

Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (repealed)

TITLE II

THE TAKING UP OF THE BUSINESS OF INSURANCE

Article 4

Article 6 of Directive 73/239/EEC shall be replaced by the following:

Article 6

The taking up of the business of direct insurance shall be subject to prior official authorization.

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

- (a) any undertaking which establishes its head office within the territory of that State;
- (b) any undertaking which, having received the authorization referred to in the first subparagraph, extends its business to an entire class or to other classes.

Article 5

Article 7 of Directive 73/239/EEC shall be replaced by the following:

Article 7

1 Authorization shall be valid for the entire Community. It shall permit an undertaking to carry on business there, under either the right of establishment or the freedom to provide services.

2 Authorization shall be granted for a particular class of insurance. It shall cover the entire class, unless the applicant wishes to cover only some of the risks pertaining to that class, as listed in point A of the Annex.

However:

- a Member States may grant authorization for the groups of classes listed in point B of the Annex, attaching to them the appropriate denominations specified therein;
- b authorization granted for one class or a group of classes shall also be valid for the purpose of covering ancillary risks included in another class if the conditions imposed in point C of the Annex are fulfilled.

Article 6

Article 8 of Directive 72/239/EEC shall be replaced by the following:

Article 8

1 The home Member State shall require every insurance undertaking for which authorization is sought to:

- a adopt one of the following forms:
 - in the case of the Kingdom of Belgium: “société anonyme — naamloze vennootschap”, “société en commandite par actions — commanditaire vennootschap op aandelen”, “association d’assurance mutuelle —

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- onderlinge verzekeringsvereniging”, “société coopérative —coöperatieve vennootschap”;
- in the case of the Kingdom of Denmark: “aktieselskaber”, “gensidige selskaber”;
 - in the case of the Federal Republic of Germany: “Aktiengesellschaft”, “Versicherungsverein auf Gegenseitigkeit”, “Öffentlich-rechtliches Wettbewerbsversicherungsunternehmen”;
 - in the case of the French Republic: “société anonyme”, “société d'assurance mutuelle”, “institution de prévoyance régie par le code de la sécurité sociale”, “institution de prévoyance régie par le code rural” and “mutuelles régies par le code de la mutualité”;
 - in the case of Ireland: incorporated companies limited by shares or by guarantee or unlimited;
 - in the case of the Italian Republic: “società per azioni”, “società cooperativa”, “mutua di assicurazione”;
 - in the case of the Grand Duchy of Luxembourg: “société anonyme”, “société en commandite par actions”, “association d'assurances mutuelles”, “société coopérative”;
 - in the case of the Kingdom of the Netherlands: “naamloze vennootschap”, “onderlinge waarborgmaatschappij”;
 - in the case of the United Kingdom: incorporated companies limited by shares or by guarantee or unlimited, societies registered under the Industrial and Provident Societies Acts, societies registered under the Friendly Societies Acts, the association of underwriters known as Lloyd's;
 - in the case of the Hellenic Republic: “ανώνυμη εταιρία”, “αλληλασφαλιστικός συνεταιρισμός”;
 - in the case of the Kingdom of Spain: “sociedad anónima”, “sociedad mutua”, “sociedad cooperativa”;
 - in the case of the Portuguese Republic: “sociedade anónima”, “mútua de seguros”.

An insurance undertaking may also adopt the form of a European Company (SE) when that has been established.

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

- b limit its objects to the business of insurance and operations arising directly therefrom, to the exclusion of all other commercial business;
- c submit a scheme of operations in accordance with Article 9;
- d possess the minimum guarantee fund provided for in Article 17 (2);
- e be effectively run by persons of good repute with appropriate professional qualifications or experience.

2 An undertaking seeking authorization to extend its business to other classes or to extend an authorization covering only some of the risks pertaining to one class shall be required to submit a scheme of operations in accordance with Article 9.

It shall, furthermore, be required to show proof that it possesses the solvency margin provided for in Article 16 and, if with regard to such other classes Article 17 (2) requires a higher minimum guarantee fund than before, that it possesses that minimum.

3 Nothing in this Directive shall 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.

Member States shall not, however, 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 an undertaking intends to use in its dealings with policyholders.

Member States may not retain or introduce prior notification or approval of proposed increases in premium rates except as part of general price-control systems.

Nothing in this Directive shall prevent Member States from subjecting undertakings seeking or having obtained authorization for class 18 in point A of the Annex to checks on their direct or indirect resources in staff and equipment, including the qualification of their medical teams and the quality of the equipment available to such undertakings to meet their commitments arising out of this class of insurance.

4 The abovementioned provisions may not require that any application for authorization be considered in the light of the economic requirements of the market.

Article 7

Article 9 of Directive 73/239/EEC shall be replaced by the following:

Article 9

The scheme of operations referred to in Article 8 (1) (c) shall include particulars or proof concerning:

- (a) the nature of the risks which the undertaking proposes to cover;
- (b) the guiding principles as to reinsurance;
- (c) the items constituting the minimum guarantee fund;
- (d) estimates of the costs of setting up the administrative services and the organization for securing business; the financial resources intended to meet those costs and, if the risks to be covered are classified in class 18 in point A of the Annex, the resources at the undertaking's disposal for the provision of the assistance promised

and, in addition, for the first three financial years:

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

Article 8

The competent authorities of the home Member State shall not grant an undertaking authorization to take up the business of insurance 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.

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