

Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC (Text with EEA relevance) (repealed)

## TITLE II

### **THE TAKING-UP OF THE BUSINESS OF REINSURANCE AND AUTHORISATION OF THE REINSURANCE UNDERTAKING**

#### *Article 3*

##### **Principle of authorisation**

The taking up of the business of reinsurance shall be subject to prior official authorisation.

Such authorisation shall be sought from the competent authorities of the home Member State by:

- (a) any undertaking which establishes its head office in the territory of that State;
- (b) any reinsurance undertaking which, having received the authorisation, extends its business to reinsurance activities other than those already authorised.

#### *Article 4*

##### **Scope of authorisation**

1 An authorisation pursuant to Article 3 shall be valid for the entire Community. It shall permit a reinsurance undertaking to carry on business there, under either the right of establishment or the freedom to provide services.

2 Authorisation shall be granted for non-life reinsurance activities, life reinsurance activities or all kinds of reinsurance activities, according to the request made by the applicant.

It shall be considered in the light of the scheme of operations to be submitted pursuant to Articles 6(b) and 11 and the fulfilment of the conditions laid down for authorisation by the Member State from which the authorisation is sought.

#### *Article 5*

##### **Form of the reinsurance undertaking**

1 The home Member State shall require every reinsurance undertaking for which authorisation is sought to adopt one of the forms set out in Annex I.

A reinsurance undertaking may also adopt the form of a European Company (SE), as defined in Regulation (EC) No 2157/2001<sup>(1)</sup>.

2 Member States may, where appropriate, set up undertakings in any public-law form provided that such bodies have as their objects reinsurance operations under conditions equivalent to those under which private-law undertakings operate.

#### *Article 6*

##### **Conditions**

The home Member State shall require every reinsurance undertaking for which authorisation is sought to:

- (a) limit its objects to the business of reinsurance and related operations; this requirement may include a holding company function and activities with respect to financial sector activities within the meaning of Article 2, point (8), of Directive 2002/87/EC;
- (b) submit a scheme of operations in accordance with Article 11;
- (c) possess the minimum guarantee fund provided for in Article 40(2);
- (d) be effectively run by persons of good repute with appropriate professional qualifications or experience.

#### *Article 7*

##### **Close links**

1 Where close links exist between the reinsurance undertaking and other natural or legal persons, the competent authorities shall grant authorisation only if those links do not prevent the effective exercise of their supervisory functions.

2 The competent authorities shall refuse authorisation if the laws, regulations or administrative provisions of a non-member country governing one or more natural or legal persons with which the reinsurance undertaking has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions.

3 The competent authorities shall require reinsurance undertakings to provide them with the information they require to monitor compliance with the conditions referred to in paragraph 1 on a continuous basis.

#### *Article 8*

##### **Head office of the reinsurance undertaking**

Member States shall require that the head offices of reinsurance undertakings be situated in the same Member State as their registered offices.

#### *Article 9*

##### **Policy conditions and scales of premiums**

1 This Directive shall not prevent Member States from maintaining in force or introducing laws, regulations or administrative provisions requiring approval of the

memorandum and articles of association and communication of any other documents necessary for the normal exercise of supervision.

2 However, Member States may not adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums and forms and other printed documents which a reinsurance undertaking intends to use in its dealings with ceding or retroceding undertakings.

#### *Article 10*

### **Economic requirements of the market**

Member States may not require that any application for authorisation be considered in the light of the economic requirements of the market.

#### *Article 11*

### **Scheme of operations**

1 The scheme of operations referred to in Article 6(b) shall include particulars or evidence of:

- a the nature of the risks which the reinsurance undertaking proposes to cover;
- b the kinds of reinsurance arrangements which the reinsurance undertaking proposes to make with ceding undertakings;
- c the guiding principles as to retrocession;
- d the items constituting the minimum guarantee fund;
- e estimates of the costs of setting up the administrative services and the organisation for securing business and the financial resources intended to meet those costs.

2 In addition to the requirements in paragraph 1, the scheme of operations shall for the first three financial years contain:

- a estimates of management expenses other than installation costs, in particular current general expenses and commissions;
- b estimates of premiums or contributions and claims;
- c a forecast balance sheet;
- d estimates of the financial resources intended to cover underwriting liabilities and the solvency margin.

#### *Article 12*

### **Shareholders and members with qualifying holdings**

The competent authorities of the home Member State shall not grant to an undertaking an authorisation to take up the business of reinsurance before they have been informed of the identities of the shareholders or members, direct or indirect, whether natural or legal persons, who have qualifying holdings in that undertaking and of the amounts of those holdings.

The same authorities shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of a reinsurance undertaking, they are not satisfied as to the qualifications of the shareholders or members.

### Article 13

#### **Refusal of authorisation**

Any decision to refuse an authorisation shall be accompanied by the precise grounds for doing so and notified to the undertaking in question.

Each Member State shall make provision for a right to apply to the courts, pursuant to Article 53, should there be any refusal.

Such provision shall also be made with regard to cases where the competent authorities have not dealt with an application for an authorisation upon the expiry of a period of six months from the date of its receipt.

### Article 14

#### **Prior consultation with the competent authorities of other Member States**

1 The competent authorities of the other Member State involved shall be consulted prior to the granting of an authorisation to a reinsurance undertaking, which is:

- a a subsidiary of an insurance or reinsurance undertaking authorised in another Member State; or
- b a subsidiary of the parent undertaking of an insurance or reinsurance undertaking authorised in another Member State; or
- c controlled by the same person, whether natural or legal, who controls an insurance or reinsurance undertaking authorised in another Member State.

2 The competent authority of a Member State involved, which is responsible for the supervision of credit institutions or investment firms, shall be consulted prior to the granting of an authorisation to a reinsurance undertaking which is:

- a a subsidiary of a credit institution or investment firm authorised in the Community; or
- b a subsidiary of the parent undertaking of a credit institution or investment firm authorised in the Community; or
- c controlled by the same person, whether natural or legal, who controls a credit institution or investment firm authorised in the Community.

3 The relevant competent authorities referred to in paragraphs 1 and 2 shall in particular consult each other when assessing the suitability of the shareholders and the reputation and experience of directors involved in the management of another entity of the same group. They shall inform each other of any information regarding the suitability of shareholders and the reputation and experience of directors which is of relevance to the other competent authorities involved for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.

- (1) Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) (OJ L 294, 10.11.2001, p. 1). Regulation as amended by Regulation (EC) No 885/2004 (OJ L 168, 1.5.2004, p. 1).