Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance

TITLE III

CONDITIONS GOVERNING THE BUSINESS OF ASSURANCE

CHAPTER 1

PRINCIPLES AND METHODS OF FINANCIAL SUPERVISION

Article 10

Competent authorities and object of supervision

1 The financial supervision of an assurance undertaking, including that of the business it carries on either through branches or under the freedom to provide services, shall be the sole responsibility of the home Member State. If the competent authorities of the Member State of the commitment have reason to consider that the activities of an assurance undertaking might affect its financial soundness, they shall inform the competent authorities of the undertaking's home Member State. The latter authorities shall determine whether the undertaking is complying with the prudential principles laid down in this Directive.

2 That financial supervision shall include verification, with respect to the assurance undertaking's entire business, of its state of solvency, the establishment of technical provisions, including mathematical provisions, and of the assets covering them, in accordance with the rules laid down or practices followed in the home Member State pursuant to the provisions adopted at Community level.

3 The competent authorities of the home Member State shall require every assurance undertaking to have sound administrative and accounting procedures and adequate internal control mechanisms.

Article 11

Supervision of branches established in another Member State

The Member State of the branch shall provide that, where an assurance undertaking authorised in another Member State carries on business through a branch, the competent authorities of the home Member State may, after having first informed the competent authorities of the Member State of the branch, carry out themselves, or through the intermediary of persons they appoint for that purpose, on-the-spot verification of the information necessary to ensure the financial supervision of the undertaking. The authorities of the Member State of the branch may participate in that verification.

Article 12

Prohibition on compulsory ceding of part of underwriting

Member States may not require assurance undertakings to cede part of their underwriting of activities listed in Article 2 to an organisation or organisations designated by national regulations.

Article 13

Accounting, prudential and statistical information: supervisory powers

1 Each Member State shall require every assurance undertaking whose head office is situated in its territory to produce an annual account, covering all types of operation, of its financial situation and solvency.

2 Member States shall require assurance undertakings with head offices within their territories to render periodically the returns, together with statistical documents, which are necessary for the purposes of supervision. The competent authorities shall provide each other with any documents and information that are useful for the purposes of supervision.

3 Every Member State shall take all steps necessary to ensure that the competent authorities have the powers and means necessary for the supervision of the business of assurance undertakings with head offices within their territories, including business carried on outside those territories, in accordance with the Council directives governing those activities and for the purpose of seeing that they are implemented.

These powers and means must, in particular, enable the competent authorities to:

a make detailed enquiries regarding the assurance undertaking's situation and the whole of its business, *inter alia*, by:
   — gathering information or requiring the submission of documents concerning its assurance business,
   — carrying out on-the-spot investigations at the assurance undertaking's premises;

b take any measures, with regard to the assurance undertaking, its directors or managers or the persons who control it, that are appropriate and necessary to ensure that the undertaking's business continues to comply with the laws, regulations and administrative provisions with which the undertaking must comply in each Member State and in particular with the scheme of operations in so far as it remains mandatory, and to prevent or remedy any irregularities prejudicial to the interests of the assured persons;

c ensure that those measures are carried out, if need be by enforcement, where appropriate through judicial channels.

Member States may also make provision for the competent authorities to obtain any information regarding contracts which are held by intermediaries.

Article 14

Transfer of portfolio

1 Under the conditions laid down by national law, each Member State shall authorise assurance undertakings with head offices within its territory to transfer all or part of their portfolios of contracts, concluded under either the right of establishment or the freedom to provide services, to an accepting office established within the Community, if the competent authorities of the home Member State of the accepting office certify that after taking the transfer into account, the latter possesses the necessary solvency margin.

2 Where a branch proposes to transfer all or part of its portfolio of contracts, concluded under either the right of establishment or the freedom to provide services, the Member State of the branch shall be consulted.

3 In the circumstances referred to in paragraphs 1 and 2, the authorities of the home Member State of the transferring assurance undertaking shall authorise the transfer after obtaining the agreement of the competent authorities of the Member States of the commitment.

4 The competent authorities of the Member States consulted shall give their opinion or consent to the competent authorities of the home Member State of the transferring assurance undertaking within three months of receiving a request; the absence of any response within that period from the authorities consulted shall be considered equivalent to a favourable opinion or tacit consent.

5 A transfer authorised in accordance with this Article shall be published as laid down by national law in the Member State of the commitment. Such transfers shall automatically be valid against policy holders, the assured persons and any other person having rights or obligations arising out of the contracts transferred.

This provision shall not affect the Member States' rights to give policy holders the option of cancelling contracts within a fixed period after a transfer.

Article 15

Qualifying holdings

1 Member States shall require any natural or legal person who proposes to hold, directly or indirectly, a qualifying holding in an assurance undertaking first to inform the competent authorities of the home Member State, indicating the size of the intended holding. Such a person must likewise inform the competent authorities of the home Member State if he/she proposes to increase his/her qualifying holding so that the proportion of the voting rights or of the capital held by him/her would reach or exceed 20 %, 33 % or 50 % or so that the assurance undertaking would become his/her subsidiary.

The competent authorities of the home Member State shall have a maximum of three months from the date of the notification provided for in the first subparagraph to oppose such a plan if, in view of the need to ensure sound and prudent management of the assurance undertaking, they are not satisfied as to the qualifications of the person referred to in the first subparagraph. If they do not oppose the plan in question they may fix a maximum period for its implementation.

2 Member States shall require any natural or legal person who proposes to dispose, directly or indirectly, of a qualifying holding in an assurance undertaking first to inform the competent authorities of the home Member State, indicating the size of his/her intended holding. Such a person must likewise inform the competent authorities if he/she proposes to reduce his/her qualifying holding so that the proportion of the voting rights or of the capital held by him/her would fall below 20 %, 33 % or 50 % or so that the assurance undertaking would cease to be his/her subsidiary.

3 On becoming aware of them, assurance undertakings shall inform the competent authorities of their home Member States of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in paragraphs 1 and 2.

They shall also, at least once a year, inform them of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at the annual general meetings of shareholders and members or as a result of compliance with the regulations relating to companies listed on stock exchanges.

4 Member States shall require that, if the influence exercised by the persons referred to in paragraph 1 is likely to operate to the detriment of the prudent and sound management of the assurance undertaking, the competent authorities of the home Member State shall take appropriate measures to put an end to that situation. Such measures may consist, for example, in injunctions, sanctions against directors and managers, or the suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.

Similar measures shall apply to natural or legal persons failing to comply with the obligation to provide prior information, as laid down in paragraph 1. If a holding is acquired despite the opposition of the competent authorities, the Member States shall, regardless of any other sanctions to be adopted, provide either for exercise of the corresponding voting rights to be suspended, or for the nullity of votes cast or for the possibility of their annulment.

Article 16

Professional secrecy

1 Member States shall provide that all persons working or who have worked for the competent authorities, as well as auditors or experts acting on behalf of the competent authorities, shall be bound by the obligation of professional secrecy. This means that no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual assurance undertakings cannot be identified, without prejudice to cases covered by criminal law.

Nevertheless, where an assurance undertaking has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that undertaking may be divulged in civil or commercial proceedings.

2 Paragraph 1 shall not prevent the competent authorities of the different Member States from exchanging information in accordance with the directives applicable to assurance undertakings. That information shall be subject to the conditions of professional secrecy indicated in paragraph 1.

3 Member States may conclude cooperation agreements providing for exchange of information with the competent authorities of third countries or with authorities or bodies of third countries as defined in paragraphs 5 and 6 only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such exchange of information must be intended for the performance of the supervisory task of the authorities or bodies mentioned.

Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

4 Competent authorities receiving confidential information under paragraphs 1 or 2 may use it only in the course of their duties:

— to check that the conditions governing the taking-up of the business of assurance are met and to facilitate monitoring of the conduct of such business, especially with regard to the monitoring of technical provisions, solvency margins, administrative and accounting procedures and internal control mechanisms, or

— to impose sanctions, or

— in administrative appeals against decisions of the competent authority, or

— in court proceedings initiated pursuant to Article 67 or under special provisions provided for in this Directive and other directives adopted in the field of assurance undertakings.

5 Paragraphs 1 and 4 shall not preclude the exchange of information within a Member State, where there are two or more competent authorities in the same Member State, or, between Member States, between competent authorities and:

— authorities responsible for the official supervision of credit institutions and other financial organisations and the authorities responsible for the supervision of financial markets,

— bodies involved in the liquidation and bankruptcy of assurance undertakings and in other similar procedures, and

— persons responsible for carrying out statutory audits of the accounts of assurance undertakings and other financial institutions,

in the discharge of their supervisory functions, and the disclosure, to bodies which administer (compulsory) winding-up proceedings or guarantee funds, of information necessary to the performance of their duties. The information received by these authorities, bodies and persons shall be subject to the obligation of professional secrecy laid down in paragraph 1.

6 Notwithstanding paragraphs 1 to 4, Member States may authorise exchanges of information between the competent authorities and:

— the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of assurance undertakings and other similar procedures, or

— the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions, or

— independent actuaries of insurance undertakings carrying out legal supervision of those undertakings and the bodies responsible for overseeing such actuaries.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

— this information shall be for the purpose of carrying out the overseeing or legal supervision referred to in the first subparagraph,
— information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,
— where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities, persons and bodies which may receive information pursuant to this paragraph.

7 Notwithstanding paragraphs 1 to 4, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorise the exchange of information between the competent authorities and the authorities or bodies responsible under the law for the detection and investigation of breaches of company law.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:
— the information shall be for the purpose of performing the task referred to in the first subparagraph,
— information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,
— where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Where, in a Member State, the authorities or bodies referred to in the first subparagraph perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions stipulated in the second subparagraph.

In order to implement the third indent of the second subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the competent authorities which have disclosed the information, the names and precise responsibilities of the persons to whom it is to be sent.

Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to this paragraph.

Before 31 December 2000, the Commission shall draw up a report on the application of this paragraph.

8 Member States may authorise the competent authorities to transmit:
— to central banks and other bodies with a similar function in their capacity as monetary authorities,
— where appropriate, to other public authorities responsible for overseeing payment systems,

information intended for the performance of their task and may authorise such authorities or bodies to communicate to the competent authorities such information as

they may need for the purposes of paragraph 4. Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article.

9 In addition, notwithstanding paragraphs 1 and 4, Member States may, under provisions laid down by law, authorise the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment services and assurance undertakings and to inspectors acting on behalf of those departments.

However, such disclosures may be made only where necessary for reasons of prudential control.

However, Member States shall provide that information received under paragraphs 2 and 5 and that obtained by means of the on-the-spot verification referred to in Article 11 may never be disclosed in the cases referred to in this paragraph except with the express consent of the competent authorities which disclosed the information or of the competent authorities of the Member State in which on-the-spot verification was carried out.

Article 17

Duties of auditors

1 Member States shall provide at least that:

a any person authorised within the meaning of Council Directive 84/253/EEC[(1)], performing in an assurance undertaking the task described in Article 51 of Council Directive 78/660/EEC[(2)], Article 37 of Directive 83/349/EEC or Article 31 of Council Directive 85/611/EEC[(3)] or any other statutory task, shall have a duty to report promptly to the competent authorities any fact or decision concerning that undertaking of which he/she has become aware while carrying out that task which is liable to:
   - — constitute a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of assurance undertakings, or
   - — affect the continuous functioning of the assurance undertaking or
   - — lead to refusal to certify the accounts or to the expression of reservations;

b that person shall likewise have a duty to report any facts and decisions of which he/she becomes aware in the course of carrying out a task as described in (a) in an undertaking having close links resulting from a control relationship with the assurance undertaking within which he/she is carrying out the abovementioned task.

2 The disclosure in good faith to the competent authorities, by persons authorised within the meaning of Directive 84/253/EEC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not involve such persons in liability of any kind.

Article 18

Pursuit of life assurance and non-life insurance activities

1 Without prejudice to paragraphs 3 and 7, no undertaking may be authorised both pursuant to this Directive and pursuant to Directive 73/239/EEC.

2 By way of derogation from paragraph 1, Member States may provide that:

— undertakings authorised pursuant to this Directive may also obtain authorisation, in accordance with Article 6 of Directive 73/239/EEC for the risks listed in classes 1 and 2 in the Annex to that Directive,

— undertakings authorised pursuant to Article 6 of Directive 73/239/EEC solely for the risks listed in classes 1 and 2 in the Annex to that Directive may obtain authorisation pursuant to this Directive.

3 Subject to paragraph 6, undertakings referred to in paragraph 2 and those which on:

— 1 January 1981 for undertakings authorised in Greece,

— 1 January 1986 for undertakings authorised in Spain and Portugal,

— 1 January 1995 for undertakings authorised in Austria, Finland and Sweden, and

— 15 March 1979 for all other undertakings,

carried on simultaneously both the activities covered by this Directive and those covered by Directive 73/239/EEC may continue to carry on those activities simultaneously, provided that each activity is separately managed in accordance with Article 19 of this Directive.

4 Member States may provide that the undertakings referred to in paragraph 2 shall comply with the accounting rules governing assurance undertakings authorised pursuant to this Directive for all of their activities. Pending coordination in this respect, Member States may also provide that, with regard to rules on winding-up, activities relating to the risks listed in classes 1 and 2 in the Annex to Directive 73/239/EEC carried on by the undertakings referred to in paragraph 2 shall be governed by the rules applicable to life assurance activities.

5 Where an undertaking carrying on the activities referred to in the Annex to Directive 73/239/EEC has financial, commercial or administrative links with an assurance undertaking carrying on the activities covered by this Directive, the competent authorities of the Member States within whose territories the head offices of those undertakings are situated shall ensure that the accounts of the undertakings in question are not distorted by agreements between these undertakings or by any arrangement which could affect the apportionment of expenses and income.

6 Any Member State may require assurance undertakings whose head offices are situated in its territory to cease, within a period to be determined by the Member State concerned, the simultaneous pursuit of activities in which they were engaged on the dates referred to in paragraph 3.

7 The provisions of this Article shall be reviewed on the basis of a report from the Commission to the Council in the light of future harmonisation of the rules on winding-up, and in any case before 31 December 1999.

Article 19

Separation of life assurance and non-life insurance management

1 The separate management referred to in Article 18(3) must be organised in such a way that the activities covered by this Directive are distinct from the activities covered by Directive 73/239/EEC in order that:

— the respective interests of life policy holders and non-life policy holders are not prejudiced and, in particular, that profits from life assurance benefit life policy holders as if the assurance undertaking only carried on the activity of life assurance,

— the minimum financial obligations, in particular solvency margins, in respect of one or other of the two activities, namely an activity under this Directive and an activity under Directive 73/239/EEC, are not borne by the other activity.

However, as long as the minimum financial obligations are fulfilled under the conditions laid down in the second indent of the first subparagraph and, provided the competent authority is informed, the undertaking may use those explicit items of the solvency margin which are still available for one or other activity.

The competent authorities shall analyse the results in both activities so as to ensure that the provisions of this paragraph are complied with.

2

a Accounts shall be drawn up in such a manner as to show the sources of the results for each of the two activities, life assurance and non-life insurance. To this end all income (in particular premiums, payments by re-insurers and investment income) and expenditure (in particular insurance settlements, additions to technical provisions, reinsurance premiums, operating expenses in respect of insurance business) shall be broken down according to origin. Items common to both activities shall be entered in accordance with methods of apportionment to be accepted by the competent authority.

b Assurance undertakings must, on the basis of the accounts, prepare a statement clearly identifying the items making up each solvency margin, in accordance with Article 27 of this Directive and Article 16(1) of Directive 73/239/EEC.

3 If one of the solvency margins is insufficient, the competent authorities shall apply to the deficient activity the measures provided for in the relevant Directive, whatever the results in the other activity. By way of derogation from the second indent of the first subparagraph of paragraph 1, these measures may involve the authorisation of a transfer from one activity to the other.

CHAPTER 2

RULES RELATING TO TECHNICAL PROVISIONS AND THEIR REPRESENTATION

Article 20

Establishment of technical provisions

1 The home Member State shall require every assurance undertaking to establish sufficient technical provisions, including mathematical provisions, in respect of its entire business.

The amount of such technical provisions shall be determined according to the following principles.

A. (i) the amount of the technical life-assurance provisions shall be calculated by a sufficiently prudent prospective actuarial valuation, taking account of all future liabilities as determined by the policy conditions for each existing contract, including:

— all guaranteed benefits, including guaranteed surrender values,

— bonuses to which policy holders are already either collectively or individually entitled, however those bonuses are described — vested, declared or allotted,

— all options available to the policy holder under the terms of the contract,

— expenses, including commissions,

taking credit for future premiums due;

(ii) the use of a retrospective method is allowed, if it can be shown that the resulting technical provisions are not lower than would be required under a sufficiently prudent prospective calculation or if a prospective method cannot be used for the type of contract involved;

(iii) a prudent valuation is not a 'best estimate' valuation, but shall include an appropriate margin for adverse deviation of the relevant factors;

(iv) the method of valuation for the technical provisions must not only be prudent in itself, but must also be so having regard to the method of valuation for the assets covering those provisions;

(v) technical provisions shall be calculated separately for each contract. The use of appropriate approximations or generalisations is allowed, however, where they are likely to give approximately the same result as individual calculations. The principle of separate calculation shall in no way prevent the establishment of additional provisions for general risks which are not individualised;

(vi) where the surrender value of a contract is guaranteed, the amount of the mathematical provisions for the contract at any time shall be at least as great as the value guaranteed at that time;

B. the rate of interest used shall be chosen prudently. It shall be determined in accordance with the rules of the competent authority in the home Member State, applying the following principles:

(a) for all contracts, the competent authority of the assurance undertaking's home Member State shall fix one or more maximum rates of interest, in particular in accordance with the following rules:

(i) when contracts contain an interest rate guarantee, the competent authority in the home Member State shall set a single maximum rate of interest. It may differ according to the currency in which the contract is denominated, provided that it is not more than 60 % of the rate on bond issues by the State in whose currency the contract is denominated.

If a Member State decides, pursuant to the second sentence of the first subparagraph, to set a maximum rate of interest for contracts denominated in another Member State's currency, it shall first consult the competent authority of the Member State in whose currency the contract is denominated;

(ii) however, when the assets of the assurance undertaking are not valued at their purchase price, a Member State may stipulate that one or more maximum rates may be calculated taking into

account the yield on the corresponding assets currently held, minus a prudential margin and, in particular for contracts with periodic premiums, furthermore taking into account the anticipated yield on future assets. The prudential margin and the maximum rate or rates of interest applied to the anticipated yield on future assets shall be fixed by the competent authority of the home Member State;

(b) the establishment of a maximum rate of interest shall not imply that the assurance undertaking is bound to use a rate as high as that;

(c) the home Member State may decide not to apply paragraph (a) to the following categories of contracts:

— unit-linked contracts,

— single-premium contracts for a period of up to eight years,

— without-profits contracts, and annuity contracts with no surrender value.

In the cases referred to in the second and third indents of the first subparagraph, in choosing a prudent rate of interest, account may be taken of the currency in which the contract is denominated and corresponding assets currently held and where the undertaking's assets are valued at their current value, the anticipated yield on future assets.

Under no circumstances may the rate of interest used be higher than the yield on assets as calculated in accordance with the accounting rules in the home Member State, less an appropriate deduction;

(d) the Member State shall require an assurance undertaking to set aside in its accounts a provision to meet interest-rate commitments vis-à-vis policy holders if the present or foreseeable yield on the undertaking's assets is insufficient to cover those commitments;

(e) the Commission and the competent authorities of the Member States which so request shall be notified of the maximum rates of interest set under (a);

C. the statistical elements of the valuation and the allowance for expenses used shall be chosen prudently, having regard to the State of the commitment, the type of policy and the administrative costs and commissions expected to be incurred;

D. in the case of participating contracts, the method of calculation for technical provisions may take into account, either implicitly or explicitly, future bonuses of all kinds, in a manner consistent with the other assumptions on future experience and with the current method of distribution of bonuses;

E. allowance for future expenses may be made implicitly, for instance by the use of future premiums net of management charges. However, the overall allowance, implicit or explicit, shall be not less than a prudent estimate of the relevant future expenses;

F. the method of calculation of technical provisions shall not be subject to discontinuities from year to year arising from arbitrary changes to the method or the bases of calculation and shall be such as to recognise the distribution of profits in an appropriate way over the duration of each policy.

2 Assurance undertakings shall make available to the public the bases and methods used in the calculation of the technical provisions, including provisions for bonuses.

3 The home Member State shall require every assurance undertaking to cover the technical provisions in respect of its entire business by matching assets, in accordance with Article 26. In respect of business written in the Community, these assets must be localised within the Community. Member States shall not require assurance undertakings to localise their assets in a particular Member State. The home Member State may, however, permit relaxations in the rules on the localisation of assets.

4 If the home Member State allows any technical provisions to be covered by claims against reassurers, it shall fix the percentage so allowed. In such case, it may not require the localisation of the assets representing such claims.

Article 21

Premiums for new business

Premiums for new business shall be sufficient, on reasonable actuarial assumptions, to enable assurance undertakings to meet all their commitments and, in particular, to establish adequate technical provisions.

For this purpose, all aspects of the financial situation of an assurance undertaking may be taken into account, without the input from resources other than premiums and income earned thereon being systematic and permanent in such a way that it may jeopardise the undertaking's solvency in the long term.

Article 22

Assets covering technical provisions

The assets covering the technical provisions shall take account of the type of business carried on by an assurance undertaking in such a way as to secure the safety, yield and marketability of its investments, which the undertaking shall ensure are diversified and adequately spread.

Article 23

Categories of authorised assets

1 The home Member State may not authorise assurance undertakings to cover their technical provisions with any but the following categories of assets:

A. investments

(a) debt securities, bonds and other money- and capital-market instruments;

(b) loans;

(c) shares and other variable-yield participations;

(d) units in undertakings for collective investment in transferable securities (UCITS) and other investment funds;

(e) land, buildings and immovable-property rights;

B. debts and claims

(f) debts owed by reassurers, including reassurers' shares of technical provisions;

(g) deposits with and debts owed by ceding undertakings;

(h) debts owed by policy holders and intermediaries arising out of direct and reassurance operations;

(i) advances against policies;

(j) tax recoveries;

(k) claims against guarantee funds;

C. others

(l) tangible fixed assets, other than land and buildings, valued on the basis of prudent amortisation;

(m) cash at bank and in hand, deposits with credit institutions and any other body authorised to receive deposits;

(n) deferred acquisition costs;

(o) accrued interest and rent, other accrued income and prepayments;

(p) reversionary interests.

2 In the case of the association of underwriters known as ‘Lloyd's’, asset categories shall also include guarantees and letters of credit issued by credit institutions within the meaning of Directive 2000/12/EC of the European Parliament and of the Council[(4)] or by assurance undertakings, together with verifiable sums arising out of life assurance policies, to the extent that they represent funds belonging to members.

3 The inclusion of any asset or category of assets listed in paragraph 1 shall not mean that all these assets should automatically be accepted as cover for technical provisions. The home Member State shall lay down more detailed rules fixing the conditions for the use of acceptable assets; in this connection, it may require valuable security or guarantees, particularly in the case of debts owed by reassurers.

In determining and applying the rules which it lays down, the home Member State shall, in particular, ensure that the following principles are complied with:

(i) assets covering technical provisions shall be valued net of any debts arising out of their acquisition;

(ii) all assets must be valued on a prudent basis, allowing for the risk of any amounts not being realisable. In particular, tangible fixed assets other than land and buildings may be accepted as cover for technical provisions only if they are valued on the basis of prudent amortisation;

(iii) loans, whether to undertakings, to a State or international organisation, to local or regional authorities or to natural persons, may be accepted as cover for technical provisions only if there are sufficient guarantees as to their security, whether these are based on the status of the borrower, mortgages, bank guarantees or guarantees granted by assurance undertakings or other forms of security;

(iv) derivative instruments such as options, futures and swaps in connection with assets covering technical provisions may be used in so far as they contribute to a reduction of investment risks or facilitate efficient portfolio management. They must be valued on a prudent basis and may be taken into account in the valuation of the underlying assets;

(v) transferable securities which are not dealt in on a regulated market may be accepted as cover for technical provisions only if they can be realised in the short term or if they are holdings in credit institutions, in assurance undertakings, within the limits permitted by Article 6, or in investment undertakings established in a Member State;

(vi) debts owed by and claims against a third party may be accepted as cover for the technical provisions only after deduction of all amounts owed to the same third party;

(vii) the value of any debts and claims accepted as cover for technical provisions must be calculated on a prudent basis, with due allowance for the risk of any amounts not being realisable. In particular, debts owed by policy holders and intermediaries arising out of assurance and reassurance operations may be accepted only in so far as they have been outstanding for not more than three months;

(viii) where the assets held include an investment in a subsidiary undertaking which manages all or part of the assurance undertaking's investments on its behalf, the home Member State must, when applying the rules and principles laid down in this Article, take into account the underlying assets held by the subsidiary undertaking; the home Member State may treat the assets of other subsidiaries in the same way;

(ix) deferred acquisition costs may be accepted as cover for technical provisions only to the extent that this is consistent with the calculation of the mathematical provisions.

4 Notwithstanding paragraphs 1, 2 and 3, in exceptional circumstances and at an assurance undertaking's request, the home Member State may, temporarily and under a properly reasoned decision, accept other categories of assets as cover for technical provisions, subject to Article 22.

Article 24

Rules for investment diversification

1 As regards the assets covering technical provisions, the home Member State shall require every assurance undertaking to invest no more than:

a 10 % of its total gross technical provisions in any one piece of land or building, or a number of pieces of land or buildings close enough to each other to be considered effectively as one investment;

b 5 % of its total gross technical provisions in shares and other negotiable securities treated as shares, bonds, debt securities and other money- and capital-market instruments from the same undertaking, or in loans granted to the same borrower, taken together, the loans being loans other than those granted to a State, regional or local authority or to an international organisation of which one or more Member States are members. This limit may be raised to 10 % if an undertaking invests not more than 40 % of its gross technical provisions in the loans or securities of issuing bodies and borrowers in each of which it invests more than 5 % of its assets;

c 5 % of its total gross technical provisions in unsecured loans, including 1 % for any single unsecured loan, other than loans granted to credit institutions, assurance undertakings — in so far as Article 6 allows it — and investment undertakings established in a Member State. The limits may be raised to 8 % and 2 % respectively

by a decision taken on a case-by-case basis by the competent authority of the home Member State;

d 3 % of its total gross technical provisions in the form of cash in hand;

e 10 % of its total gross technical provisions in shares, other securities treated as shares and debt securities which are not dealt in on a regulated market.

2 The absence of a limit in paragraph 1 on investment in any particular category does not imply that assets in that category should be accepted as cover for technical provisions without limit. The home Member State shall lay down more detailed rules fixing the conditions for the use of acceptable assets. In particular it shall ensure, in the determination and the application of those rules, that the following principles are complied with:

(i) assets covering technical provisions must be diversified and spread in such a way as to ensure that there is no excessive reliance on any particular category of asset, investment market or investment;

(ii) investment in particular types of asset which show high levels of risk, whether because of the nature of the asset or the quality of the issuer, must be restricted to prudent levels;

(iii) limitations on particular categories of asset must take account of the treatment of reassurance in the calculation of technical provisions;

(iv) where the assets held include an investment in a subsidiary undertaking which manages all or part of the assurance undertaking's investments on its behalf, the home Member State must, when applying the rules and principles laid down in this Article, take into account the underlying assets held by the subsidiary undertaking; the home Member State may treat the assets of other subsidiaries in the same way;

(v) the percentage of assets covering technical provisions which are the subject of non-liquid investments must be kept to a prudent level;

(vi) where the assets held include loans to or debt securities issued by certain credit institutions, the home Member State may, when applying the rules and principles contained in this Article, take into account the underlying assets held by such credit institutions. This treatment may be applied only where the credit institution has its head office in a Member State, is entirely owned by that Member State and/or that State's local authorities and its business, according to its memorandum and articles of association, consists of extending, through its intermediaries, loans to, or guaranteed by, States or local authorities or of loans to bodies closely linked to the State or to local authorities.

3 In the context of the detailed rules laying down the conditions for the use of acceptable assets, the Member State shall give more limitative treatment to:

— any loan unaccompanied by a bank guarantee, a guarantee issued by an assurance undertaking, a mortgage or any other form of security, as compared with loans accompanied by such collateral,

— UCITS not coordinated within the meaning of Directive 85/611/EEC and other investment funds, as compared with UCITS coordinated within the meaning of that Directive,

— securities which are not dealt in on a regulated market, as compared with those which are,

— bonds, debt securities and other money- and capital-market instruments not issued by States, local or regional authorities or undertakings belonging to zone A as defined in Directive 2000/12/EC or the issuers of which are international organisations not

numbering at least one Community Member State among their members, as compared with the same financial instruments issued by such bodies.

4 Member States may raise the limit laid down in paragraph 1(b) to 40 % in the case of certain debt securities when these are issued by a credit institution which has its head office in a Member State and is subject by law to special official supervision designed to protect the holders of those debt securities. In particular, sums deriving from the issue of such debt securities must be invested in accordance with the law in assets which, during the whole period of validity of the debt securities, are capable of covering claims attaching to debt securities and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

5 Member States shall not require assurance undertakings to invest in particular categories of assets.

6 Notwithstanding paragraph 1, in exceptional circumstances and at the assurance undertaking's request, the home Member State may, temporarily and under a properly reasoned decision, allow exceptions to the rules laid down in paragraph 1(a) to (e), subject to Article 22.

Article 25

Contracts linked to UCITS or share index

1 Where the benefits provided by a contract are directly linked to the value of units in an UCITS or to the value of assets contained in an internal fund held by the insurance undertaking, 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.

2 Where the benefits provided by a contract are directly linked to a share index or some other reference value other than those referred to in paragraph 1, 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.

3 Articles 22 and 24 shall not apply to assets held to match liabilities which are directly linked to the benefits referred to in paragraphs 1 and 2. References to the technical provisions in Article 24 shall be to the technical provisions excluding those in respect of such liabilities.

4 Where the benefits referred to in paragraphs 1 and 2 include a guarantee of investment performance or some other guaranteed benefit, the corresponding additional technical provisions shall be subject to Articles 22, 23, and 24.

Article 26

Matching rules

1 For the purposes of Articles 20(3) and 54, Member States shall comply with Annex II as regards the matching rules.

2 This Article shall not apply to the commitments referred to in Article 25.

CHAPTER 3

RULES RELATING TO THE SOLVENCY MARGIN AND TO THE GUARANTEE FUND

Article 27

Available solvency margin

1 Each Member State shall require of every assurance undertaking whose head office is situated in its territory an adequate available solvency margin in respect of its entire business at all times which is at least equal to the requirements in this Directive.

2 The available solvency margin shall consist of the assets of the assurance undertaking free of any foreseeable liabilities, less any intangible items, including:

a the paid-up share capital or, in the case of a mutual assurance undertaking, the effective initial fund plus any members' accounts which meet all the following criteria:

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

(ii) the memorandum and articles of association must stipulate, with respect to any payments referred to in point (i) for reasons other than the individual termination of membership, that the competent authorities must be notified at least one month in advance and can prohibit the payment within that period;

(iii) the relevant provisions of the memorandum and articles of association may be amended only after the competent authorities have declared that they have no objection to the amendment, without prejudice to the criteria stated in points (i) and (ii);

b reserves (statutory and free) not corresponding to underwriting liabilities;

c the profit or loss brought forward after deduction of dividends to be paid;

d in so far as authorised under national law, profit reserves appearing in the balance sheet where they may be used to cover any losses which may arise and where they have not been made available for distribution to policy holders.

The available solvency margin shall be reduced by the amount of own shares directly held by the assurance undertaking.

3 The available solvency margin may also consist of:

a cumulative preferential share capital and subordinated loan capital up to 50 % of the lesser of the available solvency margin and the required solvency margin, no more than 25 % of which shall consist of subordinated loans with a fixed maturity, or fixed-term cumulative preferential share capital, provided that binding agreements exist under which, in the event of the bankruptcy or liquidation of the assurance undertaking, the subordinated loan capital or preferential share capital ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled.

Subordinated loan capital must also fulfil the following conditions:

(i) only fully paid-up funds may be taken into account;

(ii) for loans with a fixed maturity, the original maturity must be at least five years. No later than one year before the repayment date, the assurance undertaking must submit to the competent authorities for their approval a plan showing how the available solvency margin will be kept at or brought to the required level at maturity, unless the extent to which the loan may rank as a component of the available solvency margin is gradually reduced during at least the last five years before the repayment date. The competent authorities may authorise the early repayment of such loans provided application is made by the issuing assurance undertaking and its available solvency margin will not fall below the required level;

(iii) loans the maturity of which is not fixed must be repayable only subject to five years' notice unless the loans are no longer considered as a component of the available solvency margin or unless the prior consent of the competent authorities is specifically required for early repayment. In the latter event the assurance undertaking must notify the competent authorities at least six months before the date of the proposed repayment, specifying the available solvency margin and the required solvency margin both before and after that repayment. The competent authorities shall authorise repayment only if the assurance undertaking's available solvency margin will not fall below the required level;

(iv) the loan agreement must not include any clause providing that in specified circumstances, other than the winding-up of the assurance undertaking, the debt will become repayable before the agreed repayment dates;

(v) the loan agreement may be amended only after the competent authorities have declared that they have no objection to the amendment;

b securities with no specified maturity date and other instruments, including cumulative preferential shares other than those mentioned in point (a), up to 50 % of the lesser of the available solvency margin and the required solvency margin for the total of such securities and the subordinated loan capital referred to in point (a) provided they fulfil the following:

(i) they may not be repaid on the initiative of the bearer or without the prior consent of the competent authority;

(ii) the contract of issue must enable the assurance undertaking to defer the payment of interest on the loan;

(iii) the lender's claims on the assurance undertaking must rank entirely after those of all non-subordinated creditors;

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

(v) only fully paid-up amounts may be taken into account.

4 Upon application, with supporting evidence, by the undertaking to the competent authority of the home Member State and with the agreement of that competent authority, the available solvency margin may also consist of:

a until 31 December 2009 an amount equal to 50 % of the undertaking's future profits, but not exceeding 25 % of the lesser of the available solvency margin and the required solvency margin. The amount of the future profits shall be obtained by multiplying the estimated annual profit by a factor which represents the average period left to run on policies. The factor used may not exceed six. The estimated annual profit shall not exceed the arithmetical average of the profits made over the last five financial years in the activities listed in Article 2(1).

Competent authorities may only agree to include such an amount for the available solvency margin:

(i) when an actuarial report is submitted to the competent authorities substantiating the likelihood of emergence of these profits in the future; and

(ii) in so far as that part of future profits emerging from hidden net reserves referred to in point (c) has not already been taken into account;

b where Zillmerising is not practised or where, if practised, it is less than the loading for acquisition costs included in the premium, the difference between a non-Zillmerised or partially Zillmerised mathematical provision and a mathematical provision Zillmerised at a rate equal to the loading for acquisition costs included in the premium. This figure may not, however, exceed 3,5 % of the sum of the differences between the relevant capital sums of life assurance activities and the mathematical provisions for all policies for which Zillmerising is possible. The difference shall be reduced by the amount of any undepreciated acquisition costs entered as an asset;

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

d one half of the unpaid share capital or initial fund, once the paid-up part amounts to 25 % of that share capital or fund, up to 50 % of the lesser of the available and required solvency margin.

5 Amendments to paragraphs 2, 3 and 4 to take into account developments that justify a technical adjustment of the elements eligible for the available solvency margin shall be adopted in accordance with the procedure laid down in Article 65(2).

Article 28

Required solvency margin

1 Subject to Article 29, the required solvency margin shall be determined as laid down in paragraphs 2 to 7 according to the classes of assurance underwritten.

2 For the kinds of assurance referred to in Article 2(1)(a) and (b) other than assurances linked to investment funds and for the operations referred to in Article 2(3), the required solvency margin shall be equal to the sum of the following two results:

a first result:

a 4 % fraction of the mathematical provisions relating to direct business and reinsurance acceptances gross of reinsurance cessions shall be multiplied by the ratio, for the last financial year, of the total mathematical provisions net of reinsurance cessions to the gross total mathematical provisions. That ratio may in no case be less than 85 %;

b second result:

for policies on which the capital at risk is not a negative figure, a 0,3 % fraction of such capital underwritten by the assurance undertaking shall be multiplied

by the ratio, for the last financial year, of the total capital at risk retained as the undertaking's liability after reinsurance cessions and retrocessions to the total capital at risk gross of reinsurance; that ratio may in no case be less than 50 %.

For temporary assurance on death of a maximum term of three years the fraction shall be 0,1 %. For such assurance of a term of more than three years but not more than five years the above fraction shall be 0,15 %.

3 For the supplementary insurance referred to in Article 2(1)(c) the required solvency margin shall be equal to the required solvency margin for insurance undertakings as laid down in Article 16a of Directive 73/239/EEC, excluding the provisions of Article 17 of that Directive.

4 For permanent health insurance not subject to cancellation referred to in Article 2(1)(d), the required solvency margin shall be equal to:

a a 4 % fraction of the mathematical provisions, calculated in compliance with paragraph 2(a) of this Article; plus

b the required solvency margin for insurance undertakings as laid down in Article 16a of Directive 73/239/EEC, excluding the provisions of Article 17 of that Directive. However, the condition contained in Article 16a(6)(b) of that Directive that a provision be set up for increasing age may be replaced by a requirement that the business be conducted on a group basis.

5 For capital redemption operations referred to in Article 2(2)(b), the required solvency margin shall be equal to a 4 % fraction of the mathematical provisions calculated in compliance with paragraph 2(a) of this Article.

6 For tontines, referred to in Article 2(2)(a), the required solvency margin shall be equal to 1 % of their assets.

7 For assurances covered by Article 2(1)(a) and (b) linked to investment funds and for the operations referred to in Article 2(2)(c), (d) and (e), the required solvency margin shall be equal to the sum of the following:

a in so far as the assurance undertaking bears an investment risk, a 4 % fraction of the technical provisions, calculated in compliance with paragraph 2(a) of this Article;

b in so far as the undertaking bears no investment risk but the allocation to cover management expenses is fixed for a period exceeding five years, a 1 % fraction of the technical provisions, calculated in compliance with paragraph 2(a) of this Article;

c in so far as the undertaking bears no investment risk and the allocation to cover management expenses is not fixed for a period exceeding five years, an amount equivalent to 25 % of the last financial year's net administrative expenses pertaining to such business;

d in so far as the assurance undertaking covers a death risk, a 0,3 % fraction of the capital at risk calculated in compliance with paragraph 2(b) of this Article.

Article 29

Guarantee fund

1 One third of the required solvency margin as specified in Article 28 shall constitute the guarantee fund. This fund shall consist of the items listed in Article 27(2), (3) and, with the agreement of the competent authority of the home Member State, (4)(c).

2 The guarantee fund may not be less than a minimum of EUR 3 million.

Any Member State may provide for a one-fourth reduction of the minimum guarantee fund in the case of mutual associations and mutual-type associations and tontines.

Article 30

Review of the amount of the guarantee fund

1 The amount in euro as laid down in Article 29(2) shall be reviewed annually starting on 20 September 2003, in order to take account of changes in the European index of consumer prices comprising all Member States as published by Eurostat.

The amount shall be adapted automatically, by increasing the base amount in euro by the percentage change in that index over the period between 20 March 2002 and the review date and rounded up to a multiple of EUR 100 000.

If the percentage change since the last adaptation is less than 5 %, no adaptation shall take place.

2 The Commission shall inform annually the European Parliament and the Council of the review and the adapted amount referred to in paragraph 1.

Article 31

Assets not used to cover technical provisions

1 Member States shall not prescribe any rules as to the choice of the assets that need not be used as cover for the technical provisions referred to in Article 20.

2 Subject to Article 20(3), Article 37(1), (2), (3) and (5), and the second subparagraph of Article 39(1), Member States shall not restrain the free disposal of those assets, whether movable or immovable, that form part of the assets of authorised assurance undertakings.

3 Paragraphs 1 and 2 shall not preclude any measures which Member States, while safeguarding the interests of the lives assured, are entitled to take as owners or members of or partners in the assurance undertakings in question.

CHAPTER 4

CONTRACT LAW AND CONDITIONS OF ASSURANCE

Article 32

Law applicable

1 The law applicable to contracts relating to the activities referred to in this Directive shall be the law of the Member State of the commitment. However, where the law of that State so allows, the parties may choose the law of another country.

2 Where the policy holder is a natural person and has his/her habitual residence in a Member State other than that of which he/she is a national, the parties may choose the law of the Member State of which he/she is a national.

3 Where a State includes several territorial units, each of which has its own rules of law concerning contractual obligations, each unit shall be considered a country for the purposes of identifying the law applicable under this Directive.

A Member State in which various territorial units have their own rules of law concerning contractual obligations shall not be bound to apply the provisions of this Directive to conflicts which arise between the laws of those units.

4 Nothing in this Article shall restrict the application of the rules of the law of the forum in a situation where they are mandatory, irrespective of the law otherwise applicable to the contract.

If the law of a Member State so stipulates, the mandatory rules of the law of the Member State of the commitment may be applied if and in so far as, under the law of that Member State, those rules must be applied whatever the law applicable to the contract.

5 Subject to paragraphs 1 to 4, the Member States shall apply to the assurance contracts referred to in this Directive their general rules of private international law concerning contractual obligations.

Article 33

General good

The Member State of the commitment shall not prevent a policy holder from concluding a contract with an assurance undertaking authorised under the conditions of Article 4 as long as that does not conflict with legal provisions protecting the general good in the Member State of the commitment.

Article 34

Rules relating to conditions of assurance and scales of premiums

Member States shall not adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums, technical bases used in particular for calculating scales of premiums and technical provisions or forms and other printed documents which an assurance undertaking intends to use in its dealings with policy holders.

Notwithstanding the first subparagraph, for the sole purpose of verifying compliance with national provisions concerning actuarial principles, the home Member State may require systematic communication of the technical bases used in particular for calculating scales of premiums and technical provisions, without that requirement constituting a prior condition for an assurance undertaking to carry on its business.

Not later than 1 July 1999 the Commission shall submit a report to the Council on the implementation of those provisions.

Article 35

Cancellation period

1 Each Member State shall prescribe that a policy holder who concludes an individual life-assurance contract shall have a period of between 14 and 30 days from the time when he/she was informed that the contract had been concluded within which to cancel the contract.

The giving of notice of cancellation by the policy holder shall have the effect of releasing him/her from any future obligation arising from the contract.

The other legal effects and the conditions of cancellation shall be determined by the law applicable to the contract as defined in Article 32, notably as regards the arrangements for informing the policy holder that the contract has been concluded.

2 The Member States need not apply paragraph 1 to contracts of six months' duration or less, nor where, because of the status of the policy holder or the circumstances in which the contract is concluded, the policy holder does not need this special protection. Member States shall specify in their rules where paragraph 1 is not applied.

Article 36

Information for policy holders

1 Before the assurance contract is concluded, at least the information listed in Annex III(A) shall be communicated to the policy holder.

2 The policy-holder shall be kept informed throughout the term of the contract of any change concerning the information listed in Annex III(B).

3 The Member State of the commitment may require assurance undertakings to furnish information in addition to that listed in Annex III only if it is necessary for a proper understanding by the policy holder of the essential elements of the commitment.

4 The detailed rules for implementing this Article and Annex III shall be laid down by the Member State of the commitment.

CHAPTER 5

ASSURANCE UNDERTAKINGS IN DIFFICULTY OR IN AN IRREGULAR SITUATION

Article 37

Assurance undertakings in difficulty

1 If an assurance undertaking does not comply with Article 20, the competent authority of its home Member State may prohibit the free disposal of its assets after having communicated its intention to the competent authorities of the Member States of commitment.

2 For the purposes of restoring the financial situation of an assurance undertaking, the solvency margin of which has fallen below the minimum required under Article 28, the

competent authority of the home Member State shall require that a plan for the restoration of a sound financial position be submitted for its approval.

In exceptional circumstances, if the competent authority is of the opinion that the financial situation of the assurance undertaking will further deteriorate, it may also restrict or prohibit the free disposal of the assurance undertaking's assets. It shall inform the authorities of other Member States within the territories of which the assurance undertaking carries on business of any measures it has taken and the latter shall, at the request of the former, take the same measures.

3 If the solvency margin falls below the guarantee fund as defined in Article 29, the competent authority of the home Member State shall require the assurance undertaking to submit a short-term finance scheme for its approval.

It may also restrict or prohibit the free disposal of the assurance undertaking's assets. It shall inform the authorities of other Member States within the territories of which the assurance undertaking carries on business accordingly and the latter shall, at the request of the former, take the same measures.

4 The competent authorities may further take all measures necessary to safeguard the interests of the assured persons in the cases provided for in paragraphs 1, 2 and 3.

5 Each Member State shall take the measures necessary to be able in accordance with its national law to prohibit the free disposal of assets located within its territory at the request, in the cases provided for in paragraphs 1, 2 and 3, of the assurance undertaking's home Member State, which shall designate the assets to be covered by such measures.

Article 38

Financial recovery plan

1 Member States shall ensure that the competent authorities have the power to require a financial recovery plan for those insurance undertakings where competent authorities consider that policy holders' rights are threatened. The financial recovery plan must as a minimum include particulars or proof concerning for the next three financial years:

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

b a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;

c a forecast balance sheet;

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

e the overall reinsurance policy.

2 Where policy holders' rights are threatened because the financial position of the undertaking is deteriorating, Member States shall ensure that the competent authorities have the power to oblige insurance undertakings to have a higher required solvency margin, in order to ensure that the insurance undertaking is able to fulfil the solvency requirements in the near future. The level of this higher required solvency margin shall be based on a financial recovery plan referred to in paragraph 1.

3 Member States shall ensure that the competent authorities have the power to revalue downwards all elements eligible for the available solvency margin, in particular, where there

has been a significant change in the market value of these elements since the end of the last financial year.

4 Member States shall ensure that the competent authorities have the powers to decrease the reduction, based on reinsurance, to the solvency margin as determined in accordance with Article 28 where:

a the nature or quality of reinsurance contracts has changed significantly since the last financial year;

b there is no or an insignificant risk transfer under the reinsurance contracts.

5 If the competent authorities have required a financial recovery plan for the insurance undertaking in accordance with paragraph 1, they shall refrain from issuing a certificate in accordance with Article 14(1), Article 40(3), second subparagraph, and Article 42(1)(a), as long as they consider that policy holders' rights are threatened within the meaning of paragraph 1.

Article 39

Withdrawal of authorisation

1 Authorisation granted to an assurance undertaking by the competent authority of its home Member State may be withdrawn by that authority if that undertaking:

a does not make use of the authorisation within 12 months, expressly renounces it or ceases to carry on business for more than six months, unless the Member State concerned has made provision for authorisation to lapse in such cases;

b no longer fulfils the conditions for admission;

c has been unable, within the time allowed, to take the measures specified in the restoration plan or finance scheme referred to in Article 37;

d fails seriously in its obligations under the regulations to which it is subject.

In the event of the withdrawal or lapse of the authorisation, the competent authority of the home Member State shall notify the competent authorities of the other Member States accordingly and they shall take appropriate measures to prevent the assurance undertaking from commencing new operations within their territories, under either the freedom of establishment or the freedom to provide services. The home Member State's competent authority shall, in conjunction with those authorities, take all necessary measures to safeguard the interests of the assured persons and shall restrict, in particular, the free disposal of the assets of the assurance undertaking in accordance with Article 37(1), (2), second subparagraph, and (3), second subparagraph.

2 Any decision to withdraw an authorisation shall be supported by precise reasons and notified to the assurance undertaking in question.

(**1**) OJ L 126, 12.5.1984, p. 20.

(**2**) OJ L 222, 14.8.1978, p. 11. Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283, 27.10.2001, p. 28).

(**3**) OJ L 375, 31.12.1985, p. 3. Directive as last amended by Directive 2001/108/EC of the European Parliament and of the Council (OJ L 41, 13.2.2002, p. 35).

(**4**) OJ L 126, 26.5.2000, p. 1. Directive as amended by Directive 2000/28/EC (OJ L 275, 27.10.2000, p. 37).