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Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 19,509, 10 ta' Diċembru, 2015
Taqsima B

L.N. 410 of 2015

INSURANCE BUSINESS ACT (CAP. 403)

Insurance Business (Supervision of Insurance and Reinsurance Undertakings in a Group) Regulations, 2015

IN exercise of the powers conferred by articles 32A and 64 of the Insurance Business Act, the Minister of Finance, after consultation with the Malta Financial Services Authority, has made the following regulations:-

Preliminary

Citation, scope and commencement.

1. (1) The title of these regulations is the Insurance Business (Supervision of Insurance and Reinsurance Undertakings in a Group) Regulations, 2015.

(2) The purpose of these regulations is to implement in part Title III of the Solvency II Directive.

(3) These regulations shall come into force on the 1st January 2016.

Interpretation.

2. In these regulations, unless the context otherwise requires -

Cap. 403.

"the Act" means the Insurance Business Act;

"authorised insurance undertaking" means an undertaking whose head office is in Malta, which has received authorisation pursuant to article 7 of the Act to carry on direct general business and, or long term business, and includes an undertaking authorised to carry on direct and reinsurance business;

"authorised reinsurance undertaking" means an undertaking whose head office is in Malta, which has received authorisation pursuant to article 7 of the Act to carry on business restricted to reinsurance;

"college of supervisors" means a permanent but flexible structure for the cooperation, coordination and facilitation of decision making concerning the supervision of a group;

"Directive 2002/87/EC" means Directive 2002/87/EC of the European Parliament and of the Council of the 16 December 2002 on the supplementary supervision of credit institutions, insurance

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undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council, as amended from time to time;

"European insurance undertaking" means an undertaking having its head office in a Member State or an EEA State, other than Malta, pursuing the activity of direct insurance within the meaning of Article 2 of the Solvency II Directive, which has received authorisation in accordance with Article 14 of the Solvency II Directive;

"European regulatory authority" means the supervisory authority or supervisory authorities as defined in Article 13 of the Solvency II Directive, designated by a Member State or EEA State, other than Malta, empowered by law or regulation to supervise insurance or reinsurance undertakings;

"European reinsurance undertaking" means an undertaking having its head office in a Member State or an EEA State, other than Malta, pursuing business restricted to reinsurance within the meaning of Article 2 of the Solvency II Directive which has received authorisation in accordance with Article 14 of the Solvency II Directive;

"group" means a group of undertakings that:

(a) consists of a participating undertaking, its subsidiaries and the entities in which the participating undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship as set out in Article 22 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC; or

(b) is based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among those undertakings, and that may include mutual or mutual-type associations, provided that:

(i) one of those undertakings effectively exercises, through centralised coordination, a dominant influence over the decisions, including financial decisions, of the other undertakings that are part of the group; and

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(ii) the establishment and dissolution of such relationships for the purposes of Title III of the Solvency II Directive are subject to prior approval by the group supervisor,

where the undertaking exercising the centralised coordination shall be considered as the parent undertaking, and the other undertakings shall be considered as subsidiaries;

"group supervisor" means the supervisory authority responsible for group supervision in accordance with Article 247 of the Solvency II Directive;

"insurance holding company" means a parent undertaking, which is not a mixed financial holding company and the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly authorised insurance undertakings, authorised reinsurance undertakings, European insurance undertakings, European reinsurance undertakings, or third country insurance undertakings or third country reinsurance undertakings, at least one of such subsidiary undertakings being an authorised insurance undertaking, an authorised reinsurance undertaking, a European insurance undertaking or a European reinsurance undertaking;

"intra-group transaction" means any transaction by which an authorised insurance undertaking, an authorised reinsurance undertaking, a European insurance undertaking or a European reinsurance undertaking, relies, either directly or indirectly, on other undertakings within the same group or on any natural or legal person linked to the undertakings within the same group by close links, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment;

"Malta Solvency II parent" means a parent undertaking with head office in Malta which is:

(a) an authorised insurance undertaking or an authorised reinsurance undertaking which is a participating undertaking in at least one authorised insurance undertaking, authorised reinsurance undertaking, European insurance undertaking, European reinsurance undertaking, third country insurance undertaking or third country reinsurance undertaking;

(b) an insurance holding company; or

(c) a mixed financial holding company;

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"method 1" means the method of calculating group solvency as described in regulation 22;

"method 2" means the method of calculating group solvency as described in regulation 25;

"mixed-activity insurance holding company" means a parent undertaking, other than an authorised insurance undertaking, an authorised reinsurance undertaking, a European insurance undertaking, a European reinsurance undertaking, a third country insurance undertaking, a third country reinsurance undertaking, an insurance holding company or a mixed financial holding company, which includes at least one authorised insurance undertaking, authorised reinsurance undertaking, European insurance undertaking or European reinsurance undertaking among its subsidiary undertakings;

"mixed financial holding company" means a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC;

"overseas regulatory authority" means an authority in a country or territory outside Malta, that is not a Member State or EEA State, which exercises any regulatory or supervisory function in relation to financial services corresponding to a function of the competent authority as defined in the Malta Financial Services Authority Act;

Cap. 330.

"parent undertaking" has the same meaning as assigned to it by article 2 of the Companies Act, and for the purposes of these regulations includes any undertaking which, in the opinion of the competent authority, effectively exercises a dominant influence over another undertaking;

Cap. 368.

"participating undertaking" means an undertaking which is either a parent undertaking or other undertaking which holds a participation or an undertaking linked with another undertaking by a relationship as set out in Article 22 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC;

"participation" means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking, and for the purposes of these regulations, includes, the holding, directly or indirectly of voting rights or capital in an undertaking, over which, in the opinion of the competent authority, a

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significant influence is effectively exercised;

"related undertaking" means either a subsidiary or another undertaking in which a participation is held, or an undertaking linked with another undertaking by a relationship as set out in Articles 22(7), (8), and (9) of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC;

"Solvency II Directive" means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast), as amended from time to time, and includes any delegated acts and any technical standards that have been or may be issued thereunder;

"subsidiary undertaking" means an undertaking within the meaning of article 2 of the Companies Act, and for the purposes of these regulations, includes, any undertaking over which, in the opinion of the competent authority, a parent undertaking effectively exercises a dominant influence; Cap. 368.

"third country" means a country which is not a Member State or EEA State,

and other words and expressions which are also used in the Act shall, in these regulations, have the same meaning as in the Act.

(2) The provisions of these regulations shall be applicable in addition to the Commission Delegated Regulation (EU) 2015/35 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

PART I

Group Supervision: Cases of Application, Scope and Levels

Applicability of regulations.

3. (1) For the purpose of these regulations, supervision at the level of the group shall apply to every authorised insurance undertaking and authorised reinsurance undertaking which is part of a group.

(2) Where the competent authority is the group supervisor of a group, or where it is one of the authorities responsible for the

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supervision of an individual insurance or reinsurance undertaking in a group and is not the group supervisor, group supervision shall apply in the following cases, where:

(a) either:

(i) an authorised insurance undertaking or an authorised reinsurance undertaking which is a participating undertaking in at least one other authorised insurance undertaking, authorised reinsurance undertaking, European insurance undertaking European reinsurance undertaking, third country insurance undertaking or third country reinsurance undertaking, in accordance with regulations 9 to 43; or

(ii) a European insurance undertaking or a European reinsurance undertaking which is a participating undertaking in at least an authorised insurance undertaking or an authorised reinsurance undertaking, in accordance with regulations 9 to 43; or

(b) an authorised insurance undertaking or an authorised reinsurance undertaking, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in Malta or in another Member State or EEA State, in accordance with regulations 9 to 43; or

(c) an authorised insurance undertaking or an authorised reinsurance undertaking, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in a third country, or is a third country insurance undertaking or a third country reinsurance undertaking, in accordance with regulations 44 to 47; or

(d) an authorised insurance undertaking or an authorised reinsurance undertaking, the parent undertaking of which is a mixed-activity insurance holding company, in accordance with regulation 48.

(3) For the avoidance of doubt, the provisions of the Act, regulations or Insurance Rules issued thereunder, concerning the supervision of an authorised insurance undertaking or an authorised reinsurance undertaking taken individually shall continue to apply to such an undertaking, except where it is otherwise provided under these regulations.

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Level of application with regard to mixed financial holding companies.

4. (1) Where a mixed financial holding company is subject to equivalent provisions under the Solvency II Directive and under Directive 2002/87/EC, in particular in terms of risk-based supervision, and where the competent authority is the group supervisor of the group, the authority may, after consulting other European regulatory authorities concerned, apply only the relevant provisions of Directive 2002/87/EC to that mixed financial holding company.

(2) Where a mixed financial holding company is subject to equivalent provisions under the Solvency II Directive and under Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, in particular in terms of risk-based supervision, and where the competent authority is the group supervisor of the group, the authority may, in agreement with the consolidating supervisor in the banking and investment services sector, apply only the provisions of the Directive relating to the most significant sector as determined in accordance with Article 3(2) of Directive 2002/87/EC.

(3) Where the competent authority is the group supervisor of the group, it shall inform the European Banking Authority, established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010, and EIOPA, of the decisions taken under sub-regulations (1) and (2).

Levels at which supervision need not be exercised in relation to risk concentration or intra-group transactions, or both.

5. Where the competent authority is the group supervisor of a group, it may, after consultation with other European regulatory authorities concerned, decide not to carry out supervision of the risk concentration, intra-group transactions, or both, as referred to in regulation 33, only in the following cases:

(a) in the cases referred to in regulation 3(2)(a) and (b), where the participating insurance or reinsurance undertaking or the insurance holding company or mixed financial holding company which has its head office in Malta, or in another Member State or EEA State, is either a related undertaking of, or is itself a regulated entity or a mixed financial holding company which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, at the level of that participating insurance or reinsurance undertaking or that insurance holding company or mixed financial holding company;

(b) where the ultimate parent insurance or reinsurance undertaking or insurance holding company or mixed financial

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holding company which has its head office in Malta, or in another Member State or EEA State, as referred to in regulation 7, is a subsidiary undertaking of an undertaking which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, at the level of that ultimate parent undertaking or company.

Scope of group supervision.

6. (1) Without prejudice to regulation 42 and in so far as insurance holding companies or mixed financial holding companies are concerned, the exercise of group supervision by the competent authority in accordance with regulations 3, 4 and 5, shall not imply that the competent authority is required to play a supervisory role in relation to the third country insurance undertaking, third country reinsurance undertaking, the insurance holding company, mixed financial holding company or the mixed-activity insurance holding company, taken individually.

(2) Where the competent authority is the group supervisor of a group, it may decide on a case-by-case basis not to include an undertaking in the group supervision referred to in regulations 3, 4, and 5, where:

(a) the undertaking is situated in a third country, where there are legal impediments to the transfer of the necessary information, without prejudice to the provisions of regulation 21;

(b) the undertaking which should be included is of negligible interest with respect to the objectives of group supervision; or

(c) the inclusion of the undertaking would be inappropriate or misleading with respect to the objectives of the group supervision.

(3) Where several undertakings of the same group, taken individually, may be excluded pursuant to sub-regulation (2)(b), such undertakings shall nevertheless be included where, collectively, they are of non-negligible interest.

(4) Where the competent authority is the group supervisor of the group and is of the opinion that an insurance or reinsurance undertaking is not to be included in the group supervision, based on sub-regulation (2)(b) or (c), it shall consult other regulatory authorities concerned in the supervision of the group, before taking a decision in accordance with sub-regulation (2).

(5) Where the competent authority is one of the authorities

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responsible for the supervision of an individual insurance or reinsurance undertaking in a group and is not the group supervisor, and the group supervisor has decided, in accordance with Article 214 of the Solvency II Directive, not to include that authorised insurance undertaking or authorised reinsurance undertaking in the group supervision, the competent authority may require the undertaking which is at the head of the group to provide any information which may facilitate the competent authority's supervision of the excluded authorised insurance undertaking or authorised reinsurance undertaking.

Ultimate parent undertaking at Union level.

7. Where the participating insurance or reinsurance undertaking or the insurance holding company or the mixed financial holding company, referred to in regulation 3(2)(a) and (b), is itself a subsidiary undertaking of another authorised insurance undertaking, authorised reinsurance undertaking, European insurance undertaking or European reinsurance undertaking, or of another insurance holding company or mixed financial holding company which has its head office in Malta, or in another Member State or EEA State, regulation 9 to 43 shall apply only at the level of the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company which has its head office in Malta, or in another Member State or EEA State.

Ultimate parent undertaking at national level.

8. (1) The competent authority may subject the ultimate Malta Solvency II parent to group supervision, where:

(a) the ultimate parent undertaking at Union level referred to in regulation 7, has its head office in a Member State or EEA State, other than Malta;

(b) the ultimate parent undertaking at Union level referred to in regulation 7, has not obtained permission in accordance with Articles 237 or 243 of the Solvency II Directive, for the ultimate Malta Solvency II parent, which is its subsidiary, to be subject to regulations 29 and 30; and

(c) the competent authority is one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group and is not the group supervisor.

(2) The competent authority shall:

(a) before taking the decision to exercise supervision in accordance with sub-regulation (1), consult both the group supervisor and the ultimate parent undertaking at Union level; and

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(b) where such a decision has been taken, explain its decision to both the group supervisor and the ultimate parent undertaking at Union level.

(3) Where the competent authority is the group supervisor of a group and a decision has been taken to subject the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company to group supervision, pursuant to Article 216(1) of the Solvency II Directive, the competent authority shall inform the college of supervisors in accordance with article 32B(3)(a) of the Act.

(4) (a) Where the competent authority is one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group and is not the group supervisor, and takes a decision in accordance with regulation 8(1) and (2) or concludes an agreement in accordance with regulation 8(11) to (13), regulations 9 to 43 shall apply *mutatis mutandis*, subject to paragraph (b) and to sub-regulations (1)(b), (5) to (10) of this regulation.

(b) The decision or agreement referred to in paragraph (a) is subject to the decision which the competent authority may take, to restrict group supervision of the ultimate Malta Solvency II parent to one or more of the following:

(i) Articles 218 to 243 of Title III, Chapter II, Section 1 of the Solvency II Directive;

(ii) Articles 244 and 245 of Title III, Chapter II, Section 2 of the Solvency II Directive;

(iii) Article 246 of Title III, Chapter II, Section 3 of the Solvency II Directive.

(5) Where the competent authority decides to apply Articles 218 to 243 of the Solvency II Directive to the ultimate Malta Solvency II parent or concludes an agreement in accordance with sub-regulations (11) to (13), the choice of method made in accordance with Article 220 of the Solvency II Directive by the group supervisor in respect of the ultimate parent undertaking at Union level referred to in Article 215 of the Solvency II Directive, shall be recognised as determinative and applied by the competent authority.

(6) Where the competent authority decides to apply Articles 218 to 243 of the Solvency II Directive to the ultimate Malta Solvency II parent or concludes an agreement in accordance with sub-regulations (11) to (13), the competent authority shall recognise as

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determinative and apply any permission granted in accordance with Articles 231 or 233(5) of the Solvency II Directive, to the ultimate parent undertaking at Union level referred to in regulation 7 to calculate the group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance undertakings and reinsurance undertakings in the group, on the basis of an internal model.

(7) In the situation referred to in sub-regulation (6), where the competent authority considers that the risk profile of the ultimate Malta Solvency II parent deviates significantly from the internal model approved at Union level, and as long as that undertaking does not properly address the concerns of the competent authority, the competent authority may decide to impose a capital add-on to the group Solvency Capital Requirement of that undertaking resulting from the application of such model or, in exceptional circumstances, where such capital add-on would not be appropriate, to require that undertaking to calculate its group Solvency Capital Requirement on the basis of the standard formula.

(8) The competent authority shall explain the decisions taken in accordance with sub-regulations (6) or (7) to both the Malta Solvency II parent and the group supervisor.

(9) Where the competent authority is the group supervisor of a group and a decision has been taken pursuant to Article 216(4) of the Solvency II Directive, the competent authority shall inform the college of supervisors in accordance with article 32B(3)(a) of the Act.

(10) Where the competent authority decides to apply Articles 218 to 243 of the Solvency II Directive to the ultimate Malta Solvency II parent that undertaking shall not be permitted to introduce, in accordance with regulations 27 to 32, an application for permission to subject any of its subsidiaries to Articles 238 and 239 of the Solvency II Directive.

(11) Where the competent authority makes a decision in accordance with sub-regulation (1), the competent authority may conclude an agreement with the European regulatory authorities in other Member States or EEA States where another related ultimate parent undertaking at national level, other than Malta, is present, with a view to carrying out group supervision at the level of a subgroup covering Malta and such other Member States or EEA States.

(12) Where the competent authority has concluded an agreement as referred to in sub-regulation (11), group supervision shall not be carried out at the level of any ultimate parent undertaking

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referred to Article 216 of the Solvency II Directive, present in Member States or EEA States, other than the Member States or EEA States where the subgroup referred to in sub-regulation (11) is located.

(13) Where an agreement is concluded in accordance with sub-regulation (11), the competent authority shall explain the agreement to the group supervisor and to the ultimate parent undertaking at Union level.

(14) Where the competent authority is the group supervisor of a group and an agreement to carry out group supervision at subgroup level in the Member States or EEA States concerned, has been concluded pursuant to Article 217 of the Solvency II Directive, the competent authority shall inform the college of supervisors in accordance with article 32B(3)(a) of the Act.

PART II

Financial Position

Group Solvency: general provisions.

9. (1) Supervision of the group solvency shall be exercised in accordance with sub-regulations (2) and (3), and regulations 34 to 43.

(2) In the case referred to in regulation 3(2)(a)(i), a participating insurance or reinsurance undertaking in a group, shall ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with regulations 12 to 25.

(3) In the case referred to in regulation 3(2)(b), an authorised insurance undertaking or an authorised reinsurance undertaking in a group, shall ensure that eligible own funds available in the group are always at least equal to the group Solvency Capital Requirement as calculated in accordance with regulation 26.

(4) An undertaking referred to in sub-regulations (2) and (3), shall have procedures in place to identify deteriorating financial conditions within the group and shall notify the group supervisor, without delay, when such deterioration occurs.

(5) An undertaking, as referred to in sub-regulations (2) and (3), shall:

(a) immediately inform the group supervisor, as soon as such undertaking observes that the group Solvency Capital Requirement is no longer complied with, or where there is the

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risk of non-compliance within the following three months;

(b) within two months from the observation of non-compliance with the group Solvency Capital Requirement, submit a realistic recovery plan for approval by the group supervisor;

(c) take the necessary measures to achieve within six months from the observation of non-compliance with the group Solvency Capital Requirement, which period may be extended for a further three months by the group supervisor, the re-establishment of the level of eligible own funds covering the group Solvency Capital Requirement or the reduction of the risk profile to ensure compliance with the group Solvency Capital Requirement;

(d) submit a progress report to the group supervisor every three months, setting out the measures taken and the progress made to re-establish the level of own funds covering the group Solvency Capital Requirement or to reduce the risk profile to ensure compliance with the group Solvency Capital Requirement, in the event of exceptional adverse situations affecting such undertaking, as declared by EIOPA, and where appropriate in consultation with the European Systematic Risk Board.

(6) Where the competent authority is the group supervisor of a group, the authority:

(a) shall require an authorised insurance undertaking or an authorised reinsurance undertaking, a European insurance undertaking or a European reinsurance undertaking, in a group, which has informed the competent authority as soon as it was observed that the group Solvency Capital Requirement is no longer complied with, or where there is a risk of non-compliance in the following three months, to take the necessary measures to achieve, within six months from the observation of non-compliance with the Solvency Capital Requirement, the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement;

(b) may, if appropriate extend the period of six months referred to in paragraph (a) by three months;

(c) may, in the event of exceptional adverse situations affecting any of the authorised insurance undertaking,

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authorised reinsurance undertaking, European insurance undertaking or European reinsurance undertaking, in a group, extend the period set out in paragraph (b) by a maximum period of seven years, taking into account all relevant factors, including the average duration of the technical provisions;

(d) may, request EIOPA to declare the existence of exceptional adverse situations, if any, of the authorised insurance undertaking, authorised reinsurance undertaking, European insurance undertaking or European reinsurance undertaking, in a group, representing a significant share of the market or of the affected lines of business are unlikely to meet one of the requirements set out in paragraph (a);

(e) shall cooperate with EIOPA:

(i) to assess on a regular basis whether the conditions referred to in sub-regulation (7) still apply;

(ii) to declare when an exceptional adverse situation has ceased to exist;

(f) shall require any affected undertaking to submit a progress report setting out the measures taken and the progress made to re-establish the level of eligible own funds covering the group Solvency Capital Requirement or to reduce the risk profile to ensure compliance with the group Solvency Capital Requirement;

(g) shall withdraw the extension referred to in paragraph (c) where that progress report shows that there was no significant progress in achieving the re-establishment of the level of eligible own funds covering the group Solvency Capital Requirement or the reduction of the risk profile to ensure compliance with the group Solvency Capital Requirement between the date of the observation of non-compliance of the group Solvency Capital Requirement and the date of the submission of the progress report.

(7) For the purposes of this regulation, "exceptional adverse situations" exist where the financial situation of an authorised insurance undertaking, an authorised reinsurance undertaking, a European insurance undertaking or a European reinsurance undertaking, representing a significant share of the market or of the affected lines of business, is seriously or adversely affected by one or more of the following conditions:

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(a) a fall in financial markets which is unforeseen, sharp and steep;

(b) a persistent low interest rate environment;

(c) a high-impact catastrophic event.

Frequency of calculation.

10. (1) The group solvency calculations referred to in regulation 9(2) and (3), shall be carried out at least annually by the participating insurance or reinsurance undertaking referred to in regulation 9(2), by the insurance holding company or by the mixed financial holding company referred to in regulation 9(3).

(2) The relevant data for, and the results of, the calculations referred to in regulation 9(2) and (3) shall be submitted to the group supervisor:

(a) by the participating insurance or reinsurance undertaking referred to in regulation 9(2); or

(b) by the insurance holding company or the mixed financial holding company referred to in regulation 9(3), or by such other undertaking in the group as may be identified by the group supervisor, after consulting the competent authority, the European regulatory authorities concerned and the group itself, where the group is not headed by an authorised insurance undertaking, an authorised reinsurance undertaking, a European insurance undertaking or a European reinsurance undertaking.

(3) (a) The authorised insurance undertaking and authorised reinsurance undertaking referred to in regulation 9(2), and the insurance holding company and mixed financial holding company, referred to in regulation 9(3) shall monitor the group Solvency Capital Requirement on an ongoing basis.

(b) Where the risk profile of the group deviates significantly from the assumptions underlying the last reported group Solvency Capital Requirement, the group Solvency Capital Requirement shall be recalculated without delay and reported to the group supervisor.

Supervision of group solvency.

11. Where the competent authority is the group supervisor of a group, the authority:

(a) shall ensure that the calculations referred to in Article 218(2) and (3) of the Solvency II Directive are carried out at least annually, by the participating insurance or reinsurance undertaking, by the insurance holding company or

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by the mixed financial holding company;

(b) shall conduct supervisory reviews in accordance with Articles 247 to 259 of the Solvency II Directive, to determine whether insurance or reinsurance undertakings in the group are complying with Articles 218(2) and (3) of the Solvency II Directive;

(c) shall inform the other European regulatory authorities within the college of supervisors, which shall analyse the situation of the group, as soon as a participating undertaking in the group informs the competent authority, that it is no longer in compliance with the Solvency Capital Requirement, or that there is a risk of non-compliance in the following three months;

(d) shall, where the group is not headed by an insurance undertaking or reinsurance undertaking, consult the undertakings in the group and the European regulatory authorities concerned in the supervision of the group, before identifying an undertaking other than an insurance holding company or a mixed financial holding company to supply relevant data for, and the results, of, the calculations referred to in Articles 218(2) and (3) of the Solvency II Directive;

(e) may, where there is evidence to suggest that the risk profile of the group has altered significantly since the date on which the group Solvency Capital Requirement was last reported, require a recalculation of the group Solvency Capital Requirement.

Choice of method.

12. (1) The calculation of the solvency at the level of the group of the authorised insurance undertakings and authorised reinsurance undertakings referred to in regulation 3(2)(a), shall be carried out:

(a) in accordance with the technical principles in regulations 13 to 26; and

(b) in accordance with method 1, unless the group supervisor has determined under Article 220(2) of the Solvency II Directive that method 2 or a combination of method 1 and method 2 shall be applied.

(2) Where the competent authority is the group supervisor of a group, the authority shall consult the group and the other European regulatory authorities concerned in the supervision of the group, before taking a decision in accordance with sub-regulation (1)(b) on

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requiring the particular group to use method 2 or a combination of method 1 and method 2, for the calculation of the solvency at the level of the group, where the exclusive application of method 1 would not be appropriate.

(3) Where the competent authority is one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group and is not the group supervisor, the competent authority shall apply the method chosen by the group supervisor for the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company at Union level, in relation to:

(a) group supervision at national level in accordance with regulation 8(1); and

(b) supervision at sub-group level in accordance with regulation 8(11).

Inclusion of proportional share.

13. (1) The calculation of the group solvency shall take into account the proportional share held by the participating undertaking in its related undertakings.

(2) Subject to sub-regulation (3), for the purposes of sub-regulation (1), the proportional share shall comprise either of the following:

(a) where method 1 is used, the percentages used for the establishment of the consolidated accounts; or

(b) where method 2 is used, the proportion of the subscribed capital that is held, directly or indirectly, by the participating undertaking.

(3) Notwithstanding sub-regulation (2) and regardless of the method used:

(a) where the related undertaking is a subsidiary undertaking and does not have sufficient eligible own funds to cover its Solvency Capital Requirement:

(i) the total solvency deficit of the subsidiary undertaking shall be taken into account; or

(ii) a proportional share of that solvency deficit shall be taken into account, if the group supervisor so determines in accordance with sub-regulations (4) or (5);

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(b) the proportional share shall be determined by the group supervisor if such a determination is made in accordance with sub-regulation (6).

(4) Where the competent authority is one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group and is not the group supervisor, and is of the opinion that the responsibility of the parent undertaking owning a share of the capital is strictly limited to that share of the capital, the group supervisor may nevertheless allow for the solvency deficit of the subsidiary undertaking to be taken into account on a proportional basis.

(5) Where the competent authority is the group supervisor of a group, and in the opinion of a European regulatory authority concerned the responsibility of the parent undertaking owning a share of the capital is strictly limited to that share of the capital, the competent authority may nevertheless allow for the solvency deficit of the subsidiary undertaking to be taken into account on a proportional basis.

(6) Where the competent authority is the group supervisor of a group, the authority shall, after consulting the European regulatory authority concerned and the group itself, determine the proportional share which shall be taken into account in the calculation of group solvency, in any of the following cases:

(a) where there are no capital ties between some of the undertakings in a group;

(b) where a European regulatory authority has determined that the holding, directly or indirectly, of voting rights or capital in an undertaking qualifies as a participation because, in its opinion, a significant influence is effectively exercised over that undertaking;

(c) where a European regulatory authority has determined that an undertaking is a parent undertaking of another because, in the opinion of that regulatory authority, it effectively exercises a dominant influence over that other undertaking.

Elimination of double use of eligible own funds.

14. (1) The own funds eligible for the Solvency Capital Requirement shall not be taken into account more than once among the different insurance or reinsurance undertakings, in a group, in the calculation of the group solvency.

(2) For the purposes of sub-regulation (1), when calculating

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the group solvency and where method 1 and method 2 do not provide for it, the following amounts shall be excluded:

(a) the value of any asset of the participating insurance or reinsurance undertaking, which represents the financing of own funds eligible for the Solvency Capital Requirement of one of its related insurance or reinsurance undertakings;

(b) the value of any asset of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of that participating insurance or reinsurance undertaking;

(c) the value of any asset of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking, which represents the financing of own funds eligible for the Solvency Capital Requirement of any other related insurance or reinsurance undertaking of that participating insurance or reinsurance undertaking.

(3) Without prejudice to sub-regulation (2), the following may be included in the calculation only in so far as they are eligible for covering the Solvency Capital Requirement of the related undertaking concerned:

(a) surplus funds falling under Article 91(2) of the Solvency II Directive arising in a related insurance or reinsurance undertaking carrying on long term business, of the participating insurance or reinsurance undertaking for which the group solvency is calculated;

(b) any subscribed but not paid-up capital of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated.

(4) Notwithstanding sub-regulation (3), the following shall in any event be excluded from the calculation:

(a) subscribed but not paid-up capital which represents a potential obligation on the part of the participating undertaking;

(b) subscribed but not paid-up capital of the participating insurance or reinsurance undertaking, which represents a potential obligation on the part of a related

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insurance or reinsurance undertaking;

(c) subscribed but not paid-up capital of a related insurance or reinsurance undertaking which represents a potential obligation on the part of another related insurance or reinsurance undertaking of the same participating insurance or reinsurance undertaking.

(5) Where the competent authority considers that certain own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking other than those referred to in sub-regulations (3) and (4), cannot effectively be made available to cover the Solvency Capital Requirement of the participating insurance or reinsurance undertaking for which the group solvency is calculated, those own funds may be included in the calculation only in so far as they are eligible for covering the Solvency Capital Requirement of that related undertaking.

(6) The sum of the own funds referred to in sub-regulations (3) to (5), shall not exceed the Solvency Capital Requirement of the related insurance or reinsurance undertaking.

(7) Any eligible own funds of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated that are subject to prior authorisation from the competent authority or the relevant European regulatory authority in accordance with Article 90 of the Solvency II Directive, shall be included in the calculation only in so far as they have been duly authorised by the competent authority or the relevant European regulatory authority, responsible for the supervision of that related undertaking.

Elimination of intra-group creation of capital.

15. (1) When calculating group solvency, no account shall be taken of any own funds eligible for the Solvency Capital Requirement arising out of reciprocal financing between the participating insurance or reinsurance undertaking and any of the following:

(a) a related undertaking;

(b) a participating undertaking;

(c) another related undertaking of any of its participating undertakings.

(2) When calculating group solvency, no account shall be taken of any own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking of the participating

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insurance or reinsurance undertaking for which the group solvency is calculated where the own funds concerned arise out of reciprocal financing with any other related undertaking of that participating insurance or reinsurance undertaking.

(3) Reciprocal financing shall be deemed to exist at least where an insurance or reinsurance undertaking, or any of its related undertakings, holds shares in, or makes loans to, another undertaking which, directly or indirectly, holds own funds eligible for the Solvency Capital Requirement of the first undertaking.

Valuation.

16. The value of the assets and liabilities shall be assessed in accordance with Insurance Rules issued under article 18D of the Act.

Related insurance or reinsurance undertakings.

17. (1) Where an authorised insurance undertaking or an authorised reinsurance undertaking has more than one related insurance or reinsurance undertaking, the group solvency calculation shall be carried out by including each of those related insurance or reinsurance undertakings.

(2) Where the related insurance or reinsurance undertaking has its head office in a Member State or EEA State other than that of the authorised insurance undertaking or authorised reinsurance undertaking for which the group solvency calculation is carried out, the calculation is to take into account, in respect of the related undertaking, of the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down in that other Member State or EEA State.

Intermediate insurance holding companies.

18. (1) When calculating the group solvency of an authorised insurance undertaking or an authorised reinsurance undertaking, in a group, which holds a participation in:

(a) a related insurance undertaking;

(b) a related reinsurance undertaking;

(c) a related third-country insurance undertaking; or

(d) a related third-country reinsurance undertaking,

through an insurance holding company or a mixed financial holding company, the situation of such an insurance holding company or mixed financial holding company shall be taken into account.

(2) For the sole purpose of that calculation, the intermediate insurance holding company or intermediate mixed financial holding company shall be treated as if it were an insurance or reinsurance

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undertaking, subject to the rules laid down in Articles 100 to 127 of the Solvency II Directive, in respect of the Solvency Capital Requirement and were subject to the same conditions as are laid down in Articles 87 to 99 of the Solvency II Directive, in respect of own funds eligible for the Solvency Capital Requirement.

(3) In cases where an intermediate insurance holding company or intermediate mixed financial holding company holds subordinated debt or other eligible own funds subject to limitation in accordance with Article 98 of the Solvency II Directive, they shall be recognised as eligible own funds up to the amounts calculated by application of the limits set out in the said Article to the total eligible own funds outstanding at group level as compared to the Solvency Capital Requirement at group level.

(4) Any eligible own funds of an intermediate insurance holding company or intermediate mixed financial holding company, which would require prior authorisation from the competent authority or the European regulatory authority concerned, in accordance with Article 90 of the Solvency II Directive if they were held by an authorised insurance undertaking, an authorised reinsurance undertaking, a European insurance undertaking or a European reinsurance undertaking, may be included in the calculation of the group solvency only in so far as they have been duly authorised by the group supervisor, or by the competent authority where it is the group supervisor of a group.

Equivalence concerning related third-country insurance and re-insurance undertakings.

19. (1) When calculating the group solvency of an authorised insurance undertaking or an authorised reinsurance undertaking which is a participating undertaking in a third-country insurance undertaking or third-country reinsurance undertaking, in accordance with method 2, such third-country insurance or reinsurance undertaking shall, solely for the purposes of that calculation, be treated as a related insurance or reinsurance undertaking.

(2) Notwithstanding sub-regulation (1), where the third country in which that undertaking has its head office is subject to authorisation and has a solvency regime at least equivalent to that specified in Articles 75 to 135 of the Solvency II Directive, the competent authority may provide that the calculation in sub-regulation (1) shall take into account, as regards that undertaking, the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down by the third country concerned.

(3) Where the competent authority is the group supervisor of a group and no delegated act has been adopted in accordance with

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Article 227(4) or (5) of the Solvency II Directive, the competent authority shall at the request of the participating undertaking, or on its own initiative, make the verification of whether the third country solvency regime is at least equivalent to Articles 75 to 135 of the Solvency II Directive.

(4) Where the competent authority is the group supervisor of a group, the authority shall:

(a) consult the other European regulatory authorities concerned in the supervision of the group before taking a decision on equivalence under sub-regulation (3), with the assistance of EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010;

(b) take the decision on equivalence in accordance with the criteria set out in any delegated acts adopted under Article 227(3) of the Solvency II Directive; and

(c) ensure that its decision in relation to a third country is not contradicting any decision taken vis-à-vis that third country previously, except where it is necessary to take into account significant changes to the supervisory regime laid down in Articles 75 to 135 of the Solvency II Directive and to the supervisory regime in the third country.

(5) Where the competent authority is one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group and is not the group supervisor, and disagrees with the decision taken in accordance with sub-paragraph (2) of Article 227(2) of the Solvency II Directive, the competent authority may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010 within three months after notification of the decision by the group supervisor.

Related credit institutions, investment firms and financial institutions.

20. When calculating the group solvency of an authorised insurance undertaking or an authorised reinsurance undertaking, which is a participating undertaking in a credit institution, investment firm or financial institution, the participating insurance and reinsurance undertaking shall:

(a) apply methods 1 or 2 set out in Annex I to Directive 2002/87/EC *mutatis mutandis*, provided that, method 1 set out in that Annex shall be applied only where the group supervisor or where the competent authority is the group supervisor of a group, the competent authority, as applicable, is satisfied as to

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the level of integrated management and internal control regarding the undertakings which would be included in the scope of consolidation, and provided always that the method chosen shall be applied in a consistent manner over time; or

(b) deduct any participation as referred to in paragraph (a) from the own funds eligible for the group solvency of the participating undertaking, where the group supervisor or the competent authority as group supervisor so decides, either at the request of the participating undertaking or on its own initiative.

Non-availability of the necessary information.

21. Where the information necessary for calculating the group solvency of an authorised insurance undertaking or an authorised reinsurance undertaking, in a group, concerning a related undertaking with its head office in a Member State or EEA State, or in a third country, is not available to the competent authority, where it is the group supervisor of a group:

(a) the book value of that related undertaking in the participating insurance or reinsurance undertaking shall be deducted from the own funds eligible for the group solvency; and

(b) the unrealised gains connected with such participation shall not be recognised as own funds eligible for the group solvency.

Method 1 (Default Method): Accounting consolidation-based method.

22. (1) The calculation of the group solvency of the participating insurance or reinsurance undertaking, shall be carried out on the basis of the consolidated accounts.

(2) The group solvency of the participating insurance or reinsurance undertaking is the difference between the following:

(a) the own funds eligible to cover the Solvency Capital Requirement, calculated on the basis of consolidated data; and

(b) the Solvency Capital Requirement at group level calculated on the basis of consolidated data.

(3) The rules laid down in Articles 87 to 127 of the Solvency II Directive shall apply for the calculation of the own funds eligible for the Solvency Capital Requirement and of the Solvency Capital Requirement at group level based on consolidated data.

(4) The Solvency Capital Requirement at group level based on consolidated data ("consolidated group Solvency Capital Requirement") shall be calculated on the basis of either the standard

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formula or an approved internal model, in a manner consistent with the general principles contained in Articles 87 to 97, 100 to 102 and 112 to 127 of the Solvency II Directive.

(5) The consolidated group Solvency Capital Requirement shall have as a minimum the sum of the following:

(a) the Minimum Capital Requirement as referred to in Article 129 of the Solvency II Directive, of the participating insurance or reinsurance undertaking; and

(b) the proportional share of the Minimum Capital Requirement of the related insurance and reinsurance undertakings.

(6) That minimum shall be covered by eligible basic own funds as determined in Article 98(4) of the Solvency II Directive.

(7) For the purposes of determining whether such eligible own funds qualify to cover the minimum consolidated group Solvency Capital Requirement, the principles set out in Articles 221 to 229 of the Solvency II Directive shall apply *mutatis mutandis*. Article 139(1) and (2) of the Solvency II Directive shall also apply *mutatis mutandis*.

Group internal model.

23. (1) An application for permission to calculate the consolidated group Solvency Capital Requirement, as well as the Solvency Capital Requirement of an authorised insurance undertaking, an authorised reinsurance undertaking, a European insurance undertaking or a European reinsurance undertaking, in a group, on the basis of an internal model, submitted by such an undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company, shall be submitted to the group supervisor or to the competent authority where is the group supervisor of a group, as applicable.

(2) Where the competent authority is the group supervisor of a group, upon receipt of an application as referred to in sub-regulation (1), it shall inform the other members of the college of supervisors and forward the complete application to them, without delay.

(3) Where the competent authority is one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group and is not the group supervisor:

(a) it shall cooperate with other European regulatory authorities concerned, to decide whether or not to grant the permission referred to in sub-regulation (1) and to determine the

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terms and conditions, if any, to which such permission is subject;

(b) it shall do everything within its power to reach a joint decision on the application within six months from the date of receipt of the complete application by the group supervisor; and

(c) it may, within the six-month period referred to in paragraph (b) or before a joint-decision has been reached, refer the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, and the decision of the group supervisor which is taken in conformity with EIOPA's decision, shall be recognised as determinative and shall be applied by the competent authority.

(4) If in accordance with Articles 41(2) and (3) and Articles 44(1) and (3) of Regulation (EU) No 1094/2010, the decision proposed by the panel is rejected, the group supervisor shall take a final decision and that decision shall be recognised as determinative and applied by the competent authority.

(5) Where the competent authority is the group supervisor of a group:

(a) if within the six-month period referred to in Article 231(3) of the Solvency II Directive or before a joint-decision has been reached, any of the European regulatory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the competent authority shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's decision. That decision shall be recognised as determinative and applied by the European regulatory authorities concerned; and

(b) if in accordance with Articles 41(2) and (3) and Articles 44(1) and (3) of Regulation (EU) No 1094/2010, the decision proposed by the panel is rejected, the competent authority shall take a final decision, and that decision shall be recognised as determinative and shall be applied by the European regulatory authorities concerned.

(6) Where the competent authority is the group supervisor of a group, the authority shall:

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(a) where the competent authority and the European regulatory authorities concerned have reached a joint decision, provide the applicant referred to in sub-regulation (1) with a document setting out the full reasons; and

(b) in the absence of the adoption of a joint decision within six months from the receipt of the complete application sent by it, make its own decision on the application, taking into account any views and reservations of the other European regulatory authorities concerned expressed during that six-month period and shall provide the applicant referred to in sub-regulation (1) and the other European regulatory authorities concerned, with a document setting out its fully reasoned decision which shall be recognised as determinative and shall be applied by the European regulatory authorities concerned.

(7) Where the competent authority is one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group and is not the group supervisor, in the absence of the adoption of a joint decision within six months from the date of receipt of the complete application by the group, the decision of the group supervisor on the application, shall be recognised as determinative.

(8) Where the competent authority is one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group and is not the group supervisor, and it considers that the risk profile of an authorised insurance undertaking or an authorised reinsurance undertaking deviates significantly from the assumptions underlying the internal model approved at group level, and that undertaking has not properly addressed the concerns of the competent authority, the competent authority may:

(a) in accordance with Article 37 of the Solvency II Directive, impose a capital add-on to the Solvency Capital Requirement of that insurance or reinsurance undertaking resulting from the application of such internal model;

(b) in exceptional circumstances, where such capital add-on imposed under paragraph (a) would not be appropriate, require the undertaking concerned to calculate its Solvency Capital Requirement on the basis of the standard formula referred to in Articles 87 to 97 of the Solvency II Directive; or

(c) where the competent authority has exercised its discretion under paragraph (b), to require an authorised

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insurance undertaking or an authorised reinsurance undertaking to calculate its Solvency Capital Requirement on the basis of the standard formula, impose a capital add-on to the Solvency Capital Requirement in accordance with Article 37(1)(a) and (c) of the Solvency II Directive.

(9) The competent authority shall explain any decision referred to in sub-regulation (8) to the authorised insurance undertaking or authorised reinsurance undertaking concerned and the other members of the college of supervisors.

Group capital add-on.

24. (1) Where the competent authority is the group supervisor of a group, the authority shall, in determining whether the consolidated group Solvency Capital Requirement appropriately reflects the risk profile of the group, pay attention to any case where the circumstances referred to in Article 37(1)(a) to (d) of the Solvency II Directive may arise at group level, in particular where:

(a) a specific risk existing at group level would not be sufficiently covered by the standard formula or the internal model used, because it is difficult to quantify;

(b) a capital add-on to the Solvency Capital Requirement of the related insurance or reinsurance undertakings is imposed by the European regulatory authorities concerned, in accordance with Article 37 and Article 231(7) of the Solvency II Directive.

(2) Where the competent authority is the group supervisor of a group, the authority may, where the risk profile of the group is not adequately reflected, impose a capital add-on to the consolidated group Solvency Capital Requirement.

(3) Article 37(1) to (5) of the Solvency II Directive, together with the delegated acts and implementing technical standards taken in accordance with Article 37(6), (7) and (8) of the Solvency II Directive, shall apply *mutatis mutandis*.

Method 2 (Alternative Method): Deduction and aggregation method.

25. (1) The group solvency of the participating insurance or reinsurance undertaking shall be the difference between the following:

(a) the aggregated group eligible own funds, as provided for in sub-regulation (2);

(b) the value in that participating insurance or reinsurance undertaking of the related insurance or reinsurance undertakings and the aggregated group Solvency Capital

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Requirement, as provided for in sub-regulation (3).

(2) The aggregated group eligible own funds are the sum of the following:

(a) the own funds eligible for the Solvency Capital Requirement of the participating insurance or reinsurance undertaking;

(b) the proportional share of the participating insurance or reinsurance undertaking in the own funds eligible for the Solvency Capital Requirement of the related insurance or reinsurance undertakings.

(3) The aggregated group Solvency Capital Requirement is the sum of the following:

(a) the Solvency Capital Requirement of the participating insurance or reinsurance undertaking;

(b) the proportional share of the Solvency Capital Requirement of the related insurance or reinsurance undertakings.

(4) Where, in a group, the participation in the related insurance or reinsurance undertakings consists, wholly or in part, of an indirect ownership, the value in the participating insurance or reinsurance undertaking of the related insurance or reinsurance undertakings shall incorporate the value of such indirect ownership, taking into account the relevant successive interests, and the items referred to in sub-regulations (2)(b) and (3)(b) shall include the corresponding proportional shares, respectively, of the own funds eligible for the Solvency Capital Requirement of the related insurance or reinsurance undertakings and of the Solvency Capital Requirement of the related insurance or reinsurance undertakings.

(5) Any application for permission to calculate the Solvency Capital Requirement of authorised insurance undertakings, authorised reinsurance undertakings, European insurance undertakings or European reinsurance undertakings in the group, on the basis of an internal model, submitted by the insurance or reinsurance undertaking concerned and its related undertakings, or jointly by the related undertakings of an insurance holding company or mixed financial holding company, shall be submitted to the group supervisor, or where the competent authority is the group supervisor of a group, the competent authority, as applicable, and in such a case the provisions of regulation 23 shall apply *mutatis mutandis*.

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(6) Where the competent authority is one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group and is not the group supervisor:

(a) in determining whether the aggregated group Solvency Capital Requirement, as set out in sub-regulation (3), appropriately reflects the risk profile of the group, it shall pay particular attention to any specific risks existing at group level which would not be sufficiently covered, because they are difficult to quantify;

(b) it may impose a capital add-on to the aggregated group Solvency Capital Requirement, where the risk profile of the group deviates significantly from the assumptions underlying the aggregated group Solvency Capital Requirement.

(7) Article 37(1) to (5) of the Solvency II Directive, together with the delegated acts and implementing technical standards taken in accordance with Article 37(6), (7) and (8) of the Solvency II Directive, shall apply *mutatis mutandis*.

Group solvency of an insurance holding company or a mixed financial holding company.

26. (1) Where the competent authority is the group supervisor of a group, the authority shall, where authorised insurance undertakings, authorised reinsurance undertakings, European insurance undertakings or European reinsurance undertakings are subsidiaries of an insurance holding company or of a mixed financial holding company, ensure that the calculation of the solvency of the group is carried out at the level of the insurance holding company or the mixed financial holding company applying Article 220(2) to Article 233 of the Solvency II Directive.

(2) For the purpose of that calculation, the insurance holding company or mixed financial holding company shall be treated as if it were an insurance or reinsurance undertaking subject to the rules laid down in Articles 100 to 127 of the Solvency II Directive as regards the Solvency Capital Requirement and subject to the same conditions as laid down in Article 87 to 99 of the Solvency II Directive as regards the own funds eligible for the Solvency Capital Requirement.

Subsidiaries of an insurance or reinsurance undertaking: conditions.

27. (1) Where the competent authority is one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group and is not the group supervisor, and an authorised insurance undertaking or an authorised reinsurance undertaking is the subsidiary undertaking of an authorised insurance undertaking, an authorised reinsurance undertaking, a European insurance undertaking or a European reinsurance undertaking,

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Articles 238 and 239 of the Solvency II Directive shall apply, where all of the following conditions are satisfied:

(a) the subsidiary undertaking, in relation to which the group supervisor, has not made a decision under Article 214(2) of the Solvency II Directive is included in the group supervision carried out by the group supervisor at the level of the parent undertaking in accordance with Articles 212 to 266 of the Solvency II Directive;

(b) the risk-management processes and internal control mechanisms of the parent undertaking cover the subsidiary undertaking and the parent undertaking satisfies the competent authority regarding the prudent management of the subsidiary;

(c) the parent undertaking has received the agreement referred to in Article 246(4) of the Solvency II Directive;

(d) the parent undertaking has received the agreement referred to in Article 256(2) of the Solvency II Directive;

(e) an application for permission to be subject to Articles 238 and 239 of the Solvency II Directive has been submitted by the parent undertaking and a favourable decision has been made on such application in accordance with the procedure set out in Article 237 of the Solvency II Directive.

(2) Where the competent authority is the group supervisor of a group, and an authorised insurance undertaking or an authorised reinsurance undertaking, a European insurance undertaking or a European reinsurance undertaking is the subsidiary undertaking of an authorised insurance undertaking, an authorised reinsurance undertaking, a European insurance undertaking or a European reinsurance undertaking, Articles 238 and 239 of the Solvency II Directive shall apply, where all of the following conditions are satisfied:

(a) the subsidiary undertaking, in relation to which the competent authority has not made a decision under Article 214(2) of the Solvency II Directive, is included in the group supervision carried out by the group supervisor at the level of the parent undertaking in accordance with these regulations;

(b) the risk-management processes and internal control mechanisms of the parent undertaking cover the subsidiary undertaking and the parent undertaking satisfies the other responsible authorities in the group regarding the prudent

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management of the subsidiary;

(c) the parent undertaking has received the agreement referred to in Article 246(4) of the Solvency II Directive;

(d) the parent undertaking has received the agreement referred to in Article 256(2) of the Solvency II Directive;

(e) an application for permission to be subject to Articles 238 and 239 of the Solvency II Directive has been submitted by the parent undertaking and a favourable decision has been made on such application in accordance with the procedure set out in Article 237 of the Solvency II Directive.

Subsidiaries of an insurance or reinsurance undertaking: decision on the application.

28. (1) Where the competent authority is one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group and is not the group supervisor, and where the subsidiary undertaking is an authorised insurance undertaking or an authorised reinsurance undertaking, an application for permission to subject that subsidiary undertaking to the rules laid down in Articles 238 and 239 of the Solvency II Directive, shall be submitted to the competent authority by its parent undertaking. The competent authority shall, without delay, inform the other members of the college of supervisors and forward the complete application to them.

(2) For the purposes of sub-regulation (1), the competent authority shall work together with other European regulatory authorities concerned, within the college of supervisors, in full cooperation, to decide whether or not to grant the permission sought and to determine the other terms and conditions, if any, to which such permission should be subjected.

(3) A joint decision by all the European regulatory authorities, including the competent authority, within the college of supervisors, shall be made within three months from the date of receipt of the complete application.

(4) If, within the three-month period or before a joint decision has been reached, any of the regulatory authorities concerned referred to in sub-regulation (3), referred the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the decision of the group supervisor, taken in conformity with EIOPA's decision, shall be recognised as determinative and shall be applied by such authorities.

(5) If, in accordance with Articles 41(2) and (3) and Articles 44(1) and (3) of Regulation (EU) No 1094/2010, the decision proposed by the panel is rejected, the final decision taken by the

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group supervisor shall be recognised as determinative and shall be applied by all the regulatory authorities concerned.

(6) Where the competent authority is the group supervisor of the group:

(a) if within the three-month period or before a joint decision has been reached, as referred to in Article 273 of the Solvency II Directive, any of the European regulatory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the competent authority shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's decision. That decision shall be recognised as determinative and shall be applied by the European regulatory authorities concerned; and

(b) if, in accordance with Articles 41(2) and (3) and Articles 44(1) and (3) of Regulation (EU) No 1094/2010, the decision proposed by the panel is rejected, the competent authority shall take a final decision and that decision shall be recognised as determinative and shall be applied by the European regulatory authorities concerned.

(7) Where the competent authority is one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group and is not the group supervisor:

(a) if a joint decision referred to in sub-regulation (3) has been reached, it shall provide the applicant referred to in sub-regulation (1), with the decision stating the full reasons, and such joint decision shall be recognised as determinative and shall be applied by the regulatory authorities concerned;

(b) in the absence of a joint decision in accordance with sub-regulation (3), the decision of the group supervisor with regard to the application shall be recognised as determinative and applied by all the regulatory authorities concerned.

(8) Where the competent authority is the group supervisor of a group:

(a) in the absence of a joint decision of the European regulatory authorities concerned within the three-month period set out in Article 237(2) of the Solvency II Directive, the competent authority shall take its own decision with regard to

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the application referred to in Article 237(1) of the Solvency II Directive;

(b) during the three-month period referred to in paragraph (a), the competent authority shall duly consider any views and reservations of the European regulatory authority concerned which authorised the subsidiary undertaking and any reservations of the other European regulatory authorities within the college of supervisors.

(9) A decision taken in accordance with sub-regulation (8), shall state the full reasons and shall contain an explanation of any significant deviation from the reservations of the other European regulatory authorities concerned, and shall provide the applicant and the other European regulatory authorities concerned with a copy of the decision taken by the competent authority, which decision shall be recognised as determinative and shall be applied by the European regulatory authorities concerned.

Subsidiaries of an insurance or reinsurance undertaking: determination of the Solvency Capital requirement.

29. (1) Where the subsidiary undertaking is an authorised insurance undertaking or an authorised reinsurance undertaking, without prejudice to regulation 23, the Solvency Capital Requirement of the subsidiary shall be calculated in accordance with sub-regulations (2) and (4) to (7).

(2) Where the Solvency Capital Requirement of the subsidiary undertaking is calculated on the basis of an internal model approved at group level in accordance with regulation 23 and the competent authority considers that the risk profile of the subsidiary undertaking, deviates significantly from this internal model, and as long as that undertaking does not properly address the concerns of the competent authority, the competent authority may, in the cases referred to in Article 37 of the Solvency II Directive:

(a) propose to set a capital add-on to the Solvency Capital Requirement of that subsidiary undertaking resulting from the application of such model; or

(b) in exceptional circumstances where such capital add-on would not be appropriate, to require that undertaking to calculate its Solvency Capital Requirement on the basis of the standard formula.

(3) Where the Solvency Capital Requirement of the subsidiary undertaking is calculated on the basis of the standard formula and the competent authority considers that the risk profile of the subsidiary undertaking, deviates significantly from the assumptions underlying

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the standard formula, and as long as that undertaking does not properly address the concerns of the competent authority, the competent authority may, in exceptional circumstances, propose that the undertaking replace a subset of the parameters used in the standard formula calculation by parameters specific to that undertaking when calculating the long-term business of insurance, general business of insurance and health underwriting risk modules, as set out in Article 110 of the Solvency II Directive, or in the cases referred to in Article 37 of the Solvency II Directive, to set a capital add-on to the Solvency Capital Requirement of that subsidiary undertaking.

(4) In the cases referred to in sub-regulations (2) and (3):

(a) the competent authority shall discuss its proposal within the college of supervisors and communicate the grounds for such proposals to both the subsidiary undertaking and the college of supervisors; and

(b) the college of supervisors shall do everything within its power to reach an agreement on the proposal of the competent authority or on other possible measures and the agreement reached shall be recognised as determinative and shall be applied by the competent authority and by the European regulatory authorities concerned.

(5) Where the competent authority and the group supervisor disagree, any one of them may, within one month from the proposal of the competent authority and before an agreement has been reached within the college of supervisors in accordance with sub-regulation (4), refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

(6) In the circumstances referred to in sub-regulation (5):

(a) the competent authority shall defer its decision and await any decision that EIOPA may take in accordance with Article 19 of that Regulation;

(b) the competent authority shall take its decision in conformity with EIOPA's decision and shall state the full reasons on which it is based; and

(c) the decision taken by the competent authority shall be submitted to the subsidiary undertaking and to the college of supervisors.

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(7) In the cases referred to in Article 238(2) and (3) of the Solvency II Directive, where the competent authority is the group supervisor of a group, and where the competent authority and the European regulatory authority having authorised the subsidiary undertaking disagree, the competent authority may, within one month from the proposal and before an agreement has been reached within the college of supervisors in accordance with Article 238(4) of the Solvency II Directive, refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

Subsidiaries of an insurance or reinsurance undertaking: non-compliance with the Solvency Capital Requirement and Minimum Capital Requirement.

30. (1) Where the subsidiary undertaking is an authorised insurance undertaking or an authorised reinsurance undertaking, in the event of non-compliance with the Solvency Capital Requirement and without prejudice to article 16 of the Act, the competent authority shall, without delay, forward to the college of supervisors the recovery plan submitted by the subsidiary undertaking, in order to achieve, within six months from the observation of non-compliance with the Solvency Capital Requirement, the re-establishment of the level of eligible own funds or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement.

(2) The college of supervisors shall do everything within its power to reach an agreement on the proposal of the competent authority in accordance with sub-regulation (1), regarding the approval of the recovery plan within four months from the date on which non-compliance with the Solvency Capital Requirement was first observed.

(3) In the absence of an agreement in accordance with sub-regulation (2), the competent authority shall decide whether the recovery plan should be approved, taking due account of the views and reservations of the other European regulatory authorities within the college of supervisors.

(4) Where the subsidiary undertaking is an authorised insurance undertaking or an authorised reinsurance undertaking and the competent authority identifies, in accordance with Article 136 of the Solvency II Directive, deteriorating financial conditions:

(a) it shall notify the college of supervisors without delay of the proposed measures to be taken, provided that, in emergency situations, the measures to be taken shall be discussed within the college of supervisors;

(b) the college of supervisors shall do everything within its power to reach an agreement on the proposed measures to be

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taken within one month of notification; and

(c) in the absence of such agreement referred to in paragraph (b), the competent authority shall decide whether the proposed measures shall be approved, taking due account of the views and reservations of the other European regulatory authorities within the college of supervisors.

(5) In the event of non-compliance with the Minimum Capital Requirement by a subsidiary undertaking, which is an authorised insurance or reinsurance undertaking and without prejudice to article 18 of the Act, the competent authority shall:

(a) without delay, forward to the college of supervisors the short-term finance scheme submitted to it by the subsidiary undertaking, in order to achieve, within three months from the date on which non-compliance with the Minimum Capital Requirement was first observed, the re-establishment of the level of eligible own funds covering the Minimum Capital Requirement or the reduction of its risk profile to ensure compliance with the Minimum Capital Requirement; and

(b) shall also inform the college of supervisors of any measures taken to enforce the Minimum Capital Requirement at the level of the subsidiary.

(6) The competent authority as one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group and is not the group supervisor, or the group supervisor, as applicable, may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010 where they disagree regarding either of the following:

(a) on the approval of the recovery plan, including any extension of the recovery period, within the four-month period referred to in sub-regulation (2); or

(b) on the approval of the proposed measures, within the one-month period referred to in sub-regulation (4)(b).

(7) Where the competent authority is the group supervisor of a group, the authority may refer the matter to EIOPA, where the competent authority and the European regulatory authority disagree regarding either of the following:

(a) on the approval of the recovery plan, including any

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extension of the recovery period, within the four-month period referred to in sub-regulation (2); or

(b) on the approval of the proposed measures, within the one-month period referred to in sub-regulation (4)(b).

(8) The matter shall not be referred to EIOPA:

(a) after the end of the four-month or the one-month period respectively referred to in sub-regulation (6) and (7);

(b) after an agreement has been reached within the college of supervisors in accordance with sub-regulations (2) or (4)(b); and

(c) in the case of emergency situations as referred to in sub-regulation 4(a).

(9) Where the subsidiary undertaking is an authorised insurance undertaking or an authorised reinsurance undertaking the competent authority shall:

(a) defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of Regulation (EU) No 1094/2010;

(b) take its final decision in conformity with EIOPA's decision, and state the full reasons on which that decision is based, which decision shall be recognised as determinative and shall be applied by the European regulatory authorities concerned; and

(c) submit the decision referred to in paragraph (b) to the subsidiary undertaking and to the college of supervisors.

(10) Where the competent authority is the group supervisor of a group, in the circumstances referred to in Article 239 of the Solvency II Directive, when the European regulatory authority having authorised the subsidiary undertaking and the competent authority disagree, any one of them may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010, regarding either of the following:

(a) on the approval of the recovery plan, including any extension of the recovery period, within the four-month period referred to in Article 239 (1) of the Solvency II Directive; or

(b) on the approval of the proposed measures, within the

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one-month period referred to in Article 239 (2) of the Solvency II Directive.

(11) The matter shall not be referred to EIOPA:

(a) after the end of the four-month or the one-month period respectively referred to in sub-regulation (10)(a);

(b) after an agreement has been reached within the college of supervisors in accordance with Article 239(1) and (2) of the Solvency II Directive; and

(c) in the case of emergency situations as referred to in Article 239 (2) of the Solvency II Directive.

Subsidiaries of an insurance or reinsurance undertaking: end of derogations for a subsidiary.

31. (1) Regulations 29 and 30 shall no longer be applicable where:

(a) the condition referred to in Article 236(a) of the Solvency II Directive is no longer complied with;

(b) the condition referred to in Article 236(b) of the Solvency II Directive is no longer complied with and the group does not restore compliance with this condition in an appropriate period of time; or

(c) the conditions referred to in Article 236(c) and (d) of the Solvency II Directive are no longer complied with.

(2) In the case referred to in sub-regulation (1)(a), where the competent authority is the group supervisor of a group, and it decides, after consulting the college of supervisors, to no longer include the subsidiary undertaking in the group supervision it carries out, it shall immediately inform the European regulatory authority concerned and the parent undertaking.

(3) For the purposes of Article 236(b), (c) and (d) of the Solvency II Directive, the parent undertaking shall:

(a) be responsible for ensuring that the conditions are complied with on an ongoing basis;

(b) in the event of non-compliance, it shall inform, without delay, the competent authority, where the authority is the group supervisor of a group, and the European regulatory authority of the subsidiary undertaking concerned; and

(c) present a plan to restore compliance within an

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appropriate period of time to the competent authority, where the authority is the group supervisor of a group, and to the European regulatory authority of the subsidiary undertaking concerned.

(4) Without prejudice to sub-regulation (3), where the competent authority is the group supervisor of a group, the authority shall:

(a) verify at least annually, on its own initiative, that the conditions referred to in regulation 27(2)(b), (c) and (d) continue to be complied with; and

(b) also perform such verification upon request from the European regulatory authority concerned, where the latter has significant concerns related to the ongoing compliance with those conditions.

(5) Where the verification performed identifies weaknesses, and where the competent authority is the group supervisor of a group, the authority shall require the parent undertaking to present a plan to restore compliance within an appropriate period of time.

(6) Where the competent authority is the group supervisor of a group, and after consulting the college of supervisors, the authority determines that the plan referred to in sub-regulations (3)(b) or (5), is insufficient or subsequently that it is not being implemented within the agreed period of time, the competent authority shall conclude that the conditions referred to in regulation 27(2) are no longer being complied with and it shall immediately inform the European regulatory authority concerned.

(7) Where the parent undertaking submits a new application and obtains a favourable decision in accordance with the procedure set out in regulation 27, the provisions of regulations 29 and 30 shall apply again.

Subsidiaries of an insurance holding company and mixed financial holding company.

32. Articles 236 to 242 of the Solvency II Directive shall apply *mutatis mutandis* to an authorised insurance undertaking, an authorised reinsurance undertakings, a European insurance undertaking or a European reinsurance undertaking, which is a subsidiary undertaking of an insurance holding company or a mixed financial holding company.

Supervision of risk concentration and supervision of intra-group transactions.

33. (1) Supervision of the risk concentration at group level and supervision of intra-group transactions shall be exercised in accordance with sub-regulations (2) and (3), regulation 34 and Articles 247 to 259 of the Solvency II Directive.

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(2) Subject to sub-regulation (4), an authorised insurance undertaking, an authorised reinsurance undertaking, an insurance holding company and a mixed financial holding company, shall report, on a regular basis, and at least annually to the group supervisor:

(a) any significant risk concentration at the level of the group, unless regulation 5(b) applies;

(b) all significant intra-group transactions by authorised insurance undertakings, authorised reinsurance undertakings, European insurance undertakings and European reinsurance undertakings, within a group, including those performed with a natural person with close links to an undertaking in the group, unless regulation 5(b) applies; in addition, where an intra-group transaction is very significant, it shall be reported as soon as practicable.

(3) The risk concentrations and intra-group transactions referred to in sub-regulation (2), shall be subject to supervisory review by the group supervisor.

(4) The necessary information referred to in sub-regulation (2)(a) and (b) shall be submitted to the group supervisor:

(a) by the authorised insurance undertaking or authorised reinsurance undertaking which is at the head of the group; or

(b) where the group is not headed by an authorised insurance undertaking or an authorised reinsurance undertaking, by the insurance holding company, or by the mixed financial holding company, or by the authorised insurance undertaking, authorised reinsurance undertaking, European insurance undertaking or European reinsurance undertaking in the group, as may be identified by the group supervisor, after consulting the competent authority, the other European regulatory authorities concerned and the group.

(5) Where the competent authority is the group supervisor of a group, the authority shall:

(a) carry out a supervisory review of the risk concentrations and intra-group transactions;

(b) identify, taking into account the specific group and risk management structure of the group, the type of risks and

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intra-group transactions which insurance and reinsurance undertakings, in the group, shall report to the competent authority in all circumstances;

(c) impose appropriate thresholds based on solvency capital requirements, technical provisions, or both, in order to identify which significant risk concentrations and significant intra-group transactions shall be reported;

(d) where the group is not headed by an insurance or reinsurance undertaking, identify the insurance holding company, mixed financial holding company, authorised insurance undertaking, authorised reinsurance undertaking, European insurance undertaking or European reinsurance undertaking, in a group, responsible for submitting the information required under Articles 244(2) and 245(2) of the Solvency II Directive;

(e) review the risk concentrations of a group and intra-group transactions at group level, and in particular monitor the possible risk of contagion within the group, the risk of a conflict of interests and the level or volume of risks.

(6) The competent authority shall consult the group and the other European regulatory authorities concerned in the supervision of the group whilst carrying out the activities referred to in sub-regulation (5)(b) to (d).

(7) Where the competent authority is one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group and is not the group supervisor, and the competent authority is consulted by the group supervisor in relation to the supervision of risk concentration at group level or the reporting of intra-group transactions, the competent authority shall, when giving its opinion about the type of risks to be reported, take into account the specific group and risk management structure of the group.

Supervision of the system of governance.

34. (1) The requirements set out in Articles 40 to 49 of the Solvency II Directive shall apply *mutatis mutandis*, at the level of the group.

(2) Without prejudice to sub-regulation (1), the risk management and internal control systems and reporting procedures shall be implemented consistently in all the undertakings included in the scope of group supervision pursuant to regulation 3(2)(a) and (b) so that those systems and reporting procedures can be controlled at

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the level of the group.

(3) Without prejudice to sub-regulation (1), the group internal control mechanisms shall include at least the following:

(a) adequate mechanisms as regards group solvency to identify and measure all material risks incurred and to appropriately relate eligible own funds to risks;

(b) sound reporting and accounting procedures to monitor and manage the intra-group transactions and the risk concentration.

(4) The systems and reporting procedures referred to in sub-regulations (1) to (3) shall be subject to supervisory review by the group supervisor or in accordance with the rules laid down in regulations 35 to 43.

(5) A participating insurance undertaking or reinsurance undertaking, or the insurance holding company or the mixed financial holding company, shall undertake at the level of the group the assessment required by Article 45 of the Solvency II Directive. The own-risk and solvency assessment conducted at group level shall be subject to supervisory review by the group supervisor in accordance with regulations 35 to 43.

(6) Where the calculation of the solvency at the level of the group is carried out in accordance with method 1, as referred to in regulation 22, the participating insurance or reinsurance undertaking, or the insurance holding company or the mixed financial holding company, shall provide to the group supervisor a proper understanding of the difference between the sum of the Solvency Capital Requirements of all the related insurance or reinsurance undertakings of the group and the group consolidated Solvency Capital Requirement.

(7) The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company, may, subject to the agreement of the group supervisor, undertake any assessments required pursuant to Article 45 of the Solvency II Directive at the level of the group and at the level of any subsidiary undertaking in the group at the same time, and may produce a single document covering all the assessments.

(8) Where the group exercises the option provided in sub-regulation (7), it shall submit the document to all the European regulatory authorities concerned at the same time, and the exercise of

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that option shall not exempt the subsidiaries concerned from the obligation to ensure that the requirements of Article 45 of the Solvency II Directive are met.

(9) Where the competent authority is the group supervisor of a group, the authority shall:

(a) review the risk management and internal control systems and reporting procedures implemented by the group in accordance with Article 246(1) and (2) of the Solvency II Directive;

(b) review the own-risk and solvency assessment conducted at group level by the group; and

(c) consult the members of the college of supervisors and duly take into account their views and reservations before granting an agreement to a request from a participating insurance or reinsurance undertaking, insurance holding company or mixed financial holding company to undertake its own-risk and solvency assessment in accordance with Article 45 of the Solvency II Directive, at the level of the group and at the level of any subsidiary in the group at the same time, and produce a single document covering all such assessments.

PART III

Measures to facilitate group supervision

Group supervisor.

35. (1) The group supervisor designated from among the competent authority and the European regulatory authorities concerned, shall be responsible for coordination and exercise of group supervision.

(2) Where the competent authority is the supervisor of all the insurance undertakings and reinsurance undertakings in a group, the competent authority shall be the group supervisor of the group.

(3) In all other cases and subject to Article 247(3) of the Solvency II Directive:

(a) where the group is headed by an authorised insurance undertaking or an authorised reinsurance undertaking, the competent authority shall be the group supervisor of the group;

(b) where the group is not headed by an insurance or reinsurance undertaking, the competent authority is the group

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supervisor of a group in any of the following circumstances:

(i) where an insurance undertaking or reinsurance undertaking has an insurance holding company or a mixed financial holding company as a parent, and the competent authority has authorised that insurance undertaking or reinsurance undertaking;

(ii) where the group contains two or more insurance undertakings or reinsurance undertakings which have their head offices in Member States or EEA States, and such undertakings have the same insurance holding company or mixed financial holding company as a parent, and one of such undertakings has been authorised by the competent authority, and the insurance holding company or mixed financial holding company has its head office in Malta;

(iii) where the group is headed by two or more insurance holding companies or mixed financial holding companies which have their head offices in different Member States or EEA States, and there is an insurance undertaking or reinsurance undertaking in the group in each of those Member States or EEA States, and the competent authority has authorised the insurance undertaking or reinsurance undertaking with the largest balance sheet total;

(iv) where two or more insurance undertakings or reinsurance undertakings which have their head offices in Member States or EEA States, have the same insurance holding company or mixed financial holding company as their parent, and none of those undertakings has been authorised in the Member State or EEA State in which the insurance holding company or mixed financial holding company has its head office, and the competent authority has authorised the insurance undertaking or reinsurance undertaking with the largest balance sheet total; or

(v) where the group is a group without a parent undertaking, or in any circumstances not referred to in sub-paragraphs (i) to (iv), and the competent authority has authorised the insurance undertaking or reinsurance undertaking with the largest balance sheet total.

(4) Where another European regulatory authority has been designated as the group supervisor in accordance with Article 247 of

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the Solvency II Directive, the competent authority shall recognise that supervisory authority as the group supervisor of the group.

Exceptions to the rule for deciding the group supervisor.

36. (1) Notwithstanding regulation 35:

(a) the competent authority is the group supervisor of a group, if all the supervisory authorities concerned take a joint decision that the competent authority shall be the group supervisor; and

(b) the competent authority must recognise a joint decision taken by all the supervisory authorities concerned that a supervisory authority other than the competent authority shall be the group supervisor of a group.

(2) The competent authority may request the other supervisory authorities concerned to consider whether:

(a) the criteria specified in Article 247(2) of the Solvency II Directive are appropriate for determining which supervisory authority shall be the group supervisor; and

(b) a supervisory authority other than the supervisory authority satisfying those criteria shall be the group supervisor.

(3) The competent authority may make a request referred to in sub-regulation (2) not more than once a year.

(4) Where the supervisory authorities responsible for the supervision of an insurance or reinsurance undertaking are considering, at the request of the competent authority or of another supervisory authority, whether the criteria are appropriate or whether a particular supervisory authority shall be the group supervisor:

(a) the competent authority shall do everything in its power to reach a joint decision on the request within a period of three months commencing on the date of the request;

(b) the competent authority shall permit the group concerned to give its opinion on the request;

(c) the competent authority may refer the matter to EIOPA, in accordance with Article 19 of Regulation (EU) No 1094/2010, within a period of three months commencing with the date of the request;

(d) where the matter is referred to EIOPA, the competent authority shall take a joint decision in accordance

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with any decision taken by EIOPA, and where the competent authority is designated as group supervisor of a group, the competent authority shall submit the joint decision to the group and to the college of supervisors stating the full reasons;

(e) where the matter is not referred to EIOPA or EIOPA takes no such decision on such a referral, the competent authority may take a joint decision with the other European regulatory authorities that:

(i) the criteria referred to in Article 247(2) of the Solvency II Directive are inappropriate, taking into account the structure of the group and the relative importance of the activities of authorised insurance undertakings, authorised reinsurance undertakings, European insurance undertakings, and European reinsurance undertakings, in the different countries; and

(ii) a supervisory authority, other than the supervisory authority satisfying the criteria, shall be the group supervisor; and

(f) where the joint decision designates the competent authority as the group supervisor of a group, the competent authority shall submit the joint decision to the group and to the college of supervisors stating the full reasons.

(5) In the absence of a joint decision referred to in sub-regulation (4), the task of the group supervisor shall be exercised by the supervisory authority identified in accordance with Article 247(2) of the Solvency II Directive.

Rights and duties of the group supervisor and the other supervisors (College of supervisors).

37. (1) Where the competent authority is the group supervisor of a group, the authority shall, in order to facilitate the exercise of the group supervision tasks, carry out the functions referred to in article 32B(3) of the Act.

(2) In order to facilitate the exercise of the tasks referred to in sub-regulation (1), the competent authority shall establish and chair a college of supervisors comprising:

(a) the competent authority;

(b) the supervisory authorities of the Member States or EEA States in which the head office of every subsidiary undertaking in the group is situated; and

(c) EIOPA.

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(3) The competent authority as group supervisor:

(a) shall permit the European regulatory authorities of significant branches and related undertakings to participate in the college of supervisors, provided that their participation is limited to achieving an efficient exchange of information;

(b) shall ensure that the processes for cooperation, exchange of information and consultation between the competent authority and the other European regulatory authorities that are members of the college of supervisors, are effectively applied in accordance with Articles 212 to 266 of the Solvency II Directive, with a view to promoting the convergence of their respective decisions and activities;

(c) may agree with the other European regulatory authorities concerned that some activities of the college of supervisors be carried out by a reduced number of European regulatory authorities where the effective functioning of the college of supervisors requires it;

(d) shall, without prejudice to any measure adopted pursuant to the Solvency II Directive, conclude coordination arrangements with the other European regulatory authorities for the establishment and functioning of the college of supervisors.

(4) The coordination arrangements referred to in sub-regulation (3)(d):

(a) shall specify the procedures for:

(i) the decision-making process among the supervisory authorities concerned in accordance with Articles 231, 232 and 247 of the Solvency II Directive;

(ii) consultation under Articles 218(5) and 248(4) of the Solvency II Directive; and

(b) may, in addition, set out procedures for:

(i) consultation among the supervisory authorities concerned, in particular as referred to in Articles 213 to 217, 219 to 221, 227, 244 to 246, 250, 256, 260 and 262 of the Solvency II Directive;

(ii) cooperation with other supervisory authorities.

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(5) Without prejudice to the rights and duties allocated by the Solvency II Directive, the coordination arrangements may entrust additional tasks to:

(a) the competent authority:

(i) where it is the group supervisor of a group; or

(ii) where it is one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group and is not the group supervisor; or

(b) EIOPA,

and, in each case, where this would result in the more efficient supervision of the group and would not impair the supervisory activities of the members of the college of supervisors in respect of their individual responsibilities.

(6) Where diverging views concerning the coordination arrangements arise:

(a) any member of the college of supervisors may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010; and

(b) where the competent authority is the group supervisor of a group, the authority shall:

(i) where it has received advice from EIOPA, after consulting the European regulatory authorities concerned, duly consider any advice produced by EIOPA within two months of the receipt thereof, before taking its final decision;

(ii) take its final decision in conformity with EIOPA's decision;

(iii) ensure that the decision states the full reasons and contains an explanation of any significant deviation from any advice given by EIOPA;

(iv) transmit that decision to the European regulatory authorities concerned.

(7) The competent authority as group supervisor, shall send EIOPA any information on the functioning of the college of

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supervisors and any difficulties encountered that are relevant for EIOPA's reviews of the operational functioning of colleges of supervisors.

Cooperation with authorities responsible for credit institutions and investment firms.

38. (1) Where an authorised insurance undertaking, an authorised reinsurance undertaking, a European insurance undertaking or a European reinsurance undertaking and either a credit institution as defined in Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, or an investment firm as defined in Directive 2004/39/EC, or both, are directly or indirectly related or have a common participating undertaking, the competent authority or the European regulatory authorities concerned and the authorities responsible for the supervision of those credit institutions or investment firms shall cooperate closely.

(2) Without prejudice to their respective responsibilities, those authorities referred to in sub-regulation (1) shall provide one another with any information likely to simplify their task, in particular as set out in Title III of the Solvency II Directive.

Access to information.

39. (1) The competent authority shall have access to any information relevant for the purpose of that supervision regardless of the nature of the undertaking concerned and Article 35(1) to (5) of the Solvency II Directive shall apply *mutatis mutandis*.

(2) Where the competent authority has requested the information from all the European regulatory authorities in the group, and none of them has provided such information to the competent authority, within a reasonable period of time, the authority may address the undertakings in the group directly to obtain the necessary information.

(3) Where the competent authority is the group supervisor of a group, the authority may:

(a) limit regular supervisory reporting with a frequency shorter than one year at the level of the group where all authorised insurance undertakings, authorised reinsurance undertakings, European insurance undertakings and European reinsurance undertakings within the group, benefit from the limitation in accordance with Article 35(6) of the Solvency II Directive taking into account the nature, scale and complexity of the risks inherent in the business of the group;

(b) exempt from reporting on an item-by-item basis at the level of the group where all authorised insurance

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undertakings, authorised reinsurance undertakings, European insurance undertakings and European reinsurance undertakings within the group, benefit from the exemption in accordance with Article 35(7) of the Solvency II Directive, taking into account the nature, scale and complexity of the risks inherent in the business of the group and the objective of financial stability.

Group solvency and financial condition report.

40. (1) A participating insurance and reinsurance undertaking, insurance holding company and a mixed financial holding company shall disclose publicly, on an annual basis, a report on the solvency and financial condition at the level of the group, and Articles 51, 53, 54 and 55 of the Solvency II Directive shall apply *mutatis mutandis*.

(2) A participating insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company referred to in sub-regulation (1) may, subject to the agreement of the group supervisor, provide a single report on its solvency and financial condition which shall comprise the following:

(a) the information at the level of the group to be disclosed in accordance with sub-regulation (1); and

(b) the information for any of the subsidiaries within the group, which information must be individually identifiable and must be disclosed in accordance with Articles 51, 53, 54 and 55 of the Solvency II Directive.

(3) Before an agreement is granted by the group supervisor in accordance with sub-regulation (2), the competent authority, when consulted by the group supervisor, may submit its views or make reservations.

(4) Where a subsidiary undertaking is an authorised insurance undertaking or authorised reinsurance undertaking, and such undertaking fails to include information which the competent authority requires comparable undertakings to provide, and where the omission is material, the competent authority shall have the power to require the subsidiary undertaking concerned to disclose the necessary additional information.

(5) Where the competent authority is the group supervisor of a group and the authority has received a request from a participating insurance and reinsurance undertaking, an insurance holding company or a mixed financial holding company, for such undertaking or company to be able to provide a single solvency and financial condition report, the competent authority shall consult and duly take

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into account any views and reservations of the other members of the college of supervisors, before agreeing to the request.

Public disclosure of group structure.

41. An insurance and reinsurance undertaking, an insurance holding company and a mixed financial holding company shall disclose publicly, at the level of the group, on an annual basis, the legal structure and the governance and organisational structure, including a description of all subsidiary undertakings, material related undertakings and significant branches belonging to the group.

Administrative, management or supervisory body of insurance holding companies and mixed financial holding companies.

42. The competent authority shall require that all persons who effectively run the insurance holding company or the mixed financial holding company whose head office is in Malta, are fit and proper to perform their duties and Article 18I(2)(a) of the Act shall apply *mutatis mutandis*.

Enforcement measures.

43. (1) Where authorised insurance undertakings, authorised reinsurance undertakings, European insurance undertakings and European reinsurance undertakings in a group, do not comply with the requirements provided for in Articles 218 to 246 of the Solvency II Directive, or where the requirements are met but solvency may nevertheless be jeopardised or where the intra-group transactions or the risk concentrations are a threat to the financial position of such undertakings, measures necessary to rectify the situation as soon as possible shall be adopted:

(a) where the competent authority is the group supervisor of a group, by:

(i) the competent authority with respect to:

(aa) insurance holding companies and mixed financial holding companies; and

(bb) authorised insurance undertakings and authorised reinsurance undertakings;

(ii) the European regulatory authorities with respect to European insurance undertakings and European reinsurance undertakings;

(b) where the competent authority is one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group and is not the group supervisor, by:

(i) the group supervisor with respect to insurance

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holding companies and mixed financial holding companies; and

(ii) the competent authority, with respect to authorised insurance undertakings and authorised reinsurance undertakings.

(2) Where in the case referred to in sub-regulation (1)(a)(i), the competent authority is not one of the supervisory authorities of the Member State in which the insurance holding company or mixed financial holding company has its head office, the competent authority shall inform the European regulatory authorities concerned of its findings with a view to enabling them to take the necessary measures.

(3) In the case referred to in sub-regulation (1)(a)(ii), the competent authority shall inform the European regulatory authorities concerned of its findings with a view to enabling them to take the necessary measures.

(4) Without prejudice to regulation 49, the competent authority shall determine the measures which may be taken with respect to insurance holding companies and mixed financial holding companies, whose head office is in Malta.

(5) Where the competent authority is the group supervisor of a group, or where the competent authority is one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group and is not the group supervisor, the competent authority shall, where appropriate, coordinate any measures it may take, with the European regulatory authorities concerned or with the group supervisor, as applicable.

PART IV

Third countries

Parent undertakings outside the Union: verification of equivalence.

44. (1) In the case referred to in regulation 3(2)(c), the competent authority shall verify whether an authorised insurance undertaking and authorised reinsurance undertaking, the parent undertaking of which has its head office in a third country is subject to supervision, by an overseas regulatory authority which is equivalent to that set out in Articles 212 to 266 of the Solvency II Directive, on the supervision at the level of the group of insurance and reinsurance undertakings referred to in Article 213(a) and (b) of the Solvency II Directive.

(2) Where no delegated act has been adopted in accordance

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with Articles 260(2), (3) and (5) of the Solvency II Directive, the verification referred to in sub-regulation (1), shall be carried out by the competent authority, which would be the group supervisor if the criteria set out in Article 247(2) of the Solvency II Directive were to apply (the "acting group supervisor"), at the request of the parent undertaking or of any of the authorised insurance undertakings, authorised reinsurance undertakings, European insurance undertakings or European reinsurance undertakings, or on its own initiative.

(3) Where the competent authority, is the acting group supervisor, the authority:

(a) shall, with the assistance of EIOPA, consult the supervisory authorities concerned before taking a decision on equivalence;

(b) shall, where applicable, take a decision on equivalence in accordance with the criteria set out in any delegated act adopted by the European Commission pursuant to Article 260(2) of the Solvency II Directive;

(c) shall not take any decision in relation to a third country that is in opposition to any previous decision taken vis-à-vis that third country, except where it is necessary to take into account significant changes to the supervisory regime laid down in Title I of the Solvency II Directive and to the supervisory regime in the third country; and

(d) shall notify its decision to the supervisory authorities concerned.

(4) Where the competent authority is not the acting group supervisor and disagrees with the decision on equivalence taken by the acting group supervisor in accordance with the third sub-paragraph of Article 260 of the Solvency II Directive, it may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010, within three months after notification of that decision by the acting group supervisor.

(5) Where a delegated act determining that the prudential regime of a third country is temporarily equivalent, is adopted in accordance with Article 260(5) of the Solvency II Directive, the competent authority shall apply regulation 45, unless there is an authorised insurance undertaking, an authorised reinsurance undertaking, a European insurance undertaking, or a European reinsurance undertaking, in the group, which has a balance sheet total

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that exceeds the balance sheet total of the parent undertaking situated in a third country. In that case, the task of the group supervisor shall be exercised by the acting group supervisor.

Parent undertakings outside the Community: equivalence.

45. (1) In the event of equivalent supervision referred to in Article 260 of the Solvency II Directive, the competent authority shall rely on the equivalent group supervision exercised by the overseas regulatory authorities, in accordance with sub-regulation (2).

(2) Articles 247 to 258 of the Solvency II Directive shall apply *mutatis mutandis* in relation to the cooperation with the overseas regulatory authorities.

Parent undertakings registered in a third country: absence of equivalence.

46. (1) Where regulation 3(2)(c) applies, in the absence of equivalent supervision referred to in Article 260 of the Solvency II Directive, or where the competent authority as the acting group supervisor does not apply Article 261 of the Solvency II Directive in the event of temporary equivalence in accordance with Article 260(7) of the Solvency II Directive, the competent authority shall apply either of the following to authorised insurance undertakings and authorised reinsurance undertakings:

(a) Articles 218 to 235, and Articles 244 to 258 of the Solvency II Directive, *mutatis mutandis*; or

(b) any other method which:

(i) ensures appropriate supervision of the insurance and reinsurance undertakings in a group;

(ii) allows the objectives of the group supervision as defined in Title III of the Solvency II Directive to be achieved.

(2) The general principles and methods set out in Articles 218 to 258 of the Solvency II Directive shall apply at the level of the insurance holding company, mixed financial holding company, third-country insurance undertaking or third-country reinsurance undertaking.

(3) For the sole purpose of the group solvency calculation, the parent undertaking shall be treated as if it were an insurance or reinsurance undertaking subject to the same conditions as laid down in Articles 87 to 99 of the Solvency II Directive as regards the own funds eligible for the Solvency Capital Requirement, and to either of the following:

(a) a Solvency Capital Requirement determined in

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accordance with the principles of Article 226 of the Solvency II Directive where the parent undertaking is an insurance holding company or mixed financial holding company; or

(b) a Solvency Capital Requirement determined in accordance with the principles of Article 227 of the Solvency II Directive, where the parent undertaking is a third-country insurance undertaking or a third-country reinsurance undertaking.

(4) The reference in sub-regulation (1)(b) to any other method, may include:

(a) requiring the establishment of an insurance holding company which has its head office in a Member State or EEA State, or a mixed financial holding company which has its head office in a Member State or EEA State; and

(b) applying Articles 212 to 266 of the Solvency II Directive to the insurance and reinsurance undertakings in the group headed by that insurance holding company or mixed financial holding company.

(5) Before applying any other method under sub-regulation (1)(b), the competent authority shall:

(a) where it is the group supervisor, consult the other supervisory authorities concerned in the supervision of the group;

(b) where it is one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group and is not the group supervisor, agree the method with the group supervisor.

(6) Where the competent authority is the group supervisor, and where the competent authority applies any other method under sub-regulation (1)(b), it shall notify the European Commission and the other supervisory authorities concerned.

Parent undertakings outside the Community: levels.

47. (1) Subject to sub-regulation (2), where the parent undertaking referred to in regulation 3(2)(c) is itself a subsidiary undertaking of:

(a) an insurance holding company which has its head office in a third country;

(b) a mixed financial holding company which has its

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head office in a third country;

(c) a third-country insurance undertaking; or

(d) a third-country reinsurance undertaking,

the verification provided for in regulation 44 shall apply only at the level of the ultimate parent undertaking which is a third-country insurance holding company, a third-country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.

(2) The competent authority, as the acting group supervisor, may, however, in the absence of equivalent supervision referred to in Article 260 of the Solvency II Directive, carry out a new verification at a lower level where a parent undertaking of an authorised insurance undertaking or an authorised reinsurance undertaking exists, whether at the level of a third-country insurance holding company, a third country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.

(3) In such a case referred to in sub-regulation (2), where the competent authority is the acting group supervisor in accordance with regulation 44(2), it shall explain its decision to the group.

(4) Article 262 of the Solvency II Directive shall apply *mutatis mutandis*.

PART V

Mixed-activity insurance holding companies

Mixed-activity insurance holding companies: Intra-group transactions.

48. (1) In the case referred to in regulation 3(2)(d), where the parent undertaking of one or more insurance undertakings or reinsurance undertakings is a mixed-activity insurance holding company and the competent authority supervises one or more of the insurance undertakings or reinsurance undertakings in the group, the competent authority shall exercise general supervision over transactions between:

(a) the mixed-activity holding company and its related undertakings; and

(b) the authorised insurance undertakings or authorised reinsurance undertakings supervised by the competent authority.

(2) Articles 245, 249 to 255 and 258 of the Solvency II Directive shall apply *mutatis mutandis*.

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PART VI

General provisions

Penalties.

49. (1) Any insurance holding company and mixed financial holding company, or any person effectively managing those companies, who contravenes any of the provisions of these regulations, applicable to them, shall be liable to an administrative penalty which may not be greater than a financial penalty of one hundred and fifty thousand euro (€150,000) in respect of each infringement or failure to comply, as the case may be, and, where such infringement or failure to comply continues, a further penalty not exceeding one hundred and sixteen euro (€116) for each day during which the infringement or failure to comply continues:

Provided further that a penalty imposed under this regulation, whether in the form of a fixed amount, a daily penalty, or both, may, in no case, exceed one hundred and fifty thousand euro (€150,000).

(2) The competent authority shall cooperate closely with the European regulatory authorities concerned, to ensure that the sanctions or measures referred to in Article 258(3) of the Solvency II Directive are effective, in particular where the central administration or main establishment of an insurance holding company or mixed financial holding company is not located in Malta.

Insurance Rules.

50. (1) For the better carrying out of these regulations, the competent authority may, from time to time, issue Insurance Rules.

(2) Such Insurance Rules may contain such incidental, supplementary and consequential provisions as appear to the competent authority to be expedient for the purposes of these regulations.

Revocation of the Insurance Business (Supplementary Supervision of Insurance and Reinsurance Undertakings in an Insurance Group) Regulations, 2007, and saving. L.N. 287 of 2007.

51. (1) The Insurance Business (Supplementary Supervision of Insurance and Reinsurance Undertakings in an Insurance Group) Regulations, 2007, hereinafter referred to as "the revoked regulations", are hereby revoked.

(2) Nothing in these regulations shall be deemed to affect anything done, or omitted to be done under the revoked regulations, prior to the coming into force of these regulations.

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