cases referred to in § 2, 3°, the capital add-on shall be proportionate to the material risks arising from the deficiencies which gave rise to the decision by the Bank to set the capital add-on.

In the cases referred to in § 2, 4°, the capital add-on shall be proportionate to the material risks arising from the deviation from the risk profile.

§ 4. In the cases referred to in § 2, 2° and 3°, the Bank shall ensure that the insurance or reinsurance company makes every effort to remedy the deficiencies which gave rise to the decision to apply the capital add-on.

§ 5. Capital add-ons imposed pursuant to the present Article shall be evaluated at least once a year by the Bank. It shall be removed when the company has remedied the deficiencies which led to the application of these factors.

§ 6. Except as regards the calculation of the risk margin as referred to in Article 127, § 2, where the capital add-on is imposed in the cases referred to in § 2, 3°, the solvency requirement shall be interpreted as the amount of this requirement multiplied by the capital add-on imposed pursuant to this Article.

Section V - Provision of information to EIOPA

Article 324. Without prejudice to Article 35 of Regulation 1094/2010, the Bank shall provide the following information to EIOPA on an annual basis:

1° the average capital add-on per company and the distribution of the capital add-ons as the Bank has imposed them in the previous year, calculated as a percentage of the solvency capital requirement and provided individually for:

a) insurance or reinsurance companies;

b) life insurance companies;

c) non-life insurance companies;

d) insurance companies that pursue both life insurance and non-life insurance business;

e) reinsurance companies;

2° for all of the information specified in point 1° of this paragraph: the distribution of the capital add-ons imposed by virtue of Article 323, § 2, 1°, 2° or 3°;

3° the number of insurance or reinsurance companies partially exempt from the obligation to regularly provide information and the number of insurance or reinsurance companies exempt from the obligation to provide itemized information pursuant to Articles 313 and 314, as well as the volume of their capital requirements, premiums, technical provisions and assets, measured as a percentage of the total volume of the capital requirements, premiums, technical provisions and assets of the insurance or reinsurance companies governed by Belgian law;

4° the number of groups partially exempt from the obligation to regularly provide information and the number of groups exempt from the obligation to provide itemized information pursuant to Articles 423, as well as the volume of their capital requirements, premiums, technical provisions and assets, measured as a percentage of the total volume of the capital requirements, premiums, technical provisions and assets of all groups.
Chapter II - Audit supervision

Section I - Appointment and accreditation of statutory auditors

Article 325. § 1. Without prejudice to Article 87ter of the Law of 2 August 2002, the task of statutory auditor as referred to in the Companies Code may only be entrusted, in an insurance or reinsurance company, to one or more auditors or one or more audit firms accredited for that purpose by the Bank in accordance with Article 327.

In insurance or reinsurance companies that are not required to have a statutory auditor pursuant to the aforementioned Code, the general meeting shall appoint one or more accredited auditors or one or more accredited audit firms as referred to in the first paragraph.

They shall fulfil the duties of statutory auditor and bear that title. The provisions of the Companies Code relating to statutory auditors of public limited companies (naamloze vennootschap/société anonyme) shall apply to the appointment and the task of statutory auditor in these companies. For the application of the Companies Code relating to the foregoing, the general meeting of members shall replace the general meeting of shareholders in companies in which this is provided for by law.

§ 2. Insurance or reinsurance companies may appoint deputy statutory auditors who would take over the statutory auditor’s task in the event of his/her prolonged absence. The provisions of the present Article and of Article 326 shall apply to these replacement statutory auditors.

Article 326. Accredited audit firms shall use the services of an accredited auditor they designate in accordance with Article 132 of the Companies Code, to exercise the task of statutory auditor as referred to in Article 325. The provisions of the present Law and its implementing decrees that regulate the appointment, task, obligations and prohibitions for statutory auditors as well as the sanctions, other than criminal sanctions, which apply to them, shall apply both to the accredited audit firms and to the accredited auditors who represent them.

An accredited audit firm may appoint a deputy representative from its members who meets the conditions for appointment.

Article 327. By means of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998, the Bank shall regulate the accreditation of auditors and audit firms:

The accreditation regulations shall be passed after consultation with the accredited auditors via the professional associations that represent them.

The Institut des réviseurs d’entreprises/Instituut der Bedrijfsrevisoren (Institute of company auditors) shall inform the Bank of any disciplinary proceedings initiated against an accredited auditor or an accredited audit firm for omissions in the exercise of the task at an insurance or reinsurance company as well as any disciplinary measures against an accredited auditor or an accredited audit firm, with a statement of reasons.

Article 328. The aforementioned consent of the Bank shall be required for the appointment of accredited statutory auditors and deputy accredited statutory auditors at insurance or reinsurance companies. This consent must be requested by the company body proposing the appointment. For the appointment of an accredited audit firm, such consent shall apply both to the firm and to its representative.

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

Where a statutory auditor is appointed pursuant to the law by the President of the Commercial Court or the Court of Appeal, this person shall be selected from a list of accredited auditors, which has been approved by the Bank.
**Article 329.** The Bank may at any time revoke its consent, in accordance with Article 328, to an accredited statutory auditor, deputy accredited statutory auditor, accredited audit firm or representative or deputy representative of such a firm by way of a decision on the grounds of reasons relating to their status or their task as accredited auditor or accredited audit firm, as provided for by or pursuant to the present Law. The task of the statutory auditor shall end with this revocation.

Before an accredited statutory auditor resigns, the Bank and the insurance or reinsurance company shall be notified thereof in advance, with a statement of the reasons.

The accreditation Regulation sets out the procedure to be followed.

In the event of absence of a deputy accredited statutory auditor or a deputy representative of an accredited audit firm, the insurance or reinsurance company or the accredited audit firm shall find a replacement with due regard to Article 328, within a period of two months.

Any proposal to dismiss an accredited statutory auditor in an insurance or reinsurance company from his/her task, as governed by Articles 135 and 136 of the Companies Code, shall be submitted to the Bank for an opinion. Such an opinion shall be communicated to the general meeting.

**Section II - Task of the accredited statutory auditors**

**Article 330.** Accredited statutory auditors shall lend their assistance to the Bank’s supervision at their own and sole responsibility and in accordance with the present Article, following the rules of the trade and the guidelines of the Bank.

The accredited statutory auditor and the accredited audit firms may exercise supervision in the foreign branches of the company they supervise and carry out the investigations associated with their task.

**Article 331.** The accredited statutory auditors shall assess the internal control measures that the insurance or reinsurance companies have taken in accordance with Article 42, § 1, 2°, and share their findings on the subject with the Bank.

**Article 332.** The accredited statutory auditors shall report to the Bank on the results of the limited review of the periodic financial information that the insurance or reinsurance companies provide to the Bank at the end of the first half-year in which it is confirmed that they have no knowledge of any facts that would indicate that this periodic information at the end of the half-year was not drawn up in all material respects in accordance with the provisions established by or pursuant to the present Law, the implementing measures of Directive 2009/138/EC, and the instructions of the Bank.

They shall moreover confirm that the periodic financial information at the end of the half-year, as regards the accounting information, is in accordance in all material respects with the accounting and inventories as regards:

1° completeness: they include all data from the accounting and the inventories on the basis of which they were drawn up,

2° accuracy: they correctly reflect the data from the accounting and inventories on the basis of which the periodic financial information was drawn up.

They shall confirm to have no knowledge of any facts that would indicate that the periodic financial information, as regards the accounting information, was not drawn up at the end of the half-year pursuant to the accounting and valuation rules for the drawing up of periodic information relating to the last financial year. The Bank may further specify the periodic information to which this pertains.
Article 333. The accredited statutory auditors shall also report to the Bank on the results of the review of the periodic financial information that the insurance or reinsurance companies provide to the Bank at the end of the financial year, in which it is confirmed that this periodic information was drawn up in all material respects in accordance with the provisions established by or pursuant to the present Law, the implementing measures of Directive 2009/138/EC, and the instructions of the Bank.

They shall moreover confirm that the periodic financial information at the end of the financial year, as regards the accounting information, is in accordance in all material respects with the accounting and inventories as regards:

1° completeness: they include all data from the accounting and the inventories on the basis of which they were drawn up,

2° accuracy: they correctly reflect the data from the accounting and inventories on the basis of which the periodic financial information was drawn up.

They shall confirm to have no knowledge of any facts that would indicate that the periodic financial information, as regards the accounting information, was not drawn up at the end of the financial year pursuant to the accounting and valuation rules for the preparation of the annual accounts.

The Bank may further specify the periodic information to which this pertains.

Article 334. The accredited statutory auditors shall, at the Bank’s request, provide a special report to the Bank on the organization, activity and financial structure of the company; the costs for drawing up this report shall be borne by the insurance or reinsurance company.

Article 335. Accredited statutory auditors shall report on their own initiative to the Bank within the scope of their task for the insurance or reinsurance company or an audit task for a related undertaking of an insurance or reinsurance company, the moment any of the following come to their attention:

1° decisions, facts or, where applicable, developments that have or could have a material influence on the company’s financial situation as regards its administrative and accounting procedures or its internal control;

2° decisions, facts or, where applicable, developments that could affect the business continuity of the insurance or reinsurance company;

3° decisions, facts or, where applicable, developments which could lead to non-compliance with the provisions regarding the solvency capital requirement;

4° decisions, facts or, where applicable, developments which could lead to non-compliance with the provisions regarding the minimum capital requirement;

5° decisions, facts or, where applicable, developments that could indicate an infringement of the Companies Code, the articles of association, the present Law and the decisions and regulations made for the implementation thereof;

6° decisions, facts or, where applicable, developments that could lead to a refusal of certification of the annual accounts or to the formulation of a reservation;

Article 336. The accredited statutory auditors shall communicate the reports they send to the Bank in accordance with Article 334 to the management committee of the insurance or reinsurance company or in the absence of a management committee to the persons tasked with the senior management. Article 306 shall apply to this communication.
They shall provide the Bank with a copy of the communications that they make to the management committee of the insurance or reinsurance company or in the absence of a management committee to the persons tasked with the senior management, and that relate to matters that could be important for the supervision it exercises.

**Article 337.** No civil, criminal or disciplinary action may be taken and no professional penalties may be imposed against an accredited statutory auditor who has provided information in good faith as referred to in Article 335.

**TITLE V - SUPERVISION OF INSURANCE AND REINSURANCE GROUPS AND SUPPLEMENTARY SUPERVISION OF FINANCIAL CONGLOMERATES**

**Chapter I - Definitions**

**Article 338.** Without prejudice to Article 15, the following definitions shall apply for this Title and its implementing decrees and regulations:

1° parent undertaking: a parent undertaking within the meaning of Article 15, 39°, as well as all undertakings that in the Bank’s opinion exercise a real and dominant influence over another undertaking;

2° subsidiary: a subsidiary within the meaning of Article 15, 40°, as well as all undertakings over which in the Bank’s opinion a parent undertaking exercises a real and dominant influence. All subsidiaries of subsidiaries shall also be deemed to be subsidiaries of the parent undertaking which heads up those undertakings;

3° participation: a participation within the meaning of Article 15, 43° as well as a direct or indirect holding of voting rights or capital of another undertaking over which, in the Bank’s opinion, real and dominant influence is exercised;

4° related undertaking: a subsidiary of any other undertaking in which a participation exists, or an undertaking with which a consortium is formed within the meaning of Article 10 of the Companies Code;

5° insurance holding company: a parent undertaking which is not a mixed financial holding company, and the main business of which is to acquire and hold participations in subsidiaries where those subsidiaries are exclusively or mainly insurance or reinsurance companies, or third-country insurance or reinsurance companies, at least one of such subsidiaries being an insurance or reinsurance company;

6° mixed-activity insurance holding company: a parent undertaking other than an insurance or reinsurance company, a third-country insurance or reinsurance company, an insurance holding company or a mixed financial holding company, which includes at least one insurance or reinsurance company among its subsidiaries.

7° mixed financial holding company: a parent undertaking other than a regulated undertaking which heads up a financial conglomerate;

8° regulated undertaking: an insurance or reinsurance company, a credit institution, an investment firm, a management company of undertakings for collective investment, or an Alternative Investment Fund Manager;

9° financial sector: the sector made up of one or more of the following undertakings:

a) a regulated undertaking that is a credit institution, a financial institution within the meaning of Article 3, 41° of the Law of 25 April 2014, an undertaking that provides ancillary services within the meaning of Article 164, § 1, 4° of the same law; these undertakings belong to the same
financial sector, which is called the ‘banking sector’;

b) a regulated undertaking that is an insurance or reinsurance company, an insurance holding company; these undertakings belong to the same financial sector, which is called the ‘insurance sector’;

c) a regulated undertaking that is an investment firm, an undertaking that provides ancillary services [within the meaning of Article 3, 72°, of the Law of 25 April 2014, a financial institution within the meaning of Article 3, 41°, of that same Law]; these undertakings belong to the same financial sector, which is called the ‘investment services sector’.

paragraph 1, 9°, c) amended by Article 105 of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016

10° financial institutions: institutions for post office cheques and giro services, AIFMs, management companies of undertakings for collective investment, settlement institutions referred to in Article 36/1, 14° of the Law of 22 February 1998 and institutions whose business is the operational management, in whole or in part, of services provided by such settlement institutions, shall be considered equivalent to financial institutions as referred to in Article 15, 48°.

Article 339. Without prejudice to Articles 15 and 338, the following definitions shall apply for Chapter II of this Title and its implementing decrees and regulations:

1° participating undertaking: an undertaking which is either a parent undertaking or other undertaking which holds a participation, or an undertaking with which a consortium is formed within the meaning of Article 10 of the Companies Code;

2° group: a group of undertakings,

a) which consists of a participating undertaking, its subsidiaries and the entities in which the participating undertaking or its subsidiaries hold a participation, as well as undertakings that form a consortium within the meaning of Article 10 of the Companies Code;

b) which is based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among those undertakings, and which may include mutual insurance funds or mutual insurance associations, where:

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

ii. the establishment and dissolution of such relationships for the purposes of this Title are subject to prior approval by the group supervisor,

it being understood that the undertaking exercising the centralized coordination shall be considered as the parent undertaking, and the other undertakings shall be considered as subsidiaries;

3° group supervisor: the supervisory authority responsible for the supervision at group level of the insurance or reinsurance group and that is determined in accordance with Article 406;

4° college of supervisors: a permanent but flexible structure for cooperation and coordination among the supervisory authorities of the Member States concerned to facilitate decision-making as regards group supervision;

5° supervisory authority concerned: the supervisory authority of a Member State in which a subsidiary has its registered office.

Article 340. Without prejudice to Articles 15 and 338, the following definitions shall apply for
Chapter III of this Title and its implementing decrees and regulations:

1° group: a set of undertakings formed by a parent undertaking, its subsidiaries, the undertakings in which the parent undertaking or its subsidiaries have a direct or indirect participation and the undertakings forming a consortium and undertakings controlled by the latter undertakings or in which the latter undertakings hold a participation;

2° financial conglomerate: a group or subgroup of which at least one of the subsidiaries is a regulated undertaking and meets the following conditions:

a) where a regulated undertaking heads up a group or subgroup:

i. this undertaking is the parent undertaking of an undertaking in the financial sector, an undertaking holding a participation in an undertaking in the financial sector, or an undertaking linked to an undertaking in the financial sector in the form of a consortium;

ii. at least one of the entities in the group or subgroup is an undertaking in the insurance sector and at least one of the entities in the group or subgroup is an undertaking in the banking sector or the investment services sector, and

iii. the consolidated and/or aggregate activities of the entities in the insurance sector and of the entities in the banking sector and investment services sector belonging to the group or subgroup are significant within the meaning of Article 452, § 3; or

b) where no regulated undertaking heads the group or subgroup:

i. the activity of the group or subgroup mainly occurs in the financial sector within the meaning of Article 452, § 2;

ii. at least one of the entities in the group or subgroup is an undertaking in the insurance sector and at least one of the entities in the group or subgroup is an undertaking in the banking sector or the investment services sector, and

iii. the consolidated and/or aggregate activities of the entities in the insurance sector and of the entities in the banking sector and investment services sector belonging to the group or subgroup are significant within the meaning of Article 452, § 3;

3° competent authorities: the national authorities in Member States that are tasked pursuant to laws or regulatory provisions with exercising supervision of regulated undertakings, whether on an individual or group-wide basis;

4° relevant competent authorities:

a) the competent authorities responsible for sectoral group supervision of regulated undertakings that form part of a financial conglomerate and in particular of the parent undertaking that heads a sector;

b) the coordinator, if it does not belong to the authorities referred to under a);

c) where applicable, other competent authorities concerned which are considered relevant by the authorities under a) and under b).

Until entry into force of the regulatory technical standards to be laid down in accordance with Article 21bis, paragraph 1, under b) of Directive 2002/87/EC, in the decision referred to in point c), consideration shall in particular be taken of the market share that the regulated undertaking of the financial conglomerate has in other Member States, in particular if this amounts to more than 5%, and of the interests of all regulated undertakings in the financial conglomerate established in
another Member State.

5° coordinator: the competent authority tasked with exercising the supplementary conglomerate supervision;


7° the European Financial Conglomerates Committee: the Committee established by Article 21 of Directive 2002/87/EC;

8° sectoral legislation: the present Law, the Law of 25 April 2014, [the Law of 25 October 2016], the Law of 3 August 2012 on certain forms of collective management of investment portfolios as well as the implementing decrees and regulations of these laws, with the exception of the provisions on the supplementary conglomerate supervision of regulated undertakings in a financial conglomerate; the equivalent national legislation and supervisory practices in other Member States;


9° intra-group transactions: transactions that are executed directly or indirectly, whether or not against payment, between regulated undertakings and other undertakings that form part of the same financial conglomerate or natural or legal persons with close links with these undertakings and that do or do not relate to the performance of a contractual obligation;

10° risk concentration: all positions taken by undertakings in a financial conglomerate with a loss potential, which are large enough to threaten the financial situation in general and the solvency in particular of the regulated undertakings in the financial conglomerate and that are caused by counterparty or credit risks, investment risk, insurance risks, market risk, other major risks, or a combination or interaction of these risks;

11° sectoral group supervision: the supervision of regulated undertakings pursuant to Chapter II of this Title, Articles 165 to 184 [or Articles 573 to 576 of the Law of 25 April 2014, Article 59 of the Law of 25 October 2016] or Article 241 of the Law on certain forms of collective management of investment portfolios, and the supervision pursuant to similar national legislation and regulations and supervisory practices in other Member States;


Article 341. With a view to a group supervision and supplementary conglomerate supervision that is as efficient as possible, the Bank may permit individual derogations from the provisions of this
Title and, depending on the circumstances, from the regulations laid down pursuant to Article 12bis, § 2, of the Law of 22 February 1998, insofar as these remain in line with the relevant provisions of, where applicable, Directive 2009/138/EC and Directive 2002/87/EC. In the latter case it shall inform the European Commission thereof.

Article 342. The Bank may, where applicable, further determine, by means of a regulation passed pursuant to Article 12bis, § 2, of the Law of 22 February 1998, the practical methods for group supervision as included in Chapter II of this Title and for supplementary conglomerate supervision as included in Chapter III of this Title.

Chapter II - Supervision of insurance or reinsurance companies that form part of an insurance or reinsurance group

Section I - Cases of application, scope and levels of group supervision

Subsection I - Cases of application of group supervision

Article 343. Insurance or reinsurance companies governed by Belgian law that form part of a group, shall be subject to group supervision in accordance with this Chapter, its implementing decrees and regulations and the implementing measures of Directive 2009/138/EC.

The group supervision shall be exercised on insurance or reinsurance companies governed by Belgian law:

1° which are participating undertakings in at least one insurance or reinsurance company in the European Economic Area or third country, in accordance with Sections I to IV of this Chapter;

2° the parent undertaking of which is an insurance holding company or a mixed financial holding company in the European Economic Area in accordance with Sections I to IV of this Chapter;

3° the parent undertaking of which is an insurance holding company or a mixed financial holding company from a third country or an insurance or reinsurance company from a third country, in accordance with Section V of this Chapter;

4° the parent undertaking of which is a mixed-activity insurance holding company in the European Economic Area or a third country in accordance with Section VI of this Chapter.

The group supervision is without prejudice to the supervision exercised on an individual basis on the insurance or reinsurance companies involved in the group supervision, unless provided for otherwise by or pursuant to this Chapter or the implementing measures of Directive 2009/138/EC. The Bank may also take account of the implications of the group supervision for determining the content and the methods of the individual supervision of insurance or reinsurance companies.

Article 344. In the cases referred to in Article 343, second paragraph, 1° and 2°, in which the participating insurance or reinsurance company, the insurance holding company or the mixed financial holding company in the European Economic Area is either a related undertaking of a regulated entity or a mixed financial holding company which is subject to supplementary supervision in accordance with Article 5, paragraph 2 of Directive 2002/87/EC, or is itself a regulated entity or a mixed financial holding company subject to the same supervision, the group supervisor, after consultation with the other supervisory authorities concerned, may decide not to exercise the supervision of risk concentrations referred to in Articles 388 and 389, or the supervision of intra-group transactions referred to in Articles 390 and 391, or both at the level of this participating insurance or reinsurance company, insurance holding company or mixed financial holding company.

Article 345. All provisions of this Chapter that apply at group level due to the position of the insurance holding company governed by Belgian law shall also apply at the level of a mixed...
financial holding company governed by Belgian law insofar as:

1° the insurance sector is the most important sector within the financial conglomerate;

2° at least one of the subsidiaries is an insurance or reinsurance company;

3° the Bank exercises both the group supervision and the supplementary conglomerate supervision.

For the application of the first paragraph, the size of the insurance sector is measured in accordance with Article 452, § 3.

For the application of this paragraph, the Bank in its capacity of group supervisor shall communicate with the supervisory authorities concerned which are tasked with the supervision of subsidiaries and obtain the agreement of the consolidating supervisor of the banking sector and the investment services sector.

In its capacity of group supervisor the Bank shall inform the EBA and EIOPA of the decision made pursuant to this Article.

**Article 346.** Without prejudice to Article 347, the Bank may, where an insurance or reinsurance company which heads up a financial conglomerate or where a mixed financial holding company governed by Belgian law is subject to provisions similar to those of Chapter II and Chapter III of this Title, in particular as regards risk-related supervision, decide in its capacity of group supervisor to apply to this mixed financial holding company only the relevant provisions of Chapter III of this Title.

For the application of this Article, the Bank in its capacity of group supervisor shall communicate with the supervisory authorities concerned which are tasked with the supervision of subsidiaries and, where applicable, with the consolidating supervisor of the banking sector and the investment services sector.

In its capacity of group supervisor the Bank shall inform the EBA and EIOPA of the decision made pursuant to this Article.

**Article 347.** Where an insurance or reinsurance company forms part of a financial conglomerate in which the insurance sector is the main sector and on which the Bank exercises both the group supervision and the supplementary conglomerate supervision, the Bank may decide, after consultation with the competent authorities within the meaning of Article 340, 3°, that the following measures shall apply:

1° with respect to the obligations and powers relating to risk-related supervision, as laid down in Articles 383 to 401 and 417 to 424, or parts thereof, the group as defined in Article 340, 1° that forms the financial conglomerate shall, by way of derogation, be taken into account as relevant scope for the group supervision;

2° for compliance with Articles 459 to 466, the group risks arising from intra-group transactions and risk concentration within the financial conglomerate shall be handled as an ancillary risk category. These risks shall be treated on a sufficiently specific basis with due regard to the guidelines or standards that the European Supervisory Authorities issue and to the quantitative or qualitative measures referred to in the aforementioned Articles;

3° for compliance with Article 467, the stress tests referred to can be integrated at the level of the financial conglomerate in the stress tests required based on Article 322.

The practical methods for the application of the first paragraph shall be laid down in writing in a coordinating regulation entered into with the relevant competent authorities within the meaning of Article 340, 4° within the college in the composition required based on Article 474.
In its capacity of group supervisor the Bank shall inform the EBA and EIOPA of the decision made pursuant to the first paragraph.

**Subsection II - Scope of the group supervision**

**Article 348.** Exercise of group supervision in accordance with this Chapter does not mean that supervision on an individual level must be exercised on the insurance or reinsurance companies of a third country, on the insurance holding company, on the mixed financial holding company or on the mixed-activity insurance holding company which fall under the group supervision, without prejudice to Section IV of this Chapter as regards insurance holding companies and mixed financial holding companies.

**Article 349.** § 1. The group supervisor may decide on a case-by-case basis not to include a company in the group supervision referred to in Article 343:

1° if the company is situated in a third country where there are legal impediments to the transfer of the necessary information, without prejudice to the provisions of Article 371;

2° if the company which should be included is of negligible interest with respect to the objectives of group supervision; or

3° if the inclusion of the company would be inappropriate or misleading with respect to the objectives of the group supervision.

However, where several companies of the same group, taken individually, may be excluded pursuant to the first paragraph, 2°, they must nevertheless be included where, collectively, they are of non-negligible interest.

§ 2. If the Bank in its capacity of group supervisor is of the opinion that an insurance or reinsurance company should not be included in the group supervision in the cases under § 1, first paragraph, 2° or 3°, it shall consult the other supervisory authorities concerned before making a decision.

**Article 350.** Where an insurance or reinsurance company is not included in the group supervision by virtue of Article 349, § 1, first paragraph, 2° or 3° or of a provision in the law of another Member State that provides for the transposition of Article 214, 2, first paragraph under b) or c) of Directive 2009/138/EC, the company governed by Belgian law heading up the group must provide all information to the supervisory authorities of the Member State in which this company not included in the group supervision is established, which in its opinion could facilitate the supervision of the insurance or reinsurance company concerned.

**Subsection III - Levels**

§ 1 - **Final parent undertaking at the European Economic Area level**

**Article 351.** Where the participating insurance or reinsurance company, insurance holding company or mixed financial holding company referred to in Article 343, second paragraph, 1° and 2° is itself a subsidiary of another insurance or reinsurance company, another insurance holding company or another mixed financial holding company with its registered office in the European Economic Area, the provisions laid down by or pursuant to Sections II to IV of this Chapter shall only apply at the level of the final parent insurance or reinsurance company in the European Economic Area, the final parent insurance holding company or the final parent mixed financial holding company in the European Economic Area.

**Article 352.** Where the ultimate parent insurance or reinsurance company at the European Economic Area level, the ultimate parent insurance holding company or the ultimate parent mixed financial holding company at the European Economic Area level referred to in Article 351 is a subsidiary of a company subject to supplementary supervision in accordance with Article 5,
paragraph 2 of Directive 2002/87/EC, the group supervisor, after consultation with the other supervisory authorities concerned, may decide not to exercise the supervision of risk concentrations referred to in Articles 388 and 389 at the level of this ultimate parent undertaking, parent insurance holding company or parent holding company or the supervision of intra-group transactions referred to in Articles 390 and 391, or both.

§ 2 - Ultimate parent undertaking at the Belgian level

Article 353. § 1. Without prejudice to Articles 351 and 352, where the registered office of the ultimate parent undertaking at the European Economic Area level referred to in Article 351 is not situated in Belgium, the Bank may, after consultation with the group supervisor and this ultimate parent undertaking at the European Economic Area level, decide to subject the insurance or reinsurance company, insurance holding company or mixed financial holding company referred to Article 343, second paragraph, 1° and 2° to the group supervision in accordance with the provisions established by or pursuant to this Chapter and by the implementing measures of Directive 2009/138/EC.

The insurance or reinsurance company, insurance holding company or mixed financial holding company referred to in the first paragraph shall be designated as the ultimate parent undertaking at the Belgian level.

The Bank shall explain its decision to the group supervisor and to the ultimate parent undertaking at the European Economic Area level.

§ 2. The Bank may not apply § 1 and may not enforce any decisions made pursuant to § 1 where the ultimate parent undertaking referred to in Article 351 at the European Economic Area level has obtained consent in accordance with Article 237 or 243 of Directive 2009/138/EC to subject its subsidiary, which is the ultimate parent undertaking at the Belgian level, to Articles 238 and 239 of Directive 2009/138/EC.

Article 354. § 1. Where it applies Article 353, the Bank may restrict the group supervision of the ultimate parent undertaking at the Belgian level to one or more of Subsections I, II, or III of Section II of this Chapter.

§ 2. Where the Bank decides to apply the provisions of Subsection 1 of Section II of this Chapter to the ultimate parent undertaking at the Belgian level, the choice of method to calculate solvency at a group level made in accordance with Article 220 of Directive 2009/138/EC by the group supervisor as regards the ultimate parent undertaking at the European Economic Area level referred to in Article 351 shall be recognized as final and applied by the Bank.

§ 3. Where the Bank decides to apply the provisions of Subsection 1 of Section II of this Chapter to the ultimate parent undertaking at the Belgian level, and the ultimate parent undertaking at the European Economic Area level referred to in Article 351 has obtained consent in accordance with Article 231 or Article 233, paragraph 5 of Directive 2009/138/EC to calculate the solvency capital requirement of the group and the solvency capital requirement of the insurance or reinsurance companies that form part of that group on the basis of an internal model, this decision shall be recognized as final and applied by the Bank.

Where the Bank is of the opinion in such a situation that the risk profile of the ultimate parent undertaking at the Belgian level clearly deviates from the internal model approved at the European Economic Area level, and as long as this undertaking does not sufficiently respond to the Bank’s concerns, it may decide to apply an add-on to the solvency capital requirement of the group that arises from the application of this model for the ultimate parent undertaking at the Belgian level or, in exceptional circumstances in which the application of such an add-on is not appropriate, require that this undertaking calculate the solvency capital requirement of the group using the standard formula.

The Bank shall explain the decisions made pursuant to the second paragraph to the group
supervisor and to the ultimate parent undertaking at the Belgian level.

§ 4. Where the Bank decides to apply the provisions of Subsection 1 of Section II of this Chapter to the ultimate parent undertaking at the Belgian level, this undertaking is prohibited from submitting an application in accordance with Article 382 to subject one or more of its subsidiaries to Articles 384 and 385.

Article 355. Where a supervisory authority informs the Bank in its capacity of group supervisor that it has applied Article 216, paragraph 1 or 4 of Directive 2009/138/EC, the Bank shall communicate this to the college of supervisors in accordance with Article 409, § 1.

§ 3. – Parent undertaking covering several Member States

Article 356. § 1. In the event of application of Article 353, the Bank may enter into an agreement with supervisory authorities of other Member States in which another affiliated ultimate parent undertaking is present at a national level, in order exercise group supervision at the level of a subgroup covering several Member States.

Where an agreement is entered into pursuant to the first paragraph, group supervision may not be exercised at the level of the ultimate parent undertakings at a national level which are present in Member States other than the Member State in which the subgroup referred to in the first paragraph is established.

§ 2. The Bank and supervisory authorities which are party to the agreement referred to in § 1 may agree to limit the group supervision at the level of the subgroup covering several Member States to one or more sections of Chapter II of Title III of Directive 2009/138/EC.

Where the Bank and the supervisory authorities that are party to the agreement referred to in § 1, decide to apply Articles 218 to 243 of Directive 2009/138/EC, the choice of method to calculate solvency at a group level made in accordance with Article 220 of Directive 2009/138/EC by the group supervisor as regards the ultimate parent undertaking at the European Economic Area level shall be recognized as final and applied by the Bank and the supervisory authorities which are party to the agreement referred to in § 1.

If the Bank and the supervisory authorities that are party to the agreement referred to in § 1, decide to apply Articles 218 to 243 of Directive 2009/138/EC, and if the ultimate parent undertaking at the European Economic Area level has received consent in accordance with Article 231 or Article 233, paragraph 5 of Directive 2009/138/EC to calculate the solvency capital requirement of the insurance or reinsurance companies that form part of the group using an internal model, that decision shall be recognized as final and applied by the Bank and the supervisory authorities that are party to the agreement referred to in § 1.

Where the Bank and the supervisory authorities that are party to the agreement referred to in § 1, in the case referred to in the third paragraph, are of the opinion that the risk profile of the subgroup covering several Member States, clearly deviates from the internal model approved at the European Economic Area level, and as long as this subgroup does not sufficiently respond to the concerns of the Bank and the supervisory authorities that are party to the agreement referred to in § 1, they may decide to apply an add-on to the solvency capital requirement of the subgroup covering several Member States that arises from the application of this model or, in exceptional circumstances in which the application of such an add-on is not appropriate, require that this subgroup covering several Member States calculate the solvency capital requirement of the subgroup using the standard formula.

The Bank shall explain the decisions made pursuant to the fourth paragraph, to the group supervisor and to the ultimate parent undertaking at the European Economic Area level.

§ 3. The Bank and the supervisory authorities that are party to the agreement entered into pursuant to this Article, shall explain the aforementioned agreement to the group supervisor and to the
ultimate parent undertaking at the European Economic Area level.

§ 4. The agreement referred to in this Article may not pertain to an ultimate parent undertaking at the Belgian level or at another national level which is subject, pursuant to Articles 237 or 243 of Directive 2009/138/EC to Articles 238 and 239 of Directive 2009/138/EC.

**Article 357.** Where a supervisory authority informs the Bank in its capacity of group supervisor that it has applied Article 217, paragraph 1 or Article 217, paragraph 2 juncto Article 216, 4, second paragraph of Directive 2009/138/EC, the Bank shall communicate this to the college of supervisors in accordance with Article 409, § 1.

**Section II - Domains of group supervision**

**Subsection I - Group solvency**

§ 1 - General provisions

**Article 358.** § 1. Supervision is exercised on group solvency in accordance with this Article and Subsection III of this Section.

§ 2. In the case referred to in Article 343, second paragraph, 1°, the participating insurance or reinsurance company shall ensure that there are eligible own funds available in the group at least equal to the group’s solvency capital requirement as calculated in accordance with Articles 361 to 380.

In the case referred to in Article 343, second paragraph, 2°, the insurance or reinsurance company that forms part of the group shall ensure that there are eligible own funds available in the group at least equal to the group’s solvency capital requirement as calculated in accordance with Article 381.

The requirements referred to in this paragraph shall be subject to supervision by the group supervisor in accordance with Section III of this Chapter.

§ 3. Participating insurance or reinsurance companies that find themselves in the case referred to in Article 343, second paragraph, 1°, and if no insurance or reinsurance company heads up the group, insurance holding companies or mixed financial holding companies that find themselves in the case referred to in Article 343, second paragraph, 2° shall have procedures in place to identify a deterioration in the requirements as referred to in the first paragraph and second paragraph respectively and to immediately notify the group supervisor when such a deterioration occurs.

As soon as it identifies that the group’s solvency capital requirement is no longer being complied with or that there is a risk that it will, in the next three months, no longer be complied with, the company referred to in the first paragraph shall inform the group supervisor thereof immediately.

Within two months after the identification referred to in the second paragraph, or the communication by the group supervisor of the fact that it has made such an identification, the company referred to in the first paragraph shall submit a realistic reorganization plan to the group supervisor for approval, that aims to restore the solvency capital requirement of the group within six months at the latest. After consulting with the supervisory authorities concerned, the group supervisor may extend this term by three months if it deems necessary. Article 510, §§ 2 to 3 shall apply mutatis mutandis.

**Article 359.** Where the Bank, in its capacity of group supervisor, is informed that the group’s solvency capital requirement is no longer being complied with or that there is a risk that it will, in the next three months, no longer be complied with, it shall communicate this to the supervisory authorities concerned within the college of supervisors, which will then analyse the group’s situation.
Article 360. § 1. The participating insurance or reinsurance company or, if no insurance or reinsurance company heads up the group, the insurance holding company or the mixed financial holding company shall make the calculations referred to in Article 358, § 2 at least once a year.

The information needed for the calculation and the results of the calculation shall be submitted to the group supervisor by the participating insurance or reinsurance company or, if no insurance or reinsurance company heads up the group, by the insurance holding company, or the insurance or reinsurance company belonging to the group which is designated by the group supervisor after consultation with the supervisory authorities concerned and with the group itself.

§ 2. The group’s solvency capital requirement shall continuously be monitored by the reinsurance company or, if no insurance or reinsurance company heads up the group, by the insurance holding company or the mixed financial holding company. Where the group’s risk profile significantly deviates from the assumptions on the basis of the last communicated solvency capital requirement, this solvency capital requirement shall immediately be re-calculated and communicated to the group supervisor.

If there are indications that the group’s risk profile has changed significantly since the date on which the last communication of the group’s solvency capital requirement occurred, the group supervisor may request a re-calculation of this solvency capital requirement.

§ 2 – Choice of calculation method of group solvency and general principles

Article 361. The calculation of the solvency at the level of the group of a participating insurance or reinsurance company shall be carried out in accordance with the technical principles set out in Articles 362 to 371 and according to calculation method 1 as referred to in Articles 372 to 376 and in the implementing measures of Directive 2009/138/EC.

By way of derogation from the first paragraph, after consultation with the supervisory authorities concerned and the group itself, the group supervisor may decide to apply to this group calculation method 2 as referred to in Articles 377 to 380 and in the implementing measures of Directive 2009/138/EC, or a combination of methods 1 and 2, where the exclusive application of method 1 would not be appropriate.

Article 362. § 1. The calculation of the group solvency of a participating insurance or reinsurance company shall take account of the proportional share held by the participating undertaking in its related undertakings.

For the purposes of the first paragraph, the proportional share shall comprise either of the following:

1° where method 1 is used to calculate group solvency, the percentages used for the preparation of the consolidated annual accounts; or

2° where method 2 is used to calculate group solvency, the proportion of the subscribed capital that is held, directly or indirectly, by the participating undertaking.

However, regardless of the method used to calculate group solvency, where the related undertaking is a subsidiary and does not have sufficient eligible own funds to cover its solvency capital requirement, the total solvency deficit of the subsidiary shall be taken into account.

By way of derogation from the third paragraph, where in the opinion of the supervisory authorities concerned, the responsibility of the parent undertaking owning a share of the capital is strictly limited to that share of the capital, the group supervisor may nevertheless allow for the solvency deficit of the subsidiary to be taken into account on a proportional basis.

§ 2. The group supervisor shall determine, after consulting the supervisory authorities concerned
and the group itself, the proportional share which shall be taken into account in the following cases:

1° where there are no capital ties between some of the undertakings in a group;

2° where the Bank or another supervisory authority has determined that the holding, directly or indirectly, of voting rights or capital in an undertaking qualifies as a participation because, in its opinion, a significant influence is effectively exercised over that undertaking;

3° where the Bank or another supervisory authority has determined that an undertaking is a parent undertaking of another because, in the opinion of the Bank or that other supervisory authority, it effectively exercises a dominant influence over that other undertaking.

Article 363. § 1. The double use of own funds eligible for covering the solvency capital requirement among the different insurance or reinsurance companies included in the calculation of group solvency of a participating insurance or reinsurance company shall not be allowed.

For that purpose, when calculating the group solvency and insofar as the calculation methods in Articles 372 to 380 and in the implementing measures of Directive 2009/138/EC do not provide therefor, the following amounts shall be excluded:

1° the value of any asset of the participating insurance or reinsurance company which represents the financing of own funds eligible for covering the solvency capital requirement of one of its related insurance or reinsurance companies;

2° the value of any asset of a related insurance or reinsurance company of the participating insurance or reinsurance company which represents the financing of own funds eligible for covering the solvency capital requirement of that participating insurance or reinsurance company;

3° the value of any asset of a related insurance or reinsurance company of the participating insurance or reinsurance company which represents the financing of own funds eligible for covering the solvency capital requirement of any other related insurance or reinsurance company of that participating insurance or reinsurance company.

§ 2. Without prejudice to § 1, the following may be included in the calculation of group solvency only insofar as they are eligible for covering the solvency capital requirement of the related undertaking concerned:

1° surplus funds falling under Article 145, second paragraph arising in a related life insurance or reinsurance company of the participating insurance or reinsurance company for which the group solvency is calculated;

2° any subscribed but not paid-up capital of a related insurance or reinsurance company of the participating insurance or reinsurance company for which the group solvency is calculated.

However, the following shall in any event be excluded from the calculation of group solvency:

1° subscribed but not paid-up capital which represents a potential obligation on the part of the participating undertaking;

2° subscribed but not paid-up capital of the participating insurance or reinsurance company which represents a potential obligation on the part of a related insurance or reinsurance company;

3° subscribed but not paid-up capital of a related insurance or reinsurance company which represents a potential obligation on the part of another related insurance or reinsurance company of the same participating insurance or reinsurance company.

§ 3. Where the Bank or another supervisory authority considers that certain own funds eligible for covering the solvency capital requirement of a related insurance or reinsurance company other than
those referred to in § 2 cannot effectively be made available to cover the solvency capital requirement of the participating insurance or reinsurance company for which the group solvency is calculated, those own funds may be included in the calculation only insofar as they are eligible for covering the solvency capital requirement of the related undertaking.

§ 4. The sum of the own funds referred to in §§ 2 and 3 shall not exceed the solvency capital requirement of the related insurance or reinsurance company.

§ 5. Any eligible own funds of a related insurance or reinsurance company of the participating insurance or reinsurance company for which the group solvency is calculated and the eligibility of which is subject to prior authorization from the Bank in accordance with Article 143 or from another supervisory authority in accordance with Article 90 of Directive 2009/138/EC, depending on the case, shall be included in the calculation only insofar as they have been duly authorized by the Bank or by the supervisory authority responsible for the supervision of that related undertaking, depending on the case.

Article 364. When calculating group solvency of a participating insurance or reinsurance company, no account shall be taken of any own funds eligible for covering the solvency capital requirement arising out of reciprocal financing between the participating insurance or reinsurance company and any of the following:

1° a related undertaking;

2° a participating undertaking;

3° another related undertaking of any of its participating undertakings.

When calculating group solvency, no account shall be taken of any own funds eligible for covering the solvency capital requirement of a related insurance or reinsurance company of the participating insurance or reinsurance company for which the group solvency is calculated where the own funds concerned arise out of reciprocal financing with any other related undertaking of that participating insurance or reinsurance company.

Reciprocal financing shall be deemed to exist at least where an insurance or reinsurance company, or any of its related undertakings, holds shares in, or makes loans to, another undertaking which, directly or indirectly, holds own funds eligible for covering the solvency capital requirement of the first undertaking.

Article 365. The value of the assets and liabilities shall be assessed in accordance with Article 123.

§ 3 – Application of the calculation methods of group solvency

Article 366. Where the insurance or reinsurance company has more than one related insurance or reinsurance company, the group solvency calculation of the participating insurance or reinsurance company shall be carried out by including each of those related insurance or reinsurance companies.

Where the related insurance or reinsurance company has its registered office in a Member State other than Belgium, the group solvency calculation of the participating insurance or reinsurance company shall take account, in respect of the related undertaking, of the solvency capital requirement and the own funds eligible to cover that requirement as laid down in that other Member State.

Article 367. § 1. When calculating the group solvency of the participating insurance or reinsurance company which holds a participation in a related insurance or reinsurance company, or in a third-country insurance or reinsurance company, through an intermediate insurance holding company or a mixed financial holding company, the situation of such an insurance holding company or mixed
financial holding company shall be taken into account.

For the sole purpose of that calculation, the intermediate insurance holding company or the mixed intermediate financial holding company shall be treated as if it were an insurance or reinsurance company subject to the rules laid down in Articles 151 to 188 in respect of the solvency capital requirement and were subject to the same conditions as are laid down in Articles 140 to 150 in respect of own funds eligible for covering the solvency capital requirement.

§ 2. Where an intermediate insurance holding company or a mixed intermediate financial holding company holds subordinated debt or other eligible own funds in the case set out in § 1, which are subject to limitation in accordance with Article 150, they shall be recognized as eligible own funds only up to the amounts calculated by application of the limits set out in Article 150 to the total eligible own funds at group level as compared to the solvency capital requirement at group level.

Any eligible own funds of an intermediate insurance holding company or of a mixed intermediate financial holding company which would require prior authorization from the Bank in accordance with Article 143 or from another supervisory authority in accordance with Article 90 of Directive 2009/138/EC if they were held by an insurance or reinsurance company, may be included in the calculation of the group solvency only insofar as they have been duly authorized by the group supervisor.

Article 368. § 1. When calculating, in accordance with Articles 377 to 380, the group solvency of an insurance or reinsurance company which is a participating undertaking in a third-country insurance or reinsurance company, the latter shall, solely for the purposes of that calculation, be treated as a related insurance or reinsurance company.

Where the third country in which that company has its registered office makes it subject to authorization and imposes on it a solvency regime at least equivalent to that laid down in Articles 75 to 135 of Directive 2009/138/EC, the calculation of group solvency shall take into account, as regards that undertaking, the solvency capital requirement and the own funds eligible to cover that requirement as laid down by the third country concerned.

§ 2. If the European Commission has not established a delegated act pursuant to Article 227, paragraph 4 or 5 of Directive 2009/138/EC to recognize the equivalence of the solvency regime of a third country with that of Directive 2009/138/EC, the group supervisor shall verify, at the request of the participating undertaking or at its own initiative, whether the regime of that third country is at least equivalent.

For this purpose, the group supervisor, assisted herein by EIOPA, shall consult the supervisory authorities concerned before making a decision on equivalence. This decision shall be made by virtue of the criteria established pursuant to Article 227, paragraph 3 of Directive 2009/138/EC.

The group supervisor shall make no decision as regards a third country which conflicts with any decisions that may have been made at an earlier stage as regards that third country, unless this is necessary as a result of major changes in the supervisory system established in Articles 75 to 135 of Directive 2009/138/EC and in the supervisory system of the third country.

§ 3. Where the European Commission has established a delegated act pursuant to Article 227, paragraph 5 of Directive 2009/138/EC in which the supervisory system of a third country is temporarily classed as equivalent, that third country shall be deemed equivalent for the application of § 1, second paragraph.

Article 369. If the Bank does not agree with the decision made pursuant to Article 227, paragraph 2 of Directive 2009/138/EC, the Bank may submit the matter to EIOPA to ask for its assistance pursuant to Article 19 of Regulation 1094/2010 within three months after the group supervisor notified of the decision.

Article 370. When calculating the group solvency of an insurance or reinsurance company which is
a participating undertaking in a credit institution, investment firm or financial institution, the participating insurance and reinsurance company may apply methods 1 or 2 set out in Annex V mutatis mutandis.

However, method 1 set out in that Annex shall be applied only where the group supervisor is satisfied as to the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation. The method chosen shall be applied in a consistent manner over time.

The group supervisor may also, at the request of the participating undertaking or of its own accord, deduct the participation referred to in the first paragraph from the own funds eligible for covering the group solvency of the participating undertaking.

**Article 371.** Where, depending on the case, the Bank or another supervisory authority does not have the information necessary for calculating the group solvency of an insurance or reinsurance company, concerning a related undertaking, the book value of that undertaking in the participating insurance or reinsurance company shall be deducted from the own funds eligible for covering the group solvency.

In that case, the unrealized gains connected with such participation shall not be recognized as own funds eligible for covering the group solvency.

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§ 4 – *Accounting consolidation-based method for the calculation of group solvency*

**Article 372.** The calculation of the group solvency of the participating insurance or reinsurance company on the basis of the accounting consolidation-based calculation method or ‘method 1 for the calculation of group solvency’ shall be carried out on the basis of the consolidated accounts.

The group solvency of the participating insurance or reinsurance company is the difference between the following:

1° the own funds eligible for covering the solvency capital requirement, calculated on the basis of consolidated data;

2° the solvency capital requirement at group level calculated on the basis of consolidated data.

The rules laid down in Articles 140 to 150 and in Articles 151 to 188 shall apply to the calculation of the own funds eligible for covering the solvency capital requirement and of the solvency capital requirement at group level calculated based on consolidated data.

**Article 373.** The solvency capital requirement at group level based on consolidated data of the participating insurance or reinsurance company, or the ‘consolidated group solvency capital requirement’, shall be calculated on the basis of the standard formula or of an approved internal model. This calculation must be consistent with the general principles contained in Articles 151 and 152 and in Articles 153 to 166 if the standard formula is used, or in Articles 167 to 188 if an internal model is used, as well as in the implementing measures of Directive 2009/138/EC.

The consolidated group solvency capital requirement shall at least be equal to the sum of the following:

1° the minimum capital requirement as referred to in Article 189 of the participating insurance or reinsurance company; and

2° the proportional share of the minimum capital requirement of the related insurance and reinsurance companies.

That minimum shall be covered by eligible basic own funds as determined in Article 150, § 4.
For the purposes of determining whether such eligible own funds qualify to cover the minimum consolidated group solvency capital requirement, the principles set out in §§ 2 and 3 shall apply mutatis mutandis to this Subsection. Article 511 shall apply mutatis mutandis.

**Article 374.** § 1. In the case of an application for permission to calculate the consolidated group solvency capital requirement, as well as the solvency capital requirement of insurance or reinsurance companies in the group on the basis of an internal model, submitted by an insurance or reinsurance company and its related undertakings, or jointly by the related undertakings of an insurance holding company, the Bank and the supervisory authorities concerned shall cooperate to decide whether or not to grant that permission and to determine the terms and conditions, if any, to which such permission is subject.

An application as referred to in the first paragraph shall be submitted to the group supervisor.

The group supervisor shall inform the other supervisory authorities concerned forthwith.

The Bank shall do everything within its power to reach a joint decision on the application with the supervisory authorities concerned within six months after the date of receipt by the group supervisor of the full application. The group supervisor shall provide the applicant with a document stating in detail the grounds on which this joint decision is based.

§ 2. In the absence of a joint decision within six months after receipt by the group supervisor of the full application, the group supervisor shall make its own decision on the application, without prejudice to § 3.

In making its decision, the group supervisor shall duly take into account the views and reservations expressed by the supervisory authorities concerned within the six-month term.

The group supervisor shall provide the applicant and the supervisory authorities concerned with a document stating in detail the grounds on which its decision is based.

That decision shall be recognized as final and applied by the supervisory authorities concerned.

§ 3. During the six-month period referred to in § 1, fourth paragraph, and as long as no joint decision has been made, the Bank may submit the matter to EIOPA in accordance with Article 19 of Regulation No 1094/2010.

The group supervisor shall suspend its decision pending any decision by EIOPA in accordance with Article 19, paragraph 3 of the aforementioned Regulation; it shall then make its decision in accordance with that of EIOPA. That decision shall be recognized as final and applied by the Bank and the supervisory authorities concerned.

EIOPA makes its decision within one month.

If the decision proposed by the panel pursuant to Article 41, paragraphs 2 and 3, and Article 44, 1, third paragraph of Regulation No 1094/2010 is rejected, the group supervisor shall make a final decision. That decision shall be recognized as final and applied by the Bank and the supervisory authorities concerned. The six-month term is deemed the conciliation period within the meaning of Article 19, paragraph 2 of the aforementioned Regulation.

**Article 375.** Where for the purposes of Article 374 the Bank is of the opinion that the risk profile of an insurance or reinsurance company that comes under its supervision deviates significantly from the assumptions underlying the internal model approved at the group level of the participating insurance or reinsurance company, and as long as this company does not sufficiently respond to the Bank’s concerns, it may decide, in accordance with Article 323, to apply an add-on to the solvency capital requirement arising from the application of this internal model for this company.
In exceptional circumstances in which the application of the add-on referred to in the first paragraph is not appropriate, the Bank may require that the company concerned calculate its solvency capital requirement on the basis of the standard formula referred to in Articles 151 to 166. In accordance with Article 323, § 2, the Bank may apply a capital add-on to the solvency capital requirement of the insurance or reinsurance company concerned arising from the application of the standard formula.

The Bank shall explain any decision made as referred to in the first and second paragraphs to the insurance or reinsurance company and the other members of the college of supervisors.

Article 376. In determining whether the consolidated group solvency capital requirement appropriately reflects the risk profile of the participating insurance or reinsurance company’s group, the Bank, in its capacity of group supervisor, shall pay particular attention to any case where the circumstances referred to in Article 323, § 2 may arise at group level, in particular where:

1° a specific risk existing at group level would not be sufficiently covered by the standard formula or the internal model used, because it is difficult to quantify;

2° a capital add-on to the solvency capital requirement of the related insurance or reinsurance companies is imposed, depending on the case, by the Bank or by another supervisory authority, in accordance with Article 323 or 374, or Article 37 of Directive 2009/138/EC.

Where the risk profile of the group is not adequately reflected, a capital add-on to the consolidated group solvency capital requirement may be imposed.


§ 5 – Deduction and aggregation method for the group solvency calculation

Article 377. § 1. In the case of application of the deduction and aggregation method or ‘method 2 for the calculation of group solvency’, the group solvency of the participating insurance or reinsurance company shall be the difference between the following:

1° the aggregated group eligible own funds, as provided for in § 2; and

2° the value in the participating insurance or reinsurance company of the related insurance or reinsurance companies and the aggregated group solvency capital requirement, as provided for in § 3.

§ 2. The aggregated group eligible own funds are the sum of the following:

1° the own funds eligible for the solvency capital requirement of the participating insurance or reinsurance company; and

2° the proportional share of the participating insurance or reinsurance company in the own funds eligible for the solvency capital requirement of the related insurance or reinsurance companies.

§ 3. The aggregated group solvency capital requirement is the sum of the following:

1° the solvency capital requirement of the participating insurance or reinsurance company;

2° the proportional share of the solvency capital requirement of the related insurance or reinsurance companies.

Article 378. Where the participation in the related insurance or reinsurance companies consists, wholly or in part, of an indirect ownership, the value in the participating insurance or reinsurance
company of the related insurance or reinsurance companies shall incorporate the value of such indirect ownership, taking into account the relevant successive interests, and the items referred to in Article 377, § 2, 2°, and § 3, 2°, shall include the corresponding proportional shares, respectively, of the own funds eligible for covering the solvency capital requirement of the related insurance or reinsurance companies and of the solvency capital requirement of the related insurance or reinsurance companies.

Article 379. If an insurance or reinsurance company and its related undertakings, or the related undertakings of an insurance holding company or a mixed financial holding company jointly submit an application for permission to calculate the solvency capital requirement of insurance or reinsurance companies in the group on the basis of an internal model, Articles 374 and 375 shall apply mutatis mutandis.

Article 380. In determining whether the aggregated group solvency capital requirement, calculated as set out in Article 377, § 3, appropriately reflects the risk profile of the participating insurance or reinsurance company’s group, the Bank and the supervisory authorities concerned shall pay particular attention to any specific risks existing at group level which would not be sufficiently covered, because they are difficult to quantify.

Where the risk profile of the group deviates significantly from the assumptions underlying the aggregated group solvency capital requirement, an add-on to the aggregated group solvency capital requirement may be imposed.


§ 6 – Group solvency calculation for insurance or reinsurance companies that are subsidiaries of an insurance holding company or a mixed financial holding company

Article 381. Where the insurance or reinsurance company is a subsidiary of an insurance holding company or a mixed financial holding company, the solvency of the group at the level of the insurance holding company or the mixed financial holding company shall be calculated in accordance with the provisions of this Subsection and the implementing measures of Directive 2009/138/EC.

For the purpose of the calculation referred to in the first paragraph, the parent undertaking shall be treated as if it were an insurance or reinsurance company subject to the rules laid down in Articles 151 to 188 as regards the solvency capital requirement and subject to the same conditions as laid down in Articles 140 to 150 as regards the own funds eligible for covering the solvency capital requirement.

§ 7 – Solvency calculation of groups with centralized risk management

Article 382. Articles 384 and 385 shall apply to each insurance or reinsurance company that is a subsidiary of an insurance or reinsurance company or the subsidiary of an insurance holding company or the subsidiary of a mixed financial holding company, if all of the following conditions are met:

1° the subsidiary, in relation to which the group supervisor has not made a decision under Article 349, is included in the group supervision carried out by the group supervisor at the level of the parent undertaking in accordance with Title III of Directive 2009/138/EC.

2° the risk-management processes and internal control mechanisms of the parent undertaking cover the subsidiary and the parent undertaking satisfies the Bank regarding the prudent management of the subsidiary insurance or reinsurance company;

3° the parent undertaking has received the consent referred to in Article 397;
4° the parent undertaking has received the consent referred to in Article 405;

5° the parent undertaking has submitted the application for permission to be subject to Articles 384 and 385 and this has been granted following the procedure in Article 383.

**Article 383.** § 1. In the case of applications for permission for an insurance or reinsurance company that is the subsidiary of an insurance or reinsurance company or the subsidiary of an insurance or reinsurance holding company to be subject to the rules laid down in Articles 384 and 385, the Bank shall work together within the college of supervisors, in consultation with the supervisory authorities concerned, to decide whether or not to grant the permission sought and to determine the other terms and conditions, if any, to which such permission should be subject.

An application as referred to in the first paragraph shall be submitted to the Bank. The Bank shall inform the supervisory authorities in the college of supervisors and provide them with the full application forthwith.

§ 2. The Bank shall do everything within its power to reach a joint decision on the application within three months from the date of receipt of the complete application by all supervisory authorities within the college of supervisors.

Where the Bank and the supervisory authorities concerned have made a joint decision as referred to in the first paragraph, the Bank shall provide the application with the decision and detail the reasons upon which it is based. The joint decision shall be recognized as final and applied by the Bank and the supervisory authorities concerned.

§ 3. In the absence of a joint decision within three months after receipt of the full application by the supervisors in the college of supervisors, the group supervisor shall make its own decision on the application, without prejudice to § 4.

The group supervisor shall duly take into account the views and reservations that the Bank and the supervisory authorities of the Member States where a subsidiary has its registered office have expressed and the reservations expressed by the other supervisory authorities in the college of supervisors.

The decision shall fully detail the grounds on which it is based and an explanation of every substantial deviation from the reservations of the Bank or of the supervisory authorities. The group supervisor shall provide a copy of the decision to the Bank and to the supervisory authorities concerned. That decision shall be recognized as final and applied by the Bank and the supervisory authorities concerned.

§ 4. During the three-month period referred to in § 2, and as long as no joint decision has been made, the Bank may submit the matter to EIOPA in accordance with Article 19 of Regulation No 1094/2010.

The group supervisor shall suspend its decision pending any decision by EIOPA in accordance with Article 19, paragraph 3 of the aforementioned Regulation; it shall then make its decision in accordance with that of EIOPA. That decision shall be recognized as final and applied by the Bank and the supervisory authorities concerned.

EIOPA makes its decision within one month.

If the decision proposed by the panel pursuant to Article 41, paragraphs 2 and 3, and Article 44, 1, third paragraph of Regulation No 1094/2010 is rejected, the group supervisor shall make a final decision. That decision shall be recognized as final and applied by the Bank and the supervisory authorities concerned. The three-month term is deemed the conciliation period within the meaning of Article 19, paragraph 2 of the aforementioned Regulation.
**Article 384.** § 1. Without prejudice to Articles 374 and 375, the solvency capital requirement of the subsidiary insurance or reinsurance company for which the application referred to in Article 383 has been granted, shall be calculated in accordance with this Article.

§ 2. Where the solvency capital requirement of the subsidiary insurance or reinsurance company referred to in § 1 is calculated on the basis of an internal model approved at the group level in accordance with Articles 374 and 375, and where the Bank is of the opinion that the risk profile of the company under its supervision deviates significantly from this model, and as long as this company does not properly address the concerns of the Bank, the Bank may propose to apply an add-on in the cases referred to in Article 323 to the solvency capital requirement that arises from the application of this model for this subsidiary, or, in exceptional circumstances in which the application of such an add-on would not be appropriate, to require this company to calculate its solvency capital requirement based on the standard formula as referred to in Articles 151 to 166.

The Bank shall discuss this proposal in the college of supervisors and communicate the grounds for such a proposal to the subsidiary insurance or reinsurance company and the college of supervisors.

§ 3. Where the solvency capital requirement of the subsidiary insurance or reinsurance company referred to in § 1 is calculated on the basis of the standard formula referred to in Articles 151 to 166 and where the Bank is of the opinion that the risk profile of that company deviates significantly from the assumptions underlying the standard formula and as long as this company does not properly address the concerns of the Bank, the Bank may in exceptional circumstances propose that the company replace a subset of the parameters used in the standard formula calculation, with parameters specific to that company when calculating the life, non-life and health underwriting risk modules, as set out in Article 166 or in the cases referred to in Article 323, to apply an add-on to the solvency capital requirement of that company.

The Bank shall discuss this proposal in the college of supervisors and communicate the grounds for such a proposal to the subsidiary insurance or reinsurance company and the college of supervisors.

§ 4. The Bank shall do everything in its power to come to an agreement with the supervisory authorities in the college of supervisors on that proposal which it has made in accordance with § 1 or § 2, or on other possible measures.

That decision shall be recognized as final and applied by the Bank and the supervisory authorities concerned.

§ 5. During a period of one month after the proposal as referred to in § 1 or § 2 was drafted, and as long as no agreement has been made in the college of supervisors, the Bank may, if it disagrees with the group supervisor, submit the matter to EIOPA to ask for its assistance pursuant to Article 19 of Regulation 1094/2010. EIOPA makes its decision within a month after it has been submitted the matter. The one-month term is deemed the conciliation period within the meaning of Article 19, paragraph 2 of the Regulation 1094/2010.

The Bank shall suspend its decision pending any decision by EIOPA in accordance with Article 19 of Regulation 1094/2010; it shall then make its decision in accordance with that of EIOPA.

That decision shall be recognized as final and applied by the Bank and the supervisory authorities concerned.

The decision shall fully detail the grounds on which it is based and shall be submitted to the subsidiary insurance or reinsurance company and to the college of supervisors.

**Article 385.** § 1. In the event of non-compliance by a subsidiary insurance or reinsurance company for which the application referred to Article 383 was submitted with the solvency capital requirement and without prejudice to Article 510, the Bank shall, forthwith, forward to the college of supervisors the reorganization plan submitted by the subsidiary in order to achieve, within six
months from the observation of non-compliance with the solvency capital requirement, the reestablishment of the level of eligible own funds or the reduction of its risk profile to ensure compliance with the solvency capital requirement.

The Bank shall do everything within its power to reach an agreement on the proposal with the supervisory authorities in the college of supervisors regarding the proposal it has made with a view to the approval of the reorganization plan, within four months from the date on which non-compliance with the solvency capital requirement was first observed.

In the absence of such agreement, the Bank shall decide whether the reorganization plan should be approved, taking due account of the views and reservations of the other supervisory authorities within the college of supervisors, without prejudice to the fourth paragraph.

During the four-month period referred to in the second paragraph, and as long as no agreement has been made in the college of supervisors, the Bank may, if it disagrees with the group supervisor on approval of the reorganization plan, in particular on the extension of the recovery period, submit the matter to EIOPA to ask for its assistance pursuant to Article 19 of Regulation 1094/2010. EIOPA makes its decision within a month after it has been submitted the matter. The four-month term is deemed the conciliation period within the meaning of Article 19, paragraph 2 of the Regulation 1094/2010.

The Bank shall suspend its decision pending any decision by EIOPA in accordance with Article 19 of Regulation 1094/2010; it shall then make its decision in accordance with that of EIOPA.

That decision shall be recognized as final and applied by the Bank and the supervisory authorities concerned.

The decision shall fully detail the grounds on which it is based and shall be submitted to the subsidiary insurance or reinsurance company and to the college of supervisors.

§ 2. If, in accordance with Article 510, the Bank identifies a deterioration in the financial circumstances of a subsidiary insurance or reinsurance company referred to in § 1, it shall notify the college of supervisors forthwith of the measures it proposes to take. Except in emergency situations, the measures to be taken should be discussed in the college of supervisors.

The Bank shall do everything within its power to come to an agreement with the supervisory authorities in the college of supervisors on the measures to be taken which it has proposed, within one month after notification.

In the absence of such agreement, the Bank shall decide whether the proposed measures should be approved, taking due account of the views and reservations of the other supervisory authorities within the college of supervisors, without prejudice to the fourth paragraph.

Except in emergencies, during the one-month period referred to in the second paragraph, and as long as no agreement has been made in the college of supervisors, the Bank, if it disagrees with the group supervisor on approval of the measures proposed in accordance with the first paragraph, may submit the matter to EIOPA to ask for its assistance pursuant to Article 19 of Regulation 1094/2010. EIOPA makes its decision within a month after it has been submitted the matter. The one-month term is deemed the conciliation period within the meaning of Article 19, paragraph 2 of the Regulation 1094/2010.

The Bank shall suspend its decision pending any decision by EIOPA in accordance with Article 19 of Regulation 1094/2010; it shall then make its decision in accordance with that of EIOPA.

That decision shall be recognized as final and applied by the Bank and the supervisory authorities concerned.

The decision shall fully detail the grounds on which it is based and shall be submitted to the
subsidiary insurance or reinsurance company and to the college of supervisors.

§ 3. In the event of non-compliance with the minimum capital requirement of a subsidiary insurance or reinsurance company referred to in § 1, and without prejudice to Article 511, the Bank shall forward the short-term financing agreement submitted by the subsidiary insurance or reinsurance company to the college of supervisors forthwith in order to, within three months from the first identification that the minimum capital requirement was not complied with, restore the level of eligible own funds for covering the minimum capital requirement or reduce its risk profile so that the minimum capital requirement is complied with. The college of supervisors must also be informed of all measures taken to supervise compliance with the minimum capital requirement at the level of the subsidiary.

**Article 386.** In accordance with Article 239, paragraph 4 of Directive 2009/138/EC, the Bank may, in its capacity of group supervisor, and if it disagrees with the items referred to in Article 239(4), first paragraph, of Directive 2009/138/EC, with the supervisory authority of a subsidiary insurance or reinsurance company with its registered office in another Member State for which the application referred to in Article 237 is granted, submit the matter to EIOPA to ask for its assistance pursuant to Article 19 of Regulation No 1094/2010.

**Article 387.** § 1. The provisions in Articles 384 and 385 shall no longer apply if:

1° the condition in Article 382, 1° is no longer complied with;

2° the condition in Article 382, 2° is no longer complied with and the group fails to comply with these conditions again within a reasonable period of time;

3° the conditions in Article 382, 3° and 4° are no longer complied with.

If the group supervisor decides, in the case referred to in the first paragraph, 1°, after consulting with the college of supervisors, no longer to include the subsidiary in its group supervision, it shall immediately inform the Bank and the parent undertaking thereof.

For the purposes of Article 382, 2°, 3° and 4°, it is the responsibility of the parent undertaking to ensure that the conditions are continuously complied with. If the conditions are not complied with, it shall inform the Bank and the group supervisor thereof forthwith. The parent undertaking shall submit a plan for complying with the conditions again within a reasonable period of time.

Without prejudice to the third paragraph, the group supervisor shall verify, at least once a year, and of its own accord whether the conditions of Article 382, 2°, 3° and 4° continue to be complied with. The group supervisor shall also perform such verification upon request from the Bank, where the latter has significant concerns related to the ongoing compliance with those conditions.

Where the verification performed identifies weaknesses, the group supervisor shall require the parent undertaking to present a plan to restore compliance within an appropriate period of time.

Where, after consulting the college of supervisors, the group supervisor determines that the plan referred to in the third or fifth paragraph is insufficient or subsequently that it is not being implemented within the agreed period of time, the group supervisor shall conclude that the conditions referred to in Article 382, 2°, 3° and 4° are no longer complied with and it shall immediately inform the Bank.

§ 2. The regime provided for in Articles 384 and 385 shall be applicable again where the parent undertaking submits a new application and obtains a favourable decision in accordance with the procedure set out in Article 382.
**Subsection II – Risk concentration and intra-group transactions**

### § 1 – Risk concentration

**Article 388.** § 1. Supervision of the risk concentration at the level of the insurance or reinsurance group shall be exercised in accordance with this Article and Article 389, and in accordance with Subsection III of this Section.

§ 2. Insurance or reinsurance companies, insurance holding companies and mixed financial holding companies shall report regularly and at least once a year at group level to the group supervisor any significant risk concentration at the level of the group, if Article 352 applies.

The necessary information shall be submitted to the group supervisor by the participating insurance or reinsurance company or, if no insurance or reinsurance company heads up the group, by the insurance holding company, mixed financial holding company or the insurance or reinsurance company in the group identified by the group supervisor after consulting the other supervisory authorities concerned and the group.

The risk concentrations referred to in the first paragraph shall be subject to prudential supervision by the group supervisor pursuant to Section III of this Chapter.

**Article 389.** The group supervisor, after consulting the other supervisory authorities concerned and the group, shall identify the types of risks that must be reported in all circumstances.

When defining or giving their opinion about the type of risks, the group supervisor and the other supervisory authorities concerned shall take into account the specific group and risk-management structure of the group.

In order to identify significant risk concentration to be reported, the group supervisor, after consulting the other supervisory authorities concerned and the group, shall impose appropriate thresholds based on solvency capital requirements, technical provisions, or both.

When reviewing the risk concentrations, the group supervisor shall in particular monitor the possible risk of contagion in the group, the risk of a conflict of interests, and the level or volume of risks.

### § 2 – Intra-group transactions

**Article 390.** § 1. Supervision of intra-group transactions shall be exercised in accordance with this Article and Article 391, and in accordance with Subsection III of this Section.

§ 2. Insurance or reinsurance companies, insurance holding companies and mixed financial holding companies shall report regularly and at least once a year to the group supervisor all significant intra-group transactions by insurance and reinsurance companies within a group, including those performed with a natural person with close links to a company in the group, unless Article 352 applies.

In addition, very significant intra-group transactions shall be reported as soon as possible.

The necessary information shall be submitted to the group supervisor by the participating insurance or reinsurance company, or, where the group is not headed by an insurance or reinsurance company, by the insurance holding company, mixed financial holding company or by the insurance or reinsurance company in the group identified by the group supervisor after consulting the other supervisory authorities concerned and the group.

The intra-group transactions shall be subject to prudential supervision by the group supervisor pursuant to Section III of this Chapter.
Article 391. The group supervisor, after consulting the other supervisory authorities concerned and the group, shall identify the type of intra-group transactions that must be reported in all circumstances.

When determining, or providing an opinion on the types of intra-group transactions, the group supervisor and the supervisory authorities concerned shall take into account the specific group- and risk-management structure of the group.

For the purposes of defining intra-group transactions that should be reported, the group supervisor, after consultation with the supervisory authorities concerned and the group, shall establish appropriate thresholds based on the solvency capital requirement, the technical provisions, or both.

When reviewing intra-group transactions, the group supervisor shall in particular monitor the possible risk of contagion in the group, the risk of a conflict of interests, and the level or volume of risks.

Subsection III - Governance system of the insurance or reinsurance group

§ 1 - General provisions

Article 392. The participating insurance or reinsurance companies and the insurance or reinsurance companies which have an insurance holding company or a mixed financial holding company in the European Economic Area as a parent undertaking must comply at group level with the requirements of Section VII, Chapter II, Title I of this Book and Section III, Chapter III, Title II of this Book so that these rules, procedures and mechanisms that they must set up pursuant to these provisions show consistence and are properly integrated, the influence of the companies subject to the supervision of the insurance or reinsurance group can be determined and all data and information needed for the exercise of group supervision can be mutually exchanged and the group supervisor’s requests for information can be responded to. They shall also enforce these rules, procedures and mechanisms on their subsidiaries that do not come under the present Law. These rules, procedures and mechanisms shall also be consistent and well-integrated and these subsidiaries must also be able to provide all data and information relevant for the group supervision.

Article 393. The insurance or reinsurance company with an insurance holding company or a mixed financial holding company as a parent undertaking with its registered office established outside Belgium shall supervise compliance by its parent undertaking with the obligations relating to group supervision arising for that insurance holding company or mixed financial holding company from Directive 2009/138/EC and its implementing measures.

The insurance or reinsurance company must obtain cooperation from the parent undertaking referred to in the first paragraph for setting up an appropriate management structure that contributes to the group supervision being exercised as efficiently as possible and shall ensure that the influence of the parent undertaking does not conflict with the Companies Code and its implementing decrees and is without prejudice to the supervision on an individual basis or to the group-level supervision that applies to the insurance or reinsurance company.

In the governance memorandum required pursuant to Article 42, § 3, as regards group-level supervision, it must be explained how the provisions of the first and second paragraphs are complied with.

§ 2 – Risk management and internal control

Article 394. Without prejudice to Article 392, the risk management and internal control systems and reporting procedures shall be implemented consistently in all the companies included in the group supervision pursuant to this Chapter so that those systems and procedures can be controlled at the level of the group.
Without prejudice to Article 392, the group’s internal control system shall include at least the following:

1° adequate mechanisms as regards group solvency to identify and measure all material risks incurred and to appropriately relate eligible own funds to risks;

2° sound reporting and accounting procedures to monitor and manage the intra-group transactions and the risk concentration.

Article 395. The systems and reporting procedures referred to in Articles 392 and 394 shall be subject to prudential supervision by the group supervisor, in accordance with Section III of this Chapter.

§ 3 - Group Own Risk and Solvency Assessment

Article 396. The participating insurance or reinsurance company or, if no insurance or reinsurance company heads up the group, the insurance holding company or the mixed financial holding company, shall conduct the group-level assessment prescribed by Article 91.

Where the calculation of the solvency at the level of the group is carried out in accordance with method 1, as referred to in Articles 372 and 373, the participating insurance or reinsurance company, the insurance holding company or the mixed financial holding company shall provide to the group supervisor a proper understanding of the difference between the sum of the solvency capital requirements of all the related insurance or reinsurance companies of the group and the group consolidated solvency capital requirement.

Article 397. The participating insurance or reinsurance company, insurance holding company or the mixed financial holding company may, if the group supervisor gives its consent, conduct all the assessments prescribed by Article 91 at the level of the group and at the level of any subsidiary in the group at the same time, and may produce a single document covering all the assessments.

Before giving its consent pursuant to the first paragraph, the group supervisor shall consult the members of the college of supervisors, and duly take into consideration their views and reservations.

The consent given by the group supervisor pursuant to the first paragraph does not discharge the subsidiary concerned from its obligation to ensure that the requirements of Article 91 are complied with.

In the event of application of this Article, the participating insurance or reinsurance company, insurance holding company or mixed financial holding company shall provide the single document at the same time to all the supervisory authorities concerned.

Article 398. The group-level own risk and solvency assessment shall be subject, pursuant to Section III of this Chapter, to prudential supervision by the group supervisor.

Subsection IV - Publication of information

§ 1 - Group solvency and financial condition report

Article 399. The participating insurance or reinsurance company or, if no insurance or reinsurance company heads up the group, the insurance holding company or the mixed financial holding company shall annually publish a report on the group-level solvency and financial condition.

This report shall contain the information required pursuant to Regulation 2015/35 and the other implementing measures of Directive 2009/138/EC. This information shall be published in full or, as long as the group supervisor so allows, by reference to information that is equivalent in nature
and tenor and that is published pursuant to other legal or regulatory provisions.

Article 400. § 1. In the case of major developments that have a significant influence on the relevance of the information included in the group solvency and financial condition report, the participating insurance or reinsurance company or, if no insurance or reinsurance company heads up the group, the insurance holding company or the mixed financial holding company shall publish appropriate information on the nature and effects of that major development.

§ 2. For the purposes of § 1, at least the following shall be regarded as major developments: significant non-compliance with the solvency capital requirement of the group is observed and the group supervisor does not obtain a realistic reorganization plan within two months after the date when non-compliance was observed.

In the case referred to in the first paragraph, the company shall immediately disclose the amount the non-compliance relates to and provide an explanation as to the origin and consequences thereof, including any corrective measures taken. Where, in spite of a reorganization plan initially considered to be realistic, significant non-compliance with the solvency capital requirement of the group has not been resolved six months after its observation, the amount of non-compliance shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measures taken as well as any further remedial measures planned.

Article 401. In addition to all the information that must be published, or the explanations on the solvency and financial condition of the group pursuant to Articles 383 and 384, the participating insurance or reinsurance company or, if no insurance or reinsurance company heads up the group, the insurance holding company or the mixed financial holding company may also publish all other information and explanations on its own initiative.

Article 402. Without prejudice to Articles 392 and 394, the insurance or reinsurance company or, if no insurance or reinsurance company heads up the group, the insurance holding company or mixed financial holding company, shall have appropriate structures and systems in place to comply with the requirements of Articles 399 and 400, and a written policy that guarantees that the information disclosed pursuant to Articles 399 and 400 is always sufficient.

Article 403. The group supervisor may permit an insurance or reinsurance company, an insurance holding company or a mixed financial holding company not to disclose the information as referred to in Article 399 if:

1° by disclosing such information, the competitors of the company concerned would gain significant undue advantage;

2° there are obligations to policyholders or other counterparty relationships binding the company to secrecy or confidentiality.

Where non-disclosure of information is permitted by the group supervisor, the insurance or reinsurance company, the insurance holding company or the mixed financial holding company shall make a statement to this effect in their report on group solvency and financial condition and shall state the reasons.

Article 404. The Bank may stipulate the content of and manner in which the information referred to in this Subsection is submitted by means of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998.

§ 2 – Single solvency and financial condition report

Article 405. A participating insurance or reinsurance company, an insurance holding company or, if no insurance or reinsurance company heads up the group, a mixed financial holding company may, with the consent of the group supervisor, issue a single solvency and financial condition
report, which shall include the following:

1° the group-level information that must be published pursuant to Article 399;

2° the information for each of the subsidiaries within the group, which must be individually identifiable and which, depending on the case, must be published pursuant to Articles 95 to 101 of the present Law or Articles 51, 53, 54 and 55 of Directive 2009/138/EC and in accordance with the implementing measures of this Directive.

Before giving its consent pursuant to the first paragraph, the group supervisor shall consult the members of the college of supervisors, and duly take into consideration their views and reservations.

**Article 406.** If the report referred to in Article 405 does not include the information that the Bank requires from a subsidiary insurance or reinsurance company governed by Belgian law of the group, and if essential information is missing, the Bank may require the subsidiary concerned to publish the necessary additional information.

**Section III - Group supervision**

**Subsection I - Designation of the group supervisor**

**Article 407.** § 1. A single supervisory authority shall be designated from the supervisory authorities concerned, which shall be responsible for the coordination and exercise of group supervision, hereinafter referred to as the ‘group supervisor’.

§ 2. The group-level supervision of an insurance or reinsurance company shall be exercised by the Bank where it is the supervisory authority of all the insurance or reinsurance companies within the group.

In all other cases, except for as provided by Article 408, the function of group supervisor shall be exercised as follows:

1° if an insurance or reinsurance company governed by Belgian law heads up the group, by the Bank;

2° if no insurance or reinsurance company governed by Belgian law heads up the group:

a) if the parent undertaking of the insurance or reinsurance company is an insurance holding company or a mixed financial holding company, by the Bank;

b) if several insurance or reinsurance companies in the European Economic Area, including an insurance or reinsurance company governed by Belgian law, have the same insurance holding company or mixed financial holding company as a parent undertaking and one of these companies has been granted authorization in the Member State in which the insurance holding company or the mixed financial holding company has its registered office, by the supervisory authority of the insurance or reinsurance company in that Member State;

c) if several insurance holding companies or mixed financial holding companies with their registered office in different Member States head up the group and there is an insurance or reinsurance company in each of these Member States, including Belgium, by the supervisory authority of the insurance or reinsurance company with the highest balance sheet total;

d) if several insurance or reinsurance companies in the European Economic Area, including Belgium, have the same insurance holding company or mixed financial holding company as their parent undertaking and none of these companies have been granted an authorization in the Member State in which the insurance holding company or mixed financial holding company has its registered office, by the supervisory authority of the insurance or reinsurance company with the
highest balance sheet total; or

e) if the group is a group without a parent undertaking, or in all cases not covered by points a) to d),
by the supervisory authority which has granted an authorization to the insurance or reinsurance
company with the highest balance sheet total.

Article 408. § 1. In exceptional circumstances, the Bank and the supervisory authorities concerned
may jointly decide to derogate from the criteria of Article 407 if the application thereof would be
inappropriate bearing in mind the structure of the group and the relative significance of the
activities of the insurance or reinsurance companies in the different countries, and designate
another supervisory authority as group supervisor.

The Bank may ask to open up a discussion as to whether the criteria referred to in Article 407 are
appropriate. Such a discussion shall take place no more than once a year, at the initiative of the
Bank or the supervisory authority concerned.

The Bank shall do everything within its power to reach a joint decision on the choice of group
supervisor with the supervisory authorities concerned within three months after the date of receipt
of the request to open it up to discussion. Prior to making a decision, the Bank and the supervisory
authorities concerned shall offer the group the opportunity to make its opinion known.

If the Bank is designated as the group supervisor pursuant to this paragraph, it shall submit the joint
decision including all grounds on which it is based to the group.

§ 2. During the three-month period referred to in § 1, third paragraph, and as long as no joint
decision has been made, the Bank may submit the matter to EIOPA in accordance with Article 19
of Regulation No 1094/2010.

In the event of application of the first paragraph, the Bank and the supervisory authorities
concerned shall suspend their joint decision pending any decision by EIOPA in accordance with Article 19,
paragraph 3 of the Regulation 1094/2010. The three-month term referred to in § 1, third
paragraph is deemed the conciliation period within the meaning of Article 19, paragraph 2 of
Regulation 1094/2010.

The Bank and the supervisory authorities concerned shall make their joint decision in accordance
with the decision of EIOPA. The joint decision shall be recognized as final and applied by the Bank
and the supervisory authorities concerned.

If the Bank is designated as the group supervisor pursuant to this paragraph, it shall submit the joint
decision, including all grounds on which it is based, to the group and to the college of supervisors.

§ 3. If no joint decision is made pursuant to this Article, the function of group supervisor shall be
exercised by the supervisory authority determined pursuant to Article 407.

Subsection II – Rights and duties of the group supervisor and of the supervisory authorities
concerned - College of supervisors

Article 409. § 1. Without prejudice to the other powers and tasks conferred on the Bank by or
pursuant to the present Law and the implementing measures of Directive 2009/138/EC, the Bank,
in its capacity of group supervisor shall undertake the following tasks:

1° coordinating the gathering and dissemination of relevant or essential information for going
concern and emergency situations, including the dissemination of information which is of
importance for the supervisory task of a supervisory authority;

2° prudential supervision and assessment of the financial condition of the group;

3° assessing compliance by the group with the rules on solvency, risk concentrations and intra-
group transactions laid down by or pursuant to Section II of this Chapter and by the implementing
measures of Directive 2009/138/EC;

4° assessing the governance system of the group, in accordance with Subsection III of Section II of
this Chapter, and whether the members of the statutory governing body, the management
committee or, where applicable, the senior management of the participating undertaking governed
by Belgian law fulfil the requirements set out in Articles 40, 81 and 443, first paragraph;

5° planning and coordinating, through regular meetings held at least annually or through other
appropriate means, of supervisory activities in going-concern as well as in emergency situations, in
cooperation with the supervisory authorities concerned and taking into account the nature, scale
and complexity of the risks inherent in the business of all undertakings that are part of the group;

6° other tasks, measures and decisions assigned to the group supervisor pursuant to the present Law
and to the implementing measures of Directive 2009/138/EC or deriving from the application of
this Directive, in particular leading the process for validation of any internal model at group level
as set out in Articles 374 and 377 to 380 and leading the process for permitting the application of
the system established in Articles 383 to 387.

§ 2. Where a supervisory authority concerned does not cooperate with the Bank in its capacity of
group supervisor to the extent that this is required for the exercise of the tasks referred to in § 1, the
Bank may submit the matter to EIOPA to ask for its assistance in accordance with Article 19 of
Regulation No 1094/2010.

Article 410. In order to facilitate the exercise of the group supervisory tasks as referred to in
Article 409, the Bank in its capacity of group supervisor shall set up a college of supervisors that it
shall chair.

This college of supervisors shall ensure that the cooperation, sharing of information and
consultation processes between the supervisory authorities that are members of the college of
supervisors occur in accordance with the provisions of Title III of Directive 2009/138/EC and its
implementing measures, with a view to promoting the convergence of their respective decisions
and activities.

Article 411. The college of supervisors shall be composed of:

1° the Bank, in its capacity of group supervisor;

2° the supervisory authorities concerned;

3° EIOPA, in accordance with Article 21 of Regulation No 1094/2010;

4° under the conditions established by the implementing measures of Directive 2009/138/EC, the
supervisory authorities tasked with the supervision of a significant branch or a related undertaking
in the group, with the proviso that their participation is limited to the purpose of efficient sharing of
information between supervisory authorities.

EIOPA shall be considered a supervisory authority concerned for the purposes of this Subsection.

With a view to the effective operation of the college of supervisors, it may be necessary for certain
activities to be conducted by a limited number of supervisory authorities in the college.

Article 412. Without prejudice to the provisions laid down by or pursuant to the present Law and
the implementing measures of Directive 2009/138/EC, the set-up and operation of the college of
supervisors shall be based on coordination agreements between the Bank, in its capacity of group
supervisor, and the supervisory authorities concerned.

Without prejudice to the provisions laid down by or pursuant to the present Law and the
implementing measures of Directive 2009/138/EC, the coordination agreements referred to in the first paragraph shall specify the procedures for:

1° the decision-making process between the Bank, in its capacity of group supervisor, and the supervisory authorities concerned in accordance with Articles 34, 376, 407 and 408;

2° the consultation by virtue of Articles 359 and 413;

3° the consultation between the Bank, in its capacity of group supervisor and the supervisory authorities concerned, especially in the cases referred to in Articles 343 to 357, 360 to 362, 368, 369, 388 to 406, 421, 445 to 448;

4° the cooperation with supervisory authorities other than the supervisory authorities concerned.

Without prejudice to the rights and duties established for the Bank in its capacity of group supervisor and for the supervisory authorities concerned by or pursuant to the present Law and the implementing measures of Directive 2009/138/EC, other tasks may be conferred on the Bank, in its capacity of group supervisor, or on other supervisory authorities or EIOPA in the coordination agreements, if this leads to a more efficient supervision of the group and does not conflict with the supervisory activities of the members of the college of supervisors as regards their individual responsibilities.

**Article 413.** Where a supervisory authority concerned has submitted the matter to EIOPA pursuant to Article 248, 4., second paragraph of Directive 2009/138/EC, the Bank, in its capacity of group supervisor, shall make its final decision on the difference of opinion on a coordination agreement made pursuant to Article 412, within a term of two months after receipt of the opinion from EIOPA. It shall make its decision in accordance with that of EIOPA. It shall provide its decision to the supervisory authorities concerned.

**Article 414.** In its capacity of group supervisor, the Bank shall convene a meeting forthwith with all supervisory authorities concerned at least in the following cases:

1° where it becomes aware of a significant breach of the solvency capital requirement or a breach of the minimum capital requirement of an individual insurance or reinsurance company that comes under the group-level supervision;

2° where it becomes aware of a significant breach of the solvency capital requirement at group level calculated on the basis of consolidated data or the aggregated group solvency capital requirement in accordance with whichever calculation method is used pursuant to Articles 372 to 380;

3° where it becomes aware of other exceptional circumstances.

**Article 415.** The Bank shall, in its capacity of group supervisor provide information to EIOPA which is important for the evaluation of the operation of the colleges of supervisors which EIOPA conducts in accordance with Article 248, 6., of Directive 2009/138/EC. It shall also provide information on any difficulties that arise as part of this operation.

**Article 416.** § 1. The Bank, in its capacity of supervisory authority concerned, shall take part in the college of supervisors set up pursuant to Article 248, 2., of Directive 2009/138/EC by a supervisory authority of another Member State in its capacity of group supervisor.

It shall work with the group supervisor to the extent required for the exercise of the tasks conferred on it pursuant to Article 248, 1., of Directive 2009/138/EC and its implementing measures. Where the group supervisor does not fulfil the aforementioned tasks, the Bank may submit the matter to EIOPA to ask for its assistance pursuant to Article 19 of Regulation No 1094/2010.

In cases of a difference of opinion between the group supervisor or another supervisory authority
concerned on the coordination agreement for the set up and operation of the college of supervisors in which it takes part, the Bank may in its capacity of supervisory authority concerned, submit the matter to EIOPA to request assistance in accordance with Article 19 of Regulation No 1094/2010.

The Bank may also, in its capacity of supervisory authority tasked with the supervision of a significant branch or a related undertaking of the group, under the conditions laid down in the implementing measures of Directive 2009/138/EC, take part in the college of supervisors set up to facilitate the supervision at the level of the aforementioned group. In such a case, its involvement shall be limited to the objective of efficient sharing of information between supervisory authorities.

§ 2. The Bank shall convene a meeting forthwith with the college of supervisors at least in the following cases:

1° where it establishes a significant breach of the solvency capital requirement or a breach of the minimum capital requirement of an insurance or reinsurance company governed by Belgian law that comes under the group-level supervision;

2° where it becomes aware of other exceptional circumstances.

Subsection III - Cooperation and sharing of information between supervisory authorities

Article 417. The Bank shall cooperated closely, both in its capacity of group supervisor and of supervisory authority concerned, with the supervisory authorities of the insurance or reinsurance companies that form part of an insurance or reinsurance group, especially in cases where an insurance or reinsurance company encounters financial difficulties.

It may, on its own initiative, share confidential information with these supervisory authorities or ask them to share relevant information, where this information is important to enable or facilitate the exercise of the supervisory tasks conferred on it or on these supervisory authorities pursuant to Directive 2009/138/EC or its implementing measures. The information referred to in this paragraph includes, but is not limited to, information on the actions of the group and supervisory authorities, and information provided by the group.

If the supervisory authority referred to in the first paragraph fails to share relevant information or, after a request from the Bank for cooperation—and especially for sharing relevant information—is refused or not responded to within two weeks, the Bank may submit the matter to EIOPA pursuant to Article 19 of Regulation No 1094/2010.

Article 418. In its capacity of group supervisor, the Bank shall provide information to the supervisory authorities concerned and to EIOPA on the insurance or reinsurance group in accordance with Articles 95 and 96 and Subsection V of this Section, especially on the legal structure, governance system and organizational structure of the group.

Article 419. Where the Bank is not the group supervisor designated pursuant to Article 407, the group supervisor may ask the Bank to request from a parent undertaking governed by Belgian law all information relevant for the exercise by the group supervisor of its coordination rights and duties as described in Directive 2009/138/EC and its implementing measures, and to forward this information to it.

Where the Bank is not the group supervisor pursuant to Article 407 and the parent undertaking has its registered office in a Member State other than Belgium, the Bank may ask the supervisory authority of that Member State to request from that parent undertaking all information relevant for the exercise of its coordination rights and duties as described in the present Law, Directive 2009/138/EC and its implementing measures, and to forward this information to it.

Article 420. Where an insurance or reinsurance company governed by Belgian law and a credit institution, investment firm or both, are directly or indirectly related, or have a common participating undertaking, the Bank shall work closely with the supervisory authorities of that credit
Without prejudice to their respective powers, the Bank may, on its own initiative or upon request, share, or ask supervisory authorities to share, all information which could enable or facilitate their respective tasks and which enable supervision to be exercised on the activities and the financial condition of all companies subject to their supervision.

**Subsection IV – Consultation between supervisory authorities**

**Article 421.** Without prejudice to Subsection III of this Section, the Bank shall, within the college of supervisors, consult the supervisory authorities of insurance or reinsurance companies which fall under group-level supervision, prior to making a decision on the following:

1° changes in the shareholders, organization, or management structure of an insurance or reinsurance company which require approval or authorization from the Bank; and

2° the extension of the recovery period in accordance with Article 510;

3° the main penalties and exceptional measures imposed by the Bank, including but not limited to the application of an add-on to the solvency capital requirement by virtue of Article 323 and the imposition of any restriction to the use of an internal model for the calculation of the solvency capital requirement by virtue of Articles 167 to 188.

4° all decisions based on information received from another supervisory authority.

The Bank may decide not to consult, as referred to in the first paragraph, on matters in urgent cases or if such consultation could threaten the effectiveness of its decisions. In such a case, the Bank shall inform the supervisory authorities concerned thereof forthwith as soon as it has made its decision.

By way of derogation from the second paragraph, the Bank must always consult the group supervisor if it plans to make a decision as referred to in the first paragraph, 2° or 3°.

**Subsection V - Information to be provided for the exercise of group-level supervision**

**Article 422.** § 1. Insurance or reinsurance companies, insurance holding companies and mixed financial holding companies, their subsidiaries and all other companies involved in the group-level supervision, shall provide the Bank, in its capacity of group supervisor, with all information needed for the exercise of the supervisory tasks conferred on the group supervisor by or pursuant to this Law, and the information necessary to be able to make any appropriate decision with a view to exercising the rights and duties of the group supervisor as regards group-level supervision.

§ 2. For the purposes of the application of § 1, the Bank may:

1° determine the nature, scale, format, frequency and manner of submission of the information referred to in § 1, on an individual basis or by way of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998, and request this information from the companies referred to in § 1:

a) at timeframes determined in advance;

b) when events described in advance occur;

c) when investigating the situation of an insurance or reinsurance company as a result of its inclusion in group-level supervision.

2° obtain all information on agreements in the possession of intermediaries, or agreements entered
into with third parties;

3° request information from external experts;

4° request that it regularly be sent figures or explanations other than those referred to in § 1 where this information is needed to be able to assess whether the provisions of the present Law or of the implementing decrees and regulations thereof are complied with.

Article 312, § 3 shall apply to the information referred to in §§ 1 and 2.

§ 3. The information referred to in §§ 1 and 2 shall be in line with the following principles:

1° it must reflect the nature, scale and complexity of the business of the insurance or reinsurance group concerned, and in particular the risks inherent to that business;

2° it must be accessible, complete in all material respects, comparable and consistent over time;

3° it must be relevant, reliable and comprehensible.

Article 423. Notwithstanding the timeframes set in advance referred to Article 422, § 2, a), the Bank may, in its capacity of group supervisor, limit the regular reporting of supervisory information with a frequency shorter than one year at the level of the group, if all insurance or reinsurance companies included in the group-level supervision benefit from the application of Article 313, taking into consideration the nature, scale and complexity of the risks inherent to the business of the group.

Article 424. In its capacity of group supervisor, the Bank may grant a group-level exemption from the obligation to provide itemized information, if all insurance or reinsurance companies included in the group-level supervision benefit from the application of Article 314, taking into consideration the nature, scale and complexity of the risks inherent to the business of the group and the objective of financial stability.

Article 425. The Bank shall, in its capacity of group supervisor, when it needs information as referred to in Articles 422, 423 and 424 which has already been given to another supervisory authority, contact that authority whenever possible in order to prevent duplication of reporting to the various authorities involved in the group-level supervision.

Article 426. The companies not included in the group-level supervision pursuant to Article 349 must provide all data and information to the Bank, in its capacity of group supervisor, which it deems useful for the exercise of the group-level supervision.

Undertakings that control, either exclusively or with other undertakings, an insurance or reinsurance company governed by Belgian law, and the subsidiaries of these undertakings must, if the undertakings and subsidiaries do not fall under the group-level supervision, provide the Bank and the other supervisory authorities concerned with all records and information useful for the supervision of this insurance or reinsurance company.

Article 427. Without prejudice to Articles 422 to 426, the Bank may only itself directly address the companies in the group to obtain the information necessary to exercise group-level supervision, if this information was requested from the insurance or reinsurance company included in the group supervision but not provided by that company within a reasonable period of time.

Article 428. § 1. The Bank may conduct on-site inspections, take cognizance on site, and take a copy of any information in the possession of the insurance or reinsurance company that falls under the group-level supervision, of its related undertakings, of its parent undertaking or of the related undertaking of its parent undertaking, to ascertain whether the provisions laid down by or pursuant to this Chapter and the implementing measures of Directive 2009/138/EC are complied with and, especially, to ascertain whether the information referred to in Articles 422, 423 and 424 is accurate.
and complete. Article 304 shall apply.

The Bank may task the statutory auditor of these companies—or an expert it has accredited—with these verifications at the expense of these companies.

Articles 305, 306 and 307 shall apply.

§ 2. Where the undertakings referred to in § 1 have their registered office in another Member State, the Bank shall request that the supervisory authority of that Member State conduct this on-site inspection. The Bank shall conduct this inspection itself if it receives the authorization to do so from the supervisory authority of that Member State. Where the latter wishes to conduct the inspection itself, or appoints an auditor or an expert for that task, the Bank may nevertheless take part in the inspection if it wishes to do so.

Where the request made by the Bank pursuant to the first paragraph is not responded to within two weeks, or if for practical reasons it cannot take part in the on-site inspection, the Bank may submit the matter to EIOPA to ask for its assistance pursuant to Article 19 of Regulation No 1094/2010.

§ 3. Where the undertakings referred to in § 1 have their registered office in a third country, the methods for on-site inspection shall be regulated in Memoranda of Understanding that the Bank has entered into with the authorities of that third country concerned, where applicable in accordance with Article 36/16, § 2 of the Law of 22 February 1998, or that the European Commission has entered into in accordance with Article 264 of Directive 2009/138/EC.

Article 429. § 1. Where supervision is exercised at the level of the insurance or reinsurance group by a supervisory authority governed by the law of a Member State other than Belgium, the insurance or reinsurance companies, insurance holding companies, mixed financial holding companies and their subsidiaries governed by Belgian law shall provide this supervisory authority with all the data and information it deems useful for the exercise of the supervisory tasks with which it is tasked as group supervisor in accordance with Directive 2009/138/EC and its implementing measures.

Where this supervisory authority is governed by the law of a third country and the obligation to provide information arises from Memoranda of Understanding that the Bank or the European Commission have entered into pursuant to Article 264 of Directive 2009/138/EC, the first paragraph shall apply mutatis mutandis.

§ 2. Where supervision is exercised at the level of the insurance or reinsurance group by a supervisory authority governed by the law of a Member State other than Belgium, that supervisory authority, to ascertain whether the provisions laid by or pursuant to this Chapter and the implementing measures of Directive 2009/138/EC are complied with, may assess the data and information it has received on site in the companies governed by Belgian law referred to in § 1, or task accredited statutory auditors or experts accredited by it therewith. The provisions of Article 428, § 2, shall apply mutatis mutandis.

Where this supervisory authority is governed by the law of a third country, the provisions of Article 428, § 3, shall apply mutatis mutandis.

Subsection VI – Audit supervision

Article 430. The provisions of Articles 330 to 337 on the task of accredited statutory auditor of an insurance or reinsurance company shall apply mutatis mutandis to insurance or reinsurance companies subject to group-level supervision in accordance with Article 343.

Article 431. § 1. In an insurance holding company or mixed financial holding company governed by Belgian law subject to the group-level supervision exercised by the Bank, the task of statutory auditor as referred to in the Companies Code shall be entrusted to one or more auditors or audit firms accredited by the Bank pursuant to Article 327 for the task of statutory auditor at an
insurance or reinsurance company. Articles 325 to 329 shall apply mutatis mutandis.

§ 2. The statutory auditors appointed to the insurance holding companies or mixed financial holding companies referred to in § 1, shall lend their cooperation to the exercise of group-level supervision with which the Bank is tasked, at their own and sole responsibility and in accordance with the present paragraph, following the rules of the trade and the guidelines of the Bank.

**Article 432.** The statutory auditors appointed for a company referred to in Article 431 shall assess the adequacy at group level of the internal control measures as referred to in Article 42, § 1, 2° and share their findings on the matter with the Bank.

**Article 433.** The statutory auditors appointed for a company referred to in Article 431 shall report to the Bank on the results of the limited review of the periodic statements that the insurance holding company or mixed financial holding company provide to the Bank at the end of the first half-year, in which it is confirmed that they have no knowledge of any facts that would indicate that these periodic statements were not drawn up in all material respects in accordance with the provisions laid down by or pursuant to the present Law, the implementing measures of Directive 2009/138/EC and the instructions of the Bank.

They shall moreover confirm that the periodic statements at the end of the half-year, as regards the accounting information, are in accordance in all material respects with the accounting and inventories as regards:

1° completeness: they include all data from the accounting and the inventories on the basis of which the periodic statements were drawn up,

2° accuracy: they correctly reflect the data from the accounting and inventories on the basis of which the periodic statements were drawn up.

They shall confirm to have no knowledge of any facts that would indicate that the periodic statements were not drawn up at the end of the half-year, as regards the accounting information, pursuant to the accounting and valuation rules for the preparation of periodic statements relating to the last financial year. The Bank may further specify the periodic statements referred to here.

**Article 434.** The accredited statutory auditors appointed for a company referred to in Article 431 shall also report to the Bank on the results of the review of the periodic statements that the insurance holding company or mixed financial holding company provides to the Bank at the end of the financial year, in which it is confirmed that these periodic statements were drawn up in all material respects in accordance with the provisions laid down by or pursuant to the present Law, the implementing measures of Directive 2009/138/EC and the instructions of the Bank.

They shall also confirm that the periodic statements at the end of the financial year, as regards the accounting information, are, in all material respects, in line with the accounting and the inventories as regards:

1° completeness: they include all data from the accounting and the inventories on the basis of which the periodic statements were drawn up,

2° accuracy: they correctly reflect the data from the accounting and inventories on the basis of which the periodic statements were drawn up.

They shall confirm that the periodic statements were drawn up at the end of the financial year, as regards the accounting information, pursuant to the accounting and valuation rules for the drawing up of the annual accounts.

The Bank may further specify the periodic statements referred to here.

**Article 435.** The accredited statutory auditors appointed for a company referred to in Article 431
shall, at the Bank’s request, provide a special report to the Bank on the organization, activity and financial structure of the insurance or reinsurance group; the costs for drawing up this report shall be borne by the insurance holding company or the mixed financial holding company.

**Article 436.** As part of their task at a company referred to in Article 431 or an audit task at the related undertaking of such a company, accredited statutory auditors shall report on their own initiative to the Bank the moment any of the following come to their attention:

1° decisions, facts or, where applicable, developments that have or could have a material influence on the insurance or reinsurance group’s financial situation as regards its administrative and accounting procedures or its internal control;

2° decisions, facts or, where applicable, developments which could lead to non-compliance with the solvency capital requirement at the group level;

3° decisions, facts or, where applicable, developments that could indicate an infringement of the Companies Code, the articles of association, the present Law and the decisions and regulations made for the implementation thereof as regards the insurance holding company or the mixed financial holding company;

4° decisions, facts or, where applicable, developments that could lead to a refusal of certification of the consolidated annual accounts or to the formulation of a reservation;

**Article 437.** The accredited statutory auditors shall communicate the reports they send to the Bank in accordance with Article 435 to the management of the insurance or reinsurance company. Article 306 shall apply to this communication.

They shall provide the Bank with a copy of their communications addressed to these managers and that relate to issues that could be of importance for the supervision it exercises.

**Article 438.** No civil, criminal or disciplinary action may be taken and no professional penalties may be imposed against an accredited statutory auditor who has provided information in good faith as referred to in Article 436.

**Article 439.** Where the parent undertaking of an insurance or reinsurance company governed by Belgian law is an insurance holding company or a mixed financial holding company with its registered office in another Member State which comes under the group-level supervision exercised by the Bank, the task determined by Articles 432 to 436 shall be exercised mutatis mutandis by the statutory auditor appointed to this insurance holding company or mixed financial holding company for a comparable task. In the absence of such a statutory auditor, the task referred to in Articles 432 to 436 shall be exercised by the statutory auditor appointed to the insurance or reinsurance company governed by Belgian law which is a subsidiary of this insurance holding company or mixed financial holding company.

**Article 440.** The statutory auditors appointed to insurance or reinsurance companies, insurance holding companies or mixed financial holding companies governed by Belgian law in accordance with Articles 430 and 431 shall have access to view, for the exercise of their tasks as provided for in these Articles, all documents and files that concern the subsidiaries included in the group-level supervision and the companies referred to in Article 349.

The provisions of Article 35 of the Law of 22 February 1998 shall apply to the information they have taken cognizance of in application of the first paragraph.

**Subsection VII - Prudential measures**

**Article 441.** If the insurance or reinsurance companies governed by Belgian law included in group-level supervision do not comply with the rules laid down by or pursuant to this Chapter or the implementing measures of Directive 2009/138/EC, or if the rules are taken into consideration but
group solvency still risks being undermined, or if the intra-group transactions or risk concentrations threaten the financial condition of the insurance or reinsurance companies referred to, the Bank, in its capacity of group supervisor,

1° shall take the necessary measures as regards the participating insurance or reinsurance company governed by Belgian law as referred to in Title VI of the present Law to rectify the situation as quickly as possible;

2° shall take the necessary measures as regards the parent insurance holding company or the parent mixed financial holding company governed by Belgian law as referred to in Articles 508, § 1 and 517, § 1, 1° to 5° to rectify the situation as quickly as possible.

If the Bank is not the group supervisor in the case referred to in the first paragraph, it shall take the measures referred to in this paragraph as regards the insurance or reinsurance company or the insurance holding company or the mixed financial holding company, at the request of the group supervisor or at its own initiative, taking into account the findings of the group supervisor as regards compliance with the provisions applicable to those entities.

If necessary, the Bank shall coordinate the measures taken pursuant to this Article with the supervisory authorities concerned, including, depending on the circumstances, with the group supervisor.

**Article 442.** Where the Bank, in its capacity of group supervisor, establishes that the insurance or reinsurance companies with their registered office in a Member State other than Belgium which are included in its group-level supervision, do not comply with the rules of Directive 2009/138/EC or its implementing measures, or where the rules are taken into consideration but the group solvency still risks being undermined, or if the intra-group transactions or risk concentrations threaten the financial condition of the aforementioned insurance or reinsurance companies, it shall share its findings with the supervisory authority of the Member State in which, depending on the case, the participating parent insurance or reinsurance company or the parent insurance holding company or the parent mixed financial holding company has its registered office so that this supervisory authority takes the measures provided for in its national legislation that are necessary to rectify the situation as quickly as possible.

**Section IV - Insurance holding companies and mixed financial holding companies**

**Article 443.** Without prejudice to Article 348, Articles 39, 40, 41, 45, §§ 1, 3 and 4, 46, §§ 1, 3 and 4, 47, 64 to 72, 81, 82, 83, 93 and 94 shall apply mutatis mutandis to all insurance holding companies governed by Belgian law and all mixed financial holding companies governed by Belgian law which are included in group-level supervision.

Without prejudice to Article 441, Articles 508, § 1 and 517 shall apply to the insurance holding company governed by Belgian law and to the mixed financial holding company governed by Belgian law in the case of infringement of the provisions of the first paragraph.

**Article 444.** In its capacity of group supervisor, the Bank shall draw up the list of the insurance holding companies included in its group-level supervision.

It shall provide this list to the supervisory authorities of the other Member States, to EIOPA and to the European Commission.

**Section V – Parent undertakings with their registered office in a third country**

**Article 445.** Where an insurance or reinsurance company has a third-country mixed financial holding company or insurance holding company, or a third-country insurance or reinsurance company as a parent undertaking, the Bank shall, if it is the supervisory authority that would be the group supervisor if the criteria of 247, paragraph 2 of Directive 2009/138/EC applied (hereinafter
verify whether this insurance or reinsurance company is subject to supervision exercised by a supervisory authority of a third country that is equivalent to the supervision provided for by Title III of Directive 2009/138/EC for the participating insurance or reinsurance companies or for the insurance or reinsurance companies with an insurance holding company or a mixed financial holding company with its registered office in a Member State as a parent undertaking.

The Bank shall make the verification referred to in the first paragraph where the European Commission has not established a delegated act pursuant to Article 260, paragraph 3 or 5 of Directive 2009/138/EC, to determine whether the prudential regime of the third country concerned is equivalent to that provided for in Title III of Directive 2009/138/EC. This shall be done either at the request of the parent undertaking or of the subsidiary insurance or reinsurance company or on its own initiative.

The Bank, in its capacity of acting group supervisor, shall be assisted with this verification by EIOPA pursuant to Article 33, paragraph 2 of Regulation No 1094/2010. It shall consult the supervisory authorities concerned prior to making a decision on equivalence. This decision shall be made by virtue of the criteria established in accordance with Article 260, paragraph 2 of Directive 2009/138/EC.

In its capacity of acting group supervisor, the Bank shall make no decision as regards a third country which conflicts with any decisions that may have been made at an earlier stage as regards that third country, unless this is necessary as a result of major changes in the supervisory system established in Directive 2009/138/EC or in the supervisory system of the third country.

Article 446. In accordance with Article 260, 1., fourth paragraph of Directive 2009/138/EC, if the Bank does not agree with the decision made by the acting group supervisor on the equivalence of the prudential supervision system of a third country, it may submit the matter to EIOPA to ask for its assistance pursuant to Article 19 of Regulation 1094/2010.

Article 447. Where the supervision is deemed equivalent within the meaning of Article 260 of Directive 2009/138/EC, the Bank shall rely on the equivalent group-level supervision exercised by the supervisory authorities of the third country, with the proviso that Articles 441 and 442 and Sections III and IV of this Chapter shall apply mutatis mutandis on the cooperation with supervisory authorities of third countries.

The first paragraph shall also apply where the European Commission, in accordance with Article 260, paragraph 7 of Directive 2009/138/EC, has established that there is temporary equivalence, unless there is an insurance or reinsurance company in a Member State with a higher balance sheet total than that of the parent undertaking in a third country. In such a case, the function of group supervisor shall be exercised by the acting group supervisor.

Article 448. § 1. In the case of equivalent supervision within the meaning of Article 260 of Directive 2009/138/EC, the Bank shall apply, in its capacity of group supervisor, the provisions laid down by or pursuant to this Chapter, mutatis mutandis to the insurance or reinsurance company with a third-country insurance holding company, mixed financial holding company or insurance or reinsurance company as a parent undertaking.

The general principles and methods referred to in Sections I to IV of this Chapter shall apply at the level of the third-country insurance holding company, mixed financial holding company or insurance or reinsurance company.

Solely for the calculation of group solvency, the parent undertaking shall be treated as if it were an insurance or reinsurance company subject to the same conditions as those of Articles 140 to 150, as regards the own funds eligible for covering the solvency capital requirement and to:

1° a solvency capital requirement in accordance with the principles of Article 366 if it concerns an
insurance holding company or a mixed financial holding company;

2° a solvency capital requirement in accordance with the principles of Article 367 if it concerns a third-country insurance or reinsurance company.

§ 2. By way of derogation from § 1, the Bank, in its capacity of group supervisor, shall have the power to apply other methods, after consultation with the supervisory authorities concerned, to ensure appropriate supervision of the insurance or reinsurance company referred to in the first paragraph and to allow the objectives of the group-level supervision to be achieved as stipulated in Title III of Directive 2009/138/EC.

More particularly, the Bank may require that an insurance holding company with registered office in the European Economic Area or a mixed financial holding company with registered office in the European Economic Area be established, and apply this Chapter to the insurance or reinsurance companies in the group headed up by this insurance holding company or mixed financial holding company.

The Bank shall communicate all decisions made pursuant to this paragraph to the supervisory authorities concerned and to the European Commission.

Article 449. Where the parent undertaking referred to in Article 445 is itself a subsidiary of an insurance holding company or a mixed financial holding company with registered office in a third country, or a third-country insurance or reinsurance company, the Bank shall, as the acting group supervisor, make the verification as referred to in Article 445 only at the level of the ultimate parent undertaking which is a third-country insurance holding company, a third-country mixed financial holding company or a third-country insurance or reinsurance company.

In its capacity of acting group supervisor, the Bank may also, in the absence of equivalent supervision within the meaning of Article 260 of Directive 2009/138/EC, make a new verification at a lower level where a parent undertaking of insurance or reinsurance companies exists, irrespective of whether it is a third-country insurance holding company, a third-country mixed financial holding company, or a third-country insurance or reinsurance company. It shall explain its decision to the group.

Article 448 shall apply mutatis mutandis.

Section VI - Mixed-activity insurance holding companies

Article 450. § 1. Where one or more insurance or reinsurance companies governed by Belgian law have a mixed-activity insurance holding company as a parent undertaking, the Bank may request all records and information which it deems necessary for the exercise of its individual and group-level supervision of these insurance or reinsurance companies, either directly from the mixed-activity insurance holding company or through the subsidiary insurance or reinsurance companies. In the latter case, the mixed-activity insurance holding company remains jointly responsible with the reporting insurance or reinsurance company for the accuracy and timely communication of the information provided.

If the mixed-activity insurance holding company referred to in the first paragraph is an undertaking governed by Belgian law, it shall have appropriate administrative and accounting procedures and internal control for the purposes of guaranteeing the accuracy and compliance with current rules of the records and information.

§ 2. The Bank may inspect the records and information provided pursuant to § 1, on-site.

If the mixed-activity insurance holding company or one of its subsidiaries is established in a Member State other than Belgium, the on-site inspections of the information shall occur in accordance with the procedure stipulated in Article 429. If the mixed-activity insurance holding company or one of the subsidiaries thereof is a credit institution or investment firm, the procedure
Where the mixed-activity insurance holding company or one of its subsidiaries has its registered office outside the European Economic Area, the methods for applying the provisions of § 1 shall be laid down in memoranda of understanding between the Bank and the third-country authorities concerned, where applicable in accordance with Article 36/16, § 2 of the Law of 22 February 1998, or in memoranda of understanding which the European Commission has entered into in accordance with the provisions of Article 264 of Directive 2009/138/EC.

§ 3. The Bank may have the records and information provided pursuant to § 1 verified for accuracy and completeness:

1° where the reporting undertaking is a company governed by Belgian law, by the accredited statutory auditor of this undertaking;

2° where the reporting undertaking has its registered office outside Belgium, by the accredited statutory auditor of the insurance or reinsurance company governed by Belgian law that is a subsidiary of the mixed-activity insurance holding company.

With respect to the records and information coming from mixed-activity holding companies and their subsidiaries, the rights referred to in Article 440 shall apply mutatis mutandis to the accredited statutory auditors.

§ 4. The records and information referred to in § 1 must in particular enable the Bank to assess the following aspects: the solidity of the insurance or reinsurance company, the influence of the mixed-activity insurance holding company on the management of the subsidiary insurance or reinsurance companies, and the transactions between the insurance or reinsurance company and the mixed-activity insurance holding company.

§ 5. The insurance or reinsurance companies referred to in § 1 shall have the appropriate risk management processes and internal control mechanisms, including thorough reporting and accounting systems, with a view to the appropriate recognition, measurement, monitoring and oversight of transactions with their parent mixed insurance holding company and its related undertakings. They shall report all major transactions with these entities. These procedures and major transactions shall be overseen by the Bank.

Articles 390, 391, 417 to 430, 441, paragraphs 1, 2°, 2 and 3 and 442 shall apply mutatis mutandis.

If the nature and scale of the transactions referred to in the first paragraph constitute a threat for the financial condition of the subsidiary insurance or reinsurance company governed by Belgian law, the Bank shall take appropriate measures. Without prejudice to any other measures, it may put a stop to such transactions.

Chapter III - Supplementary conglomerate supervision

Section I - Cases of application, scope and levels of supplementary conglomerate supervision

Subsection I - Cases of application of supplementary conglomerate supervision

Article 451. To the extent and in the manner laid down in this Chapter and the implementing decrees and regulations thereof, insurance or reinsurance companies governed by Belgian law

1° that head up a financial conglomerate; or

2° that have as their parent undertaking a mixed financial holding company with its registered office in a Member State,
shall be subject to supplementary conglomerate supervision.

If several regulated undertakings are subsidiaries of the mixed financial holding company referred to in the first paragraph, 2°, the supplementary conglomerate supervision shall only apply to the insurance or reinsurance company governed by Belgian law insofar as the Bank is competent, pursuant to Article 471, for the supplementary conglomerate supervision.

The supplementary conglomerate supervision is without prejudice to the individual supervision of each regulated undertaking that falls under the scope of the supplementary conglomerate supervision subject to provisions to the contrary laid down by or pursuant to this Chapter. Account may also be taken of the implications of the supplementary conglomerate supervision for determining the content and the methods of the individual supervision of insurance or reinsurance companies.

Article 452. § 1. In order to determine whether a group is a financial conglomerate within the meaning of Article 340, 2°, the thresholds stipulated in the following paragraphs shall apply.

§ 2. The activity of a group shall be considered to principally take place in the financial sector within the meaning of Article 340, 2°, point b) i), if the ratio between the joint balance sheet total of the undertakings in the group that belong to the financial sector, and the joint balance sheet total of all the undertakings that belong to the group is greater than 40%.

§ 3. The activity of undertakings that belong to a group from the same financial sector shall be considered significant within the meaning of Article 340, 2°, point a) iii) or point b) iii), if:

1° either the average of the following two ratios is greater than 10%: the ratio between the joint balance sheet total of all undertakings in the group that belong to the same financial sector and the joint balance sheet total of all undertakings that belong to the financial sector, and the ratio between the joint solvency requirements of all undertakings in the group that belong to the same financial sector and the joint solvency requirements of all undertakings that belong to the group from the same financial sector;

2° or the joint balance sheet total of the undertakings that belong to the smallest financial sector in the group is greater than 6 billion euros;

For the purposes of the first paragraph:

1° the banking sector and the investment services sector shall be considered together and as belonging to the same financial sector;

2° the smallest financial sector in a financial conglomerate is the financial sector with the smallest average and the most important financial sector in a financial conglomerate is the sector with the highest average.

§ 4. The relevant competent authorities may jointly decide not to regard a group as a financial conglomerate or not to apply the decisions and provisions of Articles 7, 8, 9 and 9bis of Directive 2002/87/EC if they are of the opinion that the inclusion of the group in the supplementary conglomerate supervision or the application of such provisions is not necessary or would be inappropriate or misleading with respect to the objectives of supplementary conglomerate supervision in the following cases:

1° if the group reaches the threshold referred to in § 3, first paragraph, 2° but the average referred to in § 3, first paragraph, 1° remains under 10%;

2° if the group reaches the threshold referred to in § 3, first paragraph, 1°, but the smallest sector does not exceed the 6 billion euros referred to in § 3, first paragraph, 2°.
Decisions made pursuant to the first paragraph shall be communicated to the other competent authorities and shall, except under exceptional circumstances, be made public by the competent authorities.

§ 5. For the application of §§ 2 to 4, the relevant competent authorities may make joint decisions on:

1° excluding an undertaking for the calculation of thresholds, for the same reasons as they can be excluded pursuant to Article 458, § 2, from the calculation of the supplementary solvency requirements, unless the entity has moved from a Member State to a third country and there is evidence that the entity changed its location in order to avoid regulation;

2° designating a group that no longer meets the thresholds under §§ 2 to 4 but that has met them for the past three consecutive years, as a financial conglomerate to prevent a sudden change of supervisory regime, or to decide otherwise or review an earlier decision because of persistent significant changes to the group’s structure;

3° excluding one or more participations in the smallest sector if such participations are decisive for the identification of a group as a financial conglomerate, and are collectively of negligible interest with respect to the objectives of supplementary conglomerate supervision.

If a group is designated as a financial conglomerate in accordance with § 2 to 4, the decisions as referred to in the first paragraph of this section shall be made based on the proposal of the Bank if it is the coordinator.

§ 6. For the application of § 2 and § 3, first paragraph, 1°, the relevant competent authorities can under exceptional circumstances mutually agree to replace or supplement the balance sheet total as a parameter with one or more of the other parameters stipulated as follows if they are of the opinion that these other parameters better reflect the business of the group in view of the objectives of the supplementary conglomerate supervision; these other parameters are: the income structure, activity that is off-balance sheet for the group and total assets under management. The Bank in its capacity of coordinator shall determine the manner in which these parameters must be calculated.

§ 7. If a financial conglomerate subject to supplementary conglomerate supervision no longer meets one or more of the thresholds stipulated in §§ 2 to 4, the thresholds shall be replaced as follows for the following three years: 40% becomes 35%, 10% becomes 8% and EUR 6 billion becomes EUR 5 billion to avoid sudden changes to the supervisory regime.

By way of derogation from the first paragraph, the Bank may decide, in its capacity of coordinator and after having obtained the agreement of the other relevant competent authorities, not to or no longer to apply these lower thresholds in the aforementioned period of three years, bearing in mind the objectives of the supplementary conglomerate supervision.

§ 8. The calculations referred to in the present Article on the joint balance sheet total shall be made on the basis of the aggregate balance sheet total of the undertakings that belong to the group based on their most recent annual accounts in accordance with the provisions laid down by the Bank, if it is the coordinator. Undertakings in which the group has participations shall be included in the amount of their balance sheet total corresponding to the aggregated proportional share held by the group. If consolidated annual accounts are drawn up for a certain group or parts of the group, these shall be used for the calculations.

The solvency requirements referred to in this Article shall be calculated in accordance with the provisions of the sectoral legislation that applies for the regulated undertakings concerned.

§ 9. The competent authorities shall, on an annual basis, reassess exemptions of the application of supplementary conglomerate supervision and shall review the quantitative indicators set out in this Article, as well as the risk-based assessments of financial groups.
Article 453. § 1. The Bank shall verify whether the insurance or reinsurance companies that have received an authorization in accordance with Belgian law form part of a financial conglomerate. To this end, the Bank shall work closely with the competent authorities of the other regulated undertakings belonging to this group that have received authorization in accordance with European law. If the Bank is of the opinion that the group concerned is a financial conglomerate and is not already subject to supplementary conglomerate supervision, it shall communicate this to the other relevant competent authorities and to the Joint Committee.

§ 2. The Bank shall inform, in its capacity of coordinator, the parent undertaking of the group, or in the absence of a parent undertaking, the regulated undertaking with the greatest balance sheet total in the most important financial sector in the group, of the identification of the group as a financial conglomerate, as well as of its designation as coordinator. It shall also inform the competent authorities of other regulated undertakings belonging to the group that have received an authorization in accordance with European law, the competent authorities of the Member State in which the mixed financial holding company has its registered office, the Joint Committee, as well as—to the extent that it deems this necessary in light of the objectives of the supplementary conglomerate supervision—the authorities of third countries.

Subsection II - Scope of the supplementary conglomerate supervision

Article 454. The insurance or reinsurance companies referred to in Article 451 shall comply with the requirements of Articles 459 to 467 at the level of the financial conglomerate. This scope of the supplementary conglomerate supervision shall correspond to all undertakings, whether regulated or unregulated, that form part of the group as defined in Article 340, 1° taking the insurance or reinsurance company that heads up the financial conglomerate or the mixed financial holding company with its registered office in the European Economic Area as a starting point.

Article 455. The supplementary conglomerate supervision shall not ensue in individual supervision being exercised of the mixed financial holding company and of any other company included in the scope of this supervision.

Subsection III - Levels of supplementary conglomerate supervision

Article 456. Where a financial conglomerate itself forms part of another financial conglomerate subject to supplementary conglomerate supervision, the Bank, in its capacity of coordinator, may exclude, in whole or in part, the insurance or reinsurance companies referred to in Article 451 that form part of the subgroup, from the supplementary conglomerate supervision if the objectives thereof are sufficiently attained by the supplementary conglomerate supervision of the other financial conglomerate.

Section II - Domains of supplementary conglomerate supervision

Subsection II - Supplementary solvency supervision

Article 457. The insurance or reinsurance companies referred to in Article 451 shall be subject to supplementary solvency supervision at a group level. The supplementary supervision relates to:

1° compliance with the requirement that there permanently be own funds available at the financial conglomerate level at least equal to the solvency requirements; the own funds and solvency requirements at the financial conglomerate level shall be calculated using one of the methods stipulated in Annex V and in compliance with the provisions and principles included in Regulation 342/2014;

2° the adequacy of the management procedures and the internal control procedures relating to the group’s solvency position in accordance with the provisions of Subsection V of this Section;

3° the adequacy of the strategies relating to own funds.
The provisions referred to in the first paragraph shall be overseen by the Bank, in its capacity of coordinator, in accordance with Section IV of this Chapter. It shall ensure that the calculation referred to in the first paragraph is made at least once a year. The results of the calculation and the records used for making it shall be presented to the Bank by the insurance or reinsurance company, by the mixed financial holding company or by one of the regulated undertakings belonging to the financial conglomerate, which the Bank has designated after consultation with the other relevant competent authorities and with the financial conglomerate.

**Article 458.** § 1. By way of derogation from the scope of the supplementary conglomerate supervision stipulated in Article 454, all undertakings in the group belonging to the financial sector shall be included in the supplementary solvency supervision for the application of Article 457, first paragraph, 1°.

§ 2. By way of derogation from § 1, the Bank, in its capacity of coordinator, may decide in the following cases to exclude a particular undertaking from the scope of the supplementary solvency supervision Article 457, first paragraph, 1°:

1° if the undertaking is situated in a third country where there are legal impediments to the transfer of the necessary information, without prejudice to the sectoral legislation relating to the obligations of the competent authorities to refuse authorization if the effective exercise of their supervisory tasks is hindered;

2° if the undertaking is of negligible interest with respect to the objectives of supplementary conglomerate supervision on regulated undertakings in a financial conglomerate;

3° if the inclusion of the undertaking would be inappropriate or misleading with respect to the objectives of the supplementary conglomerate supervision.

If several undertakings may be excluded from the calculation pursuant to the first paragraph, 2°, they must nevertheless be included where, collectively, they are of non-negligible interest.

§ 3. If the Bank, in its capacity of coordinator, is of the opinion that an insurance or reinsurance company should not be included in the supplementary conglomerate supervision pursuant to § 2, first paragraph, 3°, it shall consult the other relevant competent authorities prior to making a decision, except in cases of urgency.

**Subsection II - Supplementary supervision of risk concentrations**

**Article 459.** The insurance or reinsurance companies referred to in Article 451 shall be subject to supplementary supervision of risk concentrations. Without prejudice to the provisions of Regulation 2015/2303, this supplementary supervision shall relate to:

1° identifying and reporting significant risk concentrations;

2° the adequacy of the management procedures and the internal control procedures relating to the group’s risk concentration in accordance with the provisions of Subsection V of this Section.

For the supervision, particular attention will be paid to the following aspects: the risk contagion in the group, the existence of conflicts of interest, circumvention of sectoral legislation, as well as the level or scale of risk concentration.

**Article 460.** § 1. For the application of Article 459, first paragraph, 1° the Bank shall, in its capacity of coordinator, establish the thresholds, in consultation with the other relevant competent authorities and after consulting the financial conglomerate, for identifying and reporting each significant risk concentration within the financial conglomerate. It shall lay down the thresholds on the basis of one or both of the following parameters: the regulatory own funds and the technical provisions.
If no thresholds are laid down, risk concentrations shall be regarded as significant if they are greater than 10% of the solvency requirements of the financial conglomerate concerned.

§ 2. Without prejudice to the provisions of Article 459, the Bank may, in its capacity of coordinator, impose restrictions or other equivalent supervisory measures for controlling the risk concentration at the financial conglomerate level. In order to prevent circumvention of the sectoral legislation on risk concentration, it may also decide, in accordance with Article 347, to apply, mutatis mutandis, the sectoral provisions on the subject at the financial conglomerate level. It shall consult the other relevant competent authorities beforehand.

**Subsection III - Supplementary supervision of intra-group transactions**

**Article 461.** The insurance or reinsurance companies referred to in Article 451 shall be subject to supplementary supervision of intra-group transactions. Without prejudice to the provisions of Regulation 2015/2303, this supplementary supervision shall relate to:

1° identifying and reporting significant intra-group transactions;

2° the adequacy of the management procedures and the internal control procedures relating to intra-group transactions in accordance with the provisions of Subsection V of this Section.

For the supervision, particular attention will be paid to the following aspects: the risk contagion in the group, the existence of conflicts of interest, circumvention of sectoral legislation, as well as the level or scale of intra-group transactions.

**Article 462.** § 1. For the application of Article 461, first paragraph, 1° the Bank shall, in its capacity of coordinator, establish appropriate thresholds, in consultation with the other relevant competent authorities and after consulting the financial conglomerate, for identifying and reporting significant intra-group transactions. It shall lay down the thresholds on the basis of one or both of the following parameters: the regulatory own funds and the technical provisions.

If no thresholds are laid down, intra-group transactions shall be regarded as significant if they are greater than 5% of the solvency requirements of the financial conglomerate concerned.

§ 2. Without prejudice to the provisions of Article 461, the Bank may, in its capacity of coordinator, impose restrictions or other equivalent supervisory measures for achieving the objectives of the supplementary conglomerate supervision of intra-group transactions. In order to prevent circumvention of the sectoral legislation on intra-group transactions, it may also decide, in accordance with Article 347, to apply, mutatis mutandis, the sectoral provisions on the subject at the financial conglomerate level. It shall consult the other relevant competent authorities beforehand.

**Subsection IV – Periodic reporting**

**Article 463.** § 1. For the supplementary conglomerate supervision stipulated in Subsections I, II and III of this Section, the following statements must be provided to the Bank, in its capacity of coordinator, following the methods it determines and at least twice a year:

1° accounting statements relating to the financial situation of the financial conglomerate containing at least the balance sheet and the profit and loss account;

2° a statement showing compliance with the standards provided for by or for the implementation of Articles 457, first paragraph, 1°, 460, § 2, and 462, § 2, and a statement showing the significant risk concentrations and significant intra-group transactions referred to in Articles 459, first paragraph, 1° and 461, first paragraph, 1°.

To this end, the Bank shall determine, in its capacity of coordinator, and in consultation with the
other relevant competent authorities, the categories of transactions, risks and positions that must be reported for monitoring significant risk concentration and significant intra-group transactions; it can for this purpose take into account the specific group- and risk-management structure of the financial conglomerate concerned.

§ 2. The statements referred to in § 1 shall be provided by the insurance or reinsurance company, by the mixed financial holding company or by the regulated undertaking belonging to the financial conglomerate, designated by the Bank after consultation with the other relevant competent authorities and with the financial conglomerate.

Subsection V - Risk management and internal control procedures

Article 464. The insurance or reinsurance companies referred to in Article 451 shall ensure that the financial conglomerate possesses appropriate risk management and internal control procedures and appropriate administrative and accounting procedures.

In particular, these risk management and internal control procedures must be available at a consolidated and sub-consolidated level in the parent undertakings referred to in Article 451, regardless of whether they relate to the insurance or reinsurance company or the mixed financial holding company that heads up the financial conglomerate, and in all regulated undertakings belonging to the financial conglomerate to ensure that the risk management and internal control procedures are cohesive and well-integrated, the influence of the undertakings belonging to the group on the regulated undertakings can be assessed, and all records and information important for the supplementary conglomerate supervision can be obtained. These parent undertakings shall also apply those risk management and internal control procedures to their unregulated subsidiaries. These risk management and internal control procedures shall also be cohesive and well-integrated and these subsidiaries must also be able to provide the records and information relevant to the supervision.

Article 465. § 1. The risk management procedures shall include:

1° appropriate governance and management, with approval and periodic evaluation of the strategy and the policy by the competent bodies with regard to all major risks incurred at the financial conglomerate level;

2° an appropriate solvency policy, which in particular anticipates for the group, the future effects of the business strategy followed on the group’s risk profile, and the solvency requirements referred to in Subsection I of this Section;

3° appropriate procedures that guarantee that the risk management and risk monitoring systems are sufficiently integrated in the group’s organization and that the systems used in the group’s undertakings are in line with each other so that risks may be correctly identified, monitored and controlled at the financial conglomerate level;

4° regularly updated rules to contribute to achieving and, where applicable, developing appropriate recovery and resolution mechanisms and plans.

§ 2. The internal control procedures shall include:

1° appropriate procedures for monitoring the solvency at a group level so that all major risks are correctly identified and monitored and the own funds are sufficient in light of the risks incurred;

2° the adequacy of the procedures and systems for the identification, measurement, monitoring and control of intra-group transactions and risk concentrations.

§ 3. The insurance or reinsurance companies referred to in Article 451, shall have appropriate accounting and administrative procedures that guarantee accuracy and compliance with the applicable rules of the records and information provided for the supplementary conglomerate
supervision and the preparation of the annual accounts.

**Article 466.** The insurance or reinsurance companies referred to in Article 451 shall ensure a transparent group structure. To this end, the insurance or reinsurance company, the mixed financial holding company or the regulated undertaking belonging to the financial conglomerate designated by the Bank, in its capacity of coordinator, after consultation with the other relevant competent authorities and with the financial conglomerate, shall:

1° regularly communicate to the Bank distinctive features of their legal structure, their policy for business organization and their management structure applicable to all regulated undertakings, unregulated subsidiaries and significant branches;

2° annually provide a description, accessible to the public, of the legal structure, the policy for business organization and the management structure at the financial conglomerate level, and ensure that all regulated undertakings also publish this information, whether by full disclosure or by reference to equivalent information.

**Subsection VI - Stress tests**

**Article 467.** The Bank shall at least once a year assess, in its capacity of coordinator, the need for stress tests at a financial conglomerate level. It shall make its assessment in line with the stress test organized for the most important financial sector represented in the financial conglomerate and consult with the other relevant competent authorities.

For the application of these stress tests, the Bank shall take into consideration the parameters that could identify specific risks linked to the financial conglomerates.

The Bank shall share the results of the stress tests with the Joint Committee.

**Subsection VII - Governance**

**Article 468.** § 1. Where the Bank exercises supplementary conglomerate supervision pursuant to Article 471 on an insurance or reinsurance company referred to in Article 451, the parent undertakings referred to in Article 451 which have their registered office in Belgium shall be responsible for compliance with the obligations relating to the supplementary conglomerate supervision.

When exercising the coordination and the supervision with which it has been tasked as head of the financial conglomerate, the parent undertakings referred to in the first paragraph shall issue guidelines to the undertakings belonging to the financial conglomerate with a view to complying with the obligations arising from the supplementary conglomerate supervision and ensuring the stability of the financial conglomerate. Such guidelines may not conflict with the Companies Code and its implementing decrees and are without prejudice to the supervision on an individual basis of insurance or reinsurance companies belonging to the financial conglomerate.

§ 2. Where the Bank exercises supplementary conglomerate supervision pursuant to Article 471 on an insurance or reinsurance company referred to in Article 451 which has a mixed financial holding company with registered office outside Belgium as a parent undertaking, this insurance or reinsurance company shall ensure supervision by its parent undertaking of the obligations regarding supplementary conglomerate supervision.

The insurance or reinsurance company must obtain cooperation from the parent undertaking referred to for setting up an appropriate management structure that contributes to the supplementary conglomerate supervision being exercised as efficiently as possible, and shall ensure that the influence of the parent undertaking does not conflict with the Companies Code and its implementing decrees and is without prejudice to the supervision on an individual basis that applies to the insurance or reinsurance company or the supplementary conglomerate supervision.
§ 3. The internal governance memorandum required pursuant to Article 42, § 3 must specify, at the financial conglomerate level, how the principles included in §§ 1 and 2 are complied with.

§ 4. In the cases referred to in § 1, the responsible parent undertakings concerned shall provide the reporting required pursuant to Article 463 of the present Law as well as, at the Bank’s request, all additional information that is useful for the exercise of the supplementary conglomerate supervision.

§ 5. Where the Bank exercises the supplementary conglomerate supervision pursuant to Article 471 in cases other than those referred to in §§ 1 and 2, it may further determine, on a case-by-case basis, how the principles of §§ 1 to 4 shall apply mutatis mutandis.

§ 6. For the application of §§§ 1, 2 and 5, the Bank shall consult the other competent authorities where necessary.

§ 7. Where a competent authority other than the Bank exercises the supplementary conglomerate supervision of an insurance or reinsurance company governed by Belgian law, this insurance or reinsurance company must ensure that the influence of its parent undertaking does not conflict with the Companies Code and its implementing decrees and is without prejudice to the supervision on an individual basis to which this insurance or reinsurance company is subject.

Article 469. § 1. The management committee, or where applicable, the senior management of the parent undertakings governed by Belgian law referred to in Article 451 that are included in the supplementary conglomerate supervision exercised by the Bank, shall declare the reporting referred to in Article 468, § 4 to be in line with the accounting and inventories. To this end, the statements are required to be complete, which means that they include all records from the accounting and inventories on the basis of which these statements were drawn up, and accurate, which means that the records from the accounting and inventories on the basis of which these statements were drawn up are reflected accurately. The management committee, or where applicable, the senior management, shall confirm that it has taken the necessary steps to ensure that the aforementioned statements have been drawn up pursuant to the applicable rules and in accordance with the accounting and valuation rules for drawing up the financial statements, or, for the periodic reporting statements not pertaining to the end of the financial year, pursuant to the accounting and valuation rules for drawing up the consolidated financial statements for the last financial year.

§ 2. Article 80 shall apply mutatis mutandis to the management committee, or where applicable to the senior management of the parent undertakings referred to in § 1 with regard to the measures as included in Articles 464 to 466.

Article 470. Without prejudice to the principle included in Article 455, first paragraph, and where the supplementary conglomerate supervision is exercised by the Bank, the following Articles of the present Law shall apply mutatis mutandis to the mixed financial holding company governed by Belgian law: Articles 39, 40, 41, 45, §§ 1, 3 and 4, 46, §§ 1, 3 and 4, 47, 64 to 72, 81, 82, 83, 508, § 1 and 517.

Subsection III - Exercise of supplementary conglomerate supervision

Subsection I - Designation of the coordinator

Article 471. § 1. In order to guarantee appropriate supplementary conglomerate supervision, one single coordinator shall be designated from the competent authorities of the Member States concerned, including those of the Member State in which the mixed financial holding company has its registered office, which shall be responsible for the coordination and implementation of the supplementary conglomerate supervision.

§ 2. The supplementary conglomerate supervision of the insurance or reinsurance companies
referred to in Article 451, first paragraph, shall be exercised as follows:

1° by the Bank in the case referred to in Article 451, first paragraph, 1°;

2° if a Belgian mixed financial holding company heads a financial conglomerate, by the Bank, without prejudice to points 3° to 7°;

3° if at least one other Belgian regulated undertaking has the same Belgian mixed financial holding company heading the financial conglomerate as a Belgian insurance or reinsurance company, by the Belgian competent authority tasked with the prudential supervision of the Belgian regulated undertaking with the highest balance sheet total;

4° if the mixed financial holding company heading the financial conglomerate has its registered office in a Member State other than Belgium and has a subsidiary in that Member State that is a regulated undertaking, by the competent authority of that country;

5° if the mixed financial holding company heading the financial conglomerate has its registered office in a Member State other than Belgium and has at least two subsidiaries in that Member State that are regulated undertakings, with a different competent authority for each, by the competent authority of the regulated undertaking in the most important financial sector;

6° if several mixed financial holding companies, with registered office in several countries head the financial conglomerate and there is a regulated undertaking in each of these Member States, by the competent authority of the regulated undertaking with the highest balance sheet total if the activity of these undertakings take place in the same financial sector, or by the competent authority of the regulated undertaking in the most important financial sector;

7° if at least two regulated undertakings with registered office in a Member State have the same mixed financial holding company and parent undertaking and none of these undertakings have an authorization in the Member State in which the mixed financial holding company has its registered office, by the competent authority of the regulated undertaking with the highest balance sheet total in the most important financial sector.

8° if the financial conglomerate is a group without a parent undertaking heading the group, or in another of the aforementioned situations, by the competent authority tasked with the supervision of the regulated undertaking with the highest balance sheet total in the most important financial sector.

Article 472. The Bank and the other relevant competent authorities can in exceptional circumstances mutually agree to derogate from the competence regime stipulated in Article 471, if the application thereof, given the structure of the financial conglomerate and the relative importance of the group’s activities in the different Member States, would not be appropriate, and task another competent authority with the supplementary conglomerate supervision. They shall consult the financial conglomerate on the matter prior to making a decision.

Subsection II – Rights and duties of the coordinator - College

Article 473. § 1. Without prejudice to the other powers and tasks conferred on the Bank by or pursuant to the present Law and Directive 2002/87/EC, the tasks of the Bank, in its capacity of coordinator, shall include the following:

1° coordinating the gathering and dissemination of relevant or essential information for going concern and emergency situations, including the dissemination of information which is of importance for the supervision by a competent authority pursuant to the sectoral legislation;

2° supervising and evaluating the financial situation of the financial conglomerate;

3° supervising compliance with the provisions of Articles 457 to 462 on solvency, risk
concentrations and intra-group transactions, and compliance with the reporting obligations referred to in Article 463;

4° supervising and evaluating the structure, the organization and the internal control procedures of the financial conglomerate, as referred to in Article 464 to 466;

5° planning and coordinating supervisory activity, under normal circumstances and in emergency situations, in collaboration with the other relevant competent authorities;

6° taking measures and imposing sanctions with respect to the mixed financial holding company;

§ 2. The relevant competent authorities, where applicable in consultation with other competent authorities, may agree to allocate other supervisory tasks to the Bank in its capacity of coordinator, outside those referred to in § 1.

Article 474. § 1. In its capacity of coordinator, the Bank shall set up a college for the supplementary conglomerate supervision to shape the required cooperation and exercise of its tasks as coordinator by virtue of the present Chapter and, subject to confidentiality requirements and EU law, the appropriate coordination and cooperation with the supervisory authorities of third countries concerned.

§ 2. Where the relevant competent authorities already participate in a college established pursuant to Article 248, paragraph 2 of Directive 2009/138/EC or Article 116 of Directive 2013/36/EU, the college shall function at a financial conglomerate level within the college established for the most important financial sector. The banking sector and investment services sector shall for this purpose be considered together.

The rules for the coordination referred to in § 1 shall be detailed separately in the written coordination agreements established for the sectoral college. In its capacity of coordinator, the Bank shall decide, as the Chair of this sectoral college, which other competent authorities shall take part in a meeting or an activity of that college.

Article 475. Without prejudice to the Memoranda of Understanding and coordination agreements referred to in the other provisions of the present Chapter, the Bank, in its capacity of coordinator, shall enter into agreements with other competent authorities, which are necessary for achieving the supplementary conglomerate supervision as provided for in the present Chapter. These agreements shall regulate where necessary the methods for exercising this supervision, including the methods for cooperation and sharing of information between competent authorities. They can in particular regulate the procedures for decision-making between the relevant competent authorities.

Article 476. In its capacity of coordinator, the Bank shall draw up lists of the mixed financial holding companies included in its supplementary conglomerate supervision.

It shall provide this list to the competent authorities of the other Member States, to EIOPA, the EBA and to the European Commission.

Article 477. Without prejudice to the delegation of specific supervisory powers and responsibilities in accordance with the sectoral legislation, the designation of the Bank as coordinator is without prejudice to the tasks and responsibilities, referred to in the sectoral legislation, of the competent authorities concerned.

Subsection III - Cooperation and sharing of information between competent authorities

Article 478. The Bank, irrespective of whether it acts as coordinator or competent authority without being the coordinator, shall work closely with the other competent authorities, irrespective of whether these act as coordinator or as competent authority without being the coordinator.

The Bank may communicate or request from these competent authorities, at its own initiative or by
request, all information, including confidential information, where it is essential or relevant to enable or facilitate the exercise of the supervisory tasks conferred on these authorities pursuant to the sectoral legislation and the supplementary conglomerate supervision pursuant to Directive 2002/87/EC.

This cooperation shall include at least collecting and sharing information on the following aspects:

1° the legal structure, the policy for the organization of the business and of the management structure of the group, encompassing all regulated undertakings, unregulated subsidiaries and significant branches within the meaning of Article 354 of Regulation 2015/35 belonging to the financial conglomerate, holders of qualifying holdings at the level of the ultimate parent undertaking, as well as of the competent authorities for the regulated undertakings in the group;

2° the strategy followed by the financial conglomerate;

3° the financial situation of the financial conglomerate, in particular the sufficiency of the own funds, the intra-group transactions, risk concentration and profitability;

4° the major shareholders and the management of the financial conglomerate;

5° the organization and risk management and internal control procedures at the financial conglomerate level;

6° the procedures for the collection of information from undertakings in a financial conglomerate, as well as for the verification of such information;

7° unfavourable developments in regulated undertakings or in other undertakings of the financial conglomerate that could have serious negative consequences for the regulated undertakings;

8° important sanctions and exceptional measures taken by the competent authorities in accordance with the sectoral legislation or Directive 2002/87/EC.

The Bank may also share information with the ESRB with respect to the exercise of the supervision of insurance or reinsurance companies belonging to a financial conglomerate.

Article 479. § 1. If the Bank does not itself exercise, in the case of a parent undertaking governed by Belgian law, the supplementary conglomerate supervision by virtue of Article 471, the competent authorities tasked with the supervision may ask it to request information useful for that supervision from the parent undertaking, and forward that information to them.

§ 2. If the Bank does exercise the supplementary conglomerate supervision by virtue of Article 471, and the parent undertaking has its registered office in a Member State other than Belgium, the Bank may ask the competent authority of that Member State to request information useful for that supervision from the parent undertaking, and forward that information to it.

Article 480. Where a competent authority of another Member State exercises the supplementary conglomerate supervision of an insurance or reinsurance company that is the subsidiary of a mixed financial holding company governed by Belgian law, the Bank shall ascertain, where it is requested to do so by the competent authority, how it can lend its cooperation for the application of the measures that would exist in the Member State of that competent authority with a view to the inclusion of the mixed financial holding companies in the supplementary conglomerate supervision.

Article 481. The obtainment, sharing or holding of information by the Bank and the competent authorities with a view to facilitating the supplementary conglomerate supervision of undertakings stated in Article 483, § 1, shall under no circumstances mean that the Bank exercises separate supervision of these undertakings.
Subsection IV – Consultation between competent authorities

Article 482. Without prejudice to its responsibilities as described in the sectoral legislation, the Bank shall, prior to making a decision on the matters described as follows, consult on these matters if the decision affects the supervisory tasks of other competent authorities:

1° changes to the shareholder structure, the organization or the management of regulated undertakings in a financial conglomerate, which require approval or authorization by the competent authorities;

2° important sanctions or exceptional measures envisaged.

The Bank may decide not to consult on matters in urgent cases or if such consultation could threaten the effectiveness of its decisions. In such a case, the Bank shall inform the other competent authorities forthwith.

Subsection V - Information to be provided for the exercise of supplementary conglomerate supervision

Article 483. § 1. Without prejudice to the periodic reporting applicable, the Bank must be given access by the insurance or reinsurance companies and mixed financial holding companies concerned, their subsidiaries and all other undertakings included in the financial conglomerate, to seek, directly or indirectly, all information that is useful, depending on the circumstances, for the supplementary conglomerate supervision it exercises.

The undertakings excluded from the supplementary conglomerate supervision in accordance with Article 458, § 2, must provide the Bank, in its capacity of coordinator, all records and information it deems useful for its supplementary conglomerate supervision.

Undertakings that control, either exclusively or with other undertakings, an insurance or reinsurance company governed by Belgian law and the subsidiaries of these undertakings must, if the undertakings and subsidiaries do not fall under the scope of the supplementary conglomerate supervision, provide the Bank and the other competent authorities all records and information useful for the supervision of this insurance or reinsurance company.

§ 2. The Bank may require that the information referred to in § 1 on undertakings with registered office in a Member State other than Belgium, be communicated by the insurance or reinsurance company or mixed financial holding company established pursuant to Belgian law, or that information on undertakings with registered office in a third country be communicated to it by an insurance or reinsurance company or mixed financial holding company with registered office in a Member State.

§ 3. If an insurance or reinsurance company governed by Belgian law is excluded from the financial conglomerate by another competent authority that acts as coordinator, the Bank may require that the parent undertaking heading up the financial conglomerate provide it with the records and information it deems useful for its supervision of the insurance or reinsurance company.

Article 484. Where the Bank, as part of its individual supervision, group supervision or supplementary conglomerate supervision, wishes to receive information which is already reported to another competent authority pursuant to the sectoral legislation, it shall wherever possible turn to that competent authority to obtain that information.

Article 485. The undertakings included in the supplementary conglomerate supervision, as well as the undertakings excluded from supplementary conglomerate supervision pursuant to Article 458, § 2 which belong to a financial conglomerate shall share all useful information and records, and may not raise objections of a private-law nature thereto, especially as regards confidentiality
agreements or the nature of their links.

**Article 486.** § 1. The Bank may verify compliance with the obligations specified in this Chapter, and the accuracy and completeness of the records and information provided, on-site in the premises of the undertakings referred to in Article 483, § 1. It may task statutory auditors or foreign experts accredited by it for this purpose with these verifications at the expense of these companies.

§ 2. Where the undertakings referred to in § 1 have their registered office in another Member State, the Bank shall request that the competent authority of that Member State conduct this inspection. The Bank shall conduct this inspection itself if it receives the authorization to do so from the competent authority of that Member State. Where the latter wishes to conduct the inspection itself, or appoints an accredited auditor or an expert for that task, the Bank may nevertheless take part in the inspection if it wishes to do so.

§ 3. Where the undertakings referred to in § 1 have their registered office in a third country, the methods for on-site inspection shall be regulated in Memoranda of Understanding that the Bank has entered into with the authorities of that third country concerned, where applicable in accordance with Article 36/16, § 2 of the Law of 22 February 1998, or that the European Commission has entered into with the foreign authorities concerned in accordance with Article 264 of Directive 2009/138/EC.

**Article 487.** § 1. Where the supplementary conglomerate supervision is exercised by an authority which is a competent authority governed by the law of a Member State other than Belgium, the Belgian insurance or reinsurance companies and mixed financial holding companies and their subsidiaries shall provide this supervisory authority with all the records and information it deems useful for the exercise of the supplementary conglomerate supervision with which it is tasked, either directly or indirectly.

Where this authority is governed by the law of a third country and the obligation to provide information arises from Memoranda of Understanding that the Bank has entered into with the foreign authority concerned, the first paragraph shall apply mutatis mutandis.

§ 2. Where the supplementary conglomerate supervision is exercised by an authority that is a competent authority governed by the law of a Member State other than Belgium, that competent authority may, to ascertain whether the provisions laid by or pursuant to this Chapter are complied with, assess, on-site, the records and information it has received on site in the companies with registered office in Belgium referred to in Article 483, § 1, or task accredited statutory auditors or experts accredited by it therewith. The provisions of Article 485, § 2 shall apply mutatis mutandis.

Where this authority is governed by the law of a third country, the provisions of Article 485, § 3 shall apply mutatis mutandis.

### Subsection VI – Audit supervision

**Article 488.** The provisions of Articles 330 to 337 relating to the task of accredited statutory auditor at an insurance or reinsurance company on an individual basis shall apply mutatis mutandis to insurance or reinsurance companies referred to in Article 451, first paragraph, 1° for the supplementary conglomerate supervision to which these insurance or reinsurance companies are subject.

**Art 489.** § 1. In a mixed financial holding company governed by Belgian law referred to in Article 451, first paragraph, 2° included in the supplementary conglomerate supervision exercised by the Bank, the task of statutory auditor as referred to in the Companies Code shall be conferred on one or more auditors or audit firms accredited by the Bank in accordance with, depending on the circumstances, Article 327 of the present Law, Article 222 of the Law of 25 April 2014, or [Article 578 of the Law of 25 April 2014]. The panel of auditors of the audit firms appointed by a mixed financial holding company must be composed in such a way as to be accredited, whether individually or collectively, in each of the financial sectors in which the financial conglomerate has
significant activity. The Bank may determine, by reference to the thresholds referred to in Article 452, what must be understood as activity of significance. The provisions of the sectoral legislation on the subject of audit supervision shall apply mutatis mutandis.


§ 2. The accredited statutory auditors appointed to the mixed financial holding companies referred to in § 1 shall lend their cooperation to the supplementary conglomerate supervision with which the Bank is tasked, at their own and sole responsibility and in accordance with the present paragraph, following the rules of the trade and the guidelines of the Bank.

Article 490. The accredited statutory auditors appointed to a mixed financial holding company as referred to in Article 489 shall assess the adequacy of the risk management procedures, internal control procedures and administrative and accounting procedures as referred to in Articles 464 to 466 and share their findings on the matter with the Bank.

Article 491. The accredited statutory auditors appointed for a company referred to in Article 489 shall report to the Bank on the results of the limited review of the statements referred to in Article 463 that the mixed financial holding company provide to the Bank at the end of the first half-year, in which it is confirmed that they have no knowledge of any facts that would indicate that these periodic statements at the end of the half-year were not drawn up in all material respects in accordance with the provisions laid down by or pursuant to the Law and the instructions of the Bank.

They shall moreover confirm that these statements at the end of the half-year, as regards the accounting information, are in accordance in all material respects with the accounting and inventories as regards:

1° completeness: they include all data from the accounting and the inventories on the basis of which these statements were drawn up, and

2° accuracy: they correctly reflect the data from the accounting and inventories on the basis of which these statements were drawn up.

They shall also confirm to have no knowledge of any facts that would indicate that the periodic statements were not drawn up at the end of the half-year, as regards the accounting information, pursuant to the accounting and valuation rules for the drawing up of periodic statements relating to the last financial year. The Bank may further specify the periodic statements referred to here.

Article 492. The accredited statutory auditors appointed for a company referred to in Article 489 shall also report to the Bank on the results of the review of the periodic statements that the mixed financial holding company provides to the Bank at the end of the financial year, in which it is confirmed that these periodic statements were drawn up in all material respects in accordance with the rules laid down by or pursuant to the law and the instructions of the Bank.

They shall also confirm that these statements at the end of the financial year, as regards the accounting information, are, in all material respects, in line with the accounting and the inventories as regards:

1° completeness: they include all data from the accounting and the inventories on the basis of which these statements were drawn up, and

2° accuracy: they correctly reflect the data from the accounting and inventories on the basis of which these statements were drawn up.

They shall also confirm that the periodic statements were drawn up at the end of the financial year, as regards the accounting information, pursuant to the accounting and valuation rules for the
preparation of the annual accounts.

The Bank may further specify the statements referred to here.

**Article 493.** The accredited statutory auditors appointed for a company referred to in Article 489 shall, at the Bank’s request, provide a special report to the Bank on the aspects referred to in Articles 457 to 460 and Articles 490 to 492.

**Article 494.** Accredited statutory auditors shall report on their own initiative to the Bank within the scope of their task for the mixed financial holding company or an audit task for a related undertaking of a mixed financial holding company, the moment any of the following come to their attention:

1° decisions, facts or, where applicable, developments that have or could have a significant influence on the situation of the group from the point of view of its administrative and accounting procedures or of its internal control;

2° decisions, facts or, where applicable, developments that could constitute an infringement of the Companies Code, of the articles of association or of this law or the decisions and regulations in implementation thereof, as regards the mixed financial holding company;

3° decisions, facts or, where applicable, developments that could lead to a refusal of certification of the consolidated annual accounts or to the formulation of a reservation;

**Article 495.** The costs for drawing up these reports shall be borne by the mixed financial holding company, by the insurance or reinsurance company governed by Belgian law or by both together.

**Article 496.** The accredited statutory auditors shall communicate the reports they send to the Bank in accordance with Article 494 to the management of the insurance or reinsurance company. These communications shall be subject to Article 306.

They shall provide the Bank with a copy of their communications addressed to these managers and that relate to issues that could be of importance for the supervision it exercises.

**Article 497.** No civil, criminal or disciplinary proceedings may be initiated and no professional penalties may be imposed against accredited statutory auditors who have communicated information in good faith as referred to in Article 495.

**Article 498.** Where the parent undertaking is a mixed financial holding company referred to in Article 451, first paragraph, 2° with registered office in another Member State, which is included in the supplementary conglomerate supervision exercised by the Bank, the task specified in Articles 489, § 2 to 494 shall be exercised mutatis mutandis by the accredited statutory auditor appointed to this mixed financial holding company for an equivalent task. In the absence of such a statutory auditor, the task concerned shall be exercised by the statutory auditor appointed at the regulated undertaking governed by Belgian law under the supervision of the Bank and which is the subsidiary of the mixed financial holding company concerned.

**Article 499.** The accredited statutory auditors appointed to insurance or reinsurance companies or mixed financial holding companies governed by Belgian law in accordance with Articles 488 to 498 shall have access to view, for the exercise of their tasks as provided for in these Articles, all documents and files that concern the subsidiaries included in the financial conglomerate and the companies referred to in Article 483, § 1, second paragraph.

The provisions of Article 35 of the Law of 22 February 1998 shall apply to the information they have taken cognizance of in application of the first paragraph.
Section IV - Other financial groups

Article 500. If in cases other than those referred to in Article 451, an undertaking has a participation or other capital ties with one or more other undertakings, or exercises significant influence on such undertakings, outside a participation or other capital ties, and one of the aforementioned undertakings is an insurance or reinsurance company governed by Belgian law, the Bank, in its capacity of relevant competent authority, may mutually decide, along with the other relevant competent authorities, to exercise supplementary conglomerate supervision on the regulated undertakings in the group. The relevant competent authorities shall jointly determine the methods for this supplementary conglomerate supervision and more in particular which Articles of the present Chapter on supplementary conglomerate supervision shall apply. They shall make their decision with due regard to the objectives of the supplementary conglomerate supervision as laid down in the present Chapter and shall take into consideration the international principles on the subject of supplementary conglomerate supervision.

For the application of the provisions of the first paragraph, the conditions of Article 340, 2°, a), ii) and iii) or b), ii) and iii) must be complied with.

Article 501. The competent authority tasked with the supplementary conglomerate supervision of the group shall be designated mutatis mutandis with the provisions of Article 471.

If supplementary conglomerate supervision is opted for pursuant to Article 500, first paragraph, the provisions of Article 453, § 2, shall apply mutatis mutandis.

Section V — Parent undertakings from third countries

Article 502. Insurance or reinsurance companies governed by Belgian law with, as their parent undertaking, a regulated undertaking heading up a financial conglomerate or a mixed financial holding company with registered office in a third country, which are not, in accordance with this Chapter, already subject to or included in the scope of supplementary conglomerate supervision exercised by the Bank or another competent authority, shall be subject to supplementary conglomerate supervision in accordance with the provisions of this Section.

Article 503. § 1. The Bank shall verify whether the insurance or reinsurance companies referred to in Article 502 are subject to supervision by a competent authority from a third country that is equivalent to the supplementary conglomerate supervision under the provisions of this Chapter.

This shall be done either on the Bank’s own initiative or at the request of the parent undertakings referred to in Article 502 or of the insurance or reinsurance company governed by Belgian law.

Prior to making a decision, the Bank shall consult the other competent authorities concerned on whether the supervision referred to is equivalent.

As regards this equivalence, the Bank shall take into account the guidelines drawn up by the Joint Committee in accordance with Articles 16 and 56 of Regulation 1093/2010, Regulation 1094/2010 or Regulation 1095/2010 on supplementary conglomerate supervision, in accordance with Directive 2002/87/EC;

§ 2. If pursuant to the provisions, mutatis mutandis, of Article 10 of Directive 2002/87/EC, a competent authority other than the Bank is the coordinator, the verification and consultation shall be done by this other competent authority and the Bank may communicate findings and conclusions on the equivalence referred to in § 1 to this other competent authority.

Where the Bank has a difference of opinion on a decision made by another competent authority by virtue of the first paragraph, Article 19 of Regulation No 1094/2010, or Regulation 1093/2010 or Regulation Regulation No 1095/2010 shall apply, depending on the circumstances.
§ 3. Where the procedure in §§ 1 and 2 leads to the conclusion of no equivalence, the insurance or reinsurance companies concerned governed by Belgian law shall be subject to supplementary conglomerate supervision, pursuant to the provisions, mutatis mutandis, of § 1, first paragraph, by the Bank if it is the competent authority that would be tasked with the supplementary conglomerate supervision pursuant to the provisions, mutatis mutandis, of Article 471.

By way of derogation from the first paragraph, the Bank, after consulting the other competent authorities concerned, may also decide to apply another appropriate supervisory method that should meet the objectives behind the provisions referred to in § 2, first paragraph.

The Bank can, in particular, require that insurance or reinsurance companies governed by Belgian law and any other regulated undertakings established under the law of a Member State, be included in a group headed up by a mixed financial holding company governed by the law of a Member State, and apply the provisions of this Chapter at the financial conglomerate level headed up by this mixed financial holding company.

In such a case, the Bank shall inform the other competent authorities concerned and the European Commission of all decisions made pursuant to the second and third paragraphs.

For the application of the first to the fourth paragraphs, the Bank shall enter into the necessary agreements with the relevant competent authorities.

**TITLE VI - INSURANCE AND REINSURANCE COMPANIES IN DIFFICULTY OR IN AN IRREGULAR SITUATION**

**Chapter I - Balance of prices**

**Article 504.** If the Bank identifies—or if an insurance or reinsurance company informs the Bank—that the application of one of its prices is loss-making or risks becoming so, the Bank may require that the company concerned restore the balance as regards this price.

Restoring the balance of the price may constitute an adjustment to the cover conditions.

By way of derogation from Article 41 of the Insurance Law, and without prejudice to the policyholders’ right of cancellation, the price increase for life insurance and reinsurance policies shall be adjusted in accordance with the provisions of Article 216, § 3.

**Article 505.** Where the policies referred to in Article 504 are health insurance contracts not linked to professional activity within the meaning of Article 202 of the Insurance Law, the Bank shall consult the FSMA prior to making a decision.

The FSMA shall communicate its opinion to the Bank within a month of receipt of the request for an opinion. In the absence of an opinion within that term, it shall be assumed that it has no observations to make.

**Article 506.** A price increase is not subject to the obligation to declare an increase in prices as referred to in the Law of 22 January 1945 on economic regulation and prices, and the implementing decrees thereof.

**Article 507.** The Bank shall inform the FSMA and the Pricing Committee of the decision to increase an insurance company’s prices.

The Bank shall also have an extract of the decision published in the Belgian Official Gazette, showing the percentage of the permitted increase.
Chapter II – Recovery measures

Section I — Binding measures

**Article 508.** § 1. Where the Bank finds that an insurance or reinsurance company is not operating in accordance with the provisions of the present Law, its implementing decrees and regulations, or the implementing measures of Directive 2009/138/EC, or where it has information indicating that this company runs the risk, in the following twelve months, of no longer working in accordance with these provisions, it shall lay down the term by which this situation should be remedied.

§ 2 Until such time as the insurance or reinsurance company has remedied the situation mentioned in § 1, the Bank may, at any time:

1° impose the application of special rules governing the valuation or adjustment of value for the calculation of the own funds requirements laid down by or pursuant to the present Law, or by the implementing measures of Directive 2009/138/EC.

2° restrict or prohibit the distribution of profit-sharing and rebates, or the granting of distributed profit-sharing, after consultation with the FSMA;

3° limit or prohibit any distribution of dividends or any payment, particularly of interest, to shareholders or to the holders of common equity capital instruments, insofar as the suspension of the resulting payments does not result in the commencement of winding-up proceedings pursuant to the provisions of the Bankruptcy Law of 8 August 1997;

4° require that all or part of the distributable profits be placed in a reserve;

5° limit the variable component of the remuneration of persons to which the remuneration policy applies, to a percentage of the profits;

6° impose specific liquidity rules, stricter than those stipulated by or pursuant to regulations established by or pursuant to the present Law, including restrictions of mismatches between the insurance or reinsurance company’s assets and liabilities;

7° require the insurance or reinsurance company to reduce the risks of certain activities or products or of its organization, where applicable, by requiring the sale of all or part of its business or network;

8° impose rules on the risk concentrations or the limitation of exposure that apply to the assets and that are stricter than those provided for by or pursuant to the present Law;

9° impose additional reporting obligations or higher reporting frequencies than those stipulated by or pursuant to the present Law or by the implementing measures of Directive 2009/138/EC, in particular with regard to risks, own funds or liquidity positions;

10° require more complete and more frequent publishing than that provided for by or pursuant to this Law or by the implementing measures of Directive 2009/138/EC;

§ 3. Where the Bank considers that the measures taken by the insurance or reinsurance company to remedy the situation within the period stipulated in application of § 1, are satisfactory, it shall, pursuant to the procedures to be determined, lift all or part of the measures decided in application of § 2.

Section II — Implementation of the recovery plan

**Article 509.** Until such time as the insurance or reinsurance company has remedied the situation described in Article 508, § 1, and without prejudice to the measures described in § 2 of that Article,
Section III - Reorganization plan and short-term financing plan

**Article 510.** § 1. As soon as an insurance or reinsurance company identifies that it no longer complies with the solvency capital requirement as referred to in Article 151, or that there is a risk of non-compliance within the next three months, it shall immediately inform the Bank thereof.

Within two months after the identification referred to in the first paragraph, or the communication by the Bank of the fact that it has made such an identification, the company shall submit a realistic reorganization plan to the Bank for approval that aims to restore the own funds eligible for covering the solvency capital requirement of the group or to reduce its risk profile to the extent that the solvency capital requirement is complied with within six months at the latest. The Bank may extend this term by three months if it deems necessary.

§ 2. The reorganization plan includes at least a detailed description of the following items or the justifications thereof for the following three financial years:

1° estimates of the expected management costs, in particular overheads and commissions;

2° estimates of the income and outgoings, in respect of the direct insurance business and of reinsurance acceptances and reinsurance cessions;

3° a forecast balance sheet;

4° estimates of the financial resources to cover the technical provisions, the solvency capital requirement and the minimum capital requirement;

5° the general underwriting and pricing policy;

6° the general reinsurance or retrocession policy;

7° the relevant provisions of the recovery plan drawn up pursuant to Articles 204 to 206.

The Bank may demand all additional information or justifications it deems necessary to assess the plan.

§ 3. In exceptional unfavourable circumstances as referred to in Article 138, paragraph 4 of Directive 2009/138/EC, designated as such by EIOPA, the Bank may extend the term referred to in § 1, second paragraph, for the company concerned, by a period of a maximum of 7 years, taking into account all relevant factors, and in particular the average term of the technical provisions.

The insurance or reinsurance company concerned must submit an interim report every three months to the Bank showing which measures have been taken and the progress that has been made to restore the own funds eligible for covering the solvency capital requirement or to reduce its risk profile so that the solvency capital requirement is complied with again.

The extension referred to in the first paragraph shall be withdrawn if it appears from the interim report that no clear progress has been made by the company in light of the objectives referred to in the second paragraph.

**Article 511.** § 1. As soon as an insurance or reinsurance company identifies that it no longer complies with the minimum capital requirement as referred to in Article 189, or that there is a risk of non-compliance within the next three months, it shall immediately inform the Bank thereof.

Within one month after the identification referred to in the first paragraph, or the communication by the Bank of the fact that it has made such an identification, the company shall submit a realistic
short-term financing plan to the Bank for approval, that aims to restore the basic eligible own funds within three months to the level of the minimum capital requirement or reduce its risk profile to the extent that the minimum capital requirement is complied with.

§ 2. The short-term financing plan includes at least a detailed description of the items referred to in Article 510, § 2 or the justifications thereof for the following three financial years.

Article 512. Insofar as the reorganization plan referred to in Article 510 or the short-term financing plan referred to in Article 511 is underway, and the Bank is of the opinion that the rights of policyholders, the insureds or the beneficiaries, or compliance with the rights arising from reinsurance policies are under threat, it shall refrain from the issuing the solvency certificates referred to in Article 109, first paragraph and Article 116, first paragraph.

Section IV - Limit of the power to dispose of assets

Article 513. Without prejudice to the other measures imposed by or pursuant to this Law, the Bank may limit or prohibit the free disposal of the assets of an insurance or reinsurance company, irrespective of where they are located, in the following cases:

1° if the company does not adhere to the provisions of Articles 124 to 139 regarding the technical provisions;

2° in the exceptional circumstance that the Bank, where the company has submitted or must submit a reorganization plan pursuant to Article 510, is of the opinion that the financial condition of the company will further deteriorate;

3° if the minimum capital requirement established in Article 189 is no longer complied with;

4° if the solvency position of the company continues to deteriorate or the interests of policyholders, insureds or the beneficiaries of insurance policies or compliance with the rights arising from the reinsurance policies come under threat, despite the implementation of a reorganization plan or a short-term financing plan.

Article 514. § 1. The prohibition of free disposal of the assets located in Belgium laid down pursuant to Article 513 shall be governed by the following provisions:

1° the company provides to the Bank a full inventory of its assets, including of the other assets held for covering the technical provisions, without such communication constituting a condition for prohibition. The prior approval of the Bank is required for every deed of assignment or allocation as regards the assets.

2° for the assets that are registered on an account, the Bank shall order the deposit-taking institution to block the account. For the other assets eligible for deposit, the Bank shall order the company immediately to deposit them on a special account for the blocking of the assets at a credit institution, stockbroking firm or foreign investment firm with an authorization that covers the receipt of assets and which is governed by the law of a Member State.

The deposit-taking institutions may only return the assets that they hold for the account of insurance or reinsurance companies once they are presented with the Bank’s consent. The Bank shall inform the deposit-taking institutions of their obligations under this Article. These institutions shall be held responsible for the pecuniary losses arising from non-compliance with their obligations laid down in this paragraph.

3° The amounts paid in Belgium pursuant to claims of the insurance or reinsurance company shall be deposited on a special blocked account at a credit institution governed by Belgian law or by the law of a Member State, and fall under the same regulation as the assets referred to in 1°.

4° As regards the other assets not eligible for deposit, the King may determine the rules, upon the
recommendation of the Bank, regarding protective measures that could apply to these assets.

5° Immovable assets are subject to a statutory mortgage for the benefit of the joint insurance or reinsurance creditors.

The Bank requires registration under the conditions provided for in Articles 82 to 87 of the mortgage law.

Registration may be cancelled or reduced with the consent of the Bank under the conditions stipulated in Articles 92 to 95 of the mortgage law.

The charges and fees for registration, cancellation or reduction shall be payable by the company in question.

6° The Bank may, by registered letter addressed to the registrar of mortgages, oppose the cancellation or reduction of the mortgage granted by a third party for the benefit of the insurance or reinsurance company.

§ 2. Movable collateral that is the subject of the provisions of § 1 shall be exempt from seizure other than for the benefit of creditors who hold rights or privileges acquired in good faith through formalities completed before aforesaid collateral was allocated.

Article 515. The Bank shall previously inform the supervisory authorities of the host Member States concerned of its intention to limit or prohibit free disposal of the assets.

The Bank may require the supervisory authorities of the Member States on the territory on which the assets of the company are situated to take the necessary measures to ensure effectivity of the limitation or prohibition of free disposal of these assets. The Bank shall specify which assets are subject to these measures.

Article 516. At the request of a supervisory authority of a Member State, the Bank may, in accordance with Article 513, limit or prevent free disposal of the assets of an insurance or reinsurance company governed by the law of that Member State if those assets are situated on the Belgian territory and indicated by this supervisory authority.

Section V - Exceptional recovery measures

Article 517. § 1. Where the Bank finds that an insurance or reinsurance company does not or no longer complies with the measures taken pursuant to Article 508, § 2, or that it has not remedied the situation after expiry of the deadline set in application of Article 508, § 1, the Bank may, without prejudice to the other provisions established by or pursuant to the present Law:

1° appoint a special commissioner.

In such a case, for all actions and decisions of all bodies of the company, and those of the persons responsible for the management, the special commissioner’s written, general or special authorization is required; the Bank may, however, limit the transactions for which authorization is required.

The special commissioner may submit any proposal he/she considers appropriate to all bodies of the institution, including the general meeting.

The members of the management and governing bodies and the persons responsible for management who carry out actions or make decisions without having received the necessary authorization from the special commissioner shall be jointly and severally liable for any loss arising therefrom incurred by the company or by a third party.

If the Bank has published the name of the special commissioner in the Belgian Official Gazette and
has specified the actions and decisions that are subject to his/her authorization, any actions or
decisions made without the required authorization, shall be null and void unless ratified by the
special commissioner. Under the same conditions, any decision of the general meeting which was
made without the necessary authorization of the special commissioner shall be null and void unless
ratified by the special commissioner.

The remuneration of the special commissioner shall be set by the Bank and paid by the company.

The Bank may appoint a deputy commissioner;

2° order the replacement of all or part of the members of the statutory governing body, the
management committee and/or where applicable, the persons tasked with the senior management of
the insurance or reinsurance company by a deadline it determines and, where no replacement
occurs by this deadline, appoint one or more provisional managers or administrators in the place of
the entire management and governing bodies of the institution who alone or collegially, depending
on the case, shall have the powers of the persons replaced. The Bank shall publish its decision in
the Belgian Official Gazette.

Where the circumstances so warrant, the Bank may appoint one or more provisional managers or
administrators without first ordering the replacement of all or part of the managers of the company.

With the authorization of the Bank, the provisional manager(s) or administrator(s) may call a
general meeting and draw up the agenda thereof.

The Bank may request, in accordance with the methods it determines, that the provisional
manager(s) or administrator(s) provide a report on the financial condition of the institution and on
the measures taken in connection with their task, and on the financial condition at the start and end
of that task.

The remuneration of the provisional manager(s) or administrator(s) shall be determined by the
Bank and borne by the company concerned.

The Bank may, at any time, replace the provisional manager(s) or administrator(s), either ex
officio, or at the request of the majority of the shareholders or members if they can prove that the
management by the parties concerned no longer offers the necessary guarantees;

3° order the insurance or reinsurance company to call a general meeting of shareholders by a date
to be set by the Bank, which shall also draw up the agenda;

4° suspend or prohibit, for a period it shall determine, the direct or indirect performance of all or
part of the company's activities. Such a suspension may, to the extent determined by the Bank,
imply the total or partial suspension of pending contracts, without this suspension being able to last
longer than two months, or becoming a reason for non-payment of the premiums that were already
owed prior to the date of the suspension measure.

The members of the management and governing bodies and the persons responsible for
management who carry out actions or make decisions in violation of the suspension or prohibition
order shall be jointly and severally liable for any loss arising therefrom incurred by the company or
by a third party.

If the Bank has published the suspension or prohibition order in the Belgian Official Gazette, any
actions or decisions contravening it shall be null and void;

5° order the insurance or reinsurance company to transfer the shares it owns;

6° limit or prohibit free disposal of the assets of the insurance or reinsurance company, in which
case Articles 514 and 515 shall apply;
7° order the insurance or reinsurance company to transfer all or part of its activities, including all or part of its portfolio, as a result of which the rights and obligations arising from expired or ongoing insurance or reinsurance policies are transferred, as well as the assets held for covering those obligations, within the term determined by the Bank. In such a case, Articles 102 to 106 and Article 547, § 2, 1° shall apply;

8° revoke the authorization, for one insurance class or for several or all insurance classes for which the insurance company has received an authorization, or for some or all of the activities for which the reinsurance company has received an authorization.

§ 2. Notwithstanding the conditions of application of § 1, in extremely urgent cases or if safeguarding the rights of the insurance creditors so requires, the Bank may take the measures described in § 1 without setting a deadline in advance.

§ 3. The decisions of the Bank pursuant to § 1 shall be binding on the company from the date of notification sent by registered letter or letter with recorded delivery, and shall be binding on third parties from the date of their publication or completion of the formalities in accordance with the provisions of § 1.

§ 4. The Bank may also take the measures referred to in the present Article if an insurance or reinsurance company has obtained an authorization by means of false declarations or in any other irregular way.

§ 5. Articles 508, as well as § 1, 1°, 2°, 4°, and 6° and §§ 2 and 3 of this Article shall apply if the Bank becomes aware that an insurance or reinsurance company has put in place a special mechanism with the aim or effect of promoting tax fraud by third parties.

§ 6. In the case of a serious and systematic infringement of the rules of Article 45, § 1, first paragraph, 3°, or § 2 of the Law of 2 August 2002, the Bank may revoke the authorization, where applicable at the request of the FSMA, following the procedure and rules stipulated in Article 36bis of the same Law.

§ 7. The Commercial Court shall issue, at the request of any interested party, the annulment orders provided for in § 1, 1° and 4°.

An action for annulment shall be brought against the company. If there are serious grounds for doing so, the party seeking such a declaration may apply in summary proceedings for a temporary injunction to suspend the disputed actions or decisions. The injunction or declaration of nullity is enforceable against all parties. If the suspended or annulled action or decision is published, the suspension order and annulment order shall be published in summary form in the same way.

If the annulment order is such that it threatens the rights acquired by a third party in good faith towards the company, the court may rule that the annulment order does not affect those rights, without prejudice to any right of the applicant to compensation.

An action for annulment may not be brought after six months have elapsed from the date on which the decisions or actions concerned became enforceable on—or were known to—the party seeking the annulment.

**Article 518.** The Bank shall inform the FSMA of the decisions made in accordance with Articles 504 to 517 and shall keep the FSMA informed of the process of appeals against such decisions.

It shall also inform the supervisory authorities of the other Member States where an insurance or reinsurance company has established a branch or pursues activity within the scope of the free provision of services.
Chapter III - Measures for the protection of the financial system

Section I – Deeds of assignment

Article 519. If one of the situations referred to in Article 508, § 1 is such that it threatens to affect the stability of the Belgian or international financial system as a result of the scale of the obligations of the insurance or reinsurance company concerned or its role in the financial system, the King may, by means of a Decree deliberated on in the Council of Ministers, either at the request of the Bank or on His own initiative, upon receiving an opinion from the Bank, establish any deed of assignment to the benefit of the State or any other Belgian or foreign public or private legal entity, in particular any transfer, sale or contribution as regards:

1° assets, liabilities or one or more business areas and more in general, all or part of the rights and obligations of the insurance or reinsurance company concerned;

2° shares with or without voting rights, representing or not representing capital, issued by the insurance or reinsurance company.

Article 520. The Royal Decree established pursuant to Article 519 shall determine the compensation to be paid to the owners of goods or the holders of rights to which the deed of assignment established in the Decree pertains. If the purchaser designated by the Royal Decree is a person other than the State, the price owed by the purchaser pursuant to the agreement entered into with the State, shall accrue to the owners or holders stated as compensation in accordance with the allocation key established in the same Decree.

Article 521. The Royal Decree established pursuant to Article 519 shall be communicated to the insurance or reinsurance company concerned. The measures provided for in this Decree shall furthermore be published through a message in the Belgian Official Gazette. The message shall furthermore be published on the website of the company concerned.

As soon as it has received the notification referred to in the first paragraph, the insurance or reinsurance company shall lose the free disposal of the assets to which the deeds of assignment established in the Royal Decree refer.

Article 522. The acts referred to in Article 519 may not be declared unenforceable pursuant to Articles 17, 18 or 20 of the Bankruptcy law of 8 August 1997 or Article 1167 of the Civil Code.

Notwithstanding any contractual provision to the contrary, the measures established by the King pursuant to Article 519 may neither ensue in an amendment to the provisions of an agreement entered into between the insurance or reinsurance company and one or more third parties, nor a stop being put to such an agreement, nor the granting of a right to one of the parties concerned unilaterally to terminate the agreement.

As regards the measures established by the King pursuant to Article 519, no approval clause under a contract or the articles of association and no pre-emption right under a contract or the articles of association shall apply, and neither shall any third-party purchase right, or any clause in contracts or in the articles of association which hinders the change of control of the insurance or reinsurance company concerned.

The King has the power to lay down any other rules that are necessary to ensure the proper enforcement of the measures taken pursuant to Article 519.

Article 523. The civil liability of the persons who act on behalf of the State or at its request as part of the measures referred to in this Section, for or with respect to their decisions, deeds or acts as part of these measures, shall be limited to cases of fraud or gross negligence.

Whether or not gross negligence exists shall be determined on the basis of the concrete
circumstances of the case concerned, and in particular of the urgency faced by those persons, the practices on the financial markets, the complexity of the case in question, the threats to the protection of savings and the danger of damage to the national economy as a result of discontinuance of the insurance or reinsurance company.

Article 524. Any disputes that could ensue from the deeds referred to in this Section and the liability referred to in Article 523 shall come under the sole competence of Belgian courts, which will apply solely Belgian law.

Article 525. As regards application of collective agreement No 32bis concluded on 7 June 1985 within the National Labour Council concerning maintenance of employees’ rights in the event of a change of employer as a result of the transfer of companies pursuant to an agreement and regulating the rights of employees taken over in the event of a takeover of assets following insolvency, the acts pursuant to Article 519, 1° shall be deemed acts by the insurance or reinsurance company itself.

Article 526. Without prejudice to the general principles of law that could be invoked, the board of directors of the insurance or reinsurance company may derogate from the limitations of its management powers under the articles of association if one of the situations referred to in Article 508, § 1, first paragraph is such that it threatens to damage the stability of the Belgian or international financial system as a result of the extent of the obligations of the insurance or reinsurance company concerned or its role in the financial system. The board of directors shall draw up a special report justifying why this provision is applied and specifying the decisions made; this report shall be provided to the general meeting within two months.

Section II - Judicial review

Article 527. For the application of this Section and its implementing decrees and regulations, the following definitions apply:

1° Royal Decree: the Royal Decree established after consultation in the Council of Ministers pursuant to Article 519;

2° deed of assignment: the decision to transfer or another deed of assignment provided for by the Royal Decree;

3° Court: the Court of First Instance in Brussels;

4° owners: natural or legal persons owning, on the date of the Royal Decree, the assets or shares, or holding the rights that are the subject of the deed of assignment;

5° third purchaser: the natural or legal person other than the Belgian State, which will acquire, pursuant to the Royal Decree, the assets, shares or rights which are the subject of the deed of assignment;

6° compensation: the compensation established by the Royal Decree to the benefit of the owners as a consideration for the deed of assignment.

Article 528. Every deed of assignment shall be verified by the Courts pursuant to this Section.

The Royal Decree enters into force on the date on which the ruling referred to in Article 534 was published in the Belgian Official Gazette.

Article 529. § 1. The Belgian State shall submit an application to the office of the clerk of the Court to demonstrate that the deed of assignment is in accordance with the law and that the compensation appears fair, especially taking into account the criteria provided for in Article 533, § 4.
§ 2. Such an application, on penalty of being declared null and void, must include:

1° the identity of the insurance or reinsurance company concerned;

2° if applicable, a description of the third purchaser.

3° the justification for the decision in light of the criteria provided for in Article 519;

4° the compensation, the basis on which it was established, in particular as regards the variable component it comprises and, where applicable, the key for allocation between the owners;

5° where applicable the required authorizations from public authorities and all other conditions precedent to which the deed of assignment is subject;

6° where applicable, the price agreed with the third purchaser for the assets or shares that are the subject of the deed of assignment and, where applicable, the mechanisms for the revision or adjustment of prices;

7° the date, month and year;

8° the signature of the person representing the Belgian State or of the lawyer of the Belgian State.

A copy of the Royal Decree shall be appended to the application.

§ 3. The provisions of Title Vbis of Book II of part IV of the Judicial Code, including Articles 1034bis to 1034sexies, shall not apply to the application.

**Article 530.** The procedure initiated with the application referred to in Article 529 shall preclude all other simultaneous or future appeals or claims against the Royal Decree or against the deed of assignment with the exception of the claim referred to in Article 537.

After submission of the application, any other proceedings lodged against the Royal Decree or the deed of assignment initiated previously and still pending with another legal or administrative jurisdiction shall lapse.

**Article 531.** § 1. The President of the Court shall issue a decision, within 24 hours of submission of the application as referred to in Article 529, as to the date and time of the hearing referred to in Article 533 that must take place within seven days after the submission of the application. This decision shall include all the information referred to in Article 529, § 2.

§ 2. The decision shall be communicated by the office of the clerk of the court to the Belgian State, the insurance or reinsurance company and, where applicable, the third purchaser, by judicial letter. It shall simultaneously be published in the Belgian Official Gazette. This publication shall serve as a notification, where applicable, to the owners other than the insurance or reinsurance company concerned.

The decision shall be published by the insurance or reinsurance company concerned on its website within 24 hours of the notification.

**Article 532.** The persons referred to in Article 531, § 2, may inspect the application referred to in Article 529 through the office of the clerk of the court free-of-charge until the ruling referred to in Article 534 is issued.

**Article 533.** § 1. During the hearing established by the President of the Court and during any later hearings that the Court deems useful, the Court shall hear the Belgian State, the insurance or reinsurance company concerned, where applicable the third purchaser, as well as the owners who voluntarily take part in the procedure.
§ 2. By way of derogation from 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 previous paragraph may be involved in the procedure.

§ 3. After hearing the parties, the Court shall review whether the decision is in accordance with the law and whether the compensatory amounts, where applicable, appear fair.

§ 4. The Court shall take into account the actual situation of the insurance or reinsurance company concerned at the time of adopting the deed of assignment, especially its financial situation as it was or would have been if no direct or indirect exceptional government intervention had been granted. For the purposes of this paragraph, exceptional government intervention shall be deemed equivalent to urgent advances of liquidity as well as the guarantees granted by a public legal person.

§ 5. The Court shall issue a decision in one and the same ruling, which shall be pronounced within twenty days after the closure of the court hearing.

Article 534. The ruling by way of which the Court establishes that the deed of assignment is in accordance with the law and, where applicable, that the compensatory amounts appear fair, shall serve as a deed of transfer of title of the assets and shares that are the subject of the decision, subject to the conditions precedent referred to in Article 529, § 2, 5°.

Article 535. No appeal or application to set aside a judgment by default or by initiating third-party proceedings is possible against the ruling referred to in Article 534.

The decision shall be communicated by judicial letter by the office of the clerk of the court to the Belgian State, the insurance or reinsurance company concerned and, where applicable, the third purchaser, and shall simultaneously be published in summary form in the Belgian Official Gazette.

This publication shall serve as a notification to any owners other than the insurance or reinsurance company concerned, and shall make the deed of assignment binding to third parties with no further formalities required.

The ruling shall be published by the insurance or reinsurance company concerned on its website within 24 hours after the notification.

Article 536. After notification of the ruling referred to in Article 534, the Belgian State or, where applicable, the third purchaser, shall deposit the compensation with the Caisse des dépôts et consignations/Deposito- en Consignatiekas [the Public Trustee Office], with no further formalities required.

The Belgian State shall ensure that a message is published in the Belgian Official Gazette in which it is confirmed that the conditions precedent referred to in Article 529, § 2, 5°, have been met.

As soon as the message referred to in the second paragraph is published, the Public Trustee Office shall pay the amount deposited as compensation to the owners, without prejudice to any regular attachment of—or dispute against—the deposited amount.

Article 537. The owners may submit an application for review of the compensation to the Court within two months, under penalty of lapse of the right, to be counted from the publication in the Belgian Official Gazette of the ruling referred to Article 534. Such an application does not affect the transfer of ownership of the assets or shares that are the subject of the deed of assignment.

The application for a review shall otherwise be regulated by the Judicial Code. Article 533, § 4 shall apply.
TITLE VII - TERMINATION OF AUTHORIZATION

Chapter I. - Cancellation of authorization

Section I - Renunciation of authorization

Article 538. § 1. An insurance or reinsurance company that has received an authorization pursuant to the present Law may renounce its authorization in whole or in part.

§ 2. The application for renunciation shall be addressed to the Bank and shall state the insurance classes and reinsurance activities for which the renunciation is sought. The application shall include a plan stating the manner in which the company shall settle its obligations arising from the insurance and reinsurance policies relating to the activities for which a renunciation of authorization is sought.

In the absence of such a plan or where the Bank is of the opinion that the plan referred to in the first paragraph does not offer sufficient guarantees for the protection of insurance or reinsurance creditors, it may take any measures to set out a framework for the correct settlement of the insurance and reinsurance obligations of the insurance or reinsurance company and in particular any measures to safeguard the rights of insurance or reinsurance creditors. These measures include the measures referred to in Articles 509 to 517.

Where the Bank is of the opinion that the plan referred to in the first paragraph does offer sufficient guarantees for the protection of insurance or reinsurance creditors, the Bank shall cancel the authorization for all or part of the classes and activities for which renunciation is sought.

§ 3. The Bank shall determine the date on which the cancellation specified pursuant to the present Article shall enter into effect.

Where it relates to an insurance company, the Bank shall consult the FSMA on the sufficiency of the guarantees for the protection of the insurance creditors prior to determining this date. The FSMA shall provide its opinion to the Bank at the latest twenty days after the date of receipt of the request for an opinion.

§ 4. The Bank shall publish, on its website, the fact that the authorization has been cancelled as a result of the company’s renunciation thereto.

§ 5. The insurance or reinsurance company which has had its authorization cancelled pursuant to this Article, shall provide the Bank with an updated version of the plan referred to in § 2, first paragraph under the conditions, especially as regards the frequency and content, determined by the Bank on a case-by-case basis.

§ 6. Insurance or reinsurance companies which have had their authorization cancelled pursuant to this Article, shall be specified in a special category in the list referred to in Article 31. Any changes in this category shall be communicated to the supervisory authorities of the other Member States.

Section II - Cancellation due to non-pursuit of activity

Article 539. § 1. By way of a decision communicated by registered letter or letter with recorded delivery, the Bank may cancel an authorization of insurance or reinsurance companies,

1° which have not started their activities within twelve months after receiving the authorization;

2° which have ceased to pursue activities for longer than 6 months;

§ 2. § 1 shall apply to the insurance class(es) or the reinsurance activity or activities to which the
situation referred to in § 1 pertains.

Section III – Ipso jure cancellation

Article 540. The authorization of an insurance or reinsurance company shall be cancelled ipso jure for all insurance classes and/or reinsurance activities where this company:

1° is declared bankrupt;

2° is the subject of a voluntary or judicial winding up within the meaning of Articles 181 and 182 of the Companies Code.

Chapter II - Revocation of the authorization

Article 541. Without prejudice to the cases in which the revocation of an authorization is ruled pursuant to Article 517, § 1, 8°, the Bank shall revoke the authorization for all insurance classes and insurance and reinsurance activities where an insurance or reinsurance company no longer complies with the minimum capital requirement and the Bank is of the opinion that the short-term financing plan presented pursuant to Article 511 is clearly inadequate or that the company concerned has not succeeded in following the approved plan within three months after the identification that the minimum capital requirement is no longer complied with.

Article 542. Where the authorization is revoked pursuant to Article 517, § 1, 8° or Article 541 for all insurance classes and/or reinsurance activities, the company shall be dissolved ipso jure and placed into liquidation pursuant to Articles 183 et seq. of the Companies Code.

Chapter III - Common rules for the different cases of loss of authorization

Article 543. In the case of full or partial renunciation, cancellation or revocation of the authorization, entering into new policies in the insurance classes and for the reinsurance activities to which the loss of authorization relates is prohibited.

In accordance with the first paragraph and Article 540, Article 187 of the Companies Code and Article 46 of the bankruptcy law of 8 August 1997 only allow current insurance or reinsurance policies to be pursued, with the exclusion of entry into new insurance or reinsurance policies.

Article 544. The Bank shall inform the FSMA and the supervisory authorities of the other Member States in which the insurance or reinsurance company pursues activity, of the loss of the authorization.

It shall ask these latter to take appropriate measures to prevent the insurance or reinsurance company from commencing new activity on their territory.

Article 545. Insurance or reinsurance companies that no longer have an authorization by virtue of Article 517, § 1, 8° or of the provisions of this Title, shall remain subject to the present Law and its implementing decrees and regulations as well as to the provisions of the implementing measures of Directive 2009/138/EC until all of its insurance or reinsurance policies and all obligations pertaining thereto are settled, unless the Bank exempts them from the application of certain rules.

Article 546. The Bank may, where applicable in consultation with the supervisory authorities of the other Member States, impose any appropriate measures to the companies referred to in this Title, to safeguard the rights of policyholders, insureds and beneficiaries of the insurance and reinsurance policies.

It may in particular take all measures as referred to in Title IV, especially those referred to in Article 517, § 1, without previously establishing a term.

If a transfer is imposed by virtue of Article 517, § 1, 7°, the Bank may accompany its measure with
an adjustment, for the future, of the guaranteed rate of return in life insurance policies, without this adjustment being able to lead to a lower rate of return than that offered on the Belgian insurance market on the date on which this decision was made by the Bank. The Bank shall consult the FSMA on compliance with the aforementioned lower limit of the rate of return.

The measures referred to in the first paragraph also include the possibility for the Bank to terminate the insurance and reinsurance policy following the methods and within the term that it determines.

**Article 547.** § 1. The Bank may only make the adjustment referred to in Article 546, third paragraph, to the rate of return and terminate the policies pursuant to Article 546, fourth paragraph, if not taking these measures would constitute a disadvantage for the insurance creditors concerned.

§ 2. For the purposes of, in particular, § 1, the measures referred to in Article 546, especially the transfer of portfolio, which, where applicable, is combined with a reduction in the rate of return, shall meet the following conditions:

1° the portfolio transfer, in particular the establishment of the assets accompanying the transfer of insurance obligations, should be without prejudice to the equality of insurance creditors. This equality requires:

a) per separate management, distribution of the assets referred to in Article 194 in proportion with the obligations transferred;

and for the rest, where necessary,

b) distribution of the other assets in proportion with the transferred obligations that do not fall under a), as regards all insurance obligations of the insurance company,

as these transferred obligations were valued at the time of the transfer.

2° the insurance policies may only be terminated and a reduction may only be imposed on the rate of return if the continuation of the insurance policies would lead to a deficit liquidation. Moreover, the reduction of the rate of return shall be executed in such a way as to distribute the loss arising from the reduction of the rate of return across all insurance creditors that belong to the same separate management.

If notwithstanding the second paragraph, 2°, a positive balance results from the settlement, the amount thereof shall only be distributed among the insurance creditors in proportion with the amounts to which they would have had a right if their policies had been continued.

**Article 548.** Alongside the similar measures provided for by the implementing measures of Directive 2009/138/EC, the Bank may impose a restriction or prohibition on the repayment and payout of capital or interests as regards holders of basic own funds instruments pending the measures to safeguard the rights of the insurance creditors taken pursuant to Articles 546 and 547.

The prerogative referred to in the first paragraph may be used in the cases referred to in Article 542 and on the condition that account is taken of the situation of the creditors of the insurance company as they arise from the application of Articles 643 and 644.

**Article 549.** If the financial situation of the insurance or reinsurance company referred to in this Title worsens, the Bank may, by way of derogation from Article 6 of the bankruptcy law of 8 August 1997, submit the matter of its own accord to the Commercial Court by way of a summons.

Articles 545 to 548 shall not apply in the event of cancellation of an authorization of an insurance or reinsurance company declared bankrupt.
BOOK III

INSURANCE OR REINSURANCE COMPANIES GOVERNED BY FOREIGN LAW

TITLE I - INSURANCE OR REINSURANCE COMPANIES GOVERNED BY THE LAW OF ANOTHER MEMBER STATE

Chapter I - Pursuit of activity in Belgium by insurance companies governed by the law of another Member State

Section I - Taking-up of business

Subsection I - Opening branches

Article 550. § 1. Insurance companies governed by the law of another Member State and that may pursue insurance activity by virtue of their national law in their home Member State, may pursue this activity by establishing a branch in Belgium, on the condition that the supervisory authorities of that home Member State have provided the Bank with the dossier, which includes the information, mutatis mutandis, as referred to in Article 108, § 1, second paragraph, 1° to 4° as well as the additional information referred to in Article 109.

§ 2. This dossier shall also contain:

1° if the insurance company wishes to have its branch cover industrial accident risks:

a) proof that the Industrial Accidents Fund was notified of the envisaged activity;

b) proof that the insurance company has committed to the Industrial Accidents Fund to establish a bank guarantee at that Fund’s first request as referred to in Article 60 of the Law of 10 April 1971 on accidents at work, with a view to compensating industrial accidents where the insurance company fails to do so.

2° if the insurance company wishes to issue policies relating to compulsory motor vehicle liability insurance, excluding carrier’s liability, a declaration that the company is affiliated with the Belgisch Gemeenschappelijk Waarborgfonds/Fonds Commun de Garantie and with the Belgian Bureau.

Article 551. The Bank has a term of two months from the receipt of the information referred to in Article 550 to communicate the provisions of general interest referred to in Article 564 to the supervisory authorities of the home Member State of the company concerned.

Article 552. The activities that are permitted for the branch may commence in Belgium from the date on which the supervisory authority of the home Member State has received the communication referred to Article 551 and at the latest upon expiry of the term of two months referred to in Article 551.

Article 553. The Bank shall provide the FSMA with the information dossier referred to in Article 550 within the term referred to in Article 551 as well as all later changes to the information included therein.

Article 554. The insurance company that has opened a branch in Belgium must communicate to the Bank any change it intends to make to the information included in the information dossier referred to in Article 550 at least one month before the change is effected.

Article 555. The Bank shall draw up the list of the branches of insurance companies referred to in Article 550. This list and any subsequent changes made thereto shall be published on the Bank’s
website.

**Subsection II - Free provision of services**

**Article 556.** § 1. Insurance companies governed by the law of another Member State and that may pursue insurance activity by virtue of their national law in their home Member State, may pursue this activity in Belgium pursuant to the free provision of services on the condition that the supervisory authorities of that home Member State have provided the Bank with the dossier, which includes the information as referred to in Article 115, § 1, 1° and 2° as well as the additional information referred to in Article 116.

§ 2. This dossier shall also contain:

1° if the insurance company wishes to have its branch cover industrial accident risks:

a) proof that the Industrial Accidents Fund was notified of the envisaged activity;

b) proof that the insurance company has committed to the Industrial Accidents Fund to establish a bank guarantee at that Fund’s first request as referred to in Article 60 of the Law of 10 April 1971 on accidents at work, with a view to compensating industrial accidents where the insurance company fails to do so.

c) the name and address of the representative referred to in Article 557, §§ 2 and 3;

2° if the insurance company wishes to issue policies relating to compulsory motor vehicle liability insurance, excluding carrier’s liability:

a) a declaration that the company is affiliated with the Belgisch Gemeenschappelijk Waarborgfonds/Fonds Commun de Garantie and with the Belgian Bureau;

b) the name and address of the claims representative referred to in Article 21 of Directive 2009/103/EC;

c) the name and address of the representative referred to in Article 557, §§ 1 and 3;

**Article 557.** § 1. An insurance company that wishes to issue policies relating to compulsory motor vehicle liability insurance pursuant to the free provision of services, excluding carrier’s liability, shall ensure that the people who lodge a claim as a result of incidents that have occurred on the Belgian territory do not find themselves in a more disadvantageous position as a result of the fact that it does not pursue its activity in Belgium through a branch.

For the purposes hereof, the company shall designate a representative who has his/her home or habitual residence in Belgium and has the necessary professional integrity and expertise to carry out the task.

This representative shall collect all the necessary information on the claims dossiers and shall have sufficient powers to represent the insurance company vis-à-vis persons who may demand compensation, including for the payment thereof, and to represent the company before Belgian courts and authorities or, where necessary, to have it represented in connection with these claims for compensation.

This representative shall also have the autonomy to represent the insurance company before the competent Belgian authorities to verify the existence and validity of policies as regards compulsory motor vehicle liability insurance.

§ 2. The insurance company that wishes to cover industrial accidents under the free provision of services shall appoint, for the insurance policies relating to industrial accidents, a representative
that complies, mutatis mutandis, with the conditions of § 1.

§ 3. The function of representative referred to in § 1 may be fulfilled by the claims representative appointed pursuant to Article 556, § 2, 2°, b), insofar as the conditions of § 1 are fulfilled.

The appointment of a representative by an insurance company pursuant to §§ 1 or 2 shall not be deemed the opening of a branch.

Article 558. The insurance company may commence its activities in Belgium under the free provision of services from the date on which the supervisory authorities of the home Member State were informed of the communication to the Bank of the dossier referred to in Article 556.

Article 559. The Bank shall provide the dossier referred to in Article 556 as well as all later changes to the information included therein to the FSMA.

Article 560. Where the insurance company intends to make a change to the information referred to in Article 556, it shall follow the procedure provided for in this Article.

Article 561. The Bank shall draw up the list of the insurance companies referred to in Article 556. This list and any subsequent changes made thereto shall be published on the Bank’s website.

Section II - Pursuit of business

Art 562. § 1. The insurance companies referred to in this Chapter must continuously comply with the conditions established by or pursuant to Articles 550, 556, and 557 of the present Law.

§ 2. If the Bank has reasons to believe that the activities of the insurance company may affect its financial solidity, it shall inform the supervisory authorities of the home Member State thereof.

Article 563. The insurance companies referred to in Articles 550 and 556 must, when pursuing activities in Belgium, add their home Member State to their name and, in the case of Article 550, their registered office.

Article 564. § 1. The provisions of this Chapter are without prejudice to compliance, in the case of pursuit of insurance activities permitted in Belgium, with the legal and regulatory provisions that apply in Belgium for reasons of public interest to insurance companies and their transactions.

The insurance companies referred to in this Chapter may in particular advertise their services through all available means of communication, provided that they comply with the rules established for reasons of public interest as regards the form and content of such advertisements.

The Bank shall inform the insurance companies referred to in Article 550 as to which provisions are, to its knowledge, of public interest. For this purpose, it shall ask for an opinion from the FSMA.

The provisions of this Chapter are also without prejudice to compliance with the legal and regulatory provisions that apply in Belgium to the pursuit of insurance activities other than those permitted in Belgium that apply in Belgium to those activities.

§ 2. Articles 199 to 203 shall apply to the insurance companies referred to in Article 550.

Section III - Supervision

Article 565. Apart from the supervision to which the insurance companies referred to in this Chapter are subject pursuant to other legal or regulatory provisions that regulate their activity, they shall be subject to supervision by the Bank as regards compliance with Articles 550, 556 and 557.

Article 566. At the Bank’s request, insurance companies must provide all information and
documents required for the supervision of compliance with the provisions referred to in Article 562.

For the same purpose, the Bank may also conduct on-site inspections in the Belgian branch or make a copy of all records that the branch of the insurance company has.

As part of the supervision provided for by this Section, insurance agents, brokers or intermediaries must provide all information to the Bank, on simple request, on the insurance policies for which they have acted as intermediaries and that relate to risks situated in Belgium.

In the cases referred to in the second paragraph, the Bank shall inform the supervisory authorities of the home Member State thereof in advance.

Article 567. § 1. The supervisory authorities of the home Member State may conduct, after having informed the Bank thereof in advance, on-site inspections in the branches referred to in Article 550 to verify or request either themselves or, where applicable, via persons they have authorized thereto, the information necessary for the supervision of the financial condition of the insurance company. The Bank may take part in this verification.

§ 2. Portfolio transfers as part of which rights and obligations are transferred from insurance policies for which the Member State of the commitment or of the risk is Belgium, and that are conducted by the insurance companies referred to in this Chapter and are authorized by the supervisory authorities of their home Member State, shall be published in Belgium. This publication shall occur at the request of these authorities by the Bank pursuant to the methods in Article 106.

Section IV - Exceptional measures

Article 568. Where the Bank establishes that an insurance company governed by the law of another Member State and that works in Belgium through a branch or under the free provision of services does not comply with the provisions of Articles 562 and 564, and insofar as the content of these provisions falls under the competence of the Bank, it shall call upon the insurance company to remedy the situation within the term it determines.

The Bank shall inform the FSMA of its intention to apply the previous paragraph.

If the situation has not been remedied by the deadline referred to in the first paragraph, the Bank shall inform the supervisory authorities of the home Member State concerned thereof.

Article 569. § 1. Where the infringements continue, the Bank may take appropriate measures, in particular the measures provided for by Article 517.

Where this measure appears proportionate, the Bank may also prohibit the company from entering into new insurance policies in Belgium and proceed with, at the expense of the company, the publication of the terms of the prohibition in the newspapers of its choice or in the places and for the duration that it determines.

If the Bank is, moreover, of the opinion that the supervisory authority of the home Member State has not taken any appropriate measures to remedy the irregular situation as referred to in Article 568, it may submit the matter, in accordance with Article 19 of Regulation 1094/2010, to EIOPA to ask for its assistance.

Article 517, § 5 shall apply.

§ 2. The Bank shall inform the supervisory authorities of the home Member State prior to taking any measures referred to in § 1.

Article 570. In urgent cases, the Bank may take the measures referred to in Article 569, § 1 without
previously establishing a term; it shall inform the supervisory authorities of the home Member State thereof immediately after it has taken the measures referred to.

**Article 571.** The Bank shall inform the FSMA immediately of the measures that it has taken by virtue of Articles 569 and 570, as well as the Industrial Accidents Fund where these measures are taken as regards companies that cover industrial accident risks.

The Bank shall communicate to the European Commission and to EIOPA the number and nature of the cases in which measures are taken in accordance with Articles 569 and 570.

**Article 572.** The Bank may, at the request of the Belgian competent authorities concerned, apply Articles 568 to 570 to the insurance company referred to in this Chapter where it has committed acts in Belgium, as part of its insurance activities, that contravene the legal or regulatory provisions of public interest as referred to in Article 564, first paragraph.

**Article 573.** In the case of cancellation or revocation of an authorization of an insurance company by the supervisory authority of its home Member State, the Bank, at the request of this authority, shall take appropriate measures to prevent the insurance company concerned from entering into new policies or commencing new activities in Belgium.

After having informed this authority, the Bank may in particular order the closure of the branch that this insurance company has established in Belgium. It may appoint a temporary administrator to oversee the assets of the branch pending a decision on their destination, who shall have the power to take any protective measures in the interest of policyholders, insureds and beneficiaries in Belgium.

The Bank shall inform the FSMA of the decision to cancel or revoke the authorization of the insurance company by the supervisory authority of its Member State, as well as of the measures it takes pursuant to this Article.

**Article 574.** If the supervisory authorities of the home Member State of an insurance company so request, the Bank may, in accordance with Articles 513 to 515, limit or prohibit the free disposal of assets indicated by these authorities, and that are situated on the Belgian territory.

**Chapter II - Pursuit of activity in Belgium by reinsurance companies governed by the law of another Member State**

**Section I - Taking-up of business**

**Article 575.** Reinsurance companies governed by the law of a Member State other than Belgium may exercise, through the establishment of a branch or under the free provision of services, reinsurance activities in Belgium for which they have received an authorization in their home Member State.

**Section II - Pursuit of business**

**Article 576.** The provisions of this Chapter are without prejudice to compliance, when pursuing reinsurance activities in Belgium, with the legal and regulatory provisions that apply in Belgium for reasons of public interest to reinsurance companies and their transactions.

The provisions of this Chapter are also without prejudice to compliance, when pursuing activities other than reinsurance activities, with the legal and regulatory provisions that apply in Belgium to those activities.

Articles 199 to 202 shall apply to the reinsurance companies referred to in Article 575 that pursue their activities in Belgium through the establishment of a branch.

**Article 577.** The reinsurance companies referred to in Article 575 must, when pursuing activities in
Belgium, add their home Member State to their name and, where they pursue their activities through a branch, their registered office.

Section III - Supervision

Subsection I – General provisions

Article 578. The supervisory authorities of the home Member State may conduct, after having informed the Bank thereof in advance, on-site inspections in the branches referred to in Article 575 to verify or request either themselves or, where applicable, via persons they have authorized thereto, the information necessary for the supervision of the financial condition of the reinsurance company. The Bank may take part in this verification.

§ 2. If the Bank has reasons to believe that the activities of the reinsurance company may affect its financial solidity, it shall inform the supervisory authorities of the home Member State thereof.

Subsection II – Exceptional measures

Article 579. Where the Bank establishes that a reinsurance company governed by the law of another Member State and that works in Belgium through a branch or under the free provision of services does not comply with the legal and regulatory provisions that apply in Belgium which fall under the scope of competence of the Bank, it shall call upon the reinsurance company to remedy the situation within the term it determines.

The Bank shall inform the supervisory authorities concerned of the home Member State thereof.

Article 580. § 1. Where the infringements continue, the Bank may take appropriate measures, in particular the measures provided for by Article 517.

Where this measure appears proportionate, the Bank may also prohibit the company from entering into new reinsurance policies in Belgium and proceed with, at the expense of the company, the publication of the terms of the prohibition in the newspapers of its choice or in the places and for the duration that it determines.

If the Bank is, moreover, of the opinion that the supervisory authority of the home Member State has not taken any appropriate measures to remedy the irregular situation as referred to in Article 26, it may submit the matter, in accordance with Article 19 of Regulation 1094/2010, to EIOPA to ask for its assistance.

Article 517, § 5 shall apply.

§ 2. The Bank shall inform the supervisory authorities of the home Member State prior to taking any measures referred to in § 1.

Article 581. The Bank shall inform the FSMA immediately of the measures that it has taken by virtue of Articles 25 and 26.

Article 582. In the case of cancellation or revocation of an authorization of a reinsurance company by the supervisory authority of its home Member State, the Bank, at the request of this supervisory authority, shall take appropriate measures to prevent the reinsurance company concerned from entering into new policies or commencing new activities in Belgium.

After having informed this authority, the Bank may in particular order the closure of the branch that this reinsurance company has established in Belgium. It may appoint a temporary administrator to oversee the assets of the branch pending a decision on their destination, who shall have the power to take any protective measures in the interest of reinsurance beneficiaries in Belgium.

Article 583. If the supervisory authorities of the home Member State of a reinsurance company so
request, the Bank may, in accordance with Articles 513 to 515, limit or prohibit the free disposal of assets indicated by these authorities, and that are situated on the Belgian territory.

**TITLE II – INSURANCE OR REINSURANCE COMPANIES GOVERNED BY THE LAW OF A THIRD COUNTRY**

**Chapter I - Branches in Belgium of insurance companies governed by the law of a third country**

**Section I - Taking-up of business in Belgium**

**Article 584.** Without prejudice to the provisions of the international treaties to which Belgium is a party, insurance companies governed by the law of a third country and to which, in that capacity, an authorization has been granted in that third country, must obtain authorization from the Bank prior to opening a branch to pursue activity in Belgium.

For the application of the international treaties to which Belgium is a party, the King may determine the conditions and methods under which the insurance companies to which these treaties apply may benefit from a right of establishment and free provision of services for the pursuit of their activities in Belgium.

**Article 585.** § 1. As regards the granting of the authorization as referred to in Article 584, the following Articles shall apply:

1° Articles 22, 23, 24, 26, 27, 28, 29, 30, 32, 34, 1° and 35, with the proviso that

a) Article 18, third paragraph does not apply;

b) the insurance company is authorized in its home country to pursue the activities included in its scheme of operations;

c) the administrative dossier additionally includes the name, address and powers of the authorized agent as referred to in Article 593;

d) the reference to Article 23 applies to the insurance company the branch depends on,

2° Article 31, with the proviso that the branches referred to in this Title are specified in a separate section of the list;

3° Article 37, 2° and 3°;

4° Articles 39 to 43, with the proviso that the reference to Articles 39 and 43 applies for the insurance company the branch depends on and the reference to Articles 40 to 42 applies for the branch in Belgium;

5° Article 62, insofar as the insurance company cannot demonstrate that the commitments of its Belgian branch are at least covered to the same extent by a regulation to protect insurance creditors in its home country as by the regulations in Belgium, as regards the types of policies covered and the level of protection established.

Alongside the requirement referred to in the first paragraph, 3°, the company shall prove

a) that its branch has the necessary eligible own funds to attain half of the absolute floor of the minimum capital requirement as laid down in Article 189, § 1, 4°;

b) that it has assets in Belgium for the amount referred to in a) and that it has moreover deposited half of these assets with a financial intermediary to make them unavailable. By means of a regulation passed pursuant to Article 12bis § 2, of the Law of 22 February 1998, the Bank shall
stipulate the conditions and methods to which this unavailability must adhere.

§ 2. The authorization as referred to in § 1 may only be granted if the following conditions are met:

1° the articles of association of the insurance company concerned are not in conflict with the provisions of the present Law and its implementing decrees and regulations; in particular, the articles of association may not allow activities to be pursued other than those referred to in Article 34, 1°;

2° the supervisory authority tasked with the supervision of the insurance company in the third country shall confirm that the company meets the prudential requirements that apply to it in that country.

§ 3. Without prejudice to §§ 1 and 2, an authorization may only be granted to a branch of an insurance company governed by the law of a third country if the following general conditions are met:

1° the insurance company is subject to prudential supervision in its home country that is equivalent to the prudential supervision regulated by Directive 2009/138/EC and its implementing measures;

2° the Bank has entered into a Memorandum of Understanding with the authority concerned of a third country for the sharing of information in order to be able to exercise effective supervision on the activities of the Belgian branch. The Bank may derogate from this condition if it is of the opinion, in a particular case, that it is not able materially to improve the knowledge of the insurance company and of the group to which it belongs, with regard to its organization and the risks arising from its activities, in particular the risks relating to insurance creditors of the Belgian branch.

§ 4. The Bank may refuse an authorization, without prejudice to the international agreements which are binding for Belgium, to a branch of an insurance company governed by the law of a third country that does not offer the same access to its market to insurance companies governed by Belgian law.

§ 5. The Bank may also refuse an authorization to a branch referred to in the present Title if it is of the opinion that setting up a company governed by Belgian law is required for the protection of policyholders, insureds and beneficiaries or for the sound and prudent management of the company or even for the stability of the financial system.

For such a decision, account can in particular be taken of the following criteria:

1° that the insurance company does not actually pursue the activity envisaged by the branch in the third country or within the group to which it belongs;

2° the significance of the branch in relation to the size of the insurance company.

§ 6. Prior to issuing its decision on the application for authorization of a branch, the Bank shall consult the third-country authority concerned.

The Bank shall make a decision on the request for authorization of the branch after having received an opinion from the FSMA on the protection of the policyholders, insureds and beneficiaries. The FSMA shall provide its opinion within a period of one month to be counted from the date of receipt from the Bank of the request for an opinion, containing all the useful documents received from the company applying for the authorization. An absence of opinion by this date serves as a positive opinion.

**Section II - Pursuit of business**

**Article 586.** Branches in Belgium of insurance companies governed by the law of a third country
must continuously meet the conditions laid down by or pursuant to Article 584.

**Article 587.** The following shall apply to the branches referred to in Article 584:

1° Article 71;

2° Article 83, as regards the authorized agent of the branch, as referred to in Article 593, as well as, where applicable, the other persons tasked with the senior management of the branch, and Article 81, as regards those same persons and, where applicable, the responsibilities for the independent control functions in the branch;

3° Article 93, with the proviso that the managers of the branch are deemed equivalent to the members of the statutory governing body;

4° Articles 36 and 38, § 1;

5° Articles 102, 103, 104, § 1, 1° and § 2, 105 and 106, with the proviso that:

   a) Article 102, first paragraph, 1° applies to the branch in Belgium;

   b) in the cases referred to in Article 102, first paragraph, 3° in which the accepting undertaking is a branch of an insurance company governed by the law of a third country, established on the territory of another Member State, the Bank shall consent to a portfolio transfer only if:

      - the supervisory authorities of the Member State concerned have consented to the transfer, and

      - these supervisory authorities declare that the accepting undertaking concerned shall, after the envisaged transfer, have sufficient eligible own funds to cover the solvency capital requirement laid down pursuant to the legislation of that Member State;

   c) where so requested by the branch referred to in Article 584 in its capacity of transferring company, the consent as referred to in Article 102, first paragraph, 3° may only be granted if the Bank has received the consent of the supervisory authorities of the other Member States in which the risks are situated or, depending on the circumstances, from the supervisory authorities of the Member States of the commitment. If the foreign supervisory authorities consulted have not reacted within a period of three months, they shall be deemed to have consented.

**Article 588.** § 1. The following shall apply to the branches referred to in Article 584:

1° Articles 123 to 139;

2° Articles 76, 199 to 203, it being understood that for the application of Article 76, the place where the documents relating to the transactions executed via the branch are stored, is the registered office of the branch.

§ 2. The King determines the rules and obligations for publishing the annual accounting statements of the branches referred to in Article 584.

**Article 589.** § 1. The branches referred to in Article 584 must hold own funds that meet the following rules:

1° the own funds comply with Articles 140 to 150;

2° the own funds comply with the solvency capital requirements and with the minimum capital requirements calculated pursuant to Articles 151 to 189, it being understood that for the application of those requirements, both for life insurance policies and non-life insurance policies, only the transactions executed by the branch concerned shall be taken into account;
3° the required absolute floor is equal to half of the amount referred to in Article 189, § 1, 4°.

The deposit paid pursuant to Article 585, second paragraph, b) is accounted for in the eligible basic own funds for covering the minimum capital requirement.

§ 2. Article 323 shall apply, with the proviso that the add-on is an additional requirement as regards the own funds requirement laid down pursuant to that Article.

§ 3. Article 91 shall apply to the branches referred to in Article 584.

**Article 590.** The branches referred to in Article 584 may not simultaneously pursue non-life insurance and life insurance business.

**Article 591.** § 1. Articles 190 to 193 shall apply to the assets held by the branch.

§ 2. Without prejudice to Article 585, § 1, second paragraph, Articles 194 and 195 shall also apply to the commitments entered into by the branch. The assets referred to in Articles 194 and 195 must be located in Belgium.

§ 3. By way of derogation from § 2, the assets may only be located in Belgium for the amount of the minimum capital requirement and, for the remainder, in a Member State, where the company proves that it complies with the following conditions:

1° the law regarding winding-up proceedings of the third country guarantees that the insurance creditors whose rights are underwritten by the Belgian branch, are handled equally to the insurance creditors whose rights are underwritten by the insurance company in the third country; and

2° if winding-up proceedings are opened in the third country against the insurance company, the law recognizes that this procedure apportions a rank to insurance creditors whose rights are underwritten by the Belgian branch, which affords equivalent protection as that provided for by Articles 643 and 644.

**Article 592.** The following shall apply to the branches referred to in Article 584:

1° Articles 212 to 221;

2° Articles 230 and 231;

3° Articles 232 to 238;

4° Articles 240 and 241;

**Article 593.** The branches referred to in Article 584 must designate an authorized agent. Articles 81, 83 and 93 shall apply to them.

Moreover, this authorized agent must have his/her home or habitual residence in Belgium and must have sufficient powers to bind the insurance company vis-à-vis third parties and to represent it in its relations with the Belgian authorities and courts.

In the event of revocation or withdrawal of the mandate or in case of death of the authorized agent, the insurance company shall take the necessary measures to arrange that the replacement starts within one month.

**Article 594.** § 1. The insurance companies governed by the law of a third country and that have requested or received an authorization in Belgium pursuant to this Chapter, and that have received an authorization in one or more Member States for the establishment of a branch, may ask to benefit from the advantage of the following special provisions, which may only be granted jointly:
1° the solvency capital requirement is calculated on the basis of all the activities pursued in the Member States. This calculation shall only take into account the transactions of all branches established in Member States;

2° by way of derogation from Article 585, second paragraph, b), the deposit laid down pursuant to this provisions shall be executed in the Member State of the supervisory authority referred to in § 2, second paragraph;

3° by way of derogation from Article 592, the assets against the minimum capital requirement may be located in one of the Member States where they pursue their activity.

§ 2. The request referred to in § 1 must be submitted to the Bank and to the supervisory authorities of each of the other Member States concerned. The company must state in this request which supervisory authority shall be tasked with the supervision of solvency for all the activities of the branches established in the European Economic Area.

The company must state the reasons for the choice of supervisory authority and this must be approved by that supervisory authority.

§ 3. The advantage of the special conditions referred to in § 1 may only be granted to the company with the proviso that the supervisory authorities of all other Member States concerned grant their consent.

These special provisions shall only apply from the date on which the chosen supervisory authority confirms to the other supervisory authorities that it accepts its designation and that it shall supervise compliance with the solvency requirements by the branches established in the European Economic Area for all their activities.

Where a supervisory authority of another Member State is chosen pursuant to §§ 2 and 3, the Bank shall provide the supervisory authority with the necessary information for the supervision of compliance with the requirements for global solvency of the insurance company concerned.

The advantage of the special provisions referred to in § 1 shall be revoked ipso jure at the Bank’s request to the other supervisory authorities concerned or at the request of one of them. This revocation shall be communicated to the branch referred to in Article 584.

§ 4. Where it is chosen pursuant to §§ 2 and 3, the Bank shall inform EIOPA thereof.

Section III - Supervision

Article 595. The following Articles shall apply:

1° Articles 303 to 309;

2° Articles 504 to 507;

3° Articles 510, 511, 513 to 515, it being understood that in the cases referred to in Article 594, the supervisory authority tasked with the supervision of compliance of the solvency requirements by the branches established in the various Member States, for all of their activities, may also exercise the prerogatives to which those provisions refer.

Article 596. The management of the branches referred to in the present Title must appoint one or more accredited auditors or one or more accredited audit firms in accordance with Article 327. The management can also designate a replacement under the same terms.

When appointing an audit firm, Article 326 shall apply mutatis mutandis.
Article 328, Article 329, first to fourth paragraph, Article 330, first paragraph and Articles 331 to 337 shall apply mutatis mutandis.

Article 597. § 1. The Bank can, on the basis of the principle of reciprocity, agree with the insurance company's third-country authorities and with the competent authorities of third countries of the other branches of this company established outside Belgium, which obligations and prohibitions apply to the branch in the Belgium, how the supervision is tackled and exercised and in which way the cooperation and the information sharing is organized with these authorities, as referred to in Articles 36/16 and 36/17 of the Law of 22 February 1998.

§ 2. To be able to establish the rules and methods that are best in line with the nature and spread of the activities of the insurance company and its supervision, the agreements may derogate from the provisions of the present Law, with the approval of the Minister responsible for Economy.

Insofar as general supervision exists that meets the criteria established by or pursuant to the present Law, these agreements can grant exemption to the application of certain provisions of the present Law and its implementing decrees and regulations.

The agreements referred to in the present Article may not include more advantageous rules for the branches to which they relate than for the branches of insurance companies established in Belgium that are governed by the law of another Member State.

Section IV - Exceptional measures, penalties and termination of the authorization

Article 598. § 1. Articles 508 and 517 shall apply.

In the case of revocation of the authorization by the Bank due to non-compliance with the rules regarding solvency requirements, the Bank shall inform the other supervisory authorities referred to in Article 594 thereof.

In the case of revocation of the authorization by a supervisory authority appointed pursuant to Article 594, §§ 2 and 3, the Bank shall also withdraw the authorization referred to in Article 585.

§ 2. The Bank may revoke the authorization of a branch referred to in the present Chapter if it is of the opinion that setting up a company governed by Belgian law is required for the protection of insurance creditors or for the sound and prudent management of the insurance company or even for the stability of the financial system. The Bank may apply the criteria referred to in Article 585, § 4 thereto.

The Bank shall inform the FSMA of the decisions made pursuant to the first paragraph.

Article 599. Articles 538 to 541, Article 543, first paragraph and 544 to 547 shall apply.

Chapter II - Pursuit of activity in Belgium by reinsurance companies governed by the law of a third country through the establishment of a branch or the free provision of services

Article 600. Reinsurance companies governed by the law of a third country subject to a solvency regime pursuant to this legislation that is deemed equivalent pursuant to Article 172, paragraph 3 of Directive 2009/138/EC to the regime provided for by this Directive for companies governed by the law of a Member State, may pursue the reinsurance activities in Belgium via the establishment of a branch or under the free provision of services for which they have received an authorization in their home Member State.

In this respect, the provisions of Chapter II of Title I shall apply mutatis mutandis.

Article 601. Reinsurance companies governed by the law of a third country subject to a solvency regime pursuant to this legislation that is not deemed equivalent pursuant to Article 172, paragraph
3 of Directive 2009/138/EC to the regime provided for by this Directive for companies governed by the law of a Member State, may pursue the reinsurance activities in Belgium via the establishment of a branch for which they have received an authorization in their home Member State, provided that the provisions of Chapter I of this Title are complied with.

BOOK IV
FINES AND OTHER PENALTIES

Article 602. Without prejudice to the other measures prescribed by the present Law, the Bank may publish the fact that an insurance or reinsurance company, an insurance holding company, a mixed financial holding company or a mixed-activity insurance holding company governed by Belgian or foreign law has failed to act on its orders to, within the term it determines, comply with the provisions of the present Law or its implementing decrees or regulations, or Regulation 2015/35 or any other implementing measures of Directive 2009/138/EC.

Article 603. § 1. Without prejudice to the other measures prescribed by the present Law, the Bank may determine a deadline for an insurance or reinsurance company, an insurance holding company, a mixed financial holding company or a mixed-activity insurance holding company governed by Belgian or foreign law:

1° by which it must comply with specific provisions of the present Law, of its implementing decrees or regulations or of Regulation 2015/35 or of all implementing measures of Directive 2009/138/EC or

2° by which it must make the necessary adjustments in its regulations for business organization or its policy regarding own funds requirements and the management of its risks. Such an order applies to branches of insurance or reinsurance companies governed by the law of another Member State only for matters relating to the failure to comply with one of the obligations referred to in Article 564, first paragraph and Article 576, first paragraph;

§ 2. If the company continues to be in breach on the deadline, the Bank may apply a fine, after having heard the company or at least convened it, of a maximum of EUR 2,500,000 per infringement and a maximum of EUR 50,000 per day of delay.

§ 3. The following points shall be taken into consideration when establishing the amount of the fine:

1° the severity of the non-compliance identified and, where applicable, the potential impact of this non-compliance on the stability of the financial system;

2° the financial influence of the company concerned, as taken from its turnover.

§ 4. The fines imposed pursuant to § 2 shall be collected by the Treasury [through the General Administration of the Tax Collection and Recovery of FPS Finance].


BOOK V
SANCTIONS

TITLE I - ADMINISTRATIVE FINES

Article 604. § 1. Without prejudice to the other measures prescribed by the present Law and
without prejudice to the other measures prescribed by other laws or regulations, the Bank may, where it identifies an infringement of the provisions of the present Law, of its implementing measures or of Regulation No 2015/35 or of any other implementing measures of Directive 2009/138/EC, impose an administrative fine to an insurance or reinsurance company, an insurance holding company, a mixed financial holding company or a mixed-activity insurance holding company governed by Belgian or foreign law, to one or more members of the statutory governing body of these entities or, in the absence of a management committee, to persons involved in their senior management, who are responsible for the non-compliance identified.

§ 2. The administrative fine imposed on the company or on the entity referred to in § 1 for the same deed or deeds, shall come to a minimum of 1% and a maximum of 10% of the technical and financial revenue of the entity in the previous financial year.

Administrative fines imposed on a natural person shall amount, for the same deed or deeds, to at least EUR 5,000 and at most EUR 5,000,000.

§ 3. The fines imposed by the Bank pursuant to § 1 shall be collected by the Treasury [through the General Administration of Tax Collection and Recovery of FPS Finance].


§ 4. The amount of the fine shall be established by virtue of

1° the severity and the duration of the non-compliance;

2° the extent of the responsibility of the party involved;

3° the financial influence of the party involved, as taken from the total turnover of the legal person involved or the annual income of the natural person involved;

4° any advantage or profit that this non-compliance results in;

5° the disadvantage for third parties that this non-compliance has led to, insofar as this is quantifiable;

6° the extent of the cooperation of the natural or legal persons involved with the competent authorities;

7° earlier non-conformities of the persons involved;

8° the potential negative impact of the non-compliance on the stability of the financial system.

§ 5. Where the Bank publishes measures imposed in accordance with the present Article, it shall inform EIOPA and the supervisory authority of the Member State concerned at the same time where it relates to an insurance or reinsurance company that provides one or more of those activities in another Member State.

TITLE II — CRIMINAL SANCTIONS

Article 605. § 1. A punishment of a prison sentence of one month to one year along with a fine of EUR 50 to EUR 10,000 or one of these punishments alone shall be imposed on:

1° those who do not comply with Article 16;

2° those who pursue the activity of an insurance or reinsurance company as referred to in Article 17 or in Book III, Title II without having an authorization or with an authorization that has been
cancelled or revoked;

3° those who intentionally do not make the notifications as referred to in Articles 64 and 68, ignore the opposition as referred to in Article 66, second paragraph, or ignore the suspension as referred to in Article 72, first paragraph, 1°;

4° members of the statutory governing body and other persons referred to in Article 83 who infringe the provisions of the present Article;

5° members of the statutory governing body or the management committee, or persons tasked with the senior management who infringe Articles 93, 102, 2° and 3°, 426, 428, 483 or 486;

6° members of the statutory governing body or of the management committee or persons tasked with the senior management of an insurance or reinsurance company who open a branch or provide services abroad, without having made the notifications as referred to in Articles 108, 113, 115 or 120 or who do not comply with Articles 112, 119 or 122;

7° members of the statutory governing body or management committee or persons tasked with the senior management of an insurance or reinsurance company who infringe the decrees or regulations referred to in Articles 199, 201, 342, 564, § 2, 576, third paragraph or 588, § 1, 2°.

8° members of the statutory governing body or management committee or persons tasked with the senior management of an insurance or reinsurance company who do not comply with Articles 201 or 202.

9° those who carry out trades or execute transactions without having received the consent of the special commissioner as referred to in Article 517, § 1, 1°, or who act against a suspension decision made in accordance with Article 517, § 1, 4°, who do not respond to an order addressed to them pursuant to Articles 568, first paragraph or 579, first paragraph, or who do not comply with the measures taken pursuant to Articles 569, § 1, first paragraph, 580, § 1, 573 or 582;

10° those who as statutory auditor, accredited statutory auditor or independent expert certify, approve or ratify accounts, annual accounts, balance sheets and profit and loss accounts or consolidated annual accounts of companies or certify, approve or ratify periodic statements or information while they are aware that the provisions of the present Law and its implementing decrees and regulations or the implementing measures of Directive 2009/138/EC are not complied with, or who have not acted as they normally should to ascertain whether those provisions are complied with;

11° those who hamper the investigations and inspections they have to comply with in the country itself or abroad or refuse to provide the records they are obliged to by virtue of the present Law and the implementing measures of Directive 2009/138/EC, or who knowingly provide inaccurate or incomplete information;

12° all directors and administrators who do not follow the requirements of Articles 325, § 1, first paragraph, and 596;

§ 2. Infringements of the prohibition of Article 41 shall be punished by a prison sentence of three months to two years and with a fine of EUR 1 000 to EUR 10 000.

Article 606. The requirements of Book I of the Criminal Code, including Chapter VII and Article 85 apply to the misdeeds punished by virtue of the present Title.

Article 607. Insurance or reinsurance companies have civil liability for the fines imposed on the members of their statutory governing body, their management committee, or the persons tasked with their senior management or their representatives pursuant to the provisions of the present Title.
Article 608. All investigations resulting from infringements of the present Law or one of the laws referred to in Article 20 of the Law of 25 April 2014, by members of the statutory governing body or management committee, or persons tasked with senior management, representatives, or accredited statutory auditors of insurance or reinsurance companies, and all investigations resulting from infringements of the present Law by all other natural or legal persons must be notified by the judicial and/or administrative authority before which they have been brought to the Bank and the FSMA, each in accordance with its competence.

All criminal proceedings by virtue of the misdeeds referred to in the first paragraph, must be notified by the Public Prosecution Service to the Bank and to the FSMA, each in accordance with its competence.

Article 609. The Bank and the FSMA may intervene, at any stage of the proceedings, before the criminal court this misdeed has been brought before pursuant to the present Law, without the need to demonstrate the existence of any damage.

Such an intervention shall occur in accordance with the rules that apply for the civil party.

BOOK VI
RULES OF PRIVATE INTERNATIONAL LAW THAT APPLY TO INSURANCE COMPANIES CONCERNING REORGANIZATION MEASURES AND WINDING-UP PROCEEDINGS

TITLE I — REORGANIZATION MEASURES

Chapter I — Competence regime and recognition of foreign measures

Article 610. Subject to Articles 598 and 614, the Belgian reorganization authorities have sole competence for taking reorganization measures with respect to insurance companies governed by Belgian law. These reorganization measures shall be implemented and have effect in accordance with Belgian legislation, subject to the specifications and exceptions established in the present Law. The Belgian reorganization authorities can in particular not take any reorganization measures vis-à-vis an insurance company governed by the law of another Member State, or vis-à-vis a branch established in Belgium of such a company.

Article 611. Reorganization measures taken by reorganization authorities of another Member State with respect to an insurance company governed by the law of that Member State shall have effect in Belgium based on the legislation of that Member State as soon as they come into effect in the Member State in which they have been adopted, without prejudice to the potential publication thereof in Belgium. Such reorganization measures shall apply in Belgium with no further formalities.

Chapter II — Consultation and information

Section I - Insurance companies governed by Belgian law

Article 612. The King informs the Bank forthwith of any decision to take a reorganization measure pursuant to Article 519; where possible, He does so prior to the establishment of such a measure, or otherwise immediately thereafter.

The Bank shall inform the FSMA and the supervisory authorities of all other Member States immediately and by all appropriate means of the establishment of any reorganization measures as well as of the specific consequences that these measures could have. The King keeps the Bank informed of the progress of the enforcement of Article 519.
Article 613. If the rights of third parties in another Member State where the insurance company concerned has a branch or provides services could be jeopardized by the enforcement of a reorganization measure taken pursuant to Article 610, and if an appeal was lodged against this measure, the Bank, or, in the case of the deeds of assignment referred to in Article 519, the King, shall publish the decision in accordance with the legal provisions applying thereto, and ensure that an extract of that decision is published as quickly as possible in the Official Journal of the European Union, in the official language or one of the official languages of those Member States. This publication shall in no way influence the consequences of the reorganization measure, in particular for the creditors of the insurance company concerned. The extract shall include at least the following information:

1° the subject and the legal basis for the decision made, with a statement that the measure is governed by Belgian law;

2° the reorganization authorities and, where applicable, the commissioner in reorganization designated;

3° the timeframe for appeal with the particulars of the authority competent for such an appeal.

For third parties with their home or habitual residence in another Member State, the term for lodging an appeal against the establishment of a reorganization measure shall begin on the date of publication in the Official Journal of the European Union.

Section II - Insurance companies governed by the law of a third country

Article 614. The Bank shall inform the supervisory authorities of the other Member States where the insurance company governed by the law of a third country also has a branch, forthwith and by all appropriate means, of its decision to take a reorganization measure pursuant to Article 598 as well as the specific consequences of this measure; it shall do so, wherever possible, before establishing this measure, or otherwise immediately thereafter. The Bank shall endeavour to coordinate its actions with those of the supervisory authorities, the reorganization authorities and, where applicable, the winding-up authorities of the insurance companies of the other Member States.

TITLE II - BANKRUPTCY AND OTHER WINDING-UP PROCEEDINGS BASED ON INSOLVENCY

Chapter I — Competence regime and recognition of foreign measures

Article 615. The Commercial Court has exclusive competence to declare bankruptcy of insurance companies governed by Belgian law. This implies that it may not declare bankruptcy of an insurance company governed by the law of another country or its branches established in Belgium.

Article 616. Winding-up proceedings opened by the winding-up authorities of another Member State with respect to an insurance company governed by the law of that Member State, shall be recognized in Belgium with no further formalities and shall have effect in Belgium as soon as they come into effect in the Member State in which they were opened.

Article 617. A decision under foreign law as regards winding-up proceedings based on insolvency of an insurance company governed by the law of a third country may only be recognized and declared enforceable in Belgium if the following conditions are met:

1° the law regarding insolvency proceedings of the third country guarantees that the insurance creditors that have entered into their policy with the Belgian branch are handled equally to the insurance creditors which have entered into their policy with the insurance company in the third country;
2° the law that regulates the insolvency proceedings in the third country affords equivalent protection to insurance creditors who have entered into their policy at the Belgian branch as that provided for in Articles 643 and 644.

Chapter II - Insurance companies governed by Belgian law

Section I — Consultation and provision of information

Article 618. Without prejudice to Article 640, the Commercial Court shall inform the Bank forthwith of its decision to declare a company bankrupt as well as of the specific consequences of the bankruptcy; it shall do so where possible prior to the declaration of bankruptcy, or otherwise immediately thereafter. The Bank shall share this information forthwith and by any appropriate means to the FSMA and to the supervisory authorities of all other Member States.

Article 619. The trustee(s) in bankruptcy appointed in accordance with Article 11 of the Bankruptcy Law of 8 August 1997 shall ensure the publication referred to in Article 38 of that same Law, including via publication of the extract in the Official Journal of the European Union. For that purpose a form shall be used bearing the following headings in all the official languages of the European Union: “Invitation to lodge a claim. Time limits to be observed”.

The publication shall at least specify:

1° that the winding-up proceedings are governed by Belgian law;

2° the details of the competent court and of the trustee in bankruptcy appointed.

Article 620. If the creditors to whom individual notifications are sent as referred to in Article 62 of the Bankruptcy Law of 8 August 1997 have their home or habitual residence in another Member State, the circular shall also show, alongside the information in the extract referred to in Article 619, that the creditors with preferential rights or collateral security are obliged to declare their claims, and the consequences of non-compliance with the terms established in Article 72 of the Bankruptcy Law of 8 August 1997. In the event of an insurance claim, the circular shall also state the general consequences of the winding-up proceedings for the insurance policies, especially the date on which the insurance policies or transactions no longer have effect, as well as the rights and obligations of the insureds in connection with the policy or transaction.

The circular as referred to in Article 62 of the Bankruptcy Law of 8 August 1997, which shall be drawn up in the language of the procedure, or for insurance creditors with their habitual residence, home 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”.

Section II — Procedural aspects and applicable law

Article 621. The bankruptcy of insurance companies governed by Belgian law shall be governed by Belgian law, subject to specifications and exceptions established in the present Law.

Article 622. § 1. Creditors with their home or habitual residence in another Member State can notify of their claims or remarks in the official language of that Member State, as long as the following heading is included in the language of the procedure in Belgium: “Lodging a claim” or “Submission of observations relating to a claim”. Article 63 of the Bankruptcy Law of 8 August 1997 shall apply. The priority apportioned to insurance claims pursuant to Articles 643 and 644 does not however need to be stated.

§ 2. Claims from creditors with their home or habitual residence in another Member State shall receive the same treatment and especially the same rank as similar claims that creditors who live or reside in Belgium could submit. To this end, claims from similar creditors shall be deemed equivalent.
The first paragraph shall also apply to creditors with their home or habitual residence in a third country insofar as the law that applies in that country does not provide the option of opening insolvency proceedings against the insurance company concerned and that the procedure opened in Belgium can have effect in that country. Where that is not the case, these creditors shall be deemed equivalent, for the proceedings opened in Belgium, to unsecured creditors.

**Article 623.** The trustee(s) in bankruptcy appointed in accordance with Article 11 of the Bankruptcy Law of 8 August 1997, shall regularly keep the creditors informed of the progress of the process in the manner they deem most appropriate.

At the request of the supervisory authorities of the other Member States, the Bank shall provide them with information on the progress of the winding-up proceedings. To this end, the Commercial Court shall keep the Bank informed on the progress of the proceedings.

**Chapter III - Insurance companies governed by the law of a third country**

**Article 624.** Where an insurance company governed by the law of a third country has branches in Belgium and in other Member States, the Bank, the winding-up authorities and the supervisory authorities of those Member States shall endeavour to coordinate their actions.

**TITLE III - WINDING-UP PROCEEDINGS NOT BASED ON INSOLVENCY RELATING TO INSURANCE COMPANIES GOVERNED BY THE LAW OF A THIRD COUNTRY**

**Article 625.** If the authorization of a company governed by the law of a third country is cancelled or revoked or where this company itself renounces the authorization for all of its activities in Belgium, the Bank may appoint a liquidator and task the liquidator with realizing all the assets of the company in Belgium and settling all commitments entered into in Belgium.

Without prejudice to Article 599, the King determines, upon the recommendation of the Bank, the powers and obligations of the liquidator.

The settlement costs shall be borne by the company concerned.

The provisions of the present Article shall not apply where winding-up proceedings based on insolvency are opened as regards an insurance company governed by the law of a third country at the time of revocation of the authorization.

**Article 626.** § 1. A decision as regards settlement not based on insolvency of an insurance company governed by the law of a third country may only be recognized and declared enforceable in Belgium if the following conditions are met:

1° the law of the third country that regulates the winding-up proceedings guarantees that the insurance creditors that have entered into their policy with the Belgian branch are handled equally to the insurance creditors which have entered into their policy with the insurance company in the third country;

2° the law that regulates the winding-up proceedings in the third country affords equivalent protection to insurance creditors who have entered into their policy at the Belgian branch as that provided for in Articles 643 and 644.

§ 2. Article 625 shall not apply where winding-up proceedings not based on insolvency of an insurance company governed by the law of a third country are recognized in Belgium and declared enforceable pursuant to § 1.

**Article 627.** Where an insurance company governed by the law of a third country has branches in Belgium and in other Member States, the Bank, the winding-up authorities and the supervisory authorities of those Member States shall endeavour to coordinate their actions. Any liquidators
shall also endeavour to coordinate their actions.

**TITLE IV - SETTLEMENT OF SPECIAL FUNDS**

**Article 628.** § 1. Without prejudice to Article 631 and Article 195, second paragraph, the treatment of assets as referred to in Article 194 encumbered with a right in rem shall be determined by Belgian law under lex fori concursus.

§ 2. Without prejudice to Article 632, the treatment of assets as referred to in Article 194 encumbered with a retention of title shall be determined by Belgian law under lex fori concursus.

§ 3. Without prejudice to Article 633 and the obligation for an insurance company, for the valuation of its assets as referred to in Article 194, to estimate claims against a third party after deduction of the debts to that third party, the treatment of such assets which are subject to legal or contractual set-off, shall be determined by Belgian law under lex fori concursus.

§ 4. For the purposes of this Article, Belgian law shall include its provisions regarding material law arising from the transposition of the European directives that regulate the circumstances referred to in §§ 1 to 3.

**Article 629.** The composition of the assets registered in the running inventory at the time of the decision to open winding-up proceedings in accordance with Article 195 shall no longer be changed thereafter; no changes shall be made to the running inventory except for correcting clear material errors, unless the winding-up authorities give their consent thereto.

Without prejudice to the first paragraph, the liquidator shall add the capital return to the assets mentioned, as well as the amount of the premium collection (pure premiums) in the separate management concerned for the period between the time of opening the winding-up proceedings and the time of payout of the insurance claims, or until the time of portfolio transfer.

If the return from the realized assets is lower than the amount for which they were valued in the running inventory, the liquidator must justify this situation to the Bank.

**TITLE V - COMMON RULES REGARDING REORGANIZATION MEASURES AND WINDING-UP PROCEEDINGS**

**Chapter I — Exceptions or nuances to the application of Belgian law as procedural law**

**Article 630.** By way of derogation from Articles 610 and 621, the consequences of reorganization measures or winding-up proceedings for:

1° employment contracts and employment relationships shall be exclusively governed by the law of the Member State which applies to the employment contract or relationship;

2° agreements granting the right of use or acquisition of immovable property shall be exclusively governed by the law of the Member State on the territory of which the immovable property is located. This legislation shall determine whether the property is movable or immovable;

3° the right of the insurance company to immovable property, a boat or an aircraft that is subject to registration in a public register shall be exclusively governed by the law of the Member State under the authority of which such register is held;

4° transactions 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 exclusively governed by the law that applies to that market;

5° pending lawsuits relating to a good or a right which the insurance company has lost the
management and disposal of, shall be exclusively governed by the law of the Member State where the lawsuit is pending.

Upon the recommendation of the Bank, the King may extend the rule in the first paragraph, 4° to transactions on markets for financial instruments organized pursuant to Article 15 of the Law of 2 August 2002.

**Article 631.** § 1. Taking reorganization measures or opening bankruptcy proceedings shall not affect the right in rem of a creditor or of a third person on tangible or intangible movable or immovable property—both specific assets and collections of indefinite assets as a whole which change from time to time—that belong to an insurance company and that, at the time of these measures being taken or this procedure being opened, were located on the territory of another Member State.

§ 2. Rights, within the meaning of § 1, shall be understood to include:

1° the right to realize an asset or have it realized and to be paid out of the income or revenue from that asset, especially by virtue of a security or a mortgage;

2° the exclusive right to recover a debt, in particular through a security on the debt or by assignment of that debt for collateral;

3° the right to claim the asset back and/or to require its return from anyone who has it in their possession or uses it against the will of the person entitled to it;

4° the right in rem to the beneficial use of the asset.

§ 3. The right to acquire a right in rem, within the meaning of § 1, registered in a public register, that can be enforced against third parties, shall be deemed equivalent to a right in rem.

**Article 632.** The taking of reorganization measures or the opening of bankruptcy proceedings against an insurance company that purchases an asset, shall not affect the seller’s retention of title rights where that asset, at the time at which the measures were taken or the proceedings were opened, was located on the territory of another Member State than the Member State in which the measures were taken or the proceedings were opened.

The taking of reorganization measures or the opening of bankruptcy proceedings against an insurance company that acts in the capacity of seller, after the delivery of the sold asset has taken place, is no grounds for termination or cancellation of the purchase and shall not prevent the purchaser from acquiring the title to the purchased asset where that asset, at the time at which the measures were taken or the proceedings were opened, was located on the territory of another Member State than the Member State in which the measures were taken or the proceedings were opened.

**Article 633.** The taking of reorganization measures or the opening of bankruptcy proceedings shall not affect the right of a creditor to offset claims against the claims of the insurance company where that offset is permitted by the law that applies to the insurance company’s claims.

**Article 634.** Without prejudice to Article 630, first paragraph, 1° to 3° and subject to Article 635, Articles 631, § 1, 632 and 633 shall be without prejudice to the application of Articles 17 to 20 of the Bankruptcy Law of 8 August 1997.

Article 1167 of the Civil Code and Articles 17 to 20 of the Bankruptcy Law of 8 August 1997 shall not apply where the beneficiary of a legal act referred to in the provisions named, delivers proof that the legal act is subject to the law of a Member State that is not Belgian law, and that this law does not in this case provide for the possibility to challenge that legal act.

**Article 635.** By way of derogation from Article 517, § 1, 1° and 4°, of the present Law and Article
16 of the Bankruptcy Law of 8 August 1997, and notwithstanding Articles 17 to 20 of the latter Law, where the insurance company, after the taking of a reorganization measure or after the opening of bankruptcy proceedings has in its possession an immovable property, a boat or an aircraft against payment that is subject to registration in a public register, or financial instruments the existence or transfer of which requires registration in a statutory register or in a statutory account, or which are placed in a central securities depository governed by the law of a Member State, that transaction shall be declared null and void or unenforceable by virtue of the law of the Member State where that immovable property is located or under the authority of which such register, account or securities depository is held;

Chapter II — Provision of information

Article 636. Without prejudice to Articles 610 and 615, where the supervisory authorities of the home Member State of an insurance company inform the Bank of their decision to open winding-up proceedings or to establish a reorganization measure, the Bank shall inform the FSMA thereof. The Bank and the FSMA may have a notice published in the Belgian Official Gazette and in two daily newspapers or periodicals with regional distribution.

That notice shall include at least an extract of the decision and specifies the authorities competent to take a reorganization measure or open winding-up proceedings, the law that governs these measures or proceedings and, depending on the circumstances, the designated liquidator or commissioner in reorganization, and shall be published in at least one of the official languages of Belgium.

Chapter III — Commissioners in reorganization and liquidators

Section I — Recognition of foreign measures and procedures

Article 637. The appointment of a commissioner in reorganization or of a liquidator by an authority of another Member State shall be demonstrated by way of a certified true copy of the decision for appointment or any other certificate drawn up by that authority.

Although no legalization or similar formality is required; a translation must nevertheless be made of the document referred to in the first paragraph, in the language or one of the languages of the linguistic area in which the commissioner in reorganization or the liquidator wishes to act.

Article 638. § 1. The commissioners in reorganization and liquidators appointed by an authority of another Member State can exercise all powers in Belgium that they are authorized to exercise in the territory of that other Member State.

The same applies for persons they designate in accordance with the law of that Member State in order to assist them or to represent them in the settlement of a reorganization measure or winding-up proceedings.

§ 2. For the exercise of their powers in Belgium, the commissioners in reorganization and liquidators referred to in § 1, shall comply with Belgian legislation, and more in particular with respect to the manner in which assets are realized and employees are informed. Those powers may not include coercive measures or the right to rule on legal proceedings or disputes.

§ 3. The commissioners in reorganization and liquidators referred to in § 1 shall inform the Kruispuntbank van Ondernemingen (KBO)/Banque Carrefour des entreprises (BCE) as referred to in Article 3 of the Law of 16 January 2003 on the creation of a Crossroads Bank for Enterprises, on the modernization of the trade register, on the creation of recognized companies’ dockets and on diverse rules, of any reorganization measures and winding-up proceedings decided upon by the authority of another Member State in view of their registration.
Section II — Belgian commissioners in reorganization and liquidators

Article 639. The trustee(s) in bankruptcy that were or are appointed in accordance with Article 11 of the Bankruptcy Law of 8 August 1997 shall take all the necessary measures to comply with the registration of winding-up proceedings in a public register of another Member State imposed pursuant to the legislation of that Member State.

The costs arising from a registration in a public register of another Member State shall be deemed costs relating to the procedure, irrespective of whether the registration is imposed or occurs at the initiative of the persons referred to in the first paragraph.

BOOK VII

ASPECTS OF SUBSTANTIVE LAW OF WINDING-UP PROCEEDINGS

TITLE I - SPECIAL RULES IN THE CASE OF BANKRUPTCY PROCEEDINGS

Article 640. § 1. Except where a summons is issued pursuant to Article 549, first paragraph, the opening of bankruptcy proceedings or a provisional divestment of the debtor within the meaning of Article 8 of the Bankruptcy Law of 8 August 1997 against an insurance or reinsurance company may only be ruled after the unanimous opinion of the Bank.

§ 2. The request for an opinion shall be addressed in writing to the Bank. This request shall include the reference documents necessary.

The Bank shall issue its opinion within fifteen days of receiving the request. In the case of a procedure relating to an insurance or reinsurance company that the Bank believes may engender major systemic risk implications, or for which prior coordination with foreign authorities is necessary, the Bank may have a longer term within which to deliver its opinion, with the proviso that the total term may not amount to longer than thirty days. If the Bank is of the opinion that it must make use of this exceptional longer term, it shall advise the judicial authority that must deliver a ruling. The period available to the Bank for issuing its opinion shall serve to suspend the deadline by which the judicial authority must make its ruling. If the Bank does not deliver an opinion by the stated deadline, the court may issue a ruling.

The Bank shall provide its opinion in writing. It shall be delivered to the office of the clerk of the court, by any means, which shall provide it to the President of the Commercial Court and to the Crown Prosecutor. The opinion is to be entered into the dossier.

Article 641. The trustee(s) in bankruptcy referred to in Article 27 of the Bankruptcy Law of 8 August 1997 as well as the persons who are included as trustee in bankruptcy pursuant to the aforementioned Article 27, fourth paragraph, shall be appointed on the recommendation of the Bank.

TITLE II - SPECIAL RULES IN THE CASE OF WINDING-UP PROCEEDINGS WITHIN THE MEANING OF ARTICLE 183 OF THE COMPANIES CODE

Article 642. § 1. Except in the case of ipso jure dissolution pursuant to Article 542, the dissolution of an insurance or reinsurance company, irrespective of whether voluntary or judicial, and its subsequent settlement within the meaning of the Companies Code, requires the unanimous opinion of the Bank.

Prior to ruling on judicial dissolution of an insurance or reinsurance company on the grounds established in the Companies Code, the Commercial Court shall address a request for an opinion to the Bank pursuant to the procedure in Article 640, § 2.
§ 2. In the case of the insurance or reinsurance company’s voluntary or judicial dissolution or
dissolution pursuant to Article 542, the liquidator appointed pursuant to the legislative rules or
those under the articles of association may only be nominated with the approval of the Bank.

Without prejudice to the legal provisions that apply to commercial companies and without
prejudice to Article 545, the King determines, upon the recommendation of the Bank, the powers
and obligations of the liquidator, especially as regards the settlement of the insurance claims. The
liquidator must in any case comply with the Bank’s requests for information and must also inform
the Bank, of his/her own accord on the progress of his/her mandate.

§ 3. The Bank shall inform the supervisory authorities of all other Member States, and where it
concerns an insurance company, the FSMA, forthwith of any dissolution, and the potential specific
consequences thereof.

TITLE III - COMMON RULES RELATING TO THE DIFFERENT WINDING-UP PROCEEDINGS AND
OTHER CASES OF OVERLAP

Article 643. The joint assets as referred to in Article 194 form, per individual management as
referred to in Article 230, a special fund that is reserved to fulfil the commitments to the
policyholders, insureds, or insurance beneficiaries that fall under that management, with absolute
priority over all other claims against the insurance company.

The special fund of each separate management is composed of the content of the running inventory
prescribed by Article 195.

Article 644. Every settlement of special funds must take into account the rights of insurance
creditor, the creditors referred to in the second paragraph, and equality across all creditors of the
same rank.

By way of derogation from Article 643, first paragraph, the liquidator may first deduct his/her
remuneration from each special fund and that of his/her staff, as well as all other settlement costs,
insofar as these costs are to the benefit of the settlement of this fund.

If a positive balance remains after the settlement of a special fund, this balance shall be distributed
across the other special funds in proportion with the deficits of those special funds.

If a balance remains after the settlement of the special funds, this shall be allocated to the group of
creditors.

If the special funds are insufficient to fully compensate insurance creditors, these shall maintain a
preferential claim on the company for the remainder. This preferential right is general; the special
preferential rights and the general preferential rights of employees, of the Treasury and of the social
security institutions and social insurers, and the exercise of rights in rem are ranked above it.

BOOK VIII

FINAL, AMENDING, TRANSITIONAL AND ABROGATING PROVISIONS

TITLE I - TRANSITIONAL PROVISIONS

Article 645. The insurance companies included, on the date of entry into force of the present Law,
in the list of insurance companies as referred to in Article 4 of the Law of 9 July 1975 on the
regulation of insurance undertakings shall automatically receive an authorization in that capacity.

Insurance companies governed by the law of a Member State and included in the lists referred to in
Articles 66 of the Law of 9 July 1975 on the regulation of insurance undertakings shall be automatically included, depending on the circumstances, in the list referred to in Article 555 or 561.

**Article 646.** § 1. The insurance companies referred to in Article 275 that pursued their activities on the date of entry into force of the present Law shall temporarily be included in the list referred to in Article 275, § 2, fifth paragraph.

These companies shall have a term of four months from the entry into force of the present Law to provide to the Bank the application for registration referred to in Article 275, § 2.

§ 2. The insurance companies referred to in Article 276 shall have a term of one year from the entry into force of the present Law to comply with the provisions of Articles 276 to 293.

§ 3. The local insurance companies referred to in Article 294 that pursued their activities on the date of entry into force of the present Law shall temporarily be included in the list referred to in Article 296.

These companies shall have a term of four months from the entry into force of the present Law to provide to the Bank the application for registration referred to in Article 296.

**Article 647.** § 1. Royal decrees, regulations of the Bank and all other measures of a regulatory nature established in application of the Law of 9 July 1975 on the regulation of insurance undertakings, shall remain in force insofar as the provisions of the present Law provide for the general or specific legal authorizations necessary for these regulatory measures and insofar as their content is not in contravention of the present Law.

§ 2. The authorizations and exceptions granted by the Bank and all measures with individual scope that have been established previously by virtue of the Law of 9 July 1975 on the regulation of insurance undertakings or of the regulatory measures established in implementation thereof, shall remain in force unless they are revoked or amended in accordance with the present Law.

**Article 648.** The reinsurance companies included, on the date of entry into force of the present Law, in the list of reinsurance companies as referred to in Article 11 of the Law of 16 February 2009 on reinsurance shall automatically receive an authorization in that capacity.

**Article 649.** The insurance companies included, on the date of entry into force of the present Law, in the list of insurance companies as referred to in Article 4 of the Law of 9 July 1975 on the regulation of insurance undertakings and which pursued a reinsurance activity on that same date shall automatically receive an authorization as a reinsurance company for the purposes of the present Law.

**Article 650.** § 1. Royal decrees and regulations of the Bank and all other measures of a regulatory nature established in application of the Law of 16 February 2009 on reinsurance, shall remain in force insofar as the provisions of the present Law provide for the general or specific legal authorizations necessary for these regulatory measures and insofar as their content is not in contravention of the present Law.

§ 2. The authorizations and exceptions granted by the Bank and all measures with individual scope that have been established previously by virtue of the Law of 16 February 2009 on reinsurance or of the regulatory measures established in implementation thereof, shall remain in force unless they are revoked or amended in accordance with the present Law.

**Article 651.** By way of derogation from Article 40, § 1, first paragraph, legal persons who on 7 May 2014 exercised the role of member of the statutory governing body of an insurance or reinsurance company, may continue their current term of office until it expires. Until the terms
referred to in this Article expire, Article 40, § 1, second paragraph, shall apply to the permanent representative of that legal person.

Article 652. § 1. By way of derogation from Articles 48, 50 and 51, the insurance or reinsurance companies shall have a term of six months from the entry into force of the present Law to comply with the obligation to set up a remuneration committee and a risk committee.

§ 2. By way of derogation from Article 56, the insurance or reinsurance companies shall have a term of six months from the entry into force of the present Law to comply with the obligation to set up a risk management function in accordance with the aforementioned Article 56.

§ 3. Loans, credits, guarantees or insurance policies granted prior to the entry into force of the present Law and which are not in accordance with the provisions of Article 93 must end at the latest on 30 June 2016.

Article 653. By way of derogation from Article 96, § 4, the capital add-on or the effect of the specific parameters that the insurance or reinsurance company must use pursuant to Article 166, do not need to be published separately for a transitional period ending on 31 December 2020, even if the total solvency capital requirement as referred to in Article 96, § 1, 5°, b) is published.

Article 654. § 1. Until 31 December 2017, the insurance or reinsurance companies shall apply the percentages referred to in Article 189, § 3 to the solvency capital requirement of the company as calculated according to the standard formula referred to in Articles 153 to 166.

§ 2. By way of derogation from Articles 511 and 541, the insurance or reinsurance companies that on 31 December 2015 comply with the required solvency margin imposed by or pursuant to the Law of 9 July 1975 on the regulation of insurance undertakings or by or pursuant to the Law of 16 February 2009 on reinsurance, and which on the date of entry into force of the present Law did not hold sufficient eligible basic own funds for covering the minimum capital requirement, shall have a term ending on 31 December 2016 to comply with Article 75.

If on expiry of the term referred to in the first paragraph a company does not have sufficient eligible basic own funds for covering the minimum capital requirement, its authorization pursuant to Article 517, § 1, 8° shall be withdrawn.

Article 655. As long as the maximum reference interest rates for life insurance transactions are not established pursuant to Article 216, the maximum correlation interest rates pursuant to Article 19, §§ 2 and 3 of the Law of 9 July 1975 on the supervision of insurance companies or Article 24 of the Royal Decree of 14 November 2003 on life insurance activities shall apply.

Article 656. By way of derogation from Article 224, second paragraph but without prejudice to Articles 224, third paragraph and 225 to 229, the companies referred to in Article 223 which also pursue life and non-life reinsurance activities may, until 31 December 2019, manage all of these reinsurance activities either with their life insurance activities or their non-life insurance activities.

The Bank shall withdraw the benefit of the application of the first paragraph where the insurance company does not comply with the requirements of Article 224, third paragraph.

Article 657. The mutual insurance associations as referred to in Article 244 shall proceed, at the latest on 31 December 2017, to the formal amendment of their articles of association and insurance policies, and of all documents intended for the public, as regards the disclosure of their legal form.

Article 658. By way of derogation from Article 538, §§ 1, 2, 3 and 5 and from Article 545, insurance or reinsurance companies that have stopped entry into new policies on 1 January 2016, without being under settlement within the meaning of Articles 183 et seq. of the Companies Code, and only manage their existing portfolio with a view to putting an end to their activity, shall be
excluded from the application of the provisions of Book II of the present Law if all of the following conditions are met:

1° the company has assured the Bank that it shall end its current activities for 1 January 2019 or that it is subject to reorganization measures, and a provisional manager or administrator has been designated pursuant to Article 517, § 1, 2°.

2° the company does not form part of a group, unless all companies in the group have ended their activities pursuant to this Article or the national provisions transposing Article 308ter, paragraphs 1 to 3 of Directive 2009/138/EC.

3° the company has informed the Bank, at the latest on 15 January 2016 of its intention to apply the provisions of this Article;

4° the company submits a plan to the Bank stating how the company will settle its obligations.

The Bank shall withdraw the advantage of the provisions of this Article:

- on 1 January 2019, for the companies that have committed to end their activities on that date;
- on 1 January 2021, for the companies that are subject to reorganization measures;

or on an earlier date if the Bank is of the opinion that the company has made insufficient progress with ending its activity.

In the absence of a plan as referred to in the first paragraph, 4° or where the Bank is of the opinion that the plan does not offer sufficient guarantees for the protection of insurance or reinsurance creditors, it may take any measures to support the correct settlement of the insurance and reinsurance obligations of the company and in particular any measures to safeguard the rights of insurance or reinsurance creditors. These measures also include the measures referred to in Articles 504 to 517, 546 and 547.

The insurance or reinsurance companies referred to in this Article shall provide the Bank with an updated version of the plan referred to in the first paragraph, 4° every year. The Bank shall moreover determine, on a case-by-case basis, the content of the updated plan.

Article 659. § 1. For a period of at the most four years from 1 January 2016, the maximum term within which the insurance or reinsurance companies must provide the information referred to in Article 312 every year or less frequently, is established at twenty weeks from the closure of the company’s financial year ending between 30 June 2016 and 1 January 2017. This term shall be reduced by two weeks every financial year and shall be established at fourteen weeks from the closure of the company’s financial year ending between 30 June 2019 and 1 January 2020.

§ 2. For a period of at the most four years from 1 January 2016, the maximum term within which the insurance or reinsurance companies must provide the information referred to in Article 312 quarterly, is established at eight weeks from each quarter ending between 1 January 2016 and 1 January 2017. This term shall be reduced by one week every financial year and be established at five weeks from each quarter ending between 30 June 2019 and 1 January 2020.

Article 660. For a period of at the most four years from 1 January 2016, the maximum term within which the insurance or reinsurance companies must provide the information referred to in Articles 95 and 96, is established at twenty weeks from the closure of the company’s financial year ending between 30 June 2016 and 1 January 2017. This term shall be reduced by two weeks every financial year and shall be established at fourteen weeks from the closure of the company’s financial year ending between 30 June 2019 and 1 January 2020.

Article 661. For the purposes of the information obligations contained in Articles 93, 94 and 307,
Articles 659 and 660 shall apply mutatis mutandis to participating insurance or reinsurance companies, insurance holding companies and mixed financial holding companies, with the proviso that the terms referred to in Articles 659 and 660 are extended by six weeks each time.

**Article 662.** § 1. Notwithstanding Article 147, the basic own-fund items shall be included in the Tier 1 basic own funds for, at most, ten years after 1 January 2016, if these items:

1° are issued prior to 18 January 2015;

2° could be used on 31 December 2015, taking into account their characteristics to comply with at most 50% of the prescribed available solvency margin, in accordance with the provisions of the Law of 9 July 1975 on the regulation of insurance undertakings or the Law of 16 February 2009 on reinsurance and their implementing decrees and regulations.

§ 2. The exemption referred to in § 1 shall not apply to the basic own-fund items that can be included in Tier 2 pursuant to Article 147.

**Article 663.** § 1. By way of derogation from Article 147, the basic own-fund items shall be included in the Tier 2 basic own funds for, at most, 10 years after 1 January 2016, if these items:

1° are issued prior to 18 January 2015;

2° could be used on 31 December 2015, taking into account their characteristics to comply with at most 25% of the prescribed available solvency margin, in accordance with the provisions of the Law of 9 July 1975 on the regulation of insurance undertakings or the Law of 16 February 2009 on reinsurance and their implementing decrees and regulations.

**Article 664.** For insurance or reinsurance companies that invest in transferable securities or in other financial instruments based on repackaged loans issued prior to 1 January 2011, the requirements of Regulation 2015/35 shall only apply if new underlying exposures were added or existing underlying exposures were replaced after 31 December 2014.

**Article 665.** Notwithstanding Article 74, Article 151, § 2, second paragraph and § 3, and Article 154, the following rules shall apply:

1° until after 31 December 2017, the standard parameters that must be used in the calculation of the submodule ‘concentration risk’ and the submodule ‘spread risk’ following the standard formula, shall be the same for claims against central governments or central banks of the Member States that are expressed and financed in the national currency of a Member State, as for such claims expressed and financed in euros;

2° in 2018, the standard parameters that must be used in the calculation of the submodule ‘concentration risk’ and the submodule ‘spread risk’ following the standard formula, shall be reduced by 80% for claims against central governments or central banks of the Member States that are expressed and financed in the national currency of a Member State;

3° in 2019, the standard parameters that must be used in the calculation of the submodule ‘concentration risk’ and the submodule ‘spread risk’ following the standard formula, shall be reduced by 50% for claims against central governments or central banks of the Member States that are expressed and financed in the national currency of a Member State;

4° from 1 January 2020, the standard parameters that must be used in the calculation of the submodule ‘concentration risk’ and the submodule ‘spread risk’ following the standard formula, shall not be reduced for claims against central governments and central banks of the Member States that are expressed and financed in the national currency of another Member State;

**Article 666.** Notwithstanding Article 74, Article 151, § 2, second paragraph and § 3, and Article
154, the standard parameters that must be used for shares acquired by the company at the latest on 1 January 2016, where the submodule ‘equity risk’ is calculated following the standard formula without making use of the possibility described in Article 162, shall be calculated as the weighted average of:

a) the standard parameter that must be used for the calculation of the submodule ‘equity risk’ pursuant to Article 162; and

b) the standard parameter that must be used where the submodule ‘equity risk’ is calculated following the standard formula without making use of the possibility described in Article 162.

The weight of the parameter referred to in the first paragraph, b) shall rise at least linearly at the end of each year from 0% in the year starting 1 January 2016 to 100% on 1 January 2023.

**Article 667.** Where the insurance or reinsurance companies complied with the required solvency margin as referred to in the Law of 9 July 1975 on the regulation of insurance undertakings or the Law of 16 February 2009 on reinsurance, and their implementing decrees and regulations, but do not, in the first year of application of the present Law, comply with the solvency capital requirement, the Bank shall, notwithstanding Article 510, §§ 1 and 2 and without prejudice to § 3 of the said Article, order that the insurance or reinsurance companies concerned take the necessary measures to, by 31 December 2017, restore the own funds eligible for covering the solvency capital requirement or reduce their risk profile so that the solvency capital requirement is complied with.

The insurance or reinsurance company concerned must submit an interim report every three months to the Bank showing which measures have been taken and the progress that has been made to restore the own funds eligible for covering the solvency capital requirement or to reduce its risk profile so that the solvency capital requirement is complied with.

The extension referred to in the first paragraph shall be withdrawn where the interim report shows that no clear progress has been made by the company to restore the own funds eligible for covering the solvency capital requirement or to reduce the risk profile so that the solvency capital requirement is complied with again, between the date on which it was established that the solvency capital requirement was no longer complied with and the date of submission of the interim report.

**Article 668.** § 1. By way of derogation from Articles 126 to 131, the Bank may allow insurance or reinsurance companies to apply an exemption, through a transitional measure, to the relevant risk-free interest rate term structure for life insurance and reinsurance obligations that meet the following conditions:

1° the insurance or reinsurance obligations arising from policies entered into before 1 January 2016, with the exception of extensions to policies from that date;

2° up to 1 January 2016, the technical provisions for the insurance and reinsurance obligations are established pursuant to the provisions of the Law of 9 July 1975 on the regulation of insurance undertakings or the Law of 16 February 2009 on reinsurance and their implementing decrees and regulations;

3° the matching adjustment referred to in Article 129 is not applied to the insurance and reinsurance obligations.

§ 2. The exemption referred to in § 1 which is applied through a transitional measure allows the matching adjustment to be calculated for every currency as part of the difference between:

1° the interest rate established by the insurance or reinsurance policy on 31 December 2015 in accordance with the provisions of the Law of 9 July 1975 on the regulation of insurance undertakings or the Law of 16 February 2009 on reinsurance and their implementing decrees and
regulations; and

2° the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of insurance and reinsurance obligations that meet the conditions of § 1, results in a value that is equal to the value of the best estimate of the portfolio of those insurance and reinsurance obligations where the time value of money is taken into account using the basic risk-free interest rate term structure as referred to in Article 126, § 2.

Where insurance or reinsurance companies apply the volatility adjustment as referred to in Article 131, the risk-free interest rate term structure referred to in the first paragraph, 2° is the risk-free interest rate term structure referred to in Article 131.

If the Bank has given its consent pursuant to § 3, the part referred to in the first paragraph shall reduce linearly from 100% in the year starting 1 January 2016 to 0% on 1 January 2032.

§ 3. The consent of the Bank as referred to in § 1, first paragraph, may only be given if the company proves, by way of a dossier the content of which is determined by the Bank, that based on credible forecasts as regards the market conditions and its risk tolerance limits, it is in a position to comply during the entire transitional period with the solvency requirements, taking into account the application of the rules regarding linear reduction as referred to in § 2, third paragraph.

The Bank shall confirm receipt of the dossier referred to in the first paragraph and, within fifteen days of receipt, shall inform the company whether or not the dossier is complete and can be evaluated, or whether further information is necessary.

The Bank shall make a decision on a request for consent within two months after submission of a complete dossier and at the latest within three months after receipt of the request.

§ 4. Alongside the requirement of Article 670, the following requirements apply to insurance or reinsurance companies which apply the exemption through a transitional measure pursuant to this Article on the relevant risk-free interest rate term structure:

- they do not count the permissible insurance and reinsurance obligations in the calculation of the volatility adjustment as referred to in Article 131;

- they state in their solvency and financial condition report as referred to in Articles 95 and 96 that they apply the transitional risk-free interest rate term structure and quantify the effect that not applying that transitional measure would have on their financial condition.

**Article 669.** § 1. By way of derogation from Articles 124 to 139, the Bank may allow insurance or reinsurance companies to apply a deduction, through a transitional measure, to their technical provisions as regards the insurance or reinsurance obligations existing until 1 January 2016. That deduction may be applied at the level of homogeneous risk groups as referred to in Article 135.

The deduction referred to in the first paragraph shall agree with the difference between

1° the amount of the technical provisions after deduction of the claims arising from reinsurance policies and special purpose vehicles, calculated on 1 January 2016 pursuant to Articles 124 to 139, and

2° the amount of the technical provisions after deduction of claims arising from reinsurance agreements, calculated applying the provisions of the Law of 9 July 1975 on the regulation of insurance undertakings or the Law of 16 February 2009 on reinsurance and their implementing decrees and regulations.

Where insurance or reinsurance companies use Article 131, the amount referred to in the second
paragraph, 1°, is calculated with the volatility adjustment on 1 January 2016.

If the Bank has given its consent pursuant to § 2, the maximum deductible part of the technical provisions shall reduce linearly at the end of each year from 100% in the year starting 1 January 2016 to 0% on 1 January 2032.

Subject to the prior approval from or at the initiative of the Bank, the amounts of technical provisions, where applicable including the amount of volatility adjustment, used for the calculation pursuant to this paragraph of the transitional deduction may be recalculated every twenty-four months, or more frequently if the company’s risk profile has considerably changed as a result of an acquisition or transfer of the insurance or reinsurance obligations existing on 1 January 2016.

§ 2. The consent of the Bank as referred to in § 1, first paragraph, may only be given if the company proves, by way of a dossier the content of which is determined by the Bank, that based on credible forecasts as regards the market conditions and its risk tolerance limits, it is in a position to comply during the entire transitional period with the solvency requirements, taking into account the application of the rules regarding the deduction as referred to in § 1, fourth paragraph.

The Bank shall confirm receipt of the dossier referred to in the first paragraph and, within fifteen days of receipt, shall inform the company whether or not the dossier is complete and can be evaluated, or whether further information is necessary.

The Bank shall make a decision on a request for consent within two months after submission of a complete dossier and at the latest within three months after receipt of the request.

The Bank may limit the deduction referred to in § 1 if the application thereof could result in a reduction of the company’s financial means required compared to the financial means required as calculated pursuant to the provisions of the Law of 9 July 1975 on the regulation of insurance undertakings or the Law of 16 February 2009 on reinsurance and their implementing decrees and regulations on 31 December 2015.

To guarantee that the company complies with the rules regarding linear reduction of the deduction as referred to in § 1, fourth paragraph, the Bank may also attach conditions to its consent as a result of which non-compliance ensues in the Bank being able to cancel the consent given pursuant to this Article.

If the Bank grants its consent after 1 January 2016, the insurance or reinsurance company must take into account the linearity of the deductible part referred to in § 1, fourth paragraph, as though the consent was granted on 1 January 2016.

§ 3. In addition to the requirement of Article 670, insurance or reinsurance companies which pursuant to this Article apply the transitional deduction from the technical provisions, shall state in their solvency and financial condition report as referred to in Articles 95 and 96 that they apply this transitional deduction and quantify the effect that not applying that transitional measure would have on their financial condition.

**Article 670.** The insurance or reinsurance companies may not receive the consent granted pursuant to Article 668 and that granted pursuant to Article 669 cumulatively for the same obligations which come under the classes set out in Annex II.

**Article 671.** § 1. Insurance or reinsurance companies that apply the transitional measures referred to in Article 668 or 669 must submit a report annually to the Bank showing which measures have been taken and the progress that has been made to comply with the solvency capital requirement at the end of the transitional period. The Bank shall withdraw its consent for the application of the transitional measure if it appears from this interim report that it is unrealistic for the solvency capital requirement to be complied with at the end of the transitional period.
The insurance or reinsurance companies that apply the transitional measures referred to in Articles 668 or 669 shall furthermore inform the Bank if they establish that they would not comply with the solvency capital requirement without the application of that transitional measure. The Bank shall order the insurance or reinsurance company concerned to take the necessary measures in order to comply with the solvency capital requirement at the end of the transitional period.

Within two months after the establishment that without the application of the transitional measures referred to in Articles 668 or 669 the solvency capital requirement would not be complied with, the insurance or reinsurance company concerned must submit a gradual implementation plan to the Bank showing which measures are planned to restore, at the end of the transitional period, the own funds eligible for covering the solvency capital requirement or to reduce its risk profile so that the solvency capital requirement is complied with. The insurance or reinsurance company concerned may adjust the gradual implementation plan during the transitional period. The companies that apply the transitional measure referred to in Article 669 must additionally submit a report every year showing which measures have been taken and the progress that has been made with the gradual implementation plan referred to in this paragraph.

§ 2. Until 1 January 2021, the Bank shall provide the following information to EIOPA on an annual basis:

1° the availability of long-term guarantees in the insurance products on the national market and the conduct of insurance and reinsurance companies as long-term investors;

2° the number of insurance and reinsurance companies that apply the matching adjustment, the volatility adjustment, the extension to the recovery period pursuant to Article 510, § 3, the maturity-based submodule ‘equity risk’ and the transitional measures as referred to in Articles 668 and 669;

3° the effect of the matching adjustment, the volatility adjustment, the mechanism for symmetrical adjustment to the equity capital charge, the maturity-based submodule ‘equity risk’ and the transitional measures as referred to in Articles 668 and 669 on the financial condition of the insurance and reinsurance companies, at a national level, and anonymised for each company;

4° the effect of the matching adjustment, the volatility adjustment, the mechanism for symmetrical adjustment to the equity capital charge and the maturity-based submodule ‘equity risk’ on the investment behaviour of the insurance and reinsurance companies and whether these measures lead to an unlawful capital relief;

5° the effect of any extension of the recovery period granted pursuant to Article 510, § 3, on the efforts of insurance and reinsurance companies to restore the level of the own funds eligible for covering the solvency capital requirement or to reduce the risk profile to guarantee that the solvency capital requirement is complied with;

6° if insurance and reinsurance companies apply the transitional measures as referred to in Articles 668 and 669, whether they adhere to the gradual implementation plans referred to in § 1 of this Article, and the prospects of reduced dependence of these transitional measures, including measures taken or that may be taken by the company and the Bank, with due regard to the applicable legal framework.

Article 672. § 1. Notwithstanding Article 357, § 2, the transitional measures of Articles 661 to 665 and 668 to 671, § 1 shall apply mutatis mutandis at the level of the group.

Notwithstanding Article 357, §§ 2 and 3, the transitional provisions of Article 667 shall apply mutatis mutandis at the level of the group where the participating insurance or reinsurance companies or the insurance or reinsurance companies belonging to a group complied with the requirement of adjusted solvency as referred to in Chapter VIIbis of the Law of 9 July 1975 on the
regulation of insurance undertakings, but do not comply with the solvency capital requirement of the group.

§ 2. By way of derogation from Article 373, the ultimate parent undertaking may submit a request until 31 March 2022 for the application of an internal group model to part of the group if both the insurance or reinsurance company and the ultimate parent undertaking are established in the same Member State and if this part forms a separate part with a clearly different risk profile to the rest of the group.

Article 673. Until 31 December 2020, Article 600 shall apply to the reinsurance companies governed by the law of a third country and included in the list published by EIOPA pursuant to Article 172, 4, third paragraph of Directive 2009/138/EC.

Article 674. Insurance companies shall proceed to the formal amendment of their class 27 policies as set out in Annex II at the latest on 1 January 2019.

**TITLE II — FINAL AND MISCELLANEOUS PROVISIONS**

Article 675. Article 2, § 1quater of the Law of 9 July 1975 on the regulation of insurance undertakings, inserted by Article 30, 2° of the Law of 26 April 2010, as it existed before abrogation thereof by Article 761 of this Law, should be interpreted in the sense that the mutual insurance associations and the cooperative companies that limit their insurance activity to the municipality in which their registered office is established or to that municipality and its surrounding municipalities are exempt from the application of the provisions of the Law of 9 July 1975 on the regulation of insurance undertakings, with the exception of the provisions of that Law that are declared applicable by the King following the rules and methods that He determines.

Article 676. Without prejudice to the obligations imposed on Belgium by European Union law, the King may, by means of a Decree deliberated on in the Council of Ministers, specify the particular rules that apply to insurance companies as regards the granting of extra-statutory benefits to the employees referred to in Royal Decree No 50 of 24 October 1967 on the retirement and survival pension of employed workers and to the persons referred to in Article 32, first paragraph, 1° and 2°, of the 1992 Income Tax Code, employed without an employment contract.

Article 677. Without prejudice to the provisions of Directive 2009/138/EC and its implementing measures, the King may, by means of a Royal Decree established after deliberation by the Council of Ministers and upon the recommendation of the Bank and the FSMA, in accordance with their respective powers, and of the Supervisor of mutual health funds, exempt mutual insurance funds from the application of some provisions of this law and specify which rules should apply in their place.

Article 678. The amounts appearing in euros in the present Law shall be adjusted in accordance with the adjustment published in the Official Journal of the European Union by the European Commission pursuant to Article 300 of the Directive. The adjustment referred to in this Article shall come into effect within six months from the specified publication.

Article 679. The Royal Decree of 11 June 2015 designating the competent authority responsible for the authorization and supervision of central securities depositories shall be confirmed by law with effect from 19 June 2015.

**TITLE III — AMENDING PROVISIONS**

**Chapter I - Change in the Law of 12 July 1957 on the retirement and survivors’ pension for private sector employees**

Article 680. In Article 22, § 2 of the Law of 12 July 1957 on the retirement and survivors’ pension
for private sector workers, last amended by the Law of 28 April 2003, the words “at an insurance company or institution referred to in Article 2, § 1 and § 3, 5\(^{\circ}\), of the Law of 9 July 1975 on the regulation of insurance undertakings, insofar as they are recognized by the King in accordance with the conditions He establishes.” shall be replaced by the words “at an insurance company referred to in Article 5, first paragraph, 1\(^{\circ}\) of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies.”.

**Chapter II - Amendment to the Law of 10 April 1971 on accidents at work**

**Article 681.** In Article 48ter, first paragraph of the Law of 10 April 1971 on accidents at work, last amended by the Law of 10 August 2001, the words “referred to in Article 80 of the Law of 9 July 1975 on the regulation of insurance undertakings” shall be replaced by the words “referred to in Article 5, first paragraph, 1\(^{\circ}\) of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies,”.

**Article 682.** In Article 49, first paragraph, 1\(^{\circ}\) of the same law, the words “in accordance with the Law of 9 July 1975 on the supervision of insurance companies” shall be replaced by the words “in accordance with the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies”.

**Article 683.** In Article 52 of the same law, the words “referred to in Article 68, § 1, 5\(^{\circ}\) of the Law of 9 July 1975 on the regulation of insurance undertakings” shall be replaced by the words “referred to in Article 556, § 2, 1\(^{\circ}\) of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies”.

**Article 684.** Article 54bis of the same law, inserted by the Law of 10 August 2008, shall be replaced as follows:

“Where an insurance company that exercises the statutory industrial accident insurance is involved in the transfers referred to in Article 102, first paragraph, 3\(^{\circ}\) of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies, the National Bank of Belgium may only grant consent after consultation of the Management Committee of the Industrial Accidents Fund.

If such an insurance company is involved in a restructure of companies as referred to in Book XI of the Law of 7 May 1999 containing the Companies Code, the National Bank of Belgium shall inform the Industrial Accidents Fund forthwith hereof.”.

**Article 685.** In Article 88quater, § 1 of the same law, inserted by the Law of 13 July 2006, the following changes shall be made:

1\(^{\circ}\) the provision under 1\(^{\circ}\) shall be replaced as follows:

“1\(^{\circ}\) the National Bank of Belgium;”

2\(^{\circ}\) a provision shall be inserted under 1bisº, reading:

“1bisº the Financial Services and Markets Authority;”

**Article 686.** In Article 91, § 2 of the same law, last amended by the Law of 21 December 2013, the provision under 2\(^{\circ}\) shall be replaced as follows:

“2\(^{\circ}\) ask the National Bank of Belgium and the Financial Services and Markets Authority to apply the measures referred to, for the National Bank of Belgium in Article 517 or 569 of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies and, for the Financial Services and Markets Authority, in Article 36bis, § 2 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services, Article 288 of the Law of 4 April 2014.
on insurance or Article 291 of the same law. If necessary, the Minister responsible for social affairs shall ask the National Bank of Belgium or the Financial Services and Markets Authority to take the measures stated forthwith.

Without prejudice to the first paragraph, the Industrial Accidents Fund shall inform the National Bank of Belgium and the Financial Services and Markets Authority of the shortfalls identified at an insurance company governed by the law of a Member State other than Belgium, with a view to the application by the National Bank of Belgium of, in particular, Articles 566 to 574 of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies and by the Financial Services and Markets Authority of, in particular, Articles 286, 291 and 293 of the Law of 4 April 2014 on insurance.”.

Chapter III - Changes in the Law of 6 August 1990 on sickness funds and national unions of private sickness funds

Article 687. In Article 9, § 1septies, fifth paragraph of the Law of 6 August 1990 on sickness funds and national unions of private sickness funds, inserted by the Law of 26 April 2010, the words “to the Law of 9 July 1975 on the regulation of insurance undertakings,” shall be replaced by the words “to the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies.”.

Article 688. In Article 43ter of the same law, inserted by the Law of 22 February 1998, the following changes shall be made:

1° in the first paragraph, the words “of a bank product as referred to in the Law of 22 March 1993 on the legal status and supervision of credit institutions” shall be replaced by the words “of a bank product, as part of the activity as referred to in Article 4 of the Law of 25 April 2014 on the legal status and supervision of credit institutions”;

2° in the second paragraph, the words “as referred to in the Law of 22 March 1993 on the legal status and supervision of credit institutions” shall be replaced by the words “as referred to in Article 4 of the Law of 25 April 2014 on the legal status and supervision of credit institutions”.

Article 689. In Article 52, 11° of the same law, inserted by the Law of 26 April 2010, the words “in accordance with the provisions of the Laws of 9 July 1975 on the regulation of insurance companies,” shall be replaced by the words “in accordance with the provisions of the Laws of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies.”.

Article 690. In Article 62quater of the same law, inserted by the Law of 26 April 2010, the words “of the Law of 9 July 1975 on the regulation of insurance undertakings” shall be replaced by the words “of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies”.

Article 691. In Article 75, § 1 of the same law, the provision under 3° shall be abrogated.

Chapter IV - Amendment to the Law of 25 June 1992 on non-marine insurance contracts

Article 692. In Article 140, fourth paragraph of the Law of 25 June 1992 on non-marine insurance contracts, last amended by the Law of 30 July 2013, the words “of Article 21octies of the Law of 9 July 1975 on the regulation of insurance undertakings” shall be replaced by the words “of Article 504 of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies”.

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Chapter V - Amendments to the Law of 11 January 1993 on preventing use of the financial system for purposes of money laundering and terrorism financing

Article 693. In Article 2, § 1 of the Law of 11 January 1993 on preventing use of the financial system for purposes of money laundering and terrorism financing, last amended by the Law of 25 April 2014, the following amendments are made:

1° in the provision under 6° the words “pursuant to the Law of 9 July 1975 on the regulation of insurance undertakings,” shall be replaced by the words “pursuant to the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies”;

2° in the provision under 7° the words “referred to in the Law of 9 July 1975 on the regulation of insurance undertakings;” shall be replaced by the words “referred to in the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies”;

Chapter VI - Amendments to the Law of 6 April 1995 on the legal status and supervision of investment firms

Article 694. In Article 45, § 1 of the Law of 6 April 1995 on the legal status and supervision of investment firms, last amended by the Law of 25 April 2014, the provision under 2° shall be replaced as follows:

“2° the insurance and reinsurance companies referred to in Books II and III of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies”.

Article 695. In Article 95bis, § 1 of the same law, last amended by the Law of 25 April 2014, the following amendments shall be made:

1° in the provision under 3° the words “either an insurance company as defined in Article 91bis, 1° and 2° of the Law of 9 July 1975 on the regulation of insurance undertakings, or a reinsurance company as defined in Article 82, 3° and 4° of the Law of 16 February 2009 on reinsurance” shall be replaced by the words “either an insurance or reinsurance company with its registered office in a Member State or in a third country within the meaning of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies”;

2° in the provision under 4°, b) the words “insurance holding company within the meaning of Article 91bis, 9° of the same law;” shall be replaced by the words “insurance holding company within the meaning of Article 338, 5° of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies;”;

3° in the provision under 6° the words “Chapter VIIbis of the Law of 9 July 1975 or Article 82 of the Law of 16 February 2009 on reinsurance.” shall be replaced by the words “Book II, Title V, Chapter III of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies.”.

Chapter VII - Amendments to the Law of 22 February 1998 establishing the Organic Statute of the National Bank of Belgium

Article 696. In Article 35 of the Law of 22 February 1998 establishing the Organic Statute of the National Bank of Belgium, last amended by the Royal Decree of 3 March 2011, the following amendments shall be made:

1° the second paragraph is abrogated;

2° Article 35, amended by the provision under 1° of this Article and the existing text of which shall
form § 1, shall be supplemented by §§ 2 and 3, to read:

"§ 2. Without prejudice to § 1, the Bank may communicate confidential information:

1° where the communication of such information is stipulated or authorized by or pursuant to the law;

2° to report criminal offences to the judicial authorities;

3° as part of administrative or judicial appeal procedures against actions or decision by the Bank and in any other proceedings to which the Bank is a party;

4° in summary or aggregate form, in order that individual natural or legal persons may not be identified.

The Bank may publish the decision to bring criminal misdeeds before judicial authorities.

§ 3. Within the limits of the law of the European Union and within any restrictions expressly provided by or pursuant to the law, the Bank may use the confidential information in its possession as part of its statutory task to fulfil its tasks and mandates as referred to in Articles 12, § 1, 12ter, 36/2, 36/3 and its mandates within the ESCB."

Article 697. In Chapter IV of the same Law, an Article 35/1 shall be inserted, to read:

“Article 35/1. § 1. By way of derogation from Article 35 and within the limits of the law of the European Union, the Bank may communicate confidential information:

1° which it has received as part of the performance of its task as referred to in Article 39 of the Law of 11 January 1993 on preventing use of the financial system for purposes of money laundering and terrorism financing,

a) to the authorities of the European Union and of other Member States of the European Economic Area, as well as to the authorities of third countries that exercise powers comparable to those referred to in Article 39 of the aforementioned Law of 11 January 1993;

b) to the competent authorities of the European Union and of other Member States of the European Economic Area and to the competent authorities of third countries that exercise one or more of the powers comparable with those as referred to in Articles 36/2 and 36/3, as well as to the European Central Bank as regards the tasks conferred on its by Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions;

2° as part of the performance of its task as referred to in Article 12ter, § 1, and with a view to the exercise of that task,

a) to the resolution authorities of the European Union and of other Member States of the European Economic Area, as well as the authorities of third countries conferred tasks comparable to those referred to in Article 12ter, § 1;

b) to persons or authorities as referred to in Article 36/14, § 1, 1°, 2°, 3°, 4°, 5°, 8°, 11°, 18° and 19°;

c) to the Minister responsible for Finances;

d) to any other person, irrespective of whether that person is governed by Belgian or foreign law, where this is necessary for planning or executing a resolution measure, and especially,

- to the special administrator appointed pursuant to Article 281, § 2 of the Law of 25 April 2014 on
the legal status and supervision of credit institutions;

- to the body competent for the financing arrangements for the resolution;

- to auditors, bookkeepers, legal and professional advisors, valuers and other experts whose services have been engaged directly or indirectly by the Bank, a resolution authority, a competent Ministry or a potential acquirer;

- to a bridge institution as referred to in Article 260 of the Law of 25 April 2014 on the legal status and supervision of credit institutions or to an asset management vehicle as referred to in Article 265 of the same Law;

- to the persons or authorities as referred to in Article 36/14, § 1, 6°, 7°, 9°, 10°, 12°, 15° and 20°;

- to potential acquirers of securities or assets issued or held by the institution that is subject to the resolution procedure.

e) without prejudice to points a) to d), to any person or authority conferred with a task or mandate as referred to in Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms, where the communication of confidential information on a person as referred to in Article 1, paragraph 1, under a), b), c) or d) of the aforementioned Directive was previously approved by this person or by the authority which exercises a task vis-à-vis this person which is comparable to those as referred to in Article 12, § 1 and Article 12ter, where this information comes from this person or authority;

§ 2. The Bank may communicate confidential information pursuant to § 1 only on condition that the authorities, institutions or persons to which the information is communicated use this information solely for the performance of their tasks and that, as regards the information in question, they are bound by an equivalent obligation of professional secrecy to that as referred to in Article 35. Moreover, the information that comes from an authority of another Member State may only be disclosed to an authority of a third country with the proviso that this authority expressly agrees to this disclosure and, where applicable, with the proviso that the information is disclosed only for the purposes authorized by this authority. However, the information that comes from an authority of a third country may be disclosed only with the proviso that this authority expressly agrees to this disclosure and, where applicable, with the proviso that the information is disclosed only for the purposes authorized by this authority.

The Bank may only communicate confidential information pursuant to § 1 to the authorities of third countries with which it has entered into a Memorandum of Understanding providing for the sharing of information.

§ 3. Without prejudice to the more stringent provisions of the special laws governing them, the Belgian persons, authorities and institutions shall be bound by professional secrecy as referred to in Article 35 as regards the confidential information they receive from the Bank in application of § 1.”

**Article 698.** In Article 36/1 of the same law, last amended by the Law of 25 April 2014, the following amendments shall be made:

1° the provision under 6° shall be replaced as follows:

“6° “insurance or reinsurance company”: a company as referred to in Article 5, first paragraph, 1° or 2° of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies;”;

2° the provision under 7° shall be abrogated.

**Article 699.** In Article 36/2 of the same law, last amended by the Law of 25 April 2014, the
following amendments shall be made:

1° a second paragraph shall be inserted, reading:

“For the supervision of insurance companies, the Bank shall nominate a representative from within
the management committee or from the staff who shall sit, in an advisory capacity, on the
management committee and in certain technical committees of the Industrial Accidents Fund.”;

2° in the second paragraph, the existing text of which shall form the third paragraph, pursuant to
the provision under 1° of this Article, the words “the previous paragraph” shall be replaced by the
words “the first paragraph”;

3° the fourth paragraph, a) the existing text of which shall form the fifth paragraph, a) pursuant to
the provision under 1° of this Article, shall be supplemented with the words “and of the European
Insurance and Occupational Pensions Authority”;

4° in the fourth paragraph, b), the existing text of which shall form the fifth paragraph, b), pursuant to
the provision under 1° of this Article, the words “and by the European Insurance and
Occupational Pensions Authority” shall be inserted between the words “measures established by”
and “the European Banking Authority”.

Article 700. In Article 36/3, § 2 of the same law, last amended by the Law of 25 April 2014, the
words “and the insurance and reinsurance companies” shall be inserted between the words “with
the exception of the credit institutions” and the words “which must be deemed systemically
important”.

Article 701. In Article 36/6 of the same law, last amended by the Law of 25 April 2014, § 2 shall
be replaced as follows:

“§ 2. The Bank shall also provide the following information on its website:

1° alongside the legislation on the legal status and supervision of credit institutions and
stockbroking firms and the legislation on the legal status and supervision of insurance and
reinsurance companies, as well as the decisions, regulations, and circulars issued in application of
or pursuant to this legislation or to Community regulations on the matter, a transposition table of
the provisions of European directives on the prudential supervision of credit institutions and
stockbroking firms and the supervision of insurance and reinsurance companies, specifying the
options chosen;

2° the purposes of the supervision exercised by the Bank pursuant to the legislation referred to in 1°
and the tasks and activities it exercises in that capacity, in particular the assessment criteria and
methods it uses in its decision as referred to in Article 142 of the Law of 25 April 2014 on the legal
status and supervision of credit institutions and in Articles 318 to 321 of the Law of 13 March 2016
on the legal status and supervision of insurance and reinsurance companies;

3° aggregate statistical data on the most important aspects as regards the application of the
legislation referred to in 1°;

4° other information, as prescribed by the decrees and regulations made pursuant to the present
Law.

The information referred to in the first paragraph shall be published following the guidelines drawn
up, where applicable, by the European Commission, the European Banking Authority or the
European Insurance and Occupational Pensions Authority. The Bank shall make sure that the
information provided on its website is updated regularly.

The Bank shall also publish all other information required pursuant to the provisions of EU law that
apply in the area of supervision of credit institutions and stockbroking firms and in the area of
The Bank may publish the results of the stress tests it has carried out pursuant to the law of the European Union, by the methods it establishes and pursuant to the law of the European Union.

Article 702. In Chapter IV/1, Section 1 of the same law, an Article 36/7/1 shall be inserted, reading:

“Article 36/7/1. No civil, criminal or disciplinary measures may be taken, and no professional sanctions may be imposed against members of staff of a financial institution as referred to in Article 36/2 who have provided information to the Bank in good faith on effective or purported violations of the rules and regulations governing the legal status and supervision of the financial institutions referred to because of the fact that they have provided this information.

Disadvantageous or discriminatory treatment of these persons, or termination of the employment contract as a result of such a disclosure made by this person is prohibited.

In the event of non-compliance with the first and second paragraph, the Bank may impose an administrative sanction pursuant to the provisions on administrative sanctions included in the legislation on the legal status and supervision of institutions as referred to in Article 36/2.”.

Article 703. Article 36/13 of the same law is abrogated.

Article 704. In Article 36/14 of the same law, last amended by the Law of 25 April 2014, the following amendments shall be made:

1° in § 1, 5°, the words “deposit or investor protection scheme” shall be replaced by the words “protection scheme for deposits, investors or life insurance policies”;

2° § 1, 12° shall be replaced as follows:

“12° within the limits of the law of the European Union, to the Belgian competition authority;”;

3° in § 1, a provision is inserted under 21°, reading:

“21° to the Supervisor of mutual health funds and of national unions of mutual health funds for the performance of its statutory tasks as referred to in Article 303, § 3 of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies, as regards the mutual health funds as referred to in Article 43bis, § 5 or Article 70, §§ 6, 7 and 8 of the Law of 6 August 1990 on sickness funds and national unions of private sickness funds and their transactions;”;

4° in § 1, a provision is inserted under 22°, reading:

“22° within the limits of the law of the European Union, to the resolution authorities as referred to in Article 3 of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms, to the authorities of third countries conferred with tasks comparable to those referred to in Article 12ter, § 1, with which the Bank has entered into a Memorandum of Understanding providing for the sharing of information, as well as to the competent Ministries of the Member States of the European Economic Area, where this is necessary for planning or exercising resolution measures.”;

5° in § 3, the word “, persons” shall be inserted between the words “Belgian authorities” and the words “and institutions referred to § 1”.

Article 705. In Article 36/16 of the same law, last amended by the Royal Decree of 12 November 2013, the following amendments shall be made:
1° § 1, shall be supplemented by a paragraph, reading:

“In accordance with the law of the European Union, the Bank shall also work with the European Banking Authority, the European Insurance and Occupational Pensions Authority, the European Securities and Markets Authority and the European Central Bank as regards the tasks conferred on it pursuant to Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.”;

2° in § 2, the words “first paragraph” shall be inserted after the words “agreements mentioned in § 1,”;

3° § 3 shall be abrogated.

Article 706. In Article 36/24, § 1, 1° of the same law, last amended by the Law of 25 April 2014, the words “as regards the Law of 9 July 1975 on the regulation of insurance undertakings”, shall be replaced by the words “as regards the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies,”.

Chapter VIII - Amendments to the Law of 2 August 2002 on the supervision of the financial sector and on financial services

Article 707. In Article 45, § 1, 3°, f. of the Law of 2 August 2002 on the supervision of the financial sector and on financial services, last amended by the Law of 25 April 2014, the words “Article 14bis of the Law of 9 July 1975 on the regulation of insurance undertakings,” shall be replaced by the words “Article 42 of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies,”.

Article 708. In Article 121, § 1, 4° of the same law, last amended by the Law of 19 April 2014, the words “Article 82, § 1, first paragraph of the Law of 9 July 1975 on the regulation of insurance undertakings,” shall be replaced by the words “Articles 294, § 1, 1°, 295, § 1, 1°, 299, § 1 and 300, § 1 of the Law of 4 April 2014 on insurance,”.

Chapter IX - Amendments to the Programme Law (I) of 24 December 2002: the Law on supplementary pensions for the self-employed

Article 709. In Article 42 of the Programme Law (I) of 24 December 2002: the Law on supplementary pensions for the self-employed, last amended by the Law of 15 May 2014, the following amendments shall be made:

1° in the provision under 2° the words “referred to in Article 2, § 1 or § 3, 5°, of the Law of 9 July 1975 on the regulation of insurance undertakings,” shall be replaced by the words “referred to in Books II and III of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies,”;

2° in the provision under 12° the words “the Law of 9 July 1975 on the regulation of insurance undertakings;” shall be replaced by the words “the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies”.

Article 710. Article 81 of the same law is abrogated.

Chapter X - Amendment to the Law of 28 April 2003 on supplementary pensions and on tax regulations applicable to such pensions and to certain additional social security benefits

Article 711. In Article 3, § 1 of the Law of 28 April 2003 on supplementary pensions and on tax regulations applicable to such pensions and to certain additional social security benefits, last
amended by the Law of 18 December 2015, the following amendments shall be made:

1° in the provision under 16° the words “an institution referred to in Article 2, § 1 or § 3, 5°, of the Law of 9 July 1975” shall be replaced by the words “an institution referred to in Books II and III of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies”;

2° in the provision under 20° the words “the Law of 9 July 1975 on the supervision of these insurance companies” shall be replaced by the words “the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies”.

Chapter XI - Amendments to the Law of 27 October 2006 on the supervision of institutions for occupational retirement provision

Article 712. In Article 3, § 1 of the Law of 27 October 2006 on the supervision of institutions for occupational retirement provision, the provision under 3° shall be replaced as follows:

“3° an insurance company referred to in Books II and III of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies.”

Article 713. In Article 5, second paragraph of the same law, the provision under 6° shall be replaced as follows:

“6° of the Insurance Commission established by Article 301 of the Law of 4 April 2014 on insurance.”.

Article 714. In Article 139, first paragraph, 2nd indent of the same law, the words “, referred to in Article 2, § 1 of the Law of 9 July 1975 on the regulation of insurance undertakings,” shall be replaced by the words “referred to in Books II and III of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies;”.

Article 715. Article 227 of the same law is abrogated.

Article 716. In Article 228, § 3 of the same law, the words “established by Article 41 of the Law of 9 July 1975 on the regulation of insurance undertakings,” shall be replaced by the words “established by Article 301 of the Law of 4 April 2014 on insurance.”.

Chapter XII - Amendments to the Law of 3 August 2012 on certain forms of collective management of investment portfolios that fulfil the conditions of Directive 2009/65/EC and Financial Vehicle Corporations

Article 717. In Article 3 of the Law of 3 August 2012 on certain forms of collective management of investment portfolios that fulfil the conditions of Directive 2009/65/EC and Financial Vehicle Corporations, last amended by the Law of 25 April 2014, the following amendments shall be made:

1° the provision under 45° shall be replaced as follows:

"45° "the Law of 13 March 2016": the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies;";

2° the provision under 55° shall be abrogated.

Article 718. In Article 241 of the same law, last amended by the Law of 25 April 2014, the following amendments shall be made:

1° in § 1, 2° the words "Article 91octiesdecies of the Law of 9 July 1975 or Article 98 of the Law of 16 February 2009;" shall be replaced by the words "Article 338, 7° of the Law of 13 March
2° in § 1, 3°, second paragraph, the words "Chapter VIIbis of the Law of 9 July 1975 or Title VIII of the Law of 16 February 2009." shall be replaced by the words "Title V, Chapter II of the Law of 13 March 2016.";

3° in § 5, the words "Article 98 of the Law of 16 February 2009 or Article 91octiesdecies of the Law of 9 July 1975" shall be replaced by the words "Title V, Chapter III of the Law of 13 March 2016."

**Chapter XIII - Amendments to the Law of 26 December 2013 laying down miscellaneous provisions on thematic citizens’ lending**

**Article 719.** In Article 2, 6° of the Law of 26 December 2013 laying down miscellaneous provisions on thematic citizens’ lending, the words "with an authorization by virtue of Article 2bis of the Law of 9 July 1975 on the regulation of insurance undertakings" and the words "by virtue of Chapter Vter of the aforementioned Law of 9 July 1975;" shall be replaced respectively by the words ", to which an authorization has been granted by virtue of Article 28 of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies" and by the words "by virtue of Book III, Title I of the aforementioned Law of 13 March 2016;".

**Chapter XIV - Amendments to the Law of 4 April 2014 on insurance**

**Article 720.** In Article 5 of the Law of 4 April 2014 on insurance, the following amendments shall be made:

1° the provision under 40° shall be replaced as follows:

"40° reinsurance company: a company as referred to in Article 5, first paragraph, 2° of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies;";

2° the provision under 42° shall be replaced as follows:

"42° "the Law of 13 March 2016": the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies;";

**Article 721.** In Article 7 of the same law, the words "the Law of 9 July 1975," shall be replaced by the words "the Law of 13 March 2016,".

**Article 722.** In Article 17 of the same law, the words "the publication referred to in Article 78 of the Law of 9 July 1975" shall be replaced by the words "the publication referred to in Articles 106 or 567, § 2 of the Law of 13 March 2016".

**Article 723.** In Article 18, § 1 of the same law, the words "referred to in Article 78 of the Law of 9 July 1975" shall be replaced by the words "referred to in Articles 106 or 567, § 2 of the Law of 13 March 2016".

**Article 724.** Article 22 of the same law shall be amended as follows:

1° in § 1, the words "or with the provisions of the Law of 9 July 1975" and the words "or with the provisions of the Law of 9 July 1975" shall be replaced respectively with the words "or with the provisions of the Law of 13 March 2016" and with the words "or with the provisions of the Law of 13 March 2016";

2° § 2 shall be abrogated.

**Article 725.** In Article 33, § 2 of the same law, the words "as referred to in Article 68 of the Law of
9 July 1975, "shall be replaced with the words "as referred to in Article 557 of the Law of 13 March 2016,".

Article 726. In Article 34, first paragraph, b) of the same law, the words "as referred to in Article 68 of the Law of 9 July 1975" shall be replaced by the words "as referred to in Article 557 of the Law of 13 March 2016".

Article 727. In Article 41 of the same law, the words "in accordance with Article 21octies, § 2, first and second paragraphs of the Law of 9 July 1975" shall be replaced with the words "in accordance with Article 504 of the Law of 13 March 2016".

Article 728. In Article 204 of the Law of 4 April 2014 on insurance, amended by the Law of 26 October 2015, the following amendments shall be made:

1° § 2 shall be replaced as follows:

"§ 2. The premium, the exemption and/or the benefit may be adjusted on the annual premium due date by virtue of the consumer price index rate."

2° § 3, first paragraph, shall be replaced as follows:

“The premium, the exemption and/or the benefit may be adjusted on the annual premium due date, by virtue of one or several specific index rates to the costs of the services covered by the private health insurance policies, if an insofar as the evolution of that or those index rates exceed the consumer price index rate.”;

3° § 3 shall be supplemented by the following sentences, reading:

“Every insurance company shall automatically adjust the indexation clauses and methods in the policies in accordance with this paragraph and with the implementing decrees, including their later amendments. They shall be adjusted within a term of 2 years from the entry into force of these decrees and every later change thereto. The insurance company shall inform the policyholder on the amended indexation method and the procedure therefor by way of a mention on the premium due date message.

Amendments arising from the adjustment of the existing policies to the present Law and its implementing decrees, may not justify the cancellation of the policy by the policyholder.”.

4° in § 4, the words “Article 21octies of the Law of 9 July 1975” shall be replaced by the words “Article 504 of the Law of 13 March 2016”.

Article 729. In Article 267, § 1, fourth paragraph of the same law, the words "an insurance company subject to the supplementary supervision of an insurance company within the meaning of Article 91ter of the Law of 9 July 1975," shall be replaced by the words "an insurance company subject to group supervision within the meaning of Book II, Title V, Chapter III of the Law of 13 March 2016,.”.

Article 730. In Article 297, § 2 of the same law, the words "the significance given thereto in the Law of 9 July 1975." shall be replaced with the words "the significance given thereto in the Law of 13 March 2016.".

Article 731. In Article 302, § 2, 1° of the same law, the words "or of the Law of 9 July 1975," shall be replaced by the words "or of the Law of 13 March 2016,".
Chapter XV - Amendments to the Law of 25 April 2014 on the legal status and supervision of
credit institutions

Article 732. In Article 2, 2° of the Law of 25 April 2014 on the legal status and supervision of
credit institutions, the words “regulated by the Law of 9 July 1975 on the regulation of insurance
undertakings.” shall be replaced by the words “regulated by the Law of 13 March 2016 on the legal
status and supervision of insurance or reinsurance companies.”

Article 733. Article 3 of the same law shall be amended as follows:

1° the provision under 26° shall be replaced as follows:

"26° the concepts of “control”, “participation”, “participating interest”, “parent undertaking”,
subsidiary”, “consortium” and “affiliated enterprise”: the description given of these in the
implementing decrees of Article 106, § 1 of the present Law;";

2° the provision under 31° shall be replaced as follows:

"31° insurance company: a company as referred to in Article 5, first paragraph, 1° of the Law of 13
March 2016 on the legal status and supervision of insurance or reinsurance companies;";

3° the provision under 32° shall be replaced as follows:

"32° reinsurance company: a company as referred to in Article 5, first paragraph, 2° of the Law of
13 March 2016 on the legal status and supervision of insurance or reinsurance companies;";

4° the provision under 43° shall be replaced as follows:

"43° insurance holding company: an insurance holding company within the meaning of Article
338, 5° of the Law of 13 March 2016 on the legal status and supervision of insurance or
reinsurance companies;";

5° the provision under 44° shall be replaced as follows:

"44° mixed-activity insurance holding company: a mixed-activity insurance holding company
within the meaning of Article 338, 6° of the Law of 13 March 2016 on the legal status and
supervision of insurance or reinsurance companies;".

Article 734. Article 9 of the same law shall be amended as follows:

1° the sentence “where there are no qualifying holdings, the said notification must detail the
identity of the twenty largest shareholders and their proportion of capital.” shall be abrogated;

2° Article 9, amended by the provision under 1° of this Article and the existing text of which shall
form the first paragraph, shall be supplemented by a second paragraph, reading:

“Where there are no qualifying holdings, the notification referred to in the first paragraph must
detail the identity of the twenty largest shareholders and their proportion of capital.”.

Article 735. Article 20, § 1 of the same law shall be amended as follows:

1° in the provision under 2°, the provision under n) shall be replaced as follows:

“n) Articles 83 and 87 of the Law of 9 July 1975 on the supervision of insurance companies;”;

2° the provision under 2° shall be supplemented by a provision under z/5), reading:
“z/5) Article 605 of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies;”;

3° in the provision under 3° a provision under d) shall be inserted, reading:

“d) of the Articles referred to in Article 605 of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies;”;

Article 736. In Article 72, § 1, 2° of the same law, amended by the Law of 18 December 2015, the words “first paragraph” shall be inserted after the words “the persons referred to in Article 9”.

Article 737. Article 164, § 3, 7° of the same law shall be amended as follows:

1° the words “, the Law of 9 July 1975 on the regulation of insurance undertakings,” shall be replaced by the words “, the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies,;”;

2° the words “the Law of 6 April 1995, the Law of 16 February 2009” shall be deleted.

Article 738. In Article 170 of the same law, the following amendments shall be made:

1° in § 1, the third paragraph is abrogated;

2° in § 1, the previous fourth paragraph, which becomes the third paragraph, shall be replaced as follows:

“For the application of this paragraph, the supervisory authority, in its capacity of consolidating supervisor, shall obtain the agreement of the competent authorities concerned which are tasked with the supervision of subsidiaries and of the group supervisor of the insurance sector.”;

3° in § 1, the previous fifth paragraph is abrogated;

4° a § 1/1 shall be inserted, reading:

“§ 1/1. Without prejudice to the application of § 2, where a credit institution governed by Belgian law which heads up a financial conglomerate or a mixed financial holding company governed by Belgian law is subject to similar provisions as those of the present Chapter relating on the one hand to the consolidated supervision and on the other hand to the supplementary conglomerate supervision, in particular with respect to the risk-related supervision, the supervisory authority may decide only to apply to this credit institution or mixed financial holding company the relevant provisions relating to the supplementary conglomerate supervision.”;

5° in § 2, in the provision under 1°, the words “and which forms the financial conglomerate,” shall be inserted between the words “the group as defined in Article 164, § 3” and the words “shall be taken into account”;

6° in § 3, second sentence, the words “The supervisory authority shall consult” shall be deleted;

7° a § 4 shall be inserted, reading:

“§ 4. In its capacity of consolidating supervisor, the supervisory authority shall inform the EBA and the European Insurance and Occupational Pensions Authority of the agreement reached pursuant to § 1, 3°, the decision made pursuant to § 1/1 and the coordinating regulations taken pursuant to § 3.”.

Article 739. In Article 171, § 2 of the same law, a paragraph shall be inserted between the third and fourth paragraphs, reading:
“Without prejudice to Article 212, where the supervisory authority became or is designated as the consolidating supervisor for the exercise of consolidated supervision pursuant to Article 111, paragraph 5 of Directive 2013/36/EU of a credit institution which is governed by the law of another Member State, and the parent undertaking of which is a financial holding company or a mixed financial holding company governed by Belgian law, without a credit institution or stockbroking firm governed by Belgian law being present in the consolidated whole, the provisions that apply to the credit institution as referred to in Article 165, 2°, shall apply mutatis mutandis.”

**Article 740.** In Book II, Title III, Chapter IV, Section II, Subsection III of the same law, an Article 183/1 shall be inserted, reading:

“Article 183/1. A credit institution governed by Belgian law which forms a consortium with one or more other undertakings falls under a consolidated supervision that applies to all undertakings in the consortium and their subsidiaries. The provisions that apply to credit institutions as referred to in Article 165, 2° apply.”.

**Article 741.** In Article 194, § 2 of the same law, the provision under 4° shall be replaced as follows: “4° regularly updated rules to contribute to achieving and, where applicable, developing appropriate recovery and resolution mechanisms and plans.”.

**Article 742.** In the French text of Article 196, § 2 of the same law, the following amendments shall be made:

1° in the provision under 3°, the words “Belgian competent authority tasked with the supervision” shall be replaced by the words “competent authority tasked with the supervision”;

2° in the provision under 5°, the words “and that this Member State has” shall be replaced by the words “and has in this Member State”.

**Article 743.** Article 196, § 3 of the same law shall be amended as follows:

1° the words “§ 1” shall be replaced by the words “§ 2”;

2° a second paragraph shall be inserted, reading:

“Where the supervisory authority is designated pursuant to Article 11, paragraph 3 of Directive 2002/87/EC as the coordinator for the exercise of the supplementary conglomerate supervision of a credit institution which is governed by the law of another Member State, and the parent undertaking of which is a mixed financial holding company governed by Belgian law, without a credit institution governed by Belgian law or another regulated undertaking governed by Belgian law which is individually subject to the supervision of the supervisory authority being present in the group that forms the financial conglomerate, the provisions that apply to the credit institutions as referred to in Article 185, first paragraph, 2° shall apply mutatis mutandis to the aforementioned holding company, subject to derogations hereto in the agreement between the competent authorities as referred to in Article 11, paragraph 3 of Directive 2002/87/EC.”.

**Article 744.** In Article 210, § 1, 2°, of the same law, the words “Article 40 of the Law of 9 July 1975 on the regulation of insurance undertakings, Article 42 of the Law of 16 February 2009 on reinsurance” shall be replaced by the words “, Article 327 of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies”.

**Article 745.** In the French text of Article 213, § 1, third paragraph, of the same law, the words “and their subsidiaries” between the words “if these companies” and the words “do not fall” shall be deleted.

**Article 746.** In the French text of Article 217, § 1, first paragraph of the same law, the words “as well as the mixed financial holding companies and their subsidiaries” shall be replaced by the
words “as well as mixed-activity holding companies and their subsidiaries”.

**Article 747.** In Article 219, § 4, fifth paragraph of the same law, the words “with the competent authorities concerned” shall be replaced by the words “with the relevant competent authorities”.

**Article 748.** In Article 3, § 1, second paragraph of Annex VI of the same law, the words “Articles 15 and 91onies of the Law of 9 July 1975 on the regulation of insurance undertakings.” shall be replaced by the words “Articles 151 and 358 of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies.”.

**Chapter XVI - Amendments to the Economic Law Code**

**Article 749.** In Article I.9, 72° of the Economic Law Code, the words “referred to in Article 2, § 1, of the Law of 9 July 1975 on the regulation of insurance undertakings;” shall be replaced by the words “referred to in Article 5, first paragraph, 1° of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies;”.

**Article 750.** In Article VII.119, § 1, 2° of the same Code, inserted by the Law of 19 April 2014, the following amendments shall be made:

1° the words “by the King” shall be deleted;

2° the words “pursuant to the Law of 9 July 1975 on the regulation of insurance undertakings;” shall be replaced by the words “pursuant to the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies;”.

**Article 751.** In Article VII.173 of the same Code, inserted by the Law of 19 April 2014, the words “either as insurance companies on the list referred to in Article 4 of the Law of 9 July 1975 on the regulation of insurance undertakings” shall be replaced by the words “either as insurance companies on the list as referred to in Article 31 of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies”.

**Article 752.** In Article VII.176, § 3 of the same Code, inserted by the Law of 19 April 2014, the words “on the lists referred to in Articles 4 and 66 of the Law of 9 July 1975 on the regulation of insurance undertakings” shall be replaced by the words “on the lists as referred to in Articles 31 and 555 of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies”.

**Article 753.** In Article XI.250, second paragraph of the same Code, inserted by the Law of 19 April 2014, the following amendments shall be made:

1° in the provision under 2° the provision under o) shall be replaced as follows:

“o) Articles 83 to 87 of the Law of 9 July 1975 on the regulation of insurance undertakings;”;

2° the provision under 2° shall be supplemented by a provision under s), reading:

“s) Article 605 of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies;”.

**Article 754.** In Article XII.4, first paragraph of the same Code, inserted by the Law of 15 December 2013, the words “ Chapters IIIbis, IIIter, Vbis and Vter of the Law of 9 July 1975 on the regulation of insurance undertakings remain applicable.” shall be replaced by the words “ Book II, Title II, Chapter V, Sections 2 to 4, and Book III, Title I of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies remain applicable.”.

**Chapter XVII - Other provisions**
Article 755. In the law that contain references to Annex I of Royal Decree of 22 February 1991 containing general regulations relating to the supervision of insurance companies, these references should be read as references to Annex I of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies as regards the ‘non-life’ group of activities and as references to Annex II of the same law as regards the ‘life’ group of activities.

Article 756. Without prejudice to the references introduced to the draft Articles 680 to 684, 686, 687 to 696, 698, 699, 704 to 733, 735, 737, 744 and 748 to 754, in the laws that contain references to the Law of 9 July 1975 or to Royal Decree of 22 February 1991 containing general regulations relating to the supervision of insurance companies, these references, where applicable, should be read as references to the provisions with the same subject of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies.

TITLE IV - ABROGATING PROVISIONS

Article 757. The Law of 9 July 1975 on the supervision of insurance companies is abrogated.

Article 758. The Law of 16 February 2009 on reinsurance is abrogated.

BOOK IX

ENTRY INTO FORCE

Article 759. The present Law enters into force on the date on which it is published in the Belgian Official Gazette.

We promulgate this Law and order that it be sealed with the State seal and published in the Belgian Official Gazette.
ANNEXES

ANNEX I

CLASSIFICATION OF RISKS PER CLASS
FOR NON-LIFE INSURANCE ACTIVITIES

1. **Accidents (including industrial accidents and occupational illnesses)**
   - lump sum payments;
   - compensation;
   - combinations thereof;
   - transported persons.

2. **Illness**
   - lump sum payments;
   - compensation;
   - combinations thereof;

3. **Vehicle CASCO (excluding rolling stock)**
   All damage done to:
   - motor vehicles;
   - vehicles with no motor.

4. **Rolling stock CASCO**
   All damage done to rolling stock.

5. **Aircraft CASCO**
   All damage done to aircraft.

6. **Inland and sea vessel CASCO**
   All damage done to:
   - inland vessels;
   - lake vessels;
   - sea vessels.

7. **Transported goods (including merchandise, luggage and all other goods)**
   All damage done to transported goods or luggage, irrespective of the nature of the means of transport.

8. **Fire and natural disasters**
   All damage done to goods (excluding goods included under classes 3, 4, 5, 6 and 7) where it is caused by:
   - fire;
   - explosion;
   - storms;
   - natural disasters,
     excluding storms;
nuclear power;
- landslides.

9. **Other damage to goods**
All damage done to goods (excluding goods included under classes 3, 4, 5, 6 and 7) where it is caused by hail or frost, as well as by any other events not included under class 8, such as theft.

10. **Civil liability for motor vehicles**
Any liability that is the consequence of the use of motor vehicles (including carrier’s liability)

11. **Civil liability for aircraft**
Any liability that is the consequence of the use of aircraft (including carrier’s liability)

12. **Civil liability for sea and inland vessels**
Any liability that is the consequence of the use of sea and inland vessels (including carrier’s liability)

13. **General civil liability**
All other forms of liability that are not included under classes 10, 11 and 12.

14. **Credit**
- general insolvency;
- export credit;
- sale of goods on instalment;
- mortgage loans;
- agricultural loans.

15. **Security bond**
- direct security bond;
- indirect security bond;

16. **Miscellaneous pecuniary losses**
- risk of job loss;
- (general) shortfall of earnings;
- bad weather;
- loss of profits;
- ongoing general costs;
- unforeseen overheads;
- loss of retail value;
- loss of rent or income;
- other indirect business losses;
- pecuniary losses not related to business;
- other pecuniary losses.

17. **Legal aid**
Legal aid.

18. **Assistance**

- assistance provided for persons who get into difficulties while travelling, while away from their home or their habitual residence;
- assistance in other circumstances.
ANNEX II
CLASSIFICATION OF RISKS PER CLASS FOR LIFE INSURANCE ACTIVITIES

A. Insofar as they arise from a policy, the following life insurance shall be classified in classes 21, 22, 23 and 24 respectively:

21. the life insurance listed in points a), b) and c), with the exception of those belonging to classes 22 and 23:
   a) life insurance, namely assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or on earlier death, life assurance with return of premiums;
   b) life annuity insurance;
   c) supplementary insurance to supplement life insurance, in particular insurance against personal injury, including incapacity for work, insurance covering death from an accident and insurance covering invalidity resulting from an accident or illness;

22. insurance relating to marriage and birth;

23. life insurance as referred to in class 21, a) and b) which are linked to investment funds;

24. permanent health insurance not subject to cancellation, existing in Ireland and the United Kingdom.

B. Insofar as they arise from an agreement and insofar as they come under the supervision of the authorities tasked with the supervision of personal insurance, the following transactions shall be classified in classes 25, 26, 27 and 28 respectively:

25. tontines, in particular operations whereby associations of subscribers are set up with a view to capitalizing their contributions jointly and subsequently distributing the assets thereby accumulated among the survivors or among the beneficiaries of the deceased.

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

27. management of group pension funds, comprising:
   a) the management of investments, and in particular the assets representing the reserves of institutions that effect payments on death or survival or in the event of discontinuance or curtailment of activity,
   b) the operations referred to under a) where they are accompanied by insurance covering either conservation of capital or payment of a minimum interest;

28. the operations carried out by life insurance undertakings such as those referred to in Book IV, title 4, Chapter 1 of the French ‘Code des assurances’.

C. The following shall be classified in class 29:

operations described or referred to in social security legislation relating to the length of human life, insofar as they are effected or managed by life insurance undertakings at their own risk in accordance with the laws of a Member State.
**ANNEX III**

**STANDARD FORMULA FOR THE CALCULATION OF THE SOLVENCY CAPITAL REQUIREMENT**

**(SOLVENCY CAPITAL REQUIREMENT - SCR)**

1. **Calculating the basic solvency capital requirement**

The basic solvency capital requirement (‘basic SCR’) as referred to in Article 154, § 1 of the present Law shall be calculated as follows:

\[
\text{SCR}_{\text{kern}} \times \sum_{i,j} \text{Corr}_{i,j} \times \text{SCR}_i \times \text{SCR}_j
\]

where \( \text{SCR}_i \) stands for the risk module i, \( \text{SCR}_j \) for the risk module j and “i,j” means that the sum of the different terms must relate to all possible combinations of i and j. In the calculation, \( \text{SCR}_i \) and \( \text{SCR}_j \) shall be replaced by:

- \( \text{SCR}_{\text{non-life}} \), which stands for the ‘‘non-life’ underwriting risk’ module;
- \( \text{SCR}_{\text{life}} \), which stands for the ‘‘life’ underwriting risk’ module;
- \( \text{SCR}_{\text{health}} \), which stands for the ‘health underwriting’ risk module;
- \( \text{SCR}_{\text{market}} \), which stands for the ‘market risk’ module;
- \( \text{SCR}_{\text{counterparty}} \), which stands for the ‘counterparty default risk’ module.

The Corr\(_{i,j}\) factor stands for the value stated in row i and column j of the following correlation matrix:

<table>
<thead>
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<th></th>
<th>Market</th>
<th>Counterparty</th>
<th>Life</th>
<th>Health</th>
<th>Non-life</th>
</tr>
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</tr>
</tbody>
</table>

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

The non-life underwriting risk module as referred to in Article 156 of the present Law, shall be calculated as follows:

\[
\text{SCR}_{\text{schade}} \times \sum_{i,j} \text{Corr}_{i,j} \times \text{SCR}_i \times \text{SCR}_j
\]

where \( \text{SCR}_i \) stands for the risk module i, \( \text{SCR}_j \) for the risk module j and “i,j” means that the sum of the different terms must relate to all possible combinations of i and j. In the calculation, \( \text{SCR}_i \) and \( \text{SCR}_j \) shall be replaced by:

- \( \text{SCR}_{\text{non-life premium and provision}} \), which stands for the ‘non-life premium and provision risk’ submodule;
- \( \text{SCR}_{\text{non-life catastrophe}} \), which stands for the ‘‘non-life’ catastrophe risk’ submodule.
3. Calculation of the life underwriting risk

The life underwriting risk module as referred to in Article 157 of the present Law, shall be calculated as follows:

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

where SCR$_i$ stands for the risk module i, SCR$_j$ for the risk module j and “i,j” means that the sum of the different terms must relate to all possible combinations of i and j. In the calculation, SCR$_i$ and SCR$_j$ shall be replaced by:

- SCR$_{\text{death}}$, which stands for the ‘mortality risk’ submodule;
- SCR$_{\text{longevity}}$, which stands for the ‘longevity risk’ submodule;
- SCR$_{\text{disability}}$, which stands for the ‘disability – morbidity risk’ submodule;
- SCR$_{\text{life expense}}$, which stands for the ‘life expense risk’ submodule;
- SCR$_{\text{revision}}$, which stands for the ‘revision risk’ submodule;
- SCR$_{\text{lapse}}$, which stands for the ‘lapse risk’ submodule;
- SCR$_{\text{life catastrophe}}$, which stands for the ‘life catastrophe’ submodule;

4. Calculation of the market risk module

Structure of the market risk module

The market risk module, as referred to in Article 159 of the present Law, shall be calculated as follows:

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

where SCR$_i$ stands for the risk module i, SCR$_j$ for the risk module j and “i,j” means that the sum of the different terms must relate to all possible combinations of i and j. In the calculation, SCR$_i$ and SCR$_j$ shall be replaced by:

- SCR$_{\text{interest}}$, which stands for the ‘interest risk’ submodule;
- SCR$_{\text{equity}}$, which stands for the ‘equity risk’ submodule;
- SCR$_{\text{property}}$, which stands for the ‘property risk’ submodule;
- SCR$_{\text{spread}}$, which stands for the ‘spread risk’ submodule;
- SCR$_{\text{concentration}}$, which stands for the ‘concentration risk’ submodule;
- SCR$_{\text{currency}}$, which stands for the ‘currency risk’ submodule;
ANNEX IV

GROUPS OF NON-LIFE INSURANCE CLASSES

1° Accidents and health (classes 1 and 2 of Annex I);
2° Motor vehicle insurance (classes 3, 7 and 10 of Annex I; the figures relating to class 10, except the statutory carrier’s liability, shall be specified separately);
3° Fire and other damage to goods (classes 8 and 9 of Annex I);
4° Air, sea and transport insurance (classes 4, 5, 6, 7, 11 and 12 of Annex I);
5° General civil liability (class 13 of Annex I);
6° Credit and security bond (classes 14 and 15 of Annex I);
7° Other classes (classes 16, 17 and 18 of Annex I).
ANNEX V
SOLVENCY AT A FINANCIAL CONGLOMERATE LEVEL

Article 1. Regulated undertakings must have own funds at the financial conglomerate level that are at least equal to the solvency requirements calculated at group level. The own funds and solvency requirements are calculated using one of the methods referred to in Article 2 of this Annex, pursuant to the principles referred to in Article 3 of this Annex and in compliance with the provisions and principles of Regulation 342/2014 and the annex thereto.

The Bank as coordinator shall determine the method to be applied. It may only permit a combination of these methods in the circumstances referred to in Article 16 of Regulation 342/2014. It shall previously consult the other supervisory authorities concerned and the financial conglomerate concerned on the method to be applied.

Article 2. Methods of calculation:

§ 1. Method 1: method on the basis of the consolidated accounts

The own funds and solvency requirements at a group level are calculated based on the consolidated position of the group, using the consolidated financial statements or interim consolidated financial statements. The consolidated position of the group is the position of the consolidated whole that forms a consolidated undertaking with the other undertakings included in the consolidation. Without prejudice to the provisions of Article 3, § 1 of this Annex, the consolidated position shall be determined mutatis mutandis to the sectoral legislation on sectoral group supervision.

The own funds components at a group level are those that are recognized as own funds components in the relevant sectoral legislation of the undertakings included in the consolidated position.

The solvency requirement at a group level is equal to the sum of solvency requirements relating to every distinct financial sector represented within the group. The solvency requirements relating to every distinct financial sector shall be calculated in accordance with the relevant sectoral legislation. For unregulated undertakings in the financial sector not included in the aforementioned calculations of sectoral solvency requirements, a notional solvency requirement shall be calculated.

§ 2. Method 2: method based on deduction and aggregation

The own funds and solvency requirements are calculated using the financial statements or interim financial statements of each of the undertakings in the group.

The own funds at a group level are equal to the sum of the own funds of each of the regulated and unregulated undertakings in the financial conglomerate belonging to the financial sector. The group own funds components are those that are recognized as own funds components in the relevant sectoral legislation of the undertakings concerned.

The solvency requirements at a group level are equal to the sum of the solvency requirements of each of the regulated and unregulated undertakings in the financial conglomerate belonging to the financial sector—calculated in accordance with the relevant sectoral legislation—and the book value of all participating interests in undertakings of the group. For unregulated undertakings in the financial sector not included in the aforementioned calculations of sectoral solvency requirements, a notional solvency requirement shall be calculated in accordance with Article 12 of Regulation 342/2014.

Without prejudice to the provisions of Article 3, § 2 of this Annex relating to own funds shortfalls in subsidiaries, account shall be taken, in the application of this method, of the proportionate part that the parent undertaking or the company with a participating interest holds in another undertaking in the financial conglomerate. A proportionate part shall be understood to mean the part of the issued capital that is held directly or indirectly by this undertaking.

Article 3. Principles common to the two methods
§ 1. The solvency requirements for undertakings belonging to the insurance sector means the solvency margin laid down by Articles 151 and 378 of the present Law.

The solvency requirements for undertakings belonging to the bank and investment sector shall be understood to mean the solvency requirements in accordance with

- Part 3, Title I, Chapter 1 of Regulation No 575/2013;
- Articles 94, 96, 98, 149 and 150 of the Law of 25 April 2014;
- Articles 458 and 459 of Regulation No 575/2013; and
- If necessary, by means of regulations passed in application of Article 12bis § 2 of the Law of 22 February 1998, implementing the previous points.

§ 2. Own funds shortfalls in subsidiaries (in the case of unregulated undertakings the notional shortfall shall be calculated using the notional solvency requirements) shall be taken into account for the entire amount.

By derogation thereof, the Bank may, as the coordinator, permit that the proportionate part of the shortfall be taken into account if it is clearly demonstrated that the responsibility of the parent undertaking in the group is proportionately limited to the part of the capital that it owns in the undertaking by virtue of the responsibility that the other shareholders bear in relation to their contribution in the capital and their sufficient solvency.

If there are no capital ties between entities in a financial conglomerate, the Bank, after consultation with the other supervisory authorities concerned, shall determine which proportional part will have to be taken into account to calculate the group’s own funds. The Bank shall bear in mind the liability and risk to which the existing relationship between these undertakings gives rise.

§ 3. In calculating the own funds at the financial conglomerate level, each artificial creation of own funds within a financial conglomerate, as well as the multiple use of elements eligible for the calculation of own funds (“multiple gearing”) and the inappropriate transformation of the nature of resources, shall be eliminated. The relevant principles of the sectoral legislation shall be applied mutatis mutandis.

§ 4. The solvency requirements of the undertakings belonging to a particular financial sector in a financial conglomerate must be covered by own funds items as defined in the relevant sectoral legislation. Additional solvency requirements at the financial conglomerate level must be covered by own funds items recognized in all the sectoral laws (“cross-sector own funds”).

If the sectoral legislation subjects the eligibility of capital instruments to restrictions, these restrictions shall apply mutatis mutandis to the calculation of the own funds at the financial conglomerate level.

In taking into account own funds items at a financial conglomerate level, the Bank shall bear in mind any restrictions in the availability and transferability thereof between the different undertakings in the group, in light of the objectives of the supplementary conglomerate supervision in general, and the solvency provisions in particular.

The notional solvency requirement for an unregulated undertaking in the financial sector is the solvency requirement to which such an undertaking should comply pursuant to the relevant sectoral legislation if it were a regulated undertaking of that specific financial sector. The solvency requirements of the mixed financial holding company shall be calculated in accordance with the sectoral legislation for the most important financial sector in the group.