

ANNEX I

Forms of reinsurance undertakings:

- 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/onderlinge verzekeringsvereniging’, ‘société coopérative/coöperatieve vennootschap’;
- in the case of the Czech Republic: ‘akciová společnost’;
- 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 Republic of Estonia: ‘aktsiaselts’;
- in the case of the Hellenic Republic: ‘ανώνυμη εταιρία’, ‘αλληλασφαλιστικός συνεταιρισμός’;
- in the case of the Kingdom of Spain: ‘sociedad anónima’;
- 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’;
- in the case of the Republic of Cyprus: ‘Εταιρεία Περιορισμένης Ευθύνης με μετοχές’ ή ‘Εταιρεία Περιορισμένης Ευθύνης με εγγύηση’;
- in the case of the Republic of Latvia: ‘akciju sabiedrība’, ‘sabiedrība ar ierobežotu atbildību’;
- in the case of the Republic of Lithuania: ‘akcinė bendrovė’, ‘uždaroji akcinė bendrovė’;
- 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 Republic of Hungary: ‘biztosító részvénytársaság’, ‘biztosító szövetkezet’, ‘harmadik országbeli biztosító magyarországi fióktelepe’;
- in the case of the Republic of Malta: ‘limited liability company/kumpannija ta responsabbiltà limitata’;
- in the case of the Kingdom of the Netherlands: ‘naamloze vennootschap’, ‘onderlinge waarborgmaatschappij’;
- in the case of the Republic of Austria: ‘Aktiengesellschaft’, ‘Versicherungsverein auf Gegenseitigkeit’;
- in the case of the Republic of Poland: ‘spółka akcyjna’, ‘towarzystwo ubezpieczeń wzajemnych’;
- in the case of the Portuguese Republic: ‘sociedade anónima’, ‘mútua de seguros’;
- in the case of the Republic of Slovenia: ‘delniška družba’;
- in the case of the Slovak Republic: ‘akciová spoločnosť’;
- in the case of the Republic of Finland: ‘keskinäinen vakuutusyhtiö/ömsesidigt försäkringsbolag’, ‘vakuutusosakeyhtiö/försäkringsaktiebolag’, ‘vakuutusyhdistys/försäkringsförening’;
- in the case of the Kingdom of Sweden: ‘försäkringsaktiebolag’, ‘ömsesidigt försäkringsbolag’;

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- 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 or incorporated under the Friendly Societies Acts, ‘the association of underwriters known as Lloyd’s’.

ANNEX II

Annexes I and II to Directive 98/78/EC shall be replaced by the following:

ANNEX I

CALCULATION OF THE ADJUSTED SOLVENCY OF INSURANCE UNDERTAKINGS AND REINSURANCE UNDERTAKINGS

1. CHOICE OF CALCULATION METHOD AND GENERAL PRINCIPLES
 - A. Member States shall provide that the calculation of the adjusted solvency of insurance undertakings and reinsurance undertakings referred to in Article 2(1) shall be carried out according to one of the methods described in point 3. A Member State may, however, provide for the competent authorities to authorise or impose the application of a method set out in point 3 other than that chosen by the Member State.
 - B. **Proportionality**

The calculation of the adjusted solvency of an insurance undertaking or a reinsurance undertaking shall take account of the proportional share held by the participating undertaking in its related undertakings.

‘Proportional share’ means either, where method 1 or method 2 described in point 3 is used, the proportion of the subscribed capital that is held, directly or indirectly, by the participating undertaking or, where method 3 described in point 3 is used, the percentages used for the establishment of the consolidated accounts.

However, whichever method is used, when the related undertaking is a subsidiary undertaking and has a solvency deficit, the total solvency deficit of the subsidiary has to be taken into account.

However, where, in the opinion of the competent authorities, the responsibility of the parent undertaking owning a share of the capital is limited strictly and unambiguously to that share of the capital, such competent authorities may give permission for the solvency deficit of the subsidiary undertaking to be taken into account on a proportional basis.

Where there are no capital ties between some of the undertakings in an insurance group or a reinsurance group, the competent authority shall determine which proportional share will have to be taken account of.
 - C. **Elimination of double use of solvency margin elements**

General treatment of solvency margin elements

Regardless of the method used for the calculation of the adjusted solvency of an insurance undertaking or a reinsurance undertaking, the double use of elements eligible for the solvency margin among the different

insurance undertakings or reinsurance undertakings taken into account in that calculation must be eliminated.

For that purpose, when calculating the adjusted solvency of an insurance undertaking or a reinsurance undertaking and where the methods described in point 3 do not provide for it, the following amounts shall be eliminated:

- the value of any asset of that insurance undertaking or reinsurance undertaking which represents the financing of elements eligible for the solvency margin of one of its related insurance undertakings or related reinsurance undertakings,
- the value of any asset of a related insurance undertaking or a related reinsurance undertaking of that insurance undertaking or reinsurance undertaking which represents the financing of elements eligible for the solvency margin of that insurance undertaking or reinsurance undertaking,
- the value of any asset of a related insurance undertaking or related reinsurance undertaking of that insurance undertaking or reinsurance undertaking which represents the financing of elements eligible for the solvency margin of any other related insurance undertaking or related reinsurance undertaking of that insurance undertaking or reinsurance undertaking.

Treatment of certain elements

Without prejudice to the provisions of Section C.1:

- profit reserves and future profits arising in a related life assurance undertaking or a related life reinsurance undertaking of the insurance undertaking or reinsurance undertaking for which the adjusted solvency is calculated, and
- any subscribed but not paid-up capital of a related insurance undertaking or a related reinsurance undertaking of the insurance undertaking or of reinsurance undertaking for which the adjusted solvency is calculated,

may only be included in the calculation in so far as they are eligible for covering the solvency margin requirement of that related undertaking. However, any subscribed but not paid-up capital which represents a potential obligation on the part of the participating undertaking shall be entirely excluded from the calculation.

Any subscribed but not paid-up capital of the participating insurance undertaking or the participating reinsurance undertaking which represents a potential obligation on the part of a related insurance undertaking or of a related reinsurance undertaking shall also be excluded from the calculation.

Any subscribed but not paid-up capital of a related insurance undertaking or a reinsurance undertaking which represents a potential obligation on the part of another related insurance undertaking or reinsurance undertaking of the same participating insurance undertaking or reinsurance undertaking shall be excluded from the calculation.

Transferability

If the competent authorities consider that certain elements eligible for the solvency margin of a related insurance undertaking or a related reinsurance undertaking other than those referred to in Section C.2 cannot effectively be

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made available to cover the solvency margin requirement of the participating insurance undertaking or the participating reinsurance undertaking for which the adjusted solvency is calculated, those elements may be included in the calculation only in so far as they are eligible for covering the solvency margin requirement of the related undertaking.

The sum of the elements referred to in Sections C.2 and C.3 may not exceed the solvency margin requirement of the related insurance undertaking or the related reinsurance undertaking.

D. **Elimination of the intra-group creation of capital**

When calculating adjusted solvency, no account shall be taken of any element eligible for the solvency margin arising out of reciprocal financing between the insurance undertaking or the reinsurance undertaking and:

- a related undertaking,
- a participating undertaking,
- another related undertaking of any of its participating undertakings.

Furthermore, no account shall be taken of any element eligible for the solvency margin of a related insurance undertaking or a related reinsurance undertaking of the insurance undertaking or reinsurance undertaking for which the adjusted solvency is calculated when the element in question arises out of reciprocal financing with any other related undertaking of that insurance undertaking or reinsurance undertaking.

In particular, reciprocal financing exists when an insurance undertaking or a reinsurance undertaking, or any of its related undertakings, holds shares in, or makes loans to, another undertaking which, directly or indirectly, holds an element eligible for the solvency margin of the first undertakings.

- E. The competent authorities shall ensure that the adjusted solvency is calculated with the same frequency as that laid down by Directives 73/239/EEC, 91/674/EEC, 2002/83/EC and 2005/68/EC for calculating the solvency margin of insurance undertakings or reinsurance undertakings. The value of the assets and liabilities shall be assessed in accordance with the relevant provisions of Directives 73/239/EEC, 91/674/EEC, 2002/83/EC and 2005/68/EC.

2. APPLICATION OF THE CALCULATION METHODS

2.1. **Related insurance undertakings and related reinsurance undertakings.**

The adjusted solvency calculation shall be carried out in accordance with the general principles and methods set out in this Annex.

In the case of all methods, where the insurance undertaking or reinsurance undertaking has more than one related insurance undertaking or related reinsurance undertaking the adjusted solvency calculation shall be carried out by integrating each of these related insurance undertakings or related reinsurance undertakings.

In cases of successive participations (for example, where an insurance undertaking or a reinsurance undertaking is a participating undertaking in another insurance undertaking or reinsurance undertaking which is also a participating undertaking in an insurance undertaking or a reinsurance undertaking), the adjusted solvency calculation shall be carried out at the level of each participating insurance undertaking or reinsurance undertaking which has at least one related insurance undertaking or one related reinsurance undertaking.

Member States may waive calculation of the adjusted solvency of an insurance undertaking or a reinsurance undertaking:

- if the insurance undertaking or reinsurance undertaking is a related undertaking of another insurance undertaking or a reinsurance undertaking authorised in the same Member State, and that related undertaking is taken into account in the calculation of the adjusted solvency of the participating insurance undertaking or reinsurance undertaking, or
- if the insurance undertaking or the reinsurance undertaking is a related undertaking of an insurance holding company which has its registered office in the same Member State as the insurance undertaking or the reinsurance undertaking, and both the holding insurance company and the related insurance undertaking or the related reinsurance undertaking are taken into account in the calculation carried out.

Member States may also waive calculation of the adjusted solvency of an insurance undertaking or reinsurance undertaking if it is a related insurance undertaking or a related reinsurance undertaking of another insurance undertaking, a reinsurance undertaking or an insurance holding company which has its registered office in another Member State, and if the competent authorities of the Member States concerned have agreed to grant exercise of the supplementary supervision to the competent authority of the latter Member State.

In each case, the waiver may be granted only if the competent authorities are satisfied that the elements eligible for the solvency margins of the insurance undertakings or the reinsurance undertakings included in the calculation are adequately distributed between those undertakings.

Member States may provide that where the related insurance undertaking or the related reinsurance undertaking has its registered office in a Member State other than that of the insurance undertaking or the reinsurance undertaking for which the adjusted solvency calculation is carried out, the calculation shall take account, in respect of the related undertaking, of the solvency situation as assessed by the competent authorities of that other Member State.

2.2. **Intermediate insurance holding companies**

When calculating the adjusted solvency of an insurance undertaking or a reinsurance undertaking which holds a participation in a related insurance undertaking, a related reinsurance undertaking, a non-member country insurance undertaking or a non-member country reinsurance undertaking, through an insurance holding company, the situation of the intermediate insurance holding company is taken into account. For the sole purpose of that calculation, to be undertaken in accordance with the general principles and methods described in this Annex, this insurance holding company shall be treated as if it were an insurance undertaking or reinsurance undertaking subject to a zero solvency requirement and were subject to the same conditions as are laid down in Article 16 of Directive 73/239/EEC, in Article 27 of Directive 2002/83/EC or in Article 36 of Directive 2005/68/EC, in respect of elements eligible for the solvency margin.

2.3. **Related non-member country insurance undertakings and related non-member country reinsurance undertakings**

When calculating the adjusted solvency of an insurance undertaking or a reinsurance undertaking which is a participating undertaking in a non-member country insurance undertaking or in a non-member country reinsurance undertaking, the latter shall be

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treated solely for the purposes of the calculation, by analogy with a related insurance undertaking or a related reinsurance undertaking, by applying the general principles and methods described in this Annex.

However, where the non-member country in which that undertaking has its registered office makes it subject to authorisation and imposes on it a solvency requirement at least comparable to that laid down in Directives 73/239/EEC, 2002/83/EC or 2005/68/EC, taking into account the elements of cover of that requirement, Member States may provide that the calculation shall take into account, as regards that undertaking, the solvency requirement and the elements eligible to satisfy that requirement as laid down by the non-member country in question.

2.4. **Related credit institutions, investment firms and financial institutions**

When calculating the adjusted solvency of an insurance undertaking or reinsurance undertaking which is a participating undertaking in a credit institution, investment firm or financial institution, the rules laid down in Article 16 of Directive 73/239/EEC, in Article 27 of Directive 2002/83/EC and in Article 36 of Directive 2005/68/EC, on the deduction of such participations shall apply *mutatis mutandis*, as well as the provisions on the ability of Member States under certain conditions to allow alternative methods and to allow such participations not to be deducted.

2.5. **Non-availability of the necessary information**

Where information necessary for calculating the adjusted solvency of an insurance undertaking or reinsurance undertaking, concerning a related undertaking with its registered office in a Member State or a non-member country, is not available to the competent authorities, for whatever reason, the book value of that undertaking in the participating insurance undertaking or reinsurance undertaking shall be deducted from the elements eligible for the adjusted solvency margin. In that case, the unrealised gains connected with such participation shall not be allowed as an element eligible for the adjusted solvency margin.

3. **CALCULATION METHODS**

Method 1: Deduction and aggregation method

The adjusted solvency situation of the participating insurance undertaking or the participating reinsurance undertaking is the difference between:

- (i) the sum of:
 - (a) the elements eligible for the solvency margin of the participating insurance undertaking or the participating reinsurance undertaking, and
 - (b) the proportional share of the participating insurance undertaking or the participating reinsurance undertaking in the elements eligible for the solvency margin of the related insurance undertaking or the related reinsurance undertaking,
 and
- (ii) the sum of:
 - (a) the book value in the participating insurance undertaking or the participating reinsurance undertaking of the related insurance undertaking or the related reinsurance undertaking, and

- (b) the solvency requirement of the participating insurance undertaking or the participating reinsurance undertaking, and
- (c) the proportional share of the solvency requirement of the related insurance undertaking or the related reinsurance undertaking.

Where the participation in the related insurance undertaking or the related reinsurance undertaking consists, wholly or in part, of an indirect ownership, then item (ii)(a) shall incorporate the value of such indirect ownership, taking into account the relevant successive interests, and items (i)(b) and (ii)(c) shall include the corresponding proportional shares of the elements eligible for the solvency margin of the related insurance undertaking or the related reinsurance undertaking.

Method 2: Requirement deduction method

The adjusted solvency of the participating insurance undertaking or the participating reinsurance undertaking is the difference between:

- (i) the sum of the elements eligible for the solvency margin of the participating insurance undertaking or the participating reinsurance undertaking,
and
- (ii) the sum of:
 - (a) the solvency requirement of the participating insurance undertaking or the participating reinsurance undertaking, and
 - (b) the proportional share of the solvency requirement of the related insurance undertaking or the related reinsurance undertaking.

When valuing the elements eligible for the solvency margin, participations within the meaning of this Directive are valued by the equity method, in accordance with the option set out in Article 59(2)(b) of Directive 78/660/EEC.

Method 3: Accounting consolidation-based method

The calculation of the adjusted solvency of the participating insurance undertaking or the participating reinsurance undertaking shall be carried out on the basis of the consolidated accounts. The adjusted solvency of the participating insurance undertaking or the participating reinsurance undertaking is the difference between the elements eligible for the solvency margin calculated on the basis of consolidated data, and:

- (a) either the sum of the solvency requirement of the participating insurance undertaking or the participating reinsurance undertaking and of the proportional shares of the solvency requirements of the related insurance undertakings or the related reinsurance undertaking, based on the percentages used for the establishment of the consolidated accounts,
- (b) or the solvency requirement calculated on the basis of consolidated data.

The provisions of Directives 73/239/EEC, 91/674/EEC, 2002/83/EC and 2005/68/EC shall apply for the calculation of the elements eligible for the solvency margin and of the solvency requirement based on consolidated data.

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ANNEX II

SUPPLEMENTARY SUPERVISION FOR INSURANCE UNDERTAKINGS AND REINSURANCE UNDERTAKINGS THAT ARE SUBSIDIARIES OF AN INSURANCE HOLDING COMPANY, A NON-MEMBER COUNTRY INSURANCE UNDERTAKING OR A NON-MEMBER COUNTRY REINSURANCE UNDERTAKING

1. In the case of two or more insurance undertakings or reinsurance undertakings referred to in Article 2(2) which are the subsidiaries of an insurance holding company, a non-member country insurance undertaking or a non-member country reinsurance undertaking and which are established in different Member States, the competent authorities shall ensure that the method described in this Annex is applied in a consistent manner.

The competent authorities shall exercise the supplementary supervision with the same frequency as that laid down by Directives 73/239/EEC, 91/674/EEC, 2002/83/EC and 2005/68/EC for calculating the solvency margin of insurance undertakings and reinsurance undertakings.

2. Member States may waive the calculation provided for in this Annex with regard to an insurance undertaking or a reinsurance undertaking:
 - if that insurance undertaking or reinsurance undertaking is a related undertaking of another insurance undertaking or reinsurance undertaking and if it is taken into account in the calculation provided for in this Annex carried out for that other undertaking,
 - if that insurance undertaking or reinsurance undertaking and one or more other insurance undertakings or reinsurance undertakings authorised in the same Member State have as their parent undertaking the same insurance holding company, non-member country insurance undertaking, or non-member country reinsurance undertaking, and the insurance undertaking or reinsurance undertaking is taken into account in the calculation provided for in this Annex carried out for one of these other undertakings,
 - if that insurance undertaking or reinsurance undertaking and one or more other insurance undertakings or reinsurance undertakings authorised in other Member States have as their parent undertaking the same insurance holding company, non-member country insurance undertaking or non-member country reinsurance undertaking, and an agreement granting exercise of the supplementary supervision covered by this Annex to the supervisory authority of another Member State has been concluded in accordance with Article 4(2).

In the case of successive participations (for example: an insurance holding company or a non-member country insurance or reinsurance undertaking, which is itself owned by another insurance holding company or a non-member country insurance or reinsurance undertaking), Member States may apply the calculations provided for in this Annex only at the level of the ultimate parent undertaking of the insurance undertaking or reinsurance undertaking which is an insurance holding company, a non-member country insurance undertaking or a non-member country reinsurance undertaking.

3. The competent authorities shall ensure that calculations analogous to those described in Annex I are carried out at the level of the insurance holding company, non-member country insurance undertaking or non-member country reinsurance undertaking.

The analogy shall consist in applying the general principles and methods described in Annex I at the level of the insurance holding company, non-member country insurance undertaking or non-member country reinsurance undertaking.

For the sole purpose of that calculation, the parent undertaking shall be treated as if it were an insurance undertaking or reinsurance undertaking subject to:

- a zero solvency requirement where it is an insurance holding company,
- a solvency requirement determined in accordance with the principles of Section 2.3 of Annex I, where it is a non-member country insurance undertaking or a non-member country reinsurance undertaking,

and is subject to the same conditions as laid down in Article 16 of Directive 73/239/EEC, in Article 27 of Directive 2002/83/EC and in Article 36 of Directive 2005/68/EC as regards the elements eligible for the solvency margin.

4. Non-availability of the necessary information

Where information necessary for the calculation provided for in this Annex, concerning a related undertaking with its registered office in a Member State or a non-member country, is not available to the competent authorities, for whatever reason, the book value of that undertaking in the participating undertaking shall be deducted from the elements eligible for the calculation provided for in this Annex. In that case, the unrealised gains connected with such participation shall not be allowed as an element eligible for the calculation.