



STATUTORY INSTRUMENTS.

**S.I. No. 380 of 2006.**

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EUROPEAN COMMUNITIES (REINSURANCE)  
REGULATIONS 2006.

**(Prn. A6/1223)**

S.I. No. 380 of 2006.

EUROPEAN COMMUNITIES (REINSURANCE)  
REGULATIONS 2006.

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EUROPEAN COMMUNITIES (REINSURANCE)  
REGULATIONS 2006.

I, BRIAN COWEN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), as amended by the European Communities (Amendment) Act 1993 (No. 25 of 1993), and for the purpose of giving effect to Directive 2005/68/EC,<sup>1</sup> dated 16 November 2005, of the European Parliament and of the Council, hereby make the following Regulations:

PART 1

PRELIMINARY PROVISIONS

*Citation and commencement*

1. (1) These Regulations may be cited as the European Communities (Reinsurance) Regulations 2006.

(2) These Regulations come into operation on 15 July 2006.

*Object of these Regulations*

2. The object of these Regulations is to give effect to Directive 2005/68/EC of the European Parliament and of the Council dated 16 November 2005 on reinsurance, and amending Council Directives 73/239/EEC, 92/49/EEC, 98/78/EC and 2002/83/EC, and, in particular, to establish a prudential regulatory framework for reinsurance activities and an internal market with respect to the conduct of those activities within the reinsurance sector.

*Interpretation*

3. (1) In these Regulations, unless the context otherwise requires—

“aggregate limit”, in relation to a SPRV contract, means the maximum amount payable to the ceding insurance undertaking or reinsurance undertaking under the contract;

“authorised officer” means a person holding office as an authorised officer under Regulation 72;

<sup>1</sup> EN Official Journal of the European Union L 323/1, dated 9.12.2005.

*Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 8th August 2006.*

“authorised reinsurance undertaking” means a reinsurance undertaking—

- (a) authorised, or taken to be authorised, by the Bank under these Regulations, or
- (b) authorised, or taken to be authorised, under a corresponding law of another Member State;

“authorised SPRV” means a SPRV—

- (a) authorised, or taken to be authorised, by the Bank under these Regulations, or
- (b) authorised, or taken to be authorised, under a corresponding law of another Member State;

“Bank” means the Central Bank and Financial Services Authority of Ireland constituted under the Central Bank Act 1942;

“Capital Adequacy Directive” means Council Directive 93/6/EEC on the capital adequacy of investments firms and credit institutions;

“captive reinsurance undertaking” means a reinsurance undertaking owned—

- (a) by a financial undertaking (other than an insurance undertaking, a reinsurance undertaking, or a group of insurance or reinsurance undertakings, to which the Supplementary Supervision of Grouped Insurance Undertakings Directive applies), or
- (b) by a non-financial undertaking,

the purpose of which is to provide reinsurance cover that is limited exclusively to the risks of the undertaking or undertakings to which the reinsurance undertaking belongs, or of an undertaking or undertakings of the group of which the reinsurance undertaking is a part;

“cession” means a transaction under which a person reinsures another person in respect of risks insured or reinsured by that other person;

“chief executive”, in relation to a reinsurance undertaking or SPRV, means, irrespective of the person’s actual title, the person who has overall responsibility for the day-to-day operation of the undertaking or SPRV;

“close links” means a situation in which 2 or more persons are linked—

- (a) by a participating interest, or
- (b) by control in those cases referred to in Article 1(1) and (2) of the Group Consolidated Accounts Directive or by a similar relationship existing between a person and an undertaking;

“Companies Acts” means the Companies Act 1963 and any Act that is required to be read as one with that Act or with any Act that amends that Act;

“company”, except when qualified by “European”, means a company within the meaning of the Companies Acts;

“competent authority”—

- (a) in relation to the State, means the Bank, and
- (b) in relation to another Member State, means the authority that is empowered by a law of that State to supervise the conduct of reinsurance business carried on by reinsurance undertakings in that State;

“control” means—

- (a) the relationship between a parent undertaking and a subsidiary, as defined in Article 1 of the Group Consolidated Accounts Directive, or
- (b) a similar relationship between a person and an undertaking;

“control relationship”, in relation to a reinsurance undertaking or SPRV, means a control relationship as defined in Article 1(1) and (2) of the Group Consolidated Accounts Directive;

“corresponding law”, in relation to another Member State, means a law of that State that corresponds to these Regulations;

“country” includes a territory that is a separate dependency of a country;

“Court” means the High Court;

“credit institution” has the meaning given by the Credit Institutions Directive;

“Credit Institutions Directive” means Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions;

“credit insurance risks” means those risks that are included in Class 14 in Part A of the Annex to the Non-life Insurance Business Directive;

“eligible undertaking” means a person that satisfies the requirements of Regulation 7;

“entire business”, in relation to a reinsurance undertaking, includes business carried on by the undertaking in a third country;

“established”, in relation to a reinsurance undertaking, has the meaning given by paragraph (2);

“exempt undertaking” means any of the following:

- (a) an insurance undertaking to which the Non-life Insurance Business Directive applies;
- (b) a life assurance undertaking to which the Life Assurance Business Directive applies;
- (c) a body referred to in Article 2 or 3 of the Non-life Insurance Business Directive;
- (d) a body referred to in Article 3 of the Life Assurance Business Directive;

- (e) a reinsurance undertaking or SPRV established in a third country that does not have a place of business in the State and is not required by the corresponding law of another Member State to be authorised under that law;
- (f) subject to section 4(6), if a reinsurance undertaking whose head office is established in a third country maintains a branch in the State, the branch;

“European company” means a company as defined by Council Regulation (EC) No. 2157/2001;<sup>2</sup>

“Financial Conglomerates Directive” means 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate, and amending the Non-life Insurance Business Directive, Directive 79/267/EEC<sup>3</sup>, Directive 92/49/EEC<sup>4</sup>, the Capital Adequacy Directive and the Investment Services Directive, and the Supplementary Supervision of Grouped Insurance Undertakings Directive and the Credit Institutions Directive;

“financial sector activities” means activities within the meaning of Article 2, point 8 of the Financial Conglomerates Directive;

“financial undertaking” means one of the following entities:

- (a) a credit institution, a financial institution or an ancillary banking services undertaking within the meaning of Article 1(5) and (23) of the Credit Institutions Directive;
- (b) an insurance undertaking, a reinsurance undertaking or an insurance holding company within the meaning of Article 1(i) of the Supplementary Supervision of Grouped Insurance Undertakings Directive;

<sup>2</sup>This Regulation relates to the Statute for a European company (SE).

<sup>3</sup>This Council Directive concerns the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance.

<sup>4</sup>This Council Directive concerns the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive).

- (c) an investment firm or a financial institution within the meaning of point 1 of Article 4(1) of the Markets in Financial Instruments Directive;
- (d) a mixed financial holding company within the meaning of Article 2(15) of the Financial Conglomerates Directive;

“finite reinsurance” means reinsurance under which the explicit maximum loss potential, expressed as the maximum economic risk transferred, arising both from a significant underwriting risk and a timing risk transfer, exceeds the premium over the lifetime of the contract, by a limited but significant amount, together with at least one of the following features:

- (a) explicit and material consideration of the time value of money;
- (b) contractual provisions to moderate the balance of economic experience between the parties over time to achieve the target risk transfer;

“fully funded”—

- (a) in relation to a SPRV contract that specifies an aggregate limit, means that—
  - (i) the market value of the assets as held in trust or as otherwise held under the terms of the contract by or on behalf of the SPRV for the benefit of the counterparty to the contract, or
  - (ii) the value of a letter of credit established by or on behalf of the SPRV for the benefit of the counterparty,
 equals or exceeds that limit, and
- (b) in relation to a SPRV contract that does not specify an aggregate limit, means that—
  - (i) the market value of the assets, as held in trust or as otherwise held under the terms of the contract by or on behalf of the SPRV for the

benefit of the counterparty to the contract,  
or

- (ii) the value of a letter of credit established by or on behalf of the SPRV for the benefit of the counterparty,

equals or exceeds the projected economic reserve requirements of the SPRV under the contract as determined from time to time on an actuarial basis;

“Group Consolidated Accounts Directive” means Directive 83/349/EEC on the preparation of consolidated accounts for undertakings that are part of a group;

“Insurance Accounts Directive” means Directive 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings;

“investment firm” has the meaning given by the Markets in Financial Instruments Directive;

“Investment Services Directive” means Council Directive 93/22/EEC on investment services in the securities field;

“law” includes regulations and other kinds of subordinate legislation;

“Life Assurance Business Directive” means Directive 2002/83/EC on life insurance;

“Markets in Financial Instruments Directive” means Directive 2004/39/EC on markets in financial instruments;

“Member State” means a Member State of the European Communities;

“Non-life Insurance Business Directive” means the First Council Directive 73/239/EEC on the co-ordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance;

“officer”, in relation to a reinsurance undertaking or SPRV, means—

- (a) a director of the undertaking or SPRV, or
- (b) the chief executive or secretary of the undertaking or SPRV, or
- (c) any other person who makes, or participates in making, decisions that affect the whole or a substantial part, of the business of the undertaking or SPRV unless that person's participation is attributable to advice that the person has given in a professional capacity;

“parent undertaking” means a parent undertaking as defined in Articles 1 and 2 of the Group Consolidated Accounts Directive;

“participating interest”, in relation to an undertaking, means the ownership, direct or by way of control, of 20 per cent or more of the voting rights or capital of the undertaking;

“publish” includes posting information on an Internet Website;

“qualifying holding”—

- (a) in relation to a reinsurance undertaking, means a direct or indirect holding that—
  - (i) represents 10 per cent or more of the capital of, or voting rights in, the undertaking, or
  - (ii) makes it possible to exercise a significant influence over the management of the undertaking, or
- (b) in relation to an SPRV, means a direct or indirect shareholding that—
  - (i) represents 10 per cent or more of the share capital of, or voting rights attaching to shares in, the SPRV, or
  - (ii) makes it possible to exercise a significant influence over the management of the SPRV;

“records” includes books and all other kinds of documents, and also includes—

- (a) information kept in a non-legible form (whether electronically or otherwise) that is capable of being reproduced in a legible form, and
- (b) the means (if any) by which the information is capable of being reproduced;

“Register” means the Register of Reinsurance Undertakings and Special Purpose Reinsurance Vehicles kept under Regulation 49;

“reinsurance” means the activity consisting of accepting risks ceded by an insurance undertaking, or by another reinsurance undertaking, and includes reinsurance;

“reinsurance authorisation” means an authorisation granted to, and held by, a reinsurance undertaking;

“reinsurance business” means a business in the course of which reinsurance is provided;

“Reinsurance Directive” means Directive 2005/68/EC on reinsurance;

“reinsurance undertaking” means a person who carries on a business in the course of which reinsurance is provided;

“retrocession” means a transaction under which a reinsurance undertaking or SPRV cedes to another reinsurance undertaking or to an insurance undertaking or SPRV all or part of the risk that the first-mentioned undertaking has, as a result of a cession, assumed in respect of particular insurance contracts entered into by an insurance undertaking;

“special purpose reinsurance vehicle” means an undertaking (whether incorporated or not) that—

- (a) assumes risks from insurance undertakings or reinsurance undertakings under reinsurance contracts, and
- (b) fully funds its exposures to those risks through the proceeds of a debt issue or some other financing arrangement under which the repayment rights

of the providers of the debt or financing arrangement are subordinated to the reinsurance obligations of the undertaking,

but does not include an authorised insurance undertaking or authorised reinsurance undertaking;

“SPRV” means a special purpose reinsurance vehicle;

“SPRV authorisation” means an authorisation granted to, and held by, a SPRV;

“SPRV contract” means a contract between a SPRV and a ceding insurance undertaking or reinsurance undertaking under which the SPRV agrees, in accordance with the terms of the contract, to make one or more payments to the undertaking if a triggering event should occur;

“Stock Exchange Listings Directive” means Directive 2001/34/EC on the admission of securities to official stock exchange listing and on information to be published on those securities;

“subsidiary” means—

- (a) a subsidiary undertaking as defined in Articles 1 and 2 of the Group Consolidated Accounts Directive, or
- (b) a subsidiary undertaking of another undertaking that is a subsidiary of a parent undertaking;

“Supplementary Supervision of Grouped Insurance Undertakings Directive” means Directive 98/78/EC on the supplementary supervision of insurance undertakings in an insurance group;

“third country” means a country that is not a Member State;

“triggering event”, in relation to a SPRV contract, means an event or condition, specified in the contract, that would oblige the SPRV to make one or more payments to the ceding insurance undertaking or reinsurance undertaking under the contract.

(2) For the purposes of these Regulations—

- (a) an undertaking is established in the State if it has both its head office and its registered office located in the State, and
- (b) an undertaking is established in another Member State if it has both its head office and its registered office located in that other State.

(3) For the purposes of these Regulations, a reinsurance business is carried on in the State even if the risks associated with the business arise wholly or partly outside the State provided the business is transacted in or from the State.

(4) In these Regulations—

- (a) a reference to a reinsurance undertaking established in another Member State carrying on reinsurance business in the State includes carrying on that business through an agency or branch of the undertaking or by maintaining a permanent presence in the State, even if that presence does not take the form of a branch or agency, but consists merely of an office managed by the undertaking's own staff or by a person who is independent but has permanent authority to act for the undertaking, and
- (b) a reference to a reinsurance undertaking established in the State carrying on reinsurance business in another Member State includes carrying on that business through an agency or branch of the undertaking or by maintaining a permanent presence in that other State, even if that presence does not take the form of a branch or agency, but consists merely of an office managed by the undertaking's own staff or by a person who is independent but has permanent authority to act for the undertaking, and
- (c) a reference to a SPRV established in another Member State operating in the State includes operating through an agency or branch of the SPRV or by maintaining a permanent presence in the State, even if that presence does not take the form of a branch or agency, but consists

merely of an office managed by the SPRV's own staff or by a person who is independent but has permanent authority to act for the SPRV, and

(d) a reference to a SPRV established in the State operating in another Member State includes operating through an agency or branch of the SPRV or by maintaining a permanent presence in that other State, even if that presence does not take the form of a branch or agency, but consists merely of an office managed by the SPRV's own staff or by a person who is independent but has permanent authority to act for the SPRV, and

(e) a reference to a reinsurance undertaking established in another Member State carrying on business in the State includes providing the services of that business from a place of business outside the State to a person in the State, and

(f) a reference to a SPRV established in another Member State operating in the State includes providing the services of that SPRV from a place of business outside the State to a person in the State.

(5) For the purposes of the definition of "close links" in paragraph (1)—

(a) a subsidiary undertaking of a subsidiary undertaking is to be treated as a subsidiary of the parent undertaking that is at the head of those undertakings, and

(b) a situation in which 2 or more persons are permanently linked to the same person by a control relationship is to be treated as being a close link between those persons.

(6) For the purposes of the definition of "qualifying holding" in paragraph (1), the voting rights referred to in Article 92 of Stock Exchange Listings Directive are to be taken into account.

(7) If a word or expression used in these Regulations is defined in the Reinsurance Directive, then, unless the context otherwise requires or these Regulations otherwise provide, the word or expression has the same meaning as it has in the Reinsurance Directive.

(8) Notes appearing in the text are provided for information only and do not form part of these Regulations.

*Scope of these Regulations*

4. (1) Except as provided by paragraphs (2) to (4), these Regulations apply to all persons who undertake reinsurance business or operate as a SPRV within the State.

(2) Except as expressly provided, these Regulations do not apply to or in relation to an exempt undertaking.

(3) These Regulations do not apply to or in relation to the following activities:

- (a) an activity referred to in Article 2 or 3 of the Non-life Insurance Business Directive;
- (b) an activity referred to in Article 3 of the Life Assurance Business Directive;
- (c) reinsurance conducted or fully guaranteed by the government of a Member State when it is acting, for reasons of substantial public interest, as a reinsurer of last resort (including when it is so acting because it is not feasible in the market in which it is acting to obtain adequate commercial cover).

(4) These Regulations do not apply to a reinsurance undertaking or SPRV established in the State if not later than 10 December 2007,<sup>5</sup> the undertaking or SPRV—

- (a) has ceased to enter into new reinsurance contracts or SPRV contracts, and
- (b) exclusively administers its existing portfolios of reinsurance contracts or SPRV contracts only in order to wind up its reinsurance or SPRV business.

(5) As soon as practicable after 10 December 2007, the Bank shall—

- (a) prepare a list of those reinsurance undertakings and SPRVs that, to the Bank's knowledge, are no

<sup>5</sup>This date is 2 years after the coming into force of the Reinsurance Directive.

longer subject to these Regulations because of paragraph (4), and

- (b) send a copy of the list to each of the competent authorities of all the other Member States.

(6) If a reinsurance undertaking whose head office is established in a third country maintains a branch in the State and the Bank determines on reasonable grounds that the undertaking is failing, or has failed, to comply with a requirement or condition imposed on the branch under section 22A of the Insurance Act 1989, the branch, on being notified in writing of the determination, ceases to be an exempt undertaking for the purposes of these Regulations.

## PART 2

### RESTRICTIONS ON CARRYING ON REINSURANCE BUSINESS

*Carrying on of reinsurance business prohibited unless authorised or exempt*

5. (1) A person may carry on reinsurance business in the State only if the person is an authorised reinsurance undertaking, an authorised SPRV or an exempt undertaking.

(2) A person who carries on reinsurance business in contravention of paragraph (1) commits an offence.

(3) If a person is found guilty of an offence under paragraph (2), the Bank shall take all reasonably practicable measures to ensure that the person ceases to carry on reinsurance business within the State and within every other Member State.

*Reinsurance undertaking restricted to carrying on kind of reinsurance business permitted by its authorisation*

6. (1) A reinsurance undertaking (other than an exempt undertaking) may carry on in the State reinsurance business of a particular kind only if it is an authorised reinsurance undertaking and the authorisation extends to that kind of business.

(2) A reinsurance undertaking that carries on reinsurance business in contravention of paragraph (1) commits an offence.

(3) If a reinsurance undertaking is found guilty of an offence under paragraph (2), the Bank shall take all reasonably practicable measures to ensure that the undertaking ceases to carry on within the State and within every other Member State the kind of reinsurance business to which the contravention relates.

### PART 3

#### AUTHORISATION OF REINSURANCE UNDERTAKINGS

*Who is eligible to apply for a reinsurance authorisation?*

7. (1) A person is eligible to apply to the Bank for a reinsurance authorisation only if it is an undertaking that—

(a) has both its head office and its registered office located in the State, and

(b) is—

(i) a company limited by shares or guarantee or an unlimited company, or

(ii) a European company.

(2) An authorised reinsurance undertaking established in the State can apply to the Bank to extend its authorisation to another kind of reinsurance activity.

*Eligible undertakings may apply for an authorisation to carry on reinsurance business*

8. (1) An eligible undertaking may apply to the Bank for a reinsurance authorisation in accordance with this Regulation.

(2) An application must—

(a) specify the kind of reinsurance business that the applicant proposes to carry on and contain such information with respect to the applicant as is indicated on a form provided or approved by the Bank, and

(b) be accompanied by or include satisfactory information about the identities of—

- (i) the persons who are or will be officers of the undertaking, and
  - (ii) those persons who have qualifying holdings (whether direct or indirect) in the undertaking, the amounts of those holdings, and the qualifications of those persons, and
- (c) be accompanied by a copy of the undertaking's memorandum and articles of association, and
- (d) be accompanied by or include a scheme of operations that complies with Regulation 9, and
- (e) contain such other information, and be accompanied by such documents, as the Bank reasonably requires, and
- (f) be accompanied by the fee (if any) prescribed under section 33K of the Central Bank Act 1942 for the purposes of this section.

(3) In considering an application made by an undertaking under this Regulation, the Bank may, by written notice given to the undertaking, require the undertaking to provide such additional information and documents as are reasonably necessary to enable the application to be determined. Among the kinds of information that may be required under this paragraph is information about persons who hold shares or any other interest in the undertaking.

(4) If such a requirement is not complied with within a period specified in the notice (being not less than 28 days) the Bank may summarily reject the application.

*Schemes of operations for reinsurance undertakings*

9. (1) The scheme of operations referred to in Regulation 8(2)(d) must contain particulars or proof concerning the following matters:

- (a) the nature of the risks that the undertaking proposes to cover, and
- (b) reinsurance arrangements that the undertaking proposes to make with ceding undertakings, and

- (c) the principles that will guide the undertaking when retroceding reinsurance business to insurance undertakings or other reinsurance undertakings, and
- (d) the establishment by the undertaking of a guarantee fund that complies with Schedule 2, and
- (e) an estimate of the costs likely to be incurred by the undertaking in establishing administrative services, making arrangements for securing reinsurance business and obtaining the financial resources necessary to meet those costs.

(2) In respect of the period of 3 years immediately following the date of the application, the scheme of operations must also contain the following information:

- (a) estimates of management expenses (other than installation costs) that the undertaking is likely to incur during that period;
- (b) estimates of the amounts of premiums or contributions, and claims that the undertaking reasonably expects to receive during that period;
- (c) a forecast balance sheet for each financial year during that period;
- (d) estimates of the financial resources that the undertaking intends to set aside to cover underwriting liabilities and the solvency margin during that period.

(3) In paragraph (2), “management expenses” includes current general expenses and commissions.

*Bank to grant or refuse application for reinsurance authorisation*

10. (1) Subject to paragraphs (3) and (4), the Bank shall grant an application for a reinsurance authorisation if satisfied that—

- (a) the applicant is an eligible undertaking, and
- (b) the application complies with Regulation 8, and

- (c) the objects of the applicant are limited to carrying on reinsurance business and related operations, and
- (d) the applicant has established or has, to the satisfaction of the Bank, made arrangements to establish a guarantee fund that complies with Schedule 2.

(2) In paragraph (1)(c), “related operations” includes acting as a holding company and undertaking financial sector activities within the meaning of the Supplementary Supervision of Regulated Entities Directive.

(3) The Bank shall refuse an application for a reinsurance authorisation if it is satisfied that—

- (a) the applicant is not of good repute or is not, or will not be, able to fulfil, in a proper manner, the responsibilities that are imposed on authorised reinsurance undertakings by or under these Regulations, or
- (b) any officer of the applicant is not a person of good repute, or
- (c) the officers of the applicant do not have the professional qualifications and experience necessary to operate a reinsurance undertaking, or
- (d) any person who has a qualifying holding in the applicant is not of good repute, or
- (e) the undertaking or any of its officers has, during the immediately preceding 5 years, been convicted of an offence involving breach of trust, fraud or dishonesty, or
- (f) any officer of the undertaking is prohibited from being or acting as an officer of a reinsurance undertaking or SPRV under a law of another Member State, or
- (g) any officer of the undertaking is prohibited from being or acting as an officer of a reinsurance undertaking or a SPRV under a law of a third country in which, in the opinion of the Bank,

there exists a regulatory regime equivalent to these Regulations.

(4) The Bank shall also refuse such an application if satisfied that—

- (a) close links that exist between the applicant and other persons, or
- (b) a law or administrative provision of a third country that governs one or more persons with which the applicant has close links, or
- (c) difficulties concerning the enforcement of such a law or provision,

would prevent or inhibit the effective exercise of the Bank's supervisory functions under these Regulations.

(5) In granting an authorisation, the Bank shall specify whether the holder of the authorisation is authorised to carry on—

- (a) a non-life reinsurance business, or
- (b) a life reinsurance business, or
- (c) both a non-life reinsurance business and a life reinsurance business.

(6) A reinsurance authorisation—

- (a) must be in a form that will enable any interested party, by consulting the Register, to verify that the undertaking concerned is authorised to carry on a reinsurance business in the State and in any other Member State, and to ascertain the kind of reinsurance business that is authorised, and
- (b) whether or not any other information is included, must specify the undertaking's name and the addresses of its head office and registered office.

(7) The Bank may not refuse an application for a reinsurance authorisation without giving the applicant an opportunity to make representations in writing as to why the application should be granted.

(8) If the Bank refuses such an application, it shall promptly give to the applicant a written notice of refusal, which must include a statement setting out the reasons for the refusal.

(9) On granting a reinsurance authorisation under this Regulation, the Bank shall record in the Register the relevant particulars of the reinsurance undertaking concerned and the kind of reinsurance business that that undertaking is authorised to carry on.

*Reinsurance undertakings taken to be authorised if carrying on business before 10 December 2005*

11. (1) A reinsurance undertaking established in the State that, immediately before 10 December 2005,<sup>6</sup> had a right to carry on a reinsurance business is taken to be the holder of a reinsurance authorisation granted by the Bank that authorises the undertaking to carry on the same kind of reinsurance business as it had a right to carry on immediately before that commencement, subject to compliance with paragraph (2).

(2) Not later than 10 December 2007, every reinsurance undertaking to which paragraph (1) applies shall satisfy the Bank that the undertaking has complied with the following requirements:

- (a) the undertaking is incorporated as—
  - (i) a company limited by shares or guarantee or an unlimited company, or
  - (ii) a European company;
- (b) the undertaking's objects limit its operations to carrying on reinsurance business and related operations;
- (c) the undertaking has established, and is maintaining, a guarantee fund that complies with Schedule 2;
- (d) the officers of the undertaking are persons of good repute and have the professional qualifications and experience necessary to operate a reinsurance undertaking;

<sup>6</sup> This is the date on which the Reinsurance Directive came into operation.

- (e) both the head office and registered office of the undertaking are located in the State;
- (f) no close links between the undertaking and other persons exist that would prevent or inhibit the effective exercise of the Bank's supervisory functions under these Regulations;
- (g) the undertaking has established, and is maintaining, technical reserves and an adequate solvency margin in accordance with Regulation 23;
- (h) if the undertaking underwrites credit insurance risks, it has established, and is maintaining, an equalisation reserve in accordance with Regulation 24;
- (i) the undertaking has invested, and is continuing to invest, the assets that cover the technical reserves and equalisation reserve in accordance with Regulation 26.

(3) In paragraph (2)(b), "related operations" includes acting as a holding company and undertaking financial sector activities within the meaning of the Supplementary Supervision of Regulated Entities Directive.

*Power to impose, vary and revoke conditions of reinsurance authorisation*

12. (1) When granting a reinsurance authorisation, the Bank may impose such conditions with respect to the conduct of the reinsurance business concerned as it considers appropriate with a view to ensuring that the undertaking carries out in a proper manner the responsibilities that are imposed on reinsurance undertakings by or under these Regulations.

(2) At any time while a reinsurance authorisation has effect, the Bank may, by notice in writing, impose such conditions as it considers appropriate with respect to the conduct of the reinsurance business concerned with a view to ensuring that the undertaking carries out in a proper manner the responsibilities that are imposed on reinsurance undertakings by or under these Regulations.

(3) If it thinks it would be in the general public interest to do so, the Bank may, by notice in writing, also impose

conditions with respect to the conduct in the State of the reinsurance business of a reinsurance undertaking established in another Member State with a view to ensuring that the undertaking carries out in a proper manner the responsibilities that are imposed on it by or under these Regulations.

(4) The Bank may, from time to time, by notice in writing given to the reinsurance undertaking concerned, vary or revoke a condition imposed in accordance with this Regulation or previously varied in accordance with this paragraph.

(5) In imposing or varying a condition under this Regulation, the Bank shall ensure that the condition, or the condition as varied, is consistent with the objects of the Reinsurance Directive and these Regulations.

*Effect of reinsurance authorisation*

13. (1) A reinsurance authorisation granted under Regulation 10 or taken to have been granted under Regulation 11 authorises its holder to carry on in the State and in every other Member State the kind or kinds of reinsurance business specified in the authorisation, subject to compliance with the requirements imposed by or under these Regulations and any other restrictions imposed by law.

(2) The fact that the Bank has granted a reinsurance authorisation to an undertaking does not of itself make the Bank liable for any financial loss incurred by a person—

(a) because the undertaking, any of its officers, employees or agents has contravened or failed to comply with a provision of these Regulations, or any condition of the undertaking's authorisation, or

(b) because the undertaking has become subject to an insolvency process.

(3) An authorisation granted under these Regulations remains in force until it is cancelled under this Part.

(4) A reinsurance authorisation granted or taken to have been granted to a reinsurance undertaking in accordance with a corresponding law of another Member State also authorises the undertaking to carry on in the State the same kind of reinsurance business as it is authorised to carry on

in the other Member State, subject to compliance with that law and any requirements imposed under it and with the laws of the State in so far as they apply to it.

*Cancellation of authorisation on application of reinsurance undertaking*

14. (1) The Bank may, on the application of a reinsurance undertaking established in the State, cancel the undertaking's authorisation. The application must be accompanied by the undertaking's authorisation.

(2) A reinsurance undertaking whose authorisation is cancelled under this Regulation or under a provision of a corresponding law of another Member State ceases to be entitled to carry on a reinsurance business in the State and in every other Member State.

*Cancellation of authorisation otherwise than on application of reinsurance undertaking*

15. (1) The Bank may cancel the authorisation of a reinsurance undertaking established in the State on being satisfied on reasonable grounds that—

- (a) the undertaking is failing or has failed to comply with a condition of the authorisation, or
- (b) the undertaking is failing or has failed to comply with a direction or requirement imposed on the undertaking by or under these Regulations, or
- (c) the undertaking has not carried on reinsurance business within the immediately preceding 6 months, or
- (d) the authorisation was obtained by means of a false or misleading representation, or
- (e) the undertaking has become subject to an insolvency process, such as winding-up or bankruptcy, or
- (f) since the authorisation was granted, the circumstances under which it was granted have changed to the extent that an application for an authorisation would be refused had it been made in the changed circumstances, or

- (g) the undertaking has failed, within the permitted period, to implement a restoration plan prepared under Regulation 58 or a financial recovery plan prepared under Regulation 59, or
- (h) the undertaking or any of its officers, is convicted of—
  - (i) an offence under these Regulations or under any enactment or statutory instrument specified in Schedule 2 to the Central Bank Act 1942, or
  - (ii) an offence involving fraud, dishonesty or breach of trust.

(2) The Bank may cancel the authorisation of a reinsurance undertaking under paragraph (1), only after it has, by notice in writing given to the undertaking, informed the undertaking of its intention to cancel that authorisation. The notice must specify—

- (a) the grounds on which it is proposed to cancel the authorisation, and
- (b) that the undertaking may, within 21 days after the giving of the notice, make written representations to the Bank showing why the authorisation should not be cancelled.

(3) Not later than 21 days after being given a notice under paragraph (2), the undertaking may make written representations to the Bank as to why the undertaking's authorisation should not be cancelled.

(4) As soon as practicable after cancelling the authorisation of a reinsurance undertaking under this Regulation, the Bank shall give written notice of the cancellation to the undertaking. The notice must include a statement of the reasons for the cancellation.

(5) A reinsurance undertaking shall return its authorisation to the Bank as soon as practicable after being notified that the authorisation has been cancelled under this Regulation.

(6) A reinsurance undertaking that, without reasonable excuse, fails to comply with paragraph (5) commits an offence.

*Partial cancellation of authorisation otherwise than on application of reinsurance undertaking*

16. (1) If an authorisation granted to a reinsurance undertaking established in the State relates to a particular kind of reinsurance business, the Bank may cancel the authorisation with respect to that kind of reinsurance business on being satisfied on reasonable grounds that—

- (a) the undertaking is failing or has failed to comply with a condition of the authorisation as regards that kind of reinsurance business,
- (b) the undertaking is failing or has failed to comply with a direction or requirement imposed on the undertaking by or under these Regulations with respect to that kind of reinsurance business, or
- (c) the undertaking has not carried on that kind of reinsurance business within the immediately preceding 6 months, or
- (d) since the authorisation was granted with respect to that kind of reinsurance business, the circumstances under which the authorisation was granted have changed to the extent that an application for an authorisation in respect of that kind of business would be refused had it been made in the changed circumstances.

(2) The Bank may cancel the authorisation of a reinsurance undertaking under paragraph (1) with respect to a particular kind of reinsurance business only after it has, by notice in writing given to the undertaking, informed the undertaking of its intention to cancel that authorisation with respect to that kind of business. The notice must specify—

- (a) the grounds on which it is proposed to cancel the authorisation with respect to that kind of business, and

(b) that the undertaking may, within 21 days after the giving of the notice, make written representations to the Bank showing why the authorisation should not be cancelled with respect to that kind of business.

(3) Not later than 21 days after being given a notice under paragraph (2), the undertaking may make written representations to the Bank as to why the undertaking's authorisation should not be cancelled with respect to the particular kind of reinsurance business concerned.

(4) As soon as practicable after cancelling the authorisation of a reinsurance undertaking with respect to a particular kind of reinsurance business under this Regulation, the Bank shall give written notice of the cancellation to the undertaking. The notice must include a statement of the reasons for the cancellation.

(5) A reinsurance undertaking shall return its authorisation to the Bank for amendment as soon as practicable after being notified that the authorisation has been cancelled under this Regulation with respect to a particular kind of reinsurance business.

(6) A reinsurance undertaking that, without reasonable excuse, fails to comply with paragraph (5) commits an offence.

*Cancellation of reinsurance authorisation taken to have been granted under Regulation 11*

17. (1) The Bank shall cancel a reinsurance authorisation taken to have been granted to a reinsurance undertaking under Regulation 11(1) if the undertaking has not, by 10 December 2007, complied with all of the requirements of Regulation 11(2).

(2) Nothing in paragraph (1) affects the operation of Regulation 15 or 16 in relation to a reinsurance undertaking whose reinsurance authorisation is taken to have been granted under Regulation 11(1).

*Consequences of cancellation of authorisation of reinsurance undertaking*

18. (1) A reinsurance undertaking whose authorisation is cancelled under this Part ceases to be entitled to carry on

reinsurance business in the State and in every other Member State.

(2) A reinsurance undertaking whose authorisation is cancelled under this Part as regards a particular kind of reinsurance business ceases to be entitled to carry on that kind of reinsurance business in the State and in every other Member State.

(3) If the authorisation of a reinsurance undertaking established in another Member State is cancelled in accordance with a corresponding law of that other Member State, the undertaking ceases to be entitled to carry on reinsurance business in the State.

(4) If the authorisation of a reinsurance undertaking established in another Member State is cancelled in accordance with a corresponding law of that other Member State as regards a particular kind of reinsurance business, the undertaking ceases to be entitled to carry on that kind of reinsurance business in the State.

(5) The cancellation of an authorisation, or of an authorisation as regards a particular kind of reinsurance business, does not relieve the reinsurance undertaking concerned from fulfilling obligations arising out of reinsurance business that were outstanding at the time of the cancellation.

## PART 4

### REGULATION OF REINSURANCE UNDERTAKINGS

#### *Application of this Part to authorised reinsurance undertakings*

19. Except as provided by Regulation 11(2), this Part applies to all reinsurance undertakings as soon as they are granted, or are taken to have been granted, reinsurance authorisations by the Bank.

#### *Reinsurance undertakings established in the State to maintain sound and adequate administrative and accounting procedures and internal control mechanisms*

20. (1) Every authorised reinsurance undertaking established in the State shall establish and maintain—

- (a) administrative and accounting procedures, and

- (b) internal control mechanisms and risk management requirements,

that, in the opinion of the Bank, are sound and adequate.

(2) A reinsurance undertaking that, without reasonable excuse, fails to comply with paragraph (1) commits an offence.

*Reinsurance undertaking to lodge certain annual returns and other statistical documents with the Bank*

21. (1) An authorised reinsurance undertaking established in the State shall lodge with the Bank within 6 months after the end of the undertaking's financial year, or at such more frequent intervals as the Bank may require—

- (a) a return containing such information as the Bank may specify, and
- (b) statistical documents that the Bank requires to enable it to perform its functions under these Regulations and to verify the state of solvency of the undertaking with respect to its entire business, and
- (c) such information as the Bank requires to enable it to verify that the undertaking's technical reserves are being maintained.

Such a return and information must be in such form and manner as the Bank specifies to the undertaking in writing.

(2) A reinsurance undertaking that, without reasonable excuse, fails to comply with paragraph (1) commits an offence.

(3) If the undertaking carries on reinsurance business in another Member State, the Bank shall provide the competent authority of that other Member State with such information, within the scope of the Reinsurance Directive, as is necessary to enable that authority to carry out its supervisory functions in that other Member State.

(4) If the Bank reasonably believes that a person is in possession or has control of information relating to reinsurance contracts that are entered into through, or are held by, insurance or reinsurance intermediaries, it may require

the person to provide it with that information. The person shall comply with such a requirement to the extent that the information is in the possession or under the control of the person.

(5) A person does not break any duty of confidentiality owed to a principal only by providing information to the Bank in accordance with a requirement made under paragraph (4).

(6) A person who, without reasonable excuse, fails to comply with a requirement made under paragraph (4) commits an offence.

*Transfer of reinsurance undertaking's policy portfolio prohibited without authorisation of the Bank*

22. (1) Subject to this Regulation, an authorised reinsurance undertaking established in the State may transfer its portfolio of reinsurance contracts to another person without restriction.

(2) A reinsurance undertaking established in the State shall not acquire a portfolio of reinsurance contracts held by another reinsurance undertaking (whether or not established in the State) unless it has obtained from the Bank a certificate to the effect that, after taking the acquisition into account, the undertaking will have the solvency margin required by the Reinsurance Directive.

(3) A transfer of a portfolio of reinsurance contracts in accordance with this Regulation binds the reinsured persons concerned and any other persons having rights and obligations under the contacts transferred.

(4) A reinsurance undertaking that, without reasonable excuse, contravenes paragraph (2) commits an offence.

(5) In this paragraph—

“portfolio of reinsurance contracts” includes contracts entered into under the right of establishment or the freedom to provide services in a Member State, and includes a part of a portfolio, and

“reinsurance contracts” means reinsurance contracts transacted by an authorised reinsurance undertaking in the course of carrying on a reinsurance business.

*Reinsurance undertaking to establish and maintain technical reserves, solvency margin and guarantee fund*

23. (1) An authorised reinsurance undertaking established in the State shall establish and maintain in respect of its entire business—

- (a) technical reserves as determined in accordance with the Insurance Accounts Directive and any rules in force under paragraph (2), and
- (b) an adequate solvency margin that complies with Schedule 1, and
- (c) a guarantee fund that complies with Schedule 2.

(2) The Bank may from time to time make rules with respect to the technical reserves that are to be established and maintained by an authorised reinsurance undertaking established in the State.

(3) A reinsurance undertaking that, without reasonable excuse, fails to comply with paragraph (1) commits an offence.

*Reinsurance undertaking to establish and maintain equalisation reserve*

24. (1) An authorised reinsurance undertaking established in the State that is underwriting credit insurance risks shall establish and maintain an equalisation reserve to offset any technical deficit or above-average claims ratio arising during a financial year of the undertaking in relation to those risks.

(2) The undertaking shall calculate its equalisation reserve in accordance with whichever of the methods set out in point D of the Annex to the Non-life Insurance Business Directive as is chosen by the undertaking, with the authorisation of the Bank.

(3) The undertaking's equalisation reserve is to be disregarded for the purpose of calculating its required solvency margin, up to the amount calculated in accordance with the chosen method.

(4) Paragraph (1) does not apply to an authorised reinsurance undertaking for which the premiums or contributions receivable in respect of its credit insurance business

are less than whichever is the smaller of the following amounts:

- (a) 4 per cent of the total premiums or contributions receivable by it;
- (b) €2,500,000.

(5) A reinsurance undertaking that, without reasonable excuse, fails to comply with this Regulation commits an offence.

*Bank may give directions for determining liabilities of authorised reinsurance undertaking*

25. (1) The Bank may, for the purposes of Regulation 23 or 24, give a direction relating to determining the liabilities of an authorised reinsurance undertaking. In so doing, the Bank is required to have regard to generally accepted accounting concepts, bases and policies and other generally accepted methods appropriate for reinsurance undertakings.

(2) An authorised reinsurance undertaking that, without reasonable excuse, fails to comply with a direction given to it under paragraph (1) commits an offence.

*Reinsurance undertaking to cover its technical and equalisation reserves by equivalent assets*

26. (1) An authorised reinsurance undertaking established in the State shall cover its technical reserves and, where required by Regulation 24, its equalisation reserve, by investing in equivalent assets in accordance with this Regulation.

(2) In investing its assets to cover its technical reserves and equalisation reserve, the undertaking shall—

- (a) take into account the type of business carried on by the undertaking, in particular the nature, the amount and the duration of the expected claims payments, in such a way as to secure sufficiency, liquidity, security, quality, profitability and matching of the undertaking's investments, and
- (b) diversify and adequately spread the assets so as to enable the undertaking to respond adequately to changing economic circumstances, in particular developments in the financial markets and real

estate markets or large impact catastrophic events, and

- (c) keep to a prudent level of investments in assets that are not traded on a regulated financial market, and
- (d) properly diversify the assets so as to avoid excessive reliance on any particular asset, issuer or group of undertakings and accumulations of risk in the portfolio as a whole, and
- (e) not invest in assets issued by the same issuer, or by issuers belonging to the same group, in such a way as to expose the undertaking to excessive risk concentration, and
- (f) assess the impact of irregular market circumstances on its assets and diversify those assets to ensure that that impact is reduced.

(3) The undertaking may invest in derivative instruments to the extent that they help to reduce investment risks or facilitate efficient portfolio management. However, the undertaking shall value those investments on a prudent basis, taking into account the underlying assets, and must include a valuation of the relevant institution's assets. The undertaking shall also avoid excessive risk exposure to a single counterparty and to other derivative operations.

(4) The requirements specified in paragraph (2)(d) and (e) do not apply to investment in government bonds.

(5) The Bank may prescribe detailed rules as to how reinsurance undertakings, or any kind of reinsurance undertakings, must comply with this Regulation. Those rules may include provisions fixing the conditions for the use of amounts outstanding from a SPRV for use as assets covering a reinsurance undertaking's technical reserves and providing for compliance with those rules by reinsurance undertakings.

(6) A reinsurance undertaking that, without reasonable excuse, fails to comply with paragraph (1) commits an offence.

*Reinsurance undertaking required to keep register of assets*

27. (1) An authorised reinsurance undertaking established in the State shall—

- (a) establish and maintain a register showing the assets representing the undertaking's technical and equalisation reserves (including mathematical reserves) required by these Regulations in respect of reinsurance business carried on by it, whether in the State or elsewhere, and
- (b) provide the Bank with a certificate certifying the value of those assets as at the date on which the undertaking is required to lodge its financial statements with the Bank.

The value of those assets is to be that contained in the undertaking's financial statement for the relevant financial year.

(2) The undertaking shall—

- (a) keep the register at its head office in the State, and
- (b) ensure that the register contains current details of the assets that represent reserves for reinsurance business that the undertaking has carried on, whether in the State or elsewhere, and
- (c) make the register available during normal office hours of the undertaking for inspection by any officer of the Bank who asks to see it.

(3) A reinsurance undertaking that, without reasonable excuse, fails to comply with this Regulation commits an offence.

## PART 5

### RESTRICTIONS ON OPERATING SPECIAL PURPOSE REINSURANCE VEHICLES

*Operation of SPRVs prohibited unless authorised*

28. (1) A person may operate as a SPRV in the State only in accordance with a SPRV authorisation granted by the Bank or by a competent authority of another Member State.

(2) A person who operates as a SPRV in contravention of paragraph (1) commits an offence.

(3) If a person is found guilty of an offence under paragraph (2), the Bank shall take all reasonably practicable measures to ensure that the person ceases to operate as a SPRV within the State and within every other Member State.

*SPRV restricted to transacting reinsurance business of a kind permitted by its authorisation*

29. (1) A SPRV (other than an exempt undertaking) may transact in the State reinsurance business of a particular kind only if it is an authorised SPRV and the authorisation extends to that kind of business.

(2) A SPRV that operates in contravention of paragraph (1) commits an offence.

(3) If a SPRV is found guilty of an offence under paragraph (2), the Bank shall take all reasonably practicable measures to ensure that the SPRV ceases to transact in the State and in every other Member State the kind of reinsurance business to which the contravention relates.

## PART 6

### AUTHORISATION OF SPRVs

*Applications to operate SPRVs*

30. (1) An application for authorisation to operate as a SPRV must—

- (a) be lodged with the Bank in writing, and
- (b) be accompanied by a copy of the proposed SPRV contract or a statement containing a description of that contract, and
- (c) be accompanied by or include satisfactory information about the identities and qualifications of—
  - (i) the ceding insurance undertaking or reinsurance undertaking under the relevant SPRV contract, and

- (ii) the persons (if any) who are or will be appointed to act as trustees of the SPRV's assets, and
- (iii) the persons who are or will be officers of the SPRV, and
- (iv) those persons who have qualifying holdings (whether direct or indirect) in the SPRV and the amounts of those holdings, and
- (v) the persons who are providing or will provide management and other professional services (such as accounting) to the SPRV, and

(d) be accompanied by a copy of the SPRV's memorandum and articles, or proposed memorandum and articles, of association, and

(e) contain such other information, and be accompanied by such documents, as the Bank reasonably requires, and

(f) be accompanied by the fee (if any) prescribed under section 33K of the Central Bank Act 1942 for the purposes of this section.

(2) The description referred to in paragraph (1)(b) must include the following:

- (a) any triggering event;
- (b) the aggregate limit of the relevant SPRV contract (if any);
- (c) a statement as to how the SPRV is or will be fully funded.

(3) In considering an application made under this Regulation, the Bank may, by notice in writing given to the applicant, require the applicant to provide such additional information and documents as are reasonably necessary to enable the application to be determined. Among the kinds of information that may be required under this paragraph is information about the directors and shareholders of the SPRV and the trustees of its assets.

(4) If such a requirement is not complied with within a period specified in the notice (being not less than 28 days) the Bank may summarily reject the application.

*Bank to grant or refuse application for SPRV*

31. (1) Subject to paragraphs (2) and (3), the Bank shall grant an application for a SPRV authorisation if satisfied that—

- (a) the application complies with Regulation 30, and
- (b) the objects of the SPRV are limited to operating as such.

(2) The Bank shall refuse an application for a SPRV authorisation if it is satisfied that—

- (a) the SPRV is not of good repute or is not, or will not be, able to fulfil, in a proper manner, the responsibilities that are imposed on an authorised SPRV by or under these Regulations, or
- (b) any officer of the SPRV is not a person of good repute, or
- (c) the officers of the SPRV do not have the professional qualifications and experience necessary to operate a SPRV, or
- (d) any person who has a qualifying holding in the SPRV is not of good repute, or
- (e) the SPRV, or any officer of the SPRV, has, during the immediately preceding 5 years, been convicted of an offence involving breach of trust, fraud or dishonesty, or
- (f) any officer of the SPRV is prohibited from being or acting as an officer of a reinsurance undertaking or a SPRV under a law of another Member State, or
- (g) any officer of the SPRV is prohibited from being or acting as an officer of a reinsurance undertaking or a SPRV under a law of a third country in which, in the opinion of the Bank, there exists a

regulatory regime equivalent to these Regulations.

(3) The Bank shall also refuse such an application if it is satisfied that—

- (a) close links that exist between the SPRV and other persons, or
- (b) a law or administrative provision of a third country that governs one or more persons with which the SPRV has close links, or
- (c) difficulties concerning the enforcement of such a law or provision,

would prevent or inhibit the effective exercise of the Bank's supervisory functions under these Regulations.

(4) A SPRV authorisation—

- (a) must be in a form that will enable any interested party, by consulting the Register, to verify that the SPRV is authorised to operate as such, and
- (b) must, whether or not any other information is included, specify—
  - (i) the SPRV's name, and
  - (ii) the addresses of its head office and registered office.

(5) The Bank may not refuse an application for a SPRV authorisation without giving the applicant an opportunity to make representations in writing as to why the application should not be refused.

(6) If the Bank refuses such an application, it shall promptly give to the applicant a written notice of refusal, which must include a statement setting out the reasons for the refusal.

(7) On granting an authorisation under this Regulation, the Bank shall record in the Register the relevant particulars of the SPRV.

*SPRVs taken to be authorised if operating before 10 December 2005*

32. (1) A SPRV established in the State that, immediately before 10 December 2005,<sup>7</sup> had a right to operate as such is taken to be the holder of a SPRV authorisation granted by the Bank to carry on the same kind of operation as it was entitled to carry on immediately before that commencement, subject to compliance with paragraph (2).

(2) Not later than 10 December 2007, every SPRV to which paragraph (1) applies shall satisfy the Bank that the SPRV has complied with the following requirements:

- (a) the SPRV is incorporated as—
  - (i) a company limited by shares or guarantee or an unlimited company, or
  - (ii) a European company;
- (b) the objects of the SPRV restrict it to operating as such;
- (c) the officers of the SPRV are persons of good repute and have the professional qualifications and experience necessary to operate a SPRV;
- (d) both the head office and registered office of the SPRV are located in the State;
- (e) no close links between the SPRV and other persons exist that would prevent or inhibit the effective exercise of the Bank's supervisory functions under these Regulations;
- (f) the SPRV has complied with, and is continuing to comply with, the rules (if any) in force under Regulation 39.

*Power to impose, vary and revoke conditions of SPRV authorisation*

33. (1) When granting a SPRV authorisation or at any time while a SPRV authorisation has effect, the Bank may impose such conditions with respect to the conduct of the business concerned as it considers appropriate.

<sup>7</sup> This is the date on which the Reinsurance Directive came into operation.

(2) The Bank may, from time to time, by notice in writing given to the SPRV concerned, vary or revoke a condition imposed in accordance with paragraph (1) or previously varied in accordance with this paragraph.

(3) If it thinks it would be in the general public interest to do so, the Bank may, by notice in writing, also impose conditions with respect to the operation of a SPRV established in another Member State with a view to ensuring that the SPRV carries out in a proper manner the responsibilities that are imposed on SPRVs by or under these Regulations.

(4) In imposing or varying a condition under this Regulation, the Bank shall ensure that the condition, or the condition as varied, accords with the objects of the Reinsurance Directive and these Regulations in so far as they apply to SPRVs.

(5) The imposition, variation or revocation of a condition under this Regulation does not relieve a SPRV from its obligations to providers of financial accommodation or to the other parties to any SPRV contract to which the SPRV was a party when the condition was imposed, varied or revoked.

*Effect of SPRV authorisation*

34. (1) A SPRV authorisation authorises its holder to carry on in the State and in every other Member State the kind or kinds of business specified in the authorisation, subject to compliance with the requirements imposed by or under these Regulations and any other restrictions imposed by law.

(2) The fact that the Bank has granted a SPRV authorisation in respect of an entity does not of itself make the Bank liable for any financial loss incurred by a person—

(a) because the SPRV, or any officer, employee or agent of the SPRV, has contravened or failed to comply with a provision of these Regulations, or any condition of the authorisation, or

(b) because the SPRV has become subject to an insolvency process, such as winding up or bankruptcy.

(3) An authorisation granted under these Regulations remains in force until it is cancelled under this Part.

(4) A SPRV authorisation granted, or taken to have been granted, to a SPRV in accordance with a corresponding law of another Member State also authorises the SPRV to carry on the same kind of operation as it was entitled to carry on in the other Member State, subject to compliance with that law and any requirements imposed under it and with the laws of the State in so far as they apply to and in respect of an authorised SPRV established in the State.

*Cancellation of authorisation on application of SPRV*

35. (1) The Bank may, on the application of an authorised SPRV established in the State, cancel the authorisation. The application must be accompanied by the authorisation.

(2) A SPRV whose authorisation is cancelled under this Regulation, or under a provision of a corresponding law of another Member State, ceases to be entitled to operate in the State as such.

*Cancellation of authorisation otherwise than on application of person operating a SPRV*

36. (1) The Bank may cancel the authorisation of a SPRV established in the State on being satisfied on reasonable grounds that the vehicle is failing, or has failed, to comply with any condition of the authorisation or with any requirement imposed on the SPRV by or under this Part.

(2) The Bank may also cancel the authorisation of a SPRV on any of the following grounds:

- (a) the SPRV has not operated as such within the immediately preceding 6 months;
- (b) the authorisation was obtained by means of a false or misleading representation;
- (c) the SPRV has become subject to an insolvency process, such as winding-up or bankruptcy;
- (d) since the authorisation was granted, the circumstances under which it was granted have changed to the extent that an application for an authorisation would be refused had it been made in the changed circumstances;
- (e) the SPRV is failing, or has failed, to comply with a rule in force under Regulation 39;

- (f) the SPRV has failed, within the permitted period, to implement a restoration plan prepared under Regulation 60;
- (g) the SPRV, any officer of the SPRV or any trustee of its assets is convicted of—
  - (i) an offence under these Regulations or under any enactment or statutory instrument specified in Schedule 2 to the Central Bank Act 1942, or
  - (ii) an offence involving fraud, dishonesty or breach of trust.

(3) A SPRV whose authorisation is cancelled under this Regulation ceases to be entitled to operate as such in the State or in any other Member State.

(4) The Bank may cancel a SPRV authorisation under this Regulation only after it has, by notice in writing given to the SPRV, informed the SPRV of its intention to cancel that authorisation. The notice must specify—

- (a) the grounds on which it is proposed to cancel the authorisation, and
- (b) that the SPRV may, within 21 days after the giving of the notice, make written representations to the Bank showing why the authorisation should not be cancelled.

(5) Not later than 21 days after being given a notice under paragraph (4), the SPRV may make written representations to the Bank as to why the SPRV's authorisation should not be cancelled.

(6) As soon as practicable after cancelling a SPRV authorisation under this Regulation, the Bank shall give written notice of the cancellation to the SPRV concerned. The notice must include a statement of the reasons for the cancellation.

(7) A SPRV shall return its authorisation to the Bank as soon as practicable after being notified that the authorisation has been cancelled under this Regulation.

(8) A SPRV that, without reasonable excuse, fails to comply with paragraph (7) commits an offence.

(9) The cancellation of a SPRV authorisation under this Regulation or Regulation 35 does not relieve the SPRV from its obligations to the providers of financial accommodation or to the other parties to any SPRV contract to which the SPRV was a party at the time of the cancellation.

*Consequences of cancellation of SPRV authorisation under corresponding law of another Member State*

37. If the authorisation of a SPRV established in another Member State is cancelled in accordance with a corresponding law of that other Member State, the SPRV ceases to be entitled to operate in the State.

## PART 7

### OPERATION OF SPRVS

*SPRV to comply with certain requirements*

38. (1) An authorised SPRV shall—

- (a) maintain sound administrative and accounting procedures, adequate internal control mechanisms and risk management requirements, and
- (b) satisfy accounting, prudential and statistical information requirements,

in accordance with such requirements (if any) as the Bank notifies to the SPRV in writing from time to time.

(2) An authorised SPRV may not issue debt securities, unless the documents specifying the rights of the holders of the securities—

- (a) make it clear that the SPRV is a legal entity separate from any third party involved in the establishment of the SPRV, and
- (b) state the manner in which claims relating to such securities rank as between different security holders and limited in the event of insufficient funds, and

(c) make it a condition of securities issued or to be issued by the SPRV that the holders of the securities undertake not to initiate or participate in insolvency proceedings against the SPRV until those securities are discharged, and

(d) specifies any other conditions determined by the Bank for the purposes of this subparagraph and notified in writing to the SPRV.

(3) In making a determination for the purposes of paragraph (2)(d), the Bank shall have regard to the following factors:

(a) the need for all relevant material information to be disclosed;

(b) the need to avoid misinterpretation and to prevent abuse;

(c) the need to conduct business in an honest and fair manner;

(d) the need to preserve the integrity of the market.

(4) An authorised SPRV that, without reasonable excuse, fails to comply with paragraph (1), or contravenes paragraph (2), commits an offence.

*Bank may make rules specifying solvency requirements for SPRVs*

39. (1) The Bank may from time to time make rules with respect to the solvency requirements that are to apply to SPRVs.

(2) An authorised SPRV established in the State shall comply with rules in force under paragraph (1).

(3) An authorised SPRV that, without reasonable excuse, fails to comply with paragraph (2) commits an offence.

## PART 8

ACQUISITION AND DISPOSAL OF QUALIFYING HOLDINGS IN  
REINSURANCE UNDERTAKINGS AND SPRVs*Interpretation: Part 8*

40. (1) In this Part—

“prescribed percentage level” means 20 per cent, 33 per cent or 50 per cent;

“prescribed entity” means any of the following:

- (a) a reinsurance undertaking, an insurance undertaking, a credit institution or an investment firm authorised by a competent authority of a Member State;
- (b) the parent undertaking of such an undertaking, institution or firm;
- (c) a person (whether natural or legal) who controls such an undertaking, institution or firm.

(2) This Part has effect despite anything in the Companies Acts to the contrary.

*Restrictions on acquiring and disposing of qualifying holdings in reinsurance undertakings and SPRVs*

41. (1) A person shall not, directly or indirectly, acquire a qualifying holding in an authorised reinsurance undertaking or SPRV established in the State without having previously notified the Bank of the size of the holding.

(2) A person who has a qualifying holding in an authorised reinsurance undertaking or SPRV shall not, directly or indirectly, increase the holding without having previously notified the Bank of the increase, if, as a result of the increase—

- (a) the percentage level of the voting rights or capital that the person holds would reach or exceed any of the prescribed percentage levels, or
- (b) the undertaking or SPRV would become the person’s subsidiary.

(3) A person shall not, directly or indirectly, dispose of a qualifying holding in an authorised reinsurance undertaking or SPRV without having previously notified the Bank of the size of the holding to be disposed of.

(4) A person shall not, directly or indirectly, decrease a qualifying holding in a reinsurance undertaking or SPRV without having previously notified the Bank if, as a result of the decrease—

(a) any of the percentage levels of the voting rights or capital that the person holds would fall below any of the prescribed percentage levels, or

(b) the undertaking or SPRV would cease to be the person's subsidiary.

*Bank to consult with other competent authorities in certain cases*

42. If an authorised reinsurance undertaking or SPRV would, as result of an acquisition of a qualifying holding, or of an increase in an existing qualifying holding, in the undertaking or SPRV by a prescribed entity, become a subsidiary, or become subject to the control, of a prescribed entity, the Bank shall consult with the competent authority responsible for supervising entities of the kind to which the prescribed entity belongs in the Member State concerned.

*Obligation of reinsurance undertaking or SPRV to provide information*

43. (1) As soon as practicable after an authorised reinsurance undertaking or SPRV established in the State becomes aware of an acquisition of a holding in its capital so that the holding exceeds any of the prescribed percentage levels, the undertaking or SPRV shall, by notice in writing, inform the Bank of the acquisition.

(2) As soon as practicable after an authorised reinsurance undertaking or SPRV established in the State becomes aware of a disposal of a holding in its capital so that the holding falls below any of the prescribed percentage levels, the undertaking shall, by notice in writing, inform the Bank of the disposal.

(3) At such times as may be specified by the Bank and at least once in each year, an authorised reinsurance undertaking or SPRV established in the State shall, by notice in writing, inform the Bank of—

- (a) the names of shareholders or members who have qualifying holdings, and
- (b) the size of the holdings by reference, for example, to information received at annual general meetings of shareholders or members or as a result of compliance with the Companies Acts or any applicable rules relating to companies whose securities are listed on a stock exchange.

(4) As soon as practicable after being required to do so by the Bank, an authorised reinsurance undertaking or SPRV established in the State shall provide the Bank with information in writing concerning all shareholders of the undertaking or SPRV, irrespective of the size of their respective shareholdings.

(5) As soon as practicable after being required to do so by the Bank, an authorised reinsurance undertaking or SPRV established in the State shall provide the Bank with information in writing concerning compliance by the undertaking or SPRV with the conditions (if any) specified in the relevant authorisation or prescribed by the Bank under these Regulations.

(6) A reinsurance undertaking or SPRV that, without reasonable excuse, fails to comply with a requirement of this Regulation commits an offence.

*Bank may oppose certain acquisitions*

44. (1) Within 3 months after the date on which notice is given to it in accordance with Regulation 41(1) or (3), the Bank shall decide whether or not to oppose an acquisition of, or an increase in, a qualifying holding in an authorised reinsurance undertaking or SPRV established in the State.

(2) The Bank may oppose the acquisition or increase if, having regard to the need to ensure the prudent and sound management of the reinsurance undertaking or SPRV concerned, it is not satisfied as to the suitability of the person who, or the entity that, is proposing to acquire a qualifying

holding in that undertaking or SPRV, or to increase such a holding.

*Power of Court to make certain orders*

45. (1) If the Bank reasonably believes that—

- (a) the control exercised by a person referred to in Regulation 41 would be inconsistent with the prudent and sound management of a reinsurance undertaking or SPRV established in the State, or
- (b) a person is contravening or has contravened a provision of that Regulation,

it may apply to the Court for an order under paragraph (3) of this Regulation.

(2) On making an application under paragraph (1), the Bank shall serve a copy of the application on the person to whom the application relates. On being served with the notice, that person becomes the respondent to the application.

(3) On the hearing of an application made under paragraph (1), the Court may, on being satisfied that the Bank's belief is substantiated, make—

- (a) an order directing the respondent not to acquire a qualifying holding, or to increase a qualifying holding, in the relevant reinsurance undertaking or SPRV, or
- (b) if the respondent has already acquired such a holding, all or any of the following orders:
  - (i) an order directing the respondent to dispose of the holding or a specified part of it;
  - (ii) an order suspending the exercise of the voting rights attached to the relevant shares;
  - (iii) an order invalidating votes already exercised by holders of those shares.

## PART 9

AUDITING OF ACCOUNTS OF REINSURANCE UNDERTAKINGS  
AND SPRVs*Responsibilities of auditors in respect of reinsurance undertakings and SPRVs*

46. (1) As soon as practicable after an auditor of an authorised reinsurance undertaking or authorised SPRV—

- (a) forms the belief on reasonable grounds that circumstances exist that are likely to affect materially the ability of the undertaking or SPRV to fulfil its obligations to third parties, or to meet any of its material financial requirements, under these Regulations, or
- (b) forms the belief on reasonable grounds that there are material defects in the financial systems and controls or accounting records of the undertaking or SPRV that are likely to have that effect, or
- (c) decides to qualify any certificate that the auditor is required to provide in relation to financial statements or returns of the undertaking or SPRV under the Companies Acts, or
- (d) decides to resign or not to seek re-election as auditor, or
- (e) while conducting an audit of the affairs of another person that is in a control relationship with the undertaking or SPRV, becomes aware of any facts or decisions that are likely to materially affect the ability of the undertaking or SPRV to comply with financial requirements imposed by or under these Regulations,

the auditor shall report the matter to the Bank.

(2) As soon as practicable after preparing a report under this paragraph (1), an auditor shall send a copy of it to the undertaking or SPRV concerned.

(3) The responsibilities imposed on an auditor under this Regulation extend not only to transactions entered into in the State after the commencement of these Regulations but

also to transactions entered into by a reinsurance undertaking or SPRV before, and in existence when, it began to carry on reinsurance business or to operate as an SPRV.

*Bank may require auditor of reinsurance undertaking or SPRV to provide information*

47. (1) If the Bank considers it appropriate to do so, it may require an auditor of a reinsurance undertaking or SPRV to provide it with such information as it may specify in relation to the audit of the business of the undertaking or SPRV. The Bank may also require that, in providing any such information, the auditor must act independently of the undertaking or SPRV.

(2) The auditor shall comply with such a requirement as soon as practicable after being notified of it.

*Auditor not liable to reinsurance undertaking or SPRV, etc. for having complied with this Part*

48. An auditor's duty to an authorised reinsurance undertaking or SPRV, to the shareholders or creditors of the undertaking or SPRV, or to any other interested person is not contravened only because the auditor has complied with a requirement imposed by or under this Part.

## PART 10

### PROVISIONS APPLICABLE TO BOTH REINSURANCE UNDERTAKINGS AND SPRVs

*Bank to keep Register of Authorised Reinsurance Undertakings and SPRVs*

49. (1) The Bank shall establish and maintain a register called the Register of Authorised Reinsurance Undertakings and Special Purpose Reinsurance Vehicles.

(2) The Register must—

- (a) be compiled electronically and be available in a form that is readily accessible to the public, and
- (b) contain the names and principal business addresses of all authorised reinsurance undertakings and SPRVs and such other information relating to those undertakings and SPRVs as the Bank considers appropriate.

(3) Members of the public are entitled, without charge, to inspect the Register during the ordinary business hours of the Bank. However, the Bank may impose, on a cost recovery basis, a reasonable charge for providing a copy of the Register or of any entry in it.

(4) The Bank shall take all practicable steps to ensure that the Register is kept up to date.

*Rights of appeal against certain Bank decisions made under these Regulations*

50. The following decisions of the Bank are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942:

- (a) a decision of the Bank refusing an application for a reinsurance authorisation or a SPRV authorisation;
- (b) the failure of the Bank to make a decision with respect to such an application within 6 months after the application was made;
- (c) a decision of the Bank under Regulation 15 or 17 cancelling a reinsurance authorisation or a decision of the Bank under Regulation 16 cancelling a reinsurance authorisation as to a particular kind of reinsurance business;
- (d) a decision of the Bank under Regulation 36 cancelling a SPRV authorisation;
- (e) a decision of the Bank under Regulation 12 imposing a condition on a reinsurance undertaking or varying such a condition;
- (f) a decision of the Bank under Regulation 33 imposing a condition on a SPRV or varying such a condition;
- (g) a direction given under Regulation 58 or 60;
- (h) a requirement imposed under Regulation 59.

*Consequences of cancellation of authorisation as regards other Member States*

51. As soon as practicable after cancelling—

(a) a reinsurance authorisation under Regulation 14, 15 or 17, or

(b) a reinsurance authorisation under Regulation 16 as to a particular kind of reinsurance business, or

(c) a SPRV authorisation under Regulation 35 or 36, the Bank shall notify the cancellation to the competent authority of each of the other Member States in which the relevant undertaking or SPRV carries on business.

PART 11

RESPONSIBILITIES OF THE BANK UNDER THESE REGULATIONS

*Responsibilities of Bank with respect to authorised reinsurance undertakings and SPRVs established in the State*

52. (1) The Bank alone has responsibility for the financial supervision of authorised reinsurance undertakings and authorised SPRVs established in the State.

(2) Paragraph (1) applies to activities that the reinsurance undertaking or SPRV undertakes in the State and in any other Member State.

(3) The responsibility referred to in paragraph (1) extends to verifying the state of solvency of the entire business of an authorised reinsurance undertaking or SPRV established in the State (including the establishment and maintenance by the undertaking or SPRV of technical reserves and of the assets covering those reserves).

(4) The Bank may prescribe rules, not inconsistent with the Reinsurance Directive, relating to issues affecting the solvency of authorised reinsurance undertakings and SPRVs established in the State.

(5) In this Regulation, a reference to the entire business of an authorised reinsurance undertaking or SPRV established in the State includes any business carried on by it in another Member State or in a third country.

*Bank to be responsible for enforcing continued compliance with obligations*

53. (1) The Bank shall take all appropriate measures in order to be satisfied that an authorised reinsurance undertaking or SPRV is complying with, or is able to continue to comply with, its obligations under these Regulations and any rules prescribed by the Bank in accordance with these Regulations.

(2) In performing its function under paragraph (1), the Bank has power to do either or both of the following:

- (a) to make detailed enquiries regarding the business of an authorised reinsurance undertaking or SPRV;
- (b) to take any measures with respect to an authorised reinsurance undertaking or SPRV, or the officers who control it, that are appropriate and necessary to ensure that the undertaking or SPRV complies with these Regulations and with any other laws with which the undertaking or SPRV is required to comply.

(3) For the purpose of making enquiries of the kind referred to in paragraph (2)(a), the Bank may—

- (a) gather information or require the submission of documents concerning reinsurance and retroceding transactions entered into or proposed to be entered into by the undertaking or SPRV concerned, and
- (b) carry out investigations at any premises at which the Bank reasonably believes that the undertaking is carrying on reinsurance business or the SPRV is conducting its operations.

*Bank to collaborate with other competent authorities and the European Commission*

54. (1) The Bank shall collaborate with the competent authorities of the other Member States for the purpose of facilitating—

- (a) the supervision of reinsurance business carried on by reinsurance undertakings and the operations of SPRVs within the European Communities, and

(b) the application of the Reinsurance Directive and these Regulations.

(2) The Bank shall collaborate closely with the European Commission for the purposes of—

(a) facilitating the supervision of the activities of reinsurance undertakings and SPRVs undertaken within the European Communities, and

(b) addressing any difficulties that may arise in the implementation of the Reinsurance Directive or these Regulations.

*Bank to consult with other competent authorities before granting authorisation or when assessing compliance with conditions*

55. (1) The Bank shall consult the relevant competent authority of the other Member State responsible for the supervision of insurance undertakings, reinsurance undertakings, credit institutions or investment firms before granting an authorisation to a reinsurance undertaking or SPRV that is—

(a) a subsidiary of an insurance or reinsurance undertaking authorised in another Member State, or

(b) a subsidiary of the parent undertaking of such an insurance or reinsurance undertaking, or

(c) controlled by the same person who controls such an insurance or reinsurance undertaking.

(2) The Bank shall consult the competent authority of the other Member State responsible for the supervision of credit institutions or investment firms before granting an authorisation to a reinsurance undertaking or SPRV that is—

(a) a subsidiary of a credit institution or investment firm that is authorised in another Member State, or

(b) a subsidiary of the parent undertaking of such a credit institution or investment firm, or

(c) controlled by the same person as the one who controls such a credit institution or investment firm.

- (3) In particular, the Bank shall—
- (a) when assessing the suitability of the shareholders, and the reputation and experience of directors involved in the management, of another entity of the same group, consult with the authorities referred to in paragraphs (1) and (2), and
  - (b) either when involved in granting an authorisation to a reinsurance undertaking or SPRV or in assessing compliance by such an undertaking or SPRV with the conditions under which it is authorised to operate, inform each of the other competent authorities of the other Member States concerned of any information regarding the suitability of shareholders, and the reputation and experience of directors, that is of relevance to those authorities.

*Bank to notify competent authority of other Member State of belief that reinsurance undertaking or SPRV of that State may be financially unsound*

56. (1) If—

- (a) an authorised reinsurance undertaking that is established in another Member State is carrying on reinsurance business in the State, and
- (b) the Bank forms the belief on reasonable grounds that the conduct of the undertaking's activities in the State might affect the undertaking's financial soundness,

the Bank shall, without delay, notify its belief to the competent authority of the Member State in which the undertaking is established. The competent authority of that other Member State is responsible for determining whether that undertaking is complying with the prudential rules laid down in or required by the Reinsurance Directive.

(2) If—

- (a) an authorised SPRV that is established in another Member State is operating in the State, and
- (b) the Bank forms the belief on reasonable grounds that the conduct of the SPRV's activities in the

State might affect the SPRV's financial soundness,

the Bank shall, without delay, notify its belief to the competent authority of the Member State in which the SPRV is established. The competent authority of that other Member State is responsible for determining whether that SPRV is complying with the prudential rules laid down in or required by the Reinsurance Directive.

*Limitations on Bank with respect to its supervisory functions under these Regulations*

57. (1) In performing its supervisory functions under these Regulations, the Bank may not, except as provided by rules in force under Regulation 39 or 61, require an authorised reinsurance undertaking or SPRV to submit for prior authorisation or to systematically notify—

- (a) general and special policy conditions, or
- (b) scales of premiums, or
- (c) forms or other printed documents that the undertaking or SPRV intends to use when entering into cessions with insurance or reinsurance undertakings.

(2) Nothing in these Regulations prevents the Bank from requiring a reinsurance undertaking or SPRV—

- (a) to produce to the Bank for approval the memorandum and articles of association of the undertaking or SPRV, or
- (b) to produce documents that the Bank requires in the ordinary course of performing its supervisory functions under these Regulations.

## PART 12

### SPECIAL POWERS OF BANK TO DEAL WITH CERTAIN MATTERS

*Consequences of failing to comply with provision of Part 4*

58. (1) If a reinsurance undertaking established in the State has failed, or is failing, to comply with a provision of

Part 4, the Bank may, after notifying the supervisory authorities of the Member States in which the commitments underwritten by the undertaking exist, give the undertaking a direction in writing prohibiting or restricting it from disposing of its assets.

(2) If the Bank finds that the solvency margin of an authorised reinsurance undertaking established in the State has fallen below the minimum amount required by Schedule 1, the Bank may give the undertaking a direction in writing requiring the undertaking to submit to the Bank for its authorisation a plan for restoring the undertaking to a sound financial position.

(3) If, in a case where paragraph (2) applies, it appears to the Bank that the financial position of the reinsurance undertaking will deteriorate further, the Bank may give a further direction in writing to the undertaking restricting or prohibiting it from disposing of its assets.

(4) On giving a direction under paragraph (3), the Bank—

(a) shall inform the competent authorities of the Member States in which the undertaking carries on reinsurance business that it has given the direction to the undertaking, and

(b) may ask those authorities to take measures in relation to the undertaking corresponding to those specified in this Regulation.

(5) If the Bank finds that the solvency margin of an authorised reinsurance undertaking established in the State has fallen below the minimum amount required by Schedule 2 for a guarantee fund, the Bank—

(a) may give to the undertaking a further direction in writing requiring the undertaking to submit for the Bank's authorisation a short-term finance scheme, and

(b) may include in the direction, or in another direction, a requirement restricting or prohibiting the undertaking from disposing of its assets.

(6) On giving a direction under paragraph (5), the Bank—

(a) shall inform the competent authorities of the Member States in which the undertaking carries on reinsurance business that it has given the direction to the undertaking, and

(b) may ask those authorities to take measures in relation to the undertaking corresponding to those specified in this Regulation.

(7) If the Bank has given a direction to a reinsurance undertaking in accordance with a provision of paragraphs (1) to (6), the Bank may give the undertaking such further directions as it thinks necessary to safeguard the interests of the undertaking's clients.

(8) If the competent authority of another Member State in which an authorised reinsurance undertaking is established requests the Bank to take measures to restrict or prohibit the undertaking from disposing of assets held by the undertaking in the State, the Bank may give a direction in writing prohibiting or restricting the undertaking from disposing of those assets.

(9) A reinsurance undertaking that fails without reasonable excuse to comply with a direction given under this Regulation commits an offence.

*Reinsurance undertaking to provide financial recovery plan if required to do so by the Bank*

59. (1) If the Bank considers that the obligations arising out of the reinsurance contracts entered into by a reinsurance undertaking are being jeopardised, it can, by notice in writing, require the undertaking to provide it with a financial recovery plan to restore the undertaking to a sound financial position.

(2) As soon as practicable after receiving a notice under paragraph (1), the undertaking shall provide the Bank with a financial recovery plan. The plan must cover the 3 financial years of the undertaking following the date of the notice and include particulars or proof of the following:

(a) estimates of the undertaking's management expenses, and in particular its current general expenses and commissions;

- (b) detailed estimates of the undertaking's income and expenditure in respect of reinsurance acceptances and reinsurance cession transactions;
- (c) a forecast balance sheet for the undertaking;
- (d) estimates of financial resources intended to cover the undertaking's underwriting liabilities and its required solvency margin;
- (e) the undertaking's overall policy with respect to retrocessions;
- (f) such other matters as the Bank considers appropriate.

(3) If the Bank considers that the obligations arising out of the reinsurance contracts entered into by the undertaking are being jeopardised because its financial position is deteriorating, it may, by notice in writing, require the undertaking to maintain a higher required solvency margin so as to ensure that the undertaking is able to comply with the relevant solvency requirements. The higher required solvency margin must be based on the financial recovery plan.

(4) As soon as practicable after being notified of a requirement under paragraph (3), the undertaking shall comply with the requirement.

(5) The Bank may revalue downwards all elements eligible for the undertaking's available solvency margin, in particular, if the market value of those elements has changed significantly since the end of the undertaking's last financial year.

(6) The Bank may reduce the reduction, based on retrocessions, to the required solvency margin as determined in respect of the undertaking in accordance with these Regulations if—

- (a) the nature or quality of the undertaking's retrocessions has changed significantly since its last financial year, and
- (b) no risk, or only an insignificant risk transfer, arises under the undertaking's retrocessions.

(7) If the Bank has required a reinsurance undertaking to provide a financial recovery plan in accordance with these Regulations, it may not issue a certificate verifying compliance with the required solvency margin so long as it continues to believe that the obligations arising out of the reinsurance contracts of the undertaking are being jeopardised.

(8) A reinsurance undertaking that fails without reasonable excuse to comply with a requirement imposed by or under this Regulation commits an offence.

*Consequences of failure of SPRV to comply with certain provisions*

60. (1) If an authorised SPRV established in the State has failed, or is failing, to comply with a condition of its authorisation or with a rule in force under Regulation 39, the Bank may give the SPRV a direction in writing requiring it, except with the consent of the Bank, not to do any one or more of the following things during such period (not exceeding 12 months) as is specified in the direction:

- (a) issue shares or other securities;
- (b) pay interest to the holders of securities issued by the SPRV;
- (c) declare or pay dividends on shares issued by the SPRV;
- (d) make any other payment, or dispose of any of its assets, otherwise than as provided for by the relevant SPRV contract.

(2) If the Bank gives a SPRV a direction under paragraph (1), it shall also give the SPRV a direction requiring it to submit to the Bank for its approval a plan for the SPRV to comply with the conditions of its authorisation or with the rules (if any) in force under Regulation 39.

(3) On giving a direction under paragraph (1), the Bank—

- (a) shall inform the competent authorities of the Member States in which the SPRV is operated that it has given the direction to the SPRV, and

(b) may request those authorities to take measures in relation to the SPRV corresponding to those specified in this Regulation.

(4) If the Bank has given a direction under paragraph (1), it may give the SPRV concerned such further directions as it thinks necessary to safeguard the interests of any counterparty to a SPRV contract to which the SPRV is a party.

(5) If the competent authority of another Member State in which an authorised SPRV is established requests the Bank to do so, the Bank may give directions in writing to the SPRV corresponding to those specified in paragraphs (1) and (2).

(6) A SPRV that fails without reasonable excuse to comply with a direction given under this Regulation commits an offence.

(7) A direction given to a SPRV under this Regulation does not affect the accrued rights and obligations (if any) that any party may have under a contract entered into with the SPRV.

## PART 13

### SPECIAL PROVISIONS WITH RESPECT TO FINITE REINSURANCE CONTRACTS

#### *Powers of Bank with respect to finite reinsurance activities undertaken by reinsurance undertakings and SPRVs*

61. (1) The Bank may from time to time make rules providing for the available solvency margin, the required solvency margin and the guarantee fund that an authorised reinsurance undertaking or SPRV established in the State is required to establish and maintain in respect of its finite reinsurance activities.

(2) An authorised reinsurance undertaking or SPRV established in the State that undertakes finite reinsurance activities shall comply with the rules (if any) in force under paragraph (1).

(3) An authorised reinsurance undertaking or SPRV that, without reasonable excuse, fails to comply with paragraph (2) commits an offence.

*Regulation of finite reinsurance contracts*

62. (1) Subject to paragraph (2), a reinsurance undertaking or SPRV may enter into a finite reinsurance contract with a cession undertaking only if the contract—

- (a) states that, except for any related contract disclosed in accordance with subparagraph (b), the contract constitutes all of the contractual arrangements between the reinsurance undertaking or SPRV and the cession undertaking, and
- (b) if any other contract has been entered into that is related to the principal contract, discloses the related contract, and
- (c) states that the cession undertaking undertakes to comply with the notification requirements (if any) imposed by the competent authority of the Member State or third country in which that undertaking is established, and
- (d) states that, if the contract has (by reference to the most recent audited financial statements of the cession undertaking) the effect of altering the funds of shareholders of the cession undertaking by more than 5 per cent, or representing a cession of more than 3 per cent of the annual gross written premium or gross incurred losses of that undertaking, that undertaking undertakes, within a reasonable period after the contract is entered into—
  - (i) to notify in writing its auditor of the terms and conditions of the contract and provide to such auditor an explanation of the financial effect of the contract on that undertaking's capital resources together with the proposed accounting treatment, and
  - (ii) if the competent authority referred to in subparagraph (c) imposes no disclosure requirements, to notify in writing that authority of the terms and conditions of the contract and provide an explanation of the financial effect of the contract on that undertaking's capital resources, and

(e) provides—

- (i) that all amendments to the contract or any related contract require the consent of the reinsurance undertaking or SPRV and the cession undertaking, and
- (ii) that the cession undertaking undertakes that it will notify all such amendments to all persons whom it has undertaken to notify in accordance with subparagraphs (c) and (d), and

(f) specifies any other conditions determined by the Bank for the purposes of this subparagraph and notified in writing to the reinsurance undertaking or SPRV.

(2) A finite reinsurance contract entered into on or after 15 July 2006 but before 1 January 2007 is not required to state the matters referred to in paragraph (1)(d).

(3) In making a determination for the purposes of paragraph (1)(f), the Bank shall have regard to the following factors:

- (a) the need for all relevant material information to be disclosed;
- (b) the need to avoid misinterpretation and to prevent abuse;
- (c) the need to conduct business in an honest and fair manner;
- (d) the need to preserve the integrity of the market.

(4) A reinsurance undertaking or SPRV that, without reasonable excuse, enters into a finite reinsurance contract in contravention of paragraph (1) commits an offence.

(5) In this Regulation—

“cession undertaking”, in relation to a finite reinsurance contract, means the insurance undertaking making a cession, or the reinsurance undertaking making a retrocession, under the contract;

“related contract” means a contract that alters the commercial effect of a finite reinsurance contract and is entered into between the parties to the finite reinsurance contract, or between those parties and a person with whom either of those parties has a close link.

## PART 14

### RELATIONS INVOLVING REINSURANCE UNDERTAKINGS AND SPRVs ESTABLISHED IN OTHER MEMBER STATES

*Competent authority of other Member State empowered to undertake verification of information about reinsurance undertakings and SPRVs established in the State*

63. If an authorised reinsurance undertaking or authorised SPRV established in another Member State carries on business in the State, the competent authority of that other Member State may, after having notified the Bank of its intention to do so, undertake in the State verification of information necessary to ensure that the finances of the undertaking or SPRV are adequately supervised. The Bank is entitled to participate in such a verification.

*Bank entitled to take measures to prevent irregularities involving reinsurance undertakings and SPRVs established in other Member States*

64. (1) This Regulation applies—

- (a) to an authorised reinsurance undertaking established in another Member State that carries on reinsurance business in the State, and
- (b) to an authorised SPRV established in another Member State that operates in the State.

(2) A reinsurance undertaking or SPRV to which this Regulation applies shall, if required to do so by the Bank, submit to the Bank all documents that the Bank considers necessary for the purposes of giving effect to these Regulations. However, the Bank may only require the undertaking or SPRV to submit documents of a kind that it could require an authorised reinsurance undertaking or authorised SPRV established in the State to submit.

(3) If a reinsurance undertaking or SPRV to which this Regulation applies—

- (a) is contravening a provision of these Regulations, or
- (b) has contravened such a provision of these Regulations and has not remedied the effect of the contravention, or
- (c) is failing to comply with a direction or requirement made by or under these Regulations,

the Bank shall, in writing, direct the undertaking or SPRV to cease the contravention, to remedy the effect of the contravention or to comply with the requirement, as the case requires.

(4) If such an undertaking or SPRV fails to comply with a direction given to it under paragraph (3), the Bank shall notify the failure to the competent authority of the Member State in which the undertaking or SPRV is established so that that authority can take all appropriate measures to deal with the undertaking or SPRV under the relevant laws of that Member State.

(5) If, after the Bank has taken action under paragraph (4)—

- (a) the measures (if any) taken against the undertaking or SPRV by the competent authority of the other Member State appear to the Bank to be ineffective, and
- (b) the undertaking or SPRV is continuing to fail to comply with the direction given to it under paragraph (3),

the Bank may, after informing that authority of its intention to do so, apply to the Court for an order directing the undertaking or SPRV to comply with the direction.

(6) On hearing an application made under paragraph (5), the Court may make—

- (a) an order ordering the undertaking or SPRV to comply with the direction concerned, and
- (b) if it thinks appropriate, a further order preventing

that undertaking from transacting further reinsurance business, or that SPRV from continuing to operate, in the State, and

(c) such ancillary orders as it thinks fit.

(7) Nothing in this Regulation affects any other power of the Bank that enables it—

(a) to take action against a reinsurance undertaking or SPRV that contravenes or fails to comply with a provision of, or a direction or requirement made under, these Regulations, or

(b) to take steps to prevent the undertaking or SPRV from continuing to enter into new reinsurance contracts.

(8) If the Court makes an order against a reinsurance undertaking or SPRV under paragraph (6) and the undertaking or SPRV is not a party to the proceedings in which the order was made, the Bank shall, by notice in writing, inform the undertaking or SPRV of the order.

(9) If the Bank takes any measure under this Regulation in respect of a reinsurance undertaking or SPRV, it shall, by notice in writing, inform the undertaking or SPRV of that measure. The notice must be supported by the precise grounds for taking the measure.

*Competent authority of other Member State entitled to request Bank to respond appropriately against reinsurance undertakings and SPRVs established in the State*

65. (1) If—

(a) an authorised reinsurance undertaking established in the State carries on reinsurance business, or an authorised SPRV established in the State operates, in another Member State, and

(b) the competent authority of that other Member State requests the Bank to take appropriate measures to require the undertaking or SPRV to comply with, or to cease contravening, a specified law of that other Member State that corresponds to these Regulations, or to comply with a

direction or requirement made by that authority under such a law,

the Bank may apply to the Court for an order under paragraph (2).

(2) On hearing an application made under paragraph (1), the Court may make an order requiring the undertaking or SPRV to comply with, or to cease contravening, the law to which the application relates, or to comply with a direction or requirement made under that law.

(3) As soon as practicable after receiving a request from the competent authority as referred to in paragraph (1)(b), the Bank shall inform that authority of the action (if any) that it has taken in consequence of the request.

(4) Nothing in this Regulation prevents the Bank, as an alternative to making an application under paragraph (1), from exercising any other enforcement powers conferred on it by these Regulations, the Central Bank Act 1942 or any other law.

## PART 15

### RELATIONS INVOLVING THIRD COUNTRIES

#### *Treatment of reinsurance undertakings established in third countries*

66. (1) If a third country reinsurance undertaking commences or carries on reinsurance business in the State, the Bank shall not impose requirements or conditions under these Regulations, either on the third country undertaking or on any other reinsurance undertakings, that would result in the third country undertaking being treated more favourably than an authorised reinsurance undertaking established in the State or in another Member State would be treated.

(2) In paragraph (1), “third country reinsurance undertaking” means a reinsurance undertaking that has its head office in a third country.

#### *Bank to ensure obligations of European Communities under international agreements are complied with*

67. The Bank shall ensure that action taken under these Regulations accords with the obligations of the European

Communities under every international agreement (whether bilateral or multilateral) that governs the conduct of reinsurance business or reinsurance undertakings.

*Bank may enter into agreement with responsible authority of third country*

68. (1) The Bank may enter into an agreement with the responsible authority of a third country with a view to defining the means of supervision over reinsurance undertakings that carry on reinsurance business both in the State and in that country.

(2) In this Regulation, “responsible authority”, in relation to a third country, means the authority established in that country to supervise or regulate the conduct of those who carry on insurance or reinsurance business in that country.

*Bank to notify European Commission of authorisations and acquisitions of reinsurance undertakings governed by laws of third country*

69. (1) The Bank shall give written notice to the European Commission and the competent authorities of the other Member States—

- (a) whenever it grants an authorisation to a subsidiary of one or more parent undertakings that are governed by the laws of a third country, and
- (b) whenever such a parent undertaking acquires a holding in a reinsurance undertaking authorised by the Bank with the result that the latter undertaking becomes a subsidiary of the parent undertaking.

(2) On granting an authorisation to the subsidiary of one or more parent undertakings governed by the law of a third country, the Bank shall specify the structure of the group in the notice to be given under paragraph (1).

*Minister to notify European Commission of difficulties encountered by reinsurance undertakings in establishing or carrying on business in third country*

70. (1) As soon as practicable after becoming aware that an authorised reinsurance undertaking established in the State is encountering difficulties in establishing itself, or to carrying on reinsurance business, in a third country, the Bank shall notify those difficulties to the Minister.

(2) The Minister shall, without delay, inform the European Commission of any difficulties notified in accordance with paragraph (1).

## PART 16

### ENFORCEMENT OF REGULATIONS

#### *Enforcement powers of the Bank*

71. The Bank may exercise all or any of the following powers in relation to an authorised reinsurance undertaking or SPRV:

- (a) require the undertaking or SPRV to provide the Bank with information or documents (or both) concerning the business of the undertaking or SPRV;
- (b) take such steps as it considers necessary to ensure that the undertaking or SPRV, and the officers of the undertaking or SPRV, comply with these Regulations and any rules or requirements made under them;
- (c) take such other lawful steps as it considers necessary to enforce these Regulations.

#### *Appointment of authorised officers*

72. (1) The Bank may, in writing, appoint employees of the Bank or other suitably qualified persons to be authorised officers for the purpose of securing compliance with these Regulations or with any specified provisions of these Regulations.

(2) The Bank may, in writing, revoke the appointment of an authorised officer whenever it considers it appropriate to do so.

#### *Powers of authorised officers*

73. (1) Subject to Regulation 74, an authorised officer may, at all reasonable times on production of evidence of the officer's appointment, enter any premises at which the officer reasonably believes that a reinsurance business is being carried on or a SPRV is being operated.

(2) An authorised officer who has entered premises in accordance with paragraph (1) may exercise all or any of the following powers:

- (a) inspect the premises;
- (b) require any person on the premises who apparently has control of, or access to, records that relate to a reinsurance business or the operation of a SPRV to produce the records for inspection or to search the premises for any such records;
- (c) inspect records produced in accordance with such a requirement or found in the course of inspecting the premises;
- (d) take copies of those records or of any part of them;
- (e) if those records are kept electronically, require them to be reproduced in hard copy, or copied on to computer diskette or reduced to some other portable form suitable for removal and capable of reproducing the record for viewing;
- (f) secure for later inspection any part of the premises in which the authorised officer reasonably believes that any such records are kept;
- (g) require any person who appears to the authorised officer to have information relating to the records, or to the reinsurance business or operation of the SPRV, to answer questions with respect to the records or that business or operation;
- (h) require any such person to give to the authorised officer any other information that the authorised officer reasonably requires with respect to the reinsurance business or the operation of the SPRV;
- (i) require any person apparently employed on the premises to prepare a report on any specified aspect of the reinsurance business or the operation of the SPRV, or to explain entries in any records produced or found as result of an inspection of the premises.

(3) A person to whom a requirement is made in accordance with paragraph (2) shall—

- (a) comply with the requirement in so far as it is possible to do so, and
- (b) provide such other assistance and information to the authorised officer with respect to the reinsurance business, or the operation of the SPRV, as is reasonable in the circumstances.

(4) The powers conferred by paragraph (2) may also be exercised in relation to any other person who, in the opinion of the Bank or an authorised officer, has information that is materially relevant to the exercise of those powers in relation to the reinsurance business or the operation of the SPRV.

(5) The production of a record in compliance with a requirement made under this Regulation or Regulation 71 does not prejudice a person's lien over the record.

(6) Nothing in this Regulation requires a legal practitioner to produce a record that contains a privileged communication made by or to the practitioner or to disclose any information that relates to the communication.

(7) In this Regulation—

“legal practitioner” means a barrister, solicitor or other person authorised by or under a law of the State to undertake legal work in the State;

“suitably qualified person” means any person (other than an employee of the Bank) who, in the opinion of the Bank, has the qualifications and experience necessary to exercise the powers conferred on authorised officers by this Regulation.

*Warrant required to enter private dwelling*

74. (1) If premises or a part of premises sought to be entered under Regulation 73 are a private dwelling, the authorised officer concerned may enter the premises or part only—

- (a) with the consent of the occupier, or

(b) in accordance with a warrant issued by a judge of the District Court under paragraph (2).

(2) If a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that information required by that or another authorised officer under Regulation 73 is held on premises, or a part of premises, that are a private dwelling, the judge may issue a warrant authorising an authorised officer, at any time or times within 1 month after the date of issue of the warrant, on production of the warrant if so requested, to enter the premises, if necessary by reasonable force, and to exercise all or any of the powers conferred on an authorised officer under paragraph (3).

(3) At any time within 1 month after the issue of a warrant under paragraph (2), the authorised officer named in the warrant may, on production of the warrant if so requested—

(a) enter the premises specified in the warrant, using such force as is reasonably necessary, and

(b) exercise all or any of the powers conferred on authorised officers by Regulation 73.

That officer is entitled to be accompanied by other authorised officers or by members of the Garda Síochána, or both.

*Offence to obstruct authorised officers*

75. (1) A person who—

(a) obstructs an authorised officer in the exercise of a power conferred on authorised officers by these Regulations, or

(b) without reasonable excuse, fails to comply with a requirement made by an authorised officer under these Regulations, or

(c) in purported compliance with such a requirement, provides information that the person knows to be false or misleading,

commits an offence.

(2) A person is not guilty of an offence of failing to comply with such a requirement unless, when the requirement was made, the person was warned that a failure to comply is an offence.

(3) A person is not excused from complying with a requirement under Regulation 73 to provide information or records, or to answer a question, on the grounds that the information, record or answer might incriminate the person or make the person liable to a penalty.

(4) However, any information or answer provided by a natural person in compliance with such a requirement is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Regulation) if—

- (a) the person objected at the time of giving it to doing so on the grounds that it might be incriminating, or
- (b) the person was not warned on that occasion that the person had a right to object to giving the information or answer on the grounds that it might be incriminating.

(5) Any record provided by a person in compliance with a requirement made under Regulation 73 is not inadmissible in evidence against the person in criminal proceedings on the grounds that the record might incriminate the person.

(6) Further information obtained as a result of information or a record or an answer provided in compliance with a requirement made under Regulation 73 is not inadmissible on the grounds—

- (a) that the information, record or answer had to be provided, or
- (b) that the information, record or answer provided might incriminate the person.

*Offence to provide false or misleading information in purported compliance with direction or requirement under these Regulations*

76. (1) A person who, knowing the information to be false or misleading, provides the Bank or the co-ordinator

of a financial conglomerate with information in purported compliance with a direction or requirement notified to the person by the Bank or by that co-ordinator in accordance with these Regulations commits an offence.

(2) In this Regulation, “financial conglomerate” has the same meaning as in the European Communities (Financial Conglomerates) Regulations 2004 (S.I. No. 727 of 2004).

*Liability of officers of undertaking for offences committed by the undertaking*

77. (1) If an undertaking commits an offence against these Regulations and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the undertaking, the officer commits a separate offence and is liable to be proceeded against and punished as if the officer had been found guilty of the first-mentioned offence.

(2) A person may be proceeded against and convicted of an offence under paragraph (1) whether or not the undertaking concerned has been proceeded against or been convicted of the offence first mentioned in that paragraph.

(3) Nothing in this section affects any liability imposed on a body corporate for an offence committed by the body under these Regulations.

(4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that a person who is an officer of a body corporate, while acting in the person’s capacity as such, had, at a relevant time, a particular intention is evidence that the body had that intention.

(5) In this Regulation, “undertaking” includes a SPRV.

*Penalties for offences under these Regulations*

78. A person found guilty of having committed an offence against these Regulations is liable on conviction—

- (a) if a natural person, to a fine not exceeding €3,000 or to imprisonment for a term of not more than 12 months, or to both, or
- (b) if not a natural person, to a fine not exceeding €5,000.

*Prosecution of offences under these Regulations*

79. (1) An offence alleged to have been committed under these Regulations is triable summarily.

(2) A prosecution for an offence under these Regulations may be taken only by the Bank or by some other person who is authorised by law to prosecute offences.

(3) Summary proceedings for an offence under these Regulations may be started at any time within 12 months after the date on which the offence is alleged to have been committed, despite section 10(4) of the Petty Sessions (Ireland) Act 1854.

*Power of the Court to make enforcement orders*

80. (1) The Bank may apply to the Court in a summary manner for an order under paragraph (3) if of the opinion that a specified person is contravening or not complying with a provision of, or a direction given, or a requirement made, under these Regulations.

(2) On making an application under paragraph (1), the Bank shall serve a copy of the application on the person to whom the application relates. On being served with the notice, that person becomes the respondent to the application.

(3) On the hearing of an application made under paragraph (1), the Court may, make an order directing the respondent to cease contravening, or failing to comply with, the provision, direction or requirement specified in the application, provided it is satisfied that the respondent is contravening or failing to comply with the provision, direction or requirement.

(4) The Court may make an order under paragraph (3) whether or not a contravention of, or failure to comply with, the provision, direction or requirement is an offence and, if it is an offence, whether or not any person alleged to have committed the offence has been prosecuted for it.

(5) If the Court decides to make an order under paragraph (3), it may also make such ancillary orders as it thinks fit.

(6) Pending the hearing of an application made under paragraph (1), the Court may make such interim or interlocutory orders as it thinks fit.

## PART 17

### MISCELLANEOUS PROVISIONS

#### *Power to amend or revoke rules*

81. (1) If the Bank has made rules under a Regulation that requires it to do so, it may from time to time amend those rules.

(2) If the Bank has made rules under a Regulation that authorises it to do so, it may from time to time amend or revoke those rules.

(3) In this Regulation, “amend” means amend by inserting or adding new text, substituting new text for existing text, or omitting existing text.

#### *Publication of rules, etc.*

82. (1) If the Bank makes rules, or amends or revokes rules, in accordance with a provision of these Regulations, it shall publish those rules, or the amendment or revocation, in the *Iris Oifigiúil* and also, if it thinks fit, in some other publication that is readily available to reinsurance undertakings or SPRVs, as the case requires.

(2) Rules made under these Regulations, and any amendment to, or revocation of, those rules, take effect on the date on which they are published in accordance with paragraph (1) or, if a later date is specified in the rules, amendment or revocation, on that later date.

(3) Subject to this Part, the Interpretation Act 2005 applies to rules made under these Regulations as if they were a statutory instrument.

#### *Consequences of certain reinsurance undertakings and SPRVs being wound up*

83. (1) If an authorised reinsurance undertaking established in another Member State is wound up, commitments arising from contracts underwritten by the undertaking in

the course of carrying on reinsurance business in the State are to be met in the same way as those arising under the undertaking's other reinsurance contracts, without distinction of nationality or place of establishment of the other parties to those contracts.

(2) If an authorised reinsurance undertaking established in the State is wound up, commitments arising from contracts underwritten by the undertaking in the course of carrying on reinsurance business in another Member State are to be met in the same way as those arising under the undertaking's other reinsurance contracts, without distinction of nationality or place of establishment of the other parties to those contracts.

(3) If a SPRV established in another Member State is wound up, commitments arising from contracts underwritten by the SPRV while operating in the State are to be met in the same way as those arising under the SPRV's other contracts, without distinction of nationality or place of establishment of the other parties to those contracts.

(4) If a SPRV established in the State is wound up, commitments arising from contracts underwritten by the SPRV while operating in another Member State are to be met in the same way as those arising under the SPRV's other contracts, without distinction of nationality or place of establishment of the other parties to those contracts.

*Consequential amendment of Central Bank Act 1942*

84. (1) Section 33AK of the Central Bank Act 1942 (as inserted by section 26 of the Central Bank and Financial Services Authority of Ireland Act 2003) is amended—

(a) in paragraph (h) of the definition of “Supervisory Directives” in subsection (10), by substituting “2005,” for “2005;” and

(b) by inserting the following paragraph after paragraph (h) of that definition:

“(i) Directive 2005/68/EC of 16 November 2005;”.

(2) Part 2 of Schedule 2 to the Central Bank Act 1942 (as substituted by section 31 of the Central Bank and Financial

Services Authority of Ireland Act 2003) is amended by inserting the following item at the end of the Part:

“S.I. No. 380 of 2006	European Communities (Reinsurance) Regulations 2006	“The whole instrument“
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*Consequential amendment of Insurance Act 1989*

85. Section 22 of the Insurance Act 1989 is amended by inserting the following subsection after subsection (3):

“(4) On and after the commencement of the European Communities (Reinsurance) Regulations 2006, this section ceases to apply to those undertakings that are reinsurance undertakings or special purpose reinsurance vehicles to which those Regulations apply.”.

## SCHEDULE 1

## DETERMINATION OF REQUIRED SOLVENCY MARGIN

*Solvency margin required for reinsurance undertakings*

1. (1) An authorised reinsurance undertaking established in the State shall maintain in respect of the whole of its business an adequate available solvency margin that is at all times at least equal to that required by these Regulations.

(2) The undertaking's available solvency margin must consist of its assets, free of all foreseeable liabilities, less any intangible items.

(3) The amount of the available solvency margin for the undertaking must be based on—

- (a) the undertaking's paid up share capital, and
- (b) those of the undertaking's statutory and free reserves that do not correspond to underwriting liabilities and are not classified as part of the undertaking's equalisation reserve, and
- (c) the undertaking's profit or loss brought forward after deducting dividends that are to be paid to its shareholders.

(4) With the consent of the Bank and subject to subparagraphs (5) to (7) of this paragraph, cumulative preferential share capital and subordinated loan capital may be included in determining the amount of the available solvency margin for the undertaking, but only up to 50 per cent of whichever is the lesser of the available solvency margin and the required solvency margin.

(5) No more than 25 per cent of the lesser of—

- (a) the available solvency margin, and
- (b) the required solvency margin,

can consist of fixed term cumulative preferential share capital or subordinated loans with a fixed maturity.

(6) However, should the undertaking become bankrupt or be placed in liquidation, cumulative preferential share capital or subordinated loan capital may be taken into account under subparagraph (4) of this paragraph only if binding agreements exist under which the cumulative preferential share capital or subordinated loan capital—

- (a) will rank after the claims of all other creditors, and
- (b) will not be repaid until all other debts outstanding at the relevant time have been settled.

(7) Subordinated loan capital may be taken into account under subparagraph (4) of this paragraph only if—

- (a) it consists only of fully paid-up funds, and
- (b) subject to paragraph 2 of this Schedule—

- (i) in the case of a loan having a fixed maturity, the original maturity is for not less than 5 years, and
- (ii) in the case of a loan that does not have a fixed maturity, the loan is repayable only subject to 5 years' notice, unless it is no longer considered as a component of the available solvency margin or the Bank's prior consent is specifically required for early repayment, and
- (c) the loan agreement does not include any clause providing that in specified circumstances (other than the winding-up of the undertaking) the debt will become repayable before the agreed repayment dates, and
- (d) the loan agreement provides that it can be amended only if the Bank is notified of the amendment and has indicated that it does not object to the amendment.

*Bank may authorise repayment of certain loans in certain circumstances*

2. (1) Not later than 12 months before the repayment date for a loan of a kind referred to in paragraph 1(7)(b)(i) of this Schedule, the undertaking shall submit to the Bank for its authorisation a plan showing how the undertaking's available solvency margin will be kept at, or brought to, the required level at maturity, unless the extent to which the loan may rank as a component of the undertaking's available solvency margin is gradually reduced during at least the last 5 years before the repayment date. The Bank may authorise the early repayment of the loan but only if—

- (a) an application is made to it by the issuing undertaking, and
- (b) the undertaking's available solvency margin will not fall below the requisite level.

(2) In the case of a loan of a kind referred to in paragraph 1(7)(b)(ii) of this Schedule, the undertaking concerned shall, by notice in writing given to the Bank at least 6 months before the date of the proposed repayment, provide an estimate of—

- (a) the available solvency margin and the required solvency margin before the proposed repayment, and
- (b) assuming the repayment is made, the available solvency margin and the required solvency margin after that repayment.

The Bank may authorise the repayment only if it is satisfied that the undertaking's available solvency margin will not fall below the required level.

*Other amounts that may be included in an undertaking's solvency margin*

3. (1) With the consent of the Bank, securities with no specified maturity date and other instruments (including cumulative preferential shares other than those referred to in subparagraph (6) of paragraph 1 of this Schedule) may also be included in determining the amount of the available solvency margin for the undertaking, but only up to 50 per cent of the lesser of—

- (a) the available solvency margin, and
- (b) the required solvency margin,

for the total of those securities and the subordinated loan capital referred to in that subparagraph.

(2) However, the securities or instruments referred to in subparagraph (1) of this paragraph may be included for the purpose of determining the undertaking's available solvency margin only if—

- (a) the securities or instruments may not be repaid on the initiative of the bearer or without the prior consent of the Bank, and
- (b) the contract of issue enables the undertaking to defer the payment of interest on the relevant loan, and
- (c) the lender's claims in respect of that loan rank entirely after those of all non-subordinated creditors, and
- (d) the documents governing the issue of the securities or instruments provide for the loss-absorption capacity of the debt and unpaid interest, while enabling the undertaking to continue its business, and
- (e) only fully paid-up amounts are taken into account.

(3) In relation to an undertaking's life reinsurance activities, an amount equal to 50 per cent of its future profits (but not exceeding 25 per cent of its available solvency margin or required solvency margin, whichever is the smaller) may, until 31 December 2009, be included in the amount of the available solvency margin for the undertaking, but only with the consent of the Bank.

(4) The amount of the future profits referred to in subparagraph (3) of this paragraph is to be calculated by multiplying the estimated annual profit by a factor that represents the average period left to run on policies. The factor used may not exceed 6 and the estimated annual profit may not exceed the arithmetical average of the profits made by the undertaking, over the last 5 financial years, in the activities specified in Article 2(1) of the Life Assurance Business Directive. The Bank may consent to the inclusion of such an amount as part of the available solvency margin for the undertaking only if—

- (a) an actuarial report is submitted to it that substantiates the likelihood of those profits being realised in the future, and
- (b) the part of future profits realised from hidden net reserves referred to in subparagraph (6)(a) of this paragraph has not already been taken into account.

(5) If, in relation to an undertaking's life reinsurance activities—

- (a) zillmerizing is not practised, or
- (b) where it is practised, it is less than the loading for acquisition costs included in the premium,

an amount equal to the difference between a non-zillmerized or partially zillmerized mathematical reserve and a mathematical reserve zillmerized at a rate equal to the loading for acquisition costs included in the premium may be included in the amount of the available solvency margin for the

undertaking, but only with the consent of the Bank. However, the amount of the difference may not exceed 3.5 per cent of the sum of the differences between the relevant capital sums of life reinsurance activities and the mathematical reserves for all policies for which zillmerizing is possible. In that case, the difference must be reduced by the amount of any undepreciated acquisition costs entered as an asset.

(6) The following may also be included in the amount of the available solvency margin for the undertaking, but only with the consent of the Bank—

- (a) any hidden net reserves resulting from the under-estimation of assets and over-estimation of liabilities in so far as those reserves are not of an exceptional nature;
- (b) one half of the unpaid share capital or initial fund, once the paid-up part amounts to 25 per cent of that share capital or fund, up to 50 per cent of the lesser of the available and required solvency margin.

*Reductions in available solvency margin*

4. (1) The available solvency margin for an authorised reinsurance undertaking must be reduced by the amount of its own shares directly held by the undertaking.

(2) If the Bank, on application by an authorised reinsurance undertaking, has permitted the undertaking to discount or reduce its non-life technical provisions for outstanding claims in order to take account of investment income as permitted by Article 60.1 (g) of the Insurance Accounts Directive, the available solvency margin must be reduced by the difference between—

- (a) the undiscounted technical provisions or technical provisions before deductions as disclosed in the notes on the accounts, and
- (b) the discounted or technical provisions after deductions.

The undertaking must make such an adjustment for all risks listed in point A of the Annex to the Non-life Insurance Business Directive, except for risks listed under classes 1 and 2. For the classes listed in point A of that Annex (other than classes 1 and 2), the undertaking may, with the consent of the Bank, make no adjustment in respect of the discounting of annuities included in its technical provisions.

(3) The available solvency margin must also be reduced by the following items:

- (a) participations that the reinsurance undertaking holds in—
  - (i) insurance undertakings within the meaning of Article 4 of the Life Assurance Business Directive, Article 6 of the Non-life Insurance Business Directive or Article 1(b) of the Supplementary Supervision of Grouped Insurance Undertakings Directive, or
  - (ii) reinsurance undertakings, or

- (iii) non-member state reinsurance undertakings within the meaning of Article 1 of the Supplementary Supervision of Grouped Insurance Undertakings Directive, or
- (iv) insurance holding companies within the meaning of Article 1(i) of the Supplementary Supervision of Grouped Insurance Undertakings Directive, or
- (v) credit institutions and financial institutions within the meaning of Article 1(1) and (5) of the Credit Institutions Directive, or
- (vi) investment firms and financial institutions within the meaning of Article 1(2) of the Investment Services Directive and of Article 2(4) and (7) of the Capital Adequacy Directive;

(b) prescribed interests that the undertaking holds in respect of the entities referred to in sub-subparagraph (a) of this subparagraph in which it holds a participating interest.

(4) The following are prescribed interests for the purposes of this paragraph:

- (a) instruments of the kind referred to in paragraph 3 of Article 27 of the Life Assurance Business Directive;
- (b) instruments of the kind referred to in paragraph 3(6) of this Schedule;
- (c) subordinated claims and instruments of the kind referred to in Articles 35 and 36(3) of the Credit Institutions Directive.

(5) If an authorised reinsurance undertaking temporarily holds shares in a credit institution, investment firm, financial institution, insurance or reinsurance undertaking or insurance holding company for the purpose of providing financial assistance to enable the entity to be reorganised and saved, the Bank may waive the application of paragraphs 1(4) to (7) and 3(1) and (2) of this Schedule.

(6) As an alternative to making the reductions referred to in subparagraph (3) of this paragraph, the Bank may allow the undertaking to apply method 1, 2 or 3 of Schedule 1 to the European Communities (Financial Conglomerates) Regulations 2004 (S.I. No. 727 of 2004). However, method 1 (accounting consolidation method) may be applied only if the Bank is satisfied as to the level of integrated management and internal control regarding the entities that would be included within the scope of consolidation. The undertaking must apply the chosen method in a consistent manner over time.

(7) Subparagraph (8) of this paragraph applies to reinsurance undertakings that are subject to supplementary supervision under—

- (a) the European Communities (Supplementary Supervision of Insurance Undertakings in an Insurance Group) Regulations 1999 (S.I. No. 399 of 1999), or
- (b) the European Communities (Financial Conglomerates) Regulations 2004 (S.I. No. 727 of 2004),

when they are required to calculate solvency margins as provided by these Regulations.

(8) An undertaking to which this subparagraph applies does not have to make the reductions referred in subparagraph (3) of this paragraph in respect of participations and prescribed instruments that the undertaking holds in credit institutions, investment firms, financial institutions, insurance or reinsurance undertakings or insurance holding companies, but only if the Bank in writing so permits. However, the Bank may give such permission only if it is satisfied that the entities concerned are subject to supplementary supervision.

(9) In this paragraph, “participation” has the same meaning as in Article 1(f) of the Supplementary Supervision of Grouped Insurance Undertakings Directive.

*Required solvency margin to be determined either on premium basis or claims basis*

5. (1) The required solvency margin for an authorised reinsurance undertaking is to be determined on the basis of either—

- (a) the annual amount of premiums or contributions (‘premium basis’), or
- (b) the average burden of claims (‘claims basis’):
  - (i) except in the case referred to in sub-sub-subparagraph (ii), for the immediately preceding 3 financial years of the undertaking, or
  - (ii) in the case of a reinsurance undertaking whose business consists wholly or mainly of underwriting one or more of the risks of credit, storm, hail, or frost, for the immediately preceding 7 financial years of the undertaking.

(2) Subject to subparagraph (3) of this paragraph and to Schedule 2, the amount of the solvency margin required for an authorised reinsurance undertaking is to be the higher of the amounts derived from the calculations made under paragraphs 6 and 7 of this Schedule.

(3) If the amount of the solvency margin is less than the required solvency margin for the immediately preceding year, the required solvency margin for the undertaking must be at least equal to that for that year, multiplied by whichever is the lesser of 1 or the ratio of—

- (a) the amount of the technical provisions for claims outstanding at the end of that preceding financial year, and
- (b) the amount of the technical provisions for claims outstanding at the beginning of that year.

For the purpose of this subparagraph, the technical provisions are to be calculated net of retrocessions.

*Determination of solvency margin on premium basis*

6. (1) The first of the amounts referred to in paragraph 5 of this Schedule is to be calculated by using the higher of the gross written premiums or contributions and gross earned premiums or contributions.

(2) The calculation is to be made in accordance with the following steps:

Step 1: Multiply the total amount of premiums or contributions (inclusive of charges ancillary to premiums or contributions) due in respect of reinsurance business in the immediately preceding financial year for classes 11, 12 or 13 listed in Point A of the Annex to the Non-life Insurance Business Directive by 1.5.

Step 2: Add to the total obtained under step 1 the total amount of premiums or contributions (inclusive of charges ancillary to premiums or contributions) due in respect of reinsurance business in the immediately preceding financial year in respect of other classes listed in Point A of the Annex to the Non-life Insurance Business Directive.

(Note: For specific kinds of reinsurance activities and contracts, premiums or contributions in respect of classes (other than classes 11, 12 and 13) listed in point A of the Annex to the Non-life Insurance Business Directive can, in accordance with the procedure referred to in Article 55.2 of the Reinsurance Directive, be enhanced by up to 50 per cent in order to take account of the specificities of those kinds of activities or contracts.)

Step 3: Deduct from the amount obtained under step 2—

- (a) the total amount of premiums or contributions cancelled by the undertaking during its immediately preceding financial year, and
- (b) the total amount of taxes and levies relating to the premiums or contributions included in the calculation.

Step 4: (a) Divide the amount obtained under step 3 into 2 parts, with the first part comprising up to €50,000,000 or, if the amount so obtained is less than €50,000,000, that amount, and the second part comprising the balance (if any), and

(b) Multiply the first part by 0.18 and the second part (if any) by 0.16, and

(c) Add together the amounts obtained as a result of multiplying those parts.

Step 5: Multiply the amount obtained under step 4 by the higher of the following factors:

(a) 0.5, and

(b) the ratio between—

- (i) the total amount of claims remaining to be borne by the undertaking in respect of claims made to it during the immediately preceding 3 years, after deducting amounts recoverable

under retrocessions and amounts recoverable from authorised SPRVs, but only with the authorisation of the Bank, granted following an application with supporting evidence, and

- (ii) the gross amount of all claims made to the undertaking during that period.

(3) When applying this paragraph, statistical methods can be used to allocate the premiums or contributions, but only with the prior authorisation of the Bank.

*Determination of solvency margin on claims basis*

7. (1) The second of the amounts referred to in paragraph 5 of this Schedule is to be calculated in accordance with the following steps:

Step 1: For classes 11, 12 or 13 listed in Point A of the Annex to the Non-life Insurance Business Directive, multiply by 1.5 the amount representing claims, provisions and recoveries referred to in the following steps.

(Note: For specific kinds of reinsurance activities and contracts, claims provisions and recoveries in respect of classes (other than classes 11, 12, and 13 listed in Point A of the Annex to the Non-life Insurance Business Directive) can, in accordance with the procedure referred to in Article 55.2 of the Reinsurance Directive, be enhanced by up to 50 per cent in order to take account of the specificities of those kinds of activities or contracts.)

Step 2: Add together the amounts of claims paid during the periods specified in paragraph 5 of this Schedule (without deducting claims borne by retrocessionaires).

Step 3: Add to the amount obtained under step 2 the amount of provisions made for established claims outstanding at the end of the immediately preceding financial year of the undertaking.

Step 4: Deduct from the amount obtained under step 3 the amounts of recoveries made by the undertaking during the periods referred to in paragraph 5 of this Schedule.

Step 5: Deduct from the amount obtained under step 4 the total amount provided for established claims outstanding—

- (a) at the beginning of the second financial year preceding the last financial year of the undertaking for which a statement of accounts has been prepared, or
- (b) if the period of reference established in paragraph 5(1) of this Schedule equals 7 years, at the beginning of the sixth financial year preceding the last financial year for which such a statement has been prepared.

- Step 6:
- (a) Ascertain one-third or one-seventh of the amount obtained under step 5 (according to whether the period of reference is 3 years or 7 years), and
  - (b) Divide the amount ascertained into 2 parts, with the first part comprising the lesser of €35,000,000 or the result of the amount ascertained and the second part comprising the balance (if any) of that amount, and
  - (c) Multiply the first part by 0.26 and the second part (if any) by 0.23, and
  - (d) Add together the amounts obtained as a result of multiplying those parts.

Step 7: Multiply the amount obtained under step 6 by the higher of the following factors:

- (a) 0.5, and
- (b) the ratio between—
  - (i) the total amount of claims remaining to be borne by the undertaking in respect of claims made to it during the immediately preceding 3 years, after deducting amounts recoverable under retrocessions and amounts recoverable from authorised SPRVs, but only with the authorisation of the Bank, following an application with supporting evidence, and
  - (ii) the gross amount of all claims made to the undertaking during that period.

(2) When applying subparagraph (1) of this paragraph, statistical methods can be used to allocate the claims, provisions and recoveries, but only with the prior authorisation of the Bank.

*Reduction of fractions*

8. In the case of reinsurance of health insurance provided on a similar technical basis to life assurance, the multipliers referred to in sub-step (b) of step 4 in paragraph 6(2), and sub-step (c) of step 6 in paragraph 7(1), of this Schedule are to be respectively reduced to one-third of the fractions specified in those sub-steps, but only if—

- (a) the premiums paid are calculated on the basis of sickness tables that accord with the mathematical method applied in insurance, and
- (b) a provision is set up for increasing age, and
- (c) an additional premium is collected in order to establish a safety margin of an appropriate amount, and
- (d) the undertaking may cancel the contract not later than the end of the third year of the insurance, and
- (e) the contract allows for premiums to be increased or payments to be reduced even for current contracts.

*Solvency margin for life reinsurance undertakings*

9. (1) The solvency margin for a life reinsurance undertaking is to be determined in accordance with paragraph 5 of this Schedule.

(2) However, the Bank may provide that the required solvency margin is to be determined in accordance with Article 28 of the Life Assurance Business Directive—

- (a) in the case of reinsurance classes of assurance business covered by Article 2.1(a) of that Directive linked to investment funds or participating contracts, and
- (b) in the case of operations referred to in Article 2.1(b), 2.2(b), (c), (d) and (e) of that Directive.

*Solvency margin for a reinsurance undertaking conducting simultaneously non-life and life reinsurance*

10. (1) Every reinsurance undertaking conducting both non-life and life reinsurance business shall maintain an available solvency margin to cover the total sum of required solvency margins in respect of non-life and life reinsurance activities. Those margins are to be determined in accordance with paragraphs 5 and 9 respectively of this Schedule.

(2) If the available solvency margin of an authorised reinsurance undertaking conducting both life and non-life reinsurance business falls below the level prescribed in subparagraph (1), the Bank shall apply the measures provided for in Regulation 57 and 58, as appropriate.

## SCHEDULE 2

## GUARANTEE FUNDS

*What a reinsurance undertaking's guarantee fund must contain*

1. Subject to paragraph 2 of this Schedule, an authorised reinsurance undertaking's guarantee fund must—

- (a) contain funds equivalent to at least one-third of the undertaking's required solvency margin, as calculated in accordance with Schedule 1, and
- (b) comprise—
  - (i) the items specified in paragraphs 1(2) to (7), 2, 3(1) and (2) and 4 of Schedule 1, and
  - (ii) with the authorisation of the Bank, the item specified in paragraph 3(6)(a) of that Schedule.

*Minimum amounts for reinsurance undertaking's guarantee fund*

2. (1) The amount of an authorised reinsurance undertaking's guarantee fund must be—

- (a) except as provided by subparagraph (b), not less than €3,000,000 or,
- (b) in the case of a captive reinsurance undertaking, not less than €1,000,000,

(2) However, if the European Commission has, in accordance with the review procedure set out in Article 41 of the Reinsurance Directive, prescribed a higher amount, not less than that higher amount.



GIVEN under my Official Seal, this 13th day of  
July 2006.

BRIAN COWEN,  
Minister for Finance.

#### EXPLANATORY NOTE.

*(This note is not a legal part of the Instrument and does not purport to be a legal interpretation.)*

These Regulations give effect to the Reinsurance Directive (2005/68/EC — O.J. No. L 323/1) which institutes a prudential regulatory framework for reinsurance activities in the Community. The Regulations provide the necessary harmonisation to facilitate the mutual recognition of authorisations and prudential control systems, thereby making it possible to grant a single authorisation valid throughout the Community. They apply the principles set out in the Directive to supervision of reinsurance companies by the home Member State.

The Regulations require reinsurance undertakings to establish and maintain technical reserves, solvency margin and guarantee fund and to furnish information and statistical documents necessary for supervision purposes to the Bank. They also provide the Bank with the power to impose, vary and revoke conditions of an authorisation, as well as the power in specified circumstances to cancel an authorisation.

The Regulations set out restrictions on acquiring and disposing of qualifying holdings in reinsurance undertakings, as well as the role of the Bank in this process. They also specify the responsibilities of the Bank under the Regulations, in particular the requirement to collaborate with other competent authorities and the European Commission.

In addition to the regulation of standard reinsurance business, the Regulations are applicable to finite reinsurance activities, and special purpose reinsurance vehicles (SPRVs). A series of mandatory conditions are specified for these types of business.

Appropriate enforcement powers are provided to the Bank under these Regulations.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA  
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