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Act on the Supervision of Insurance Undertakings¹
(German Insurance Supervision Act, *Versicherungsaufsichtsgesetz – VAG*)

“Insurance Supervision Act of 1 April 2015 (Federal Law Gazette I page 434), as most recently amended by Article 2 of the Act of 19 December 2018 (Federal Law Gazette I, page 2672)”

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Part 1 General provisions

Section 1 Scope

(1) The following are subject to supervision under this Act:

1. insurance undertakings as defined in section 7 nos. 33 and 34,
2. insurance holding companies as defined in section 7 no. 31 and undertakings within the meaning of section 293 (4),
3. special purpose insurance companies within the meaning of section 168;
4. guarantee schemes within the meaning of section 223, and
5. pension funds within the meaning of section 236 (1).

(2) ¹The businesses listed under nos. 22 to 24 of Annex 1 do not fall within the scope of this Act unless operated by insurance undertakings authorised for one of the classes of insurance specified in nos. 19 to 21 of Annex 1; in such cases, these businesses are treated in the same way as life insurance business. ²Capital redemption operations (no. 23 of Annex 1) refer to any business operations in which an actuarial calculation is used to determine in advance the duration and amount of single or regular premiums and the commitments assumed by the operation. ³Business within the meaning of no. 24 of Annex 1 refers to the administration of schemes that pay death or survival benefits or that provide benefits in the event of discontinuation of employment or reduction of earning capacity; this business includes the investment and management of the assets. ⁴In the case of business referred to in sentence 3, the insurance undertakings may, in connection with the administration of such business, also issue guarantees that the capital will be protected and that a minimum rate of return will be achieved.

(3) ¹For civil service or church insurance undertakings governed by public law that exclusively provide retirement and invalidity benefits or benefits for surviving dependants, only section 12 (1), sections 13, 37 (1), section 38 (1), sections 39, 47 no. 12, sections 294 to 298, 300, 302, 305 to 307, sections 310 to 312 and section 314 apply. ²For insurance undertakings established under federal state law and subject to supervision at state level, alternative provisions may be specified under federal state law.

(4) ¹Section 12 (1), sections 13, 37 (1), section 38 (1), section 39, and sections 294 to 298, 300, 302, 305 to 307, 310, 312 and 314 apply, with the necessary modifications, to institutions or schemes of the nature specified in section 140 (1) of the Seventh Book of the German Social Security Code (*Sozialgesetzbuch – SGB*). ²Resolutions passed by the representatives' meeting relating to these institutions or schemes, or to their articles of association or business plans, require the approval of the supervisory authority; section 8 (1), section 9 (1) to (4) and section 11 apply in this regard, with the necessary modifications.

Section 2 Schemes governed by public law

(1) ¹If schemes governed by public law, including the legally dependent local authority and church supplementary benefit funds (*Zusatzversorgungskassen*) and the Federal and Länder Pension Institution (*Versorgungsanstalt des Bundes und der Länder*), offer retirement provisions by way of voluntary insurance, a ring-fenced fund must be established for the assets and liabilities relating to this business. ²The liabilities and assets must be managed and organised separately from the other business of the scheme, without the possibility of transfer. ³The provisions of this Act governing the business of "*Pensionskassen*" must be applied, with the necessary modifications, to the ring-fenced fund; to this extent, the schemes are also subject to insurance supervision.

(2) For schemes governed by public law established under federal state law and subject to supervision at state level, alternative provisions may be specified under federal state law.

Section 3 Exemptions from the supervision requirement, authorisation to issue statutory orders

(1) The following are not subject to supervision under this Act:

1. bodies of persons that grant their members benefits without the members having a legal claim to such benefits, in particular support funds and support structures operated by professional associations;
2. "*Unterstützungskassen*" (support funds) established by guilds under the German Skilled Trades Regulation (*Handwerksordnung – HwO*);

3. confederations, with legal capacity, of chambers of commerce and industry with trade associations if the purpose of such confederations is to settle their members' pension liabilities arising from pension commitments by means of a pay-as-you-go system and if such confederations were granted their status as legal entities by the government;
4. confederations, without legal capacity, of local authorities if their purpose is to settle, by means of a pay-as-you-go system, the cost of the following losses resulting from risks assumed by their members or by undertakings operated to provide public services, in which one or several local government members or – in the case of b) – other regional or local authorities hold an interest of at least 50 per cent:
 - a) losses for which the members or their staff may be held answerable by third parties on the basis of the statutory liability provisions,
 - b) losses resulting from holding motor vehicles,
 - c) benefits paid under the local government accident compensation scheme;
5. corporate bodies and institutions governed by public laws subject to an insurance relationship imposed directly by law or arising as a result of statutory obligation;
6. healthcare schemes governed by public law operated by the Federal Railways Fund (*Bundeseisenbahnvermögen*) and the Postal Workers Health Insurance Fund (*Postbeamtenkrankenkasse*);
7. the Federal and Länder Pension Institution (*Versorgungsanstalt des Bundes und der Länder*), *Deutsche Rentenversicherung Knappschaft-Bahn-See* (part of the German statutory pension insurance scheme) and the Deutsche Bundespost Pension Institution (*Versorgungsanstalt der Deutschen Bundespost*);
8. undertakings operating within narrow territorial limits that, in return for payment of a lump sum, provide benefits should a contingent event materialise, provided such benefits do not take the form of cash payments, assumption of responsibility for costs or indemnification of third parties.

(2) The Federal Ministry of Finance is authorised to determine, by way of a statutory order not requiring the consent of the Bundesrat, that all the insurance business or certain kinds of insurance business with the group of persons specified under Article I (1) (a) to (c) of the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces dated 19 June 1951 (Federal Law Gazette 1961 II, pages 1183, 1190) is or are exempted, either in full or in part, from the provisions of this Act, provided that this does not, within the scope of this Act, prejudice the interests of other insured or the undertaking's ability to fulfil its obligations under its other insurance contracts at all times.

Section 4 Decision as to whether an undertaking is subject to supervision

¹The supervisory authority decides whether an undertaking is subject to supervision. ²This decision is binding on the administrative authorities. ³A decision made by a court or an administrative authority before 1 April 1931 does not preclude a new decision made by the supervisory authority.

Section 5 Discretionary exemption from supervision

(1) ¹The supervisory authority may exempt mutual societies that are not required to be registered from ongoing supervision under this Act if the nature of their business and other circumstances are such that supervision is deemed to be unnecessary to safeguard the interests of the insureds. ²In particular, these requirements may be met by funeral expenses funds and by societies whose business is limited to a specific geographical area, that have a small number of members and that receive minimal premium income. ³The exemption must be revoked if the supervisory authority becomes aware that the fund or society concerned no longer satisfies the criteria for exemption.

(2) If the supervisory authority has granted an exemption in accordance with subsection (1) above, the provisions of sections 12, 13, 178 (4), sections 193, 213 to 217, 220 and 234j (1) and (3), sections 234g and 235, part 2 chapter 2, part

3 and part 6, with the exception of sections 305, 306 and 310, do not apply if ancillary exemption provisions or the rights of the supervisory authority specified in sections 305 and 306 are to be enforced; any transformation under the German Transformation Act (*Umwandlungsgesetz – UmwG*) is prohibited.

(3) The Federal Ministry of Finance is authorised to exempt, by way of a statutory order not requiring the consent of the Bundesrat, insurance undertakings governed by public law within the meaning of section 1 (3) and schemes within the meaning of section 2 that are not subject to supervision at state level from supervision under this Act if, taking into account the statutory provisions for the establishment of such undertakings or the agreements existing between the undertakings and their sponsoring agencies, supervision is deemed unnecessary to safeguard the interests of the insured.

Section 6 Restrictions on the use of terms

(1) ¹The terms “Versicherung”, “Versicherer”, “Assekuranz”, “Rückversicherung”, “Rückversicherer” or their equivalents in a foreign language, or terms in which these words appear, may only be used in the registered name, as an addition to the registered name, to describe the purpose of the business or for advertising purposes, by insurance undertakings within the meaning of section 1 (1) and (3) and by their associations, unless otherwise provided for by legislation.

²Insurance intermediaries may only use the terms in sentence 1 above with an addition clarifying the activity as an intermediary.

(2) ¹In cases of doubt, the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*; hereinafter referred to as “BaFin”) decides if an undertaking is permitted to use the terms specified in subsection (1) above. ²It must communicate its decisions to the Registration Court.

(3) In Registration Court proceedings relating to the registration or amendment of the legal status or registered name of an undertaking that is using terms that are unlawful under subsection (1) above, BaFin has the right to file applications and lodge appeals as permitted by the German Act on Proceedings in Family Matters and Matters Relating to Voluntary Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit – FamFG*).

(4) ¹If an undertaking uses a registered name, or an addition thereto, that is unlawful under subsection (1) above, or an undertaking makes use of such an unlawful term when describing the purpose of the business, the Registration Court must officially cancel and delete that registered name, addition or term designating the purpose of the business; section 395 of the German Act on Proceedings in Family Matters and Matters Relating to Voluntary Jurisdiction applies, with the necessary modifications. ²The undertaking must be required to discontinue the use of the registered name or addition thereto or term designating the purpose of the business by the imposition of an administrative fine; section 392 of the Act on Proceedings in Family Matters and Matters Relating to Voluntary Jurisdiction applies, with the necessary modifications.

Section 7 Definitions

The following definitions apply in this Act:

1. Supervisory authority: the authority or authorities responsible for supervision of the undertakings specified in section 1 (1) on the basis of sections 320 to 322 of this Act or on the basis of other legal or administrative provisions.
2. Outsourcing: an agreement of any kind between an insurance undertaking and a service provider on the basis of which the service provider, directly or through further outsourcing, carries out a process, service or activity that would otherwise be carried out by the insurance undertaking itself; the service provider may or may not be an undertaking subject to supervision.
3. Qualifying holding: a direct or indirect holding equivalent to at least 10 per cent of the capital or voting rights of an undertaking or other arrangement in which significant influence can be exercised over the management of the undertaking concerned; in connection with the calculation of the relevant proportion of voting rights, section 33 (1) in conjunction with a statutory order under subsection (5), section 34 (1) and 2, section 35 (1) to (3) in conjunction with a statutory order under subsection (6) and section 36 of the German Securities Trading Act (*Wertpapierhandelsgesetz*) apply, with the necessary modifications; voting rights or shares in the capital that

- investment services enterprises or credit institutions hold as part of underwriting business in accordance with section 1 (1) sentence 2 no. 10 of the German Banking Act (*Kreditwesengesetz*) are not taken into account provided that these rights are not exercised or otherwise used to intervene in the management of the issuer and are sold within one year of the date of acquisition.
4. Participating undertaking: a parent undertaking or other undertaking that holds a holding or that is affiliated with another undertaking by virtue of a relationship as described in section 271 (1) of the German Commercial Code (*Handelsgesetzbuch* – HGB); holdings for the purposes of this definition are holdings equivalent to at least 20 per cent of the voting rights or capital of an undertaking; for the purposes of supervision under sections 245 to 287, a holding is also deemed to include a direct or indirect holding of voting rights or capital of an undertaking over which the holder effectively exercises significant influence in the opinion of the supervisory authorities: for the purposes of supervision under sections 245 to 287, a participating undertaking is also an undertaking that forms part of a horizontal corporate group within the meaning of number 15.
 5. Diversification effects: a reduction in the potential risk faced by insurance undertakings and groups as a result of the diversification of business activities; such diversification means that the negative impact from one risk can be offset by a more favourable impact from another risk where the correlation between the risks involved is low.
 6. Third country: any country that is not a member state or EEA signatory state within the meaning of no. 22; a quasi-governmental entity with independent regulatory powers is also deemed to be a third country, provided the stipulations under European Union law concerning the freedom of movement, the right of establishment and the freedom to provide services do not apply.
 7. Close links: a situation in which at least two natural or legal persons are linked by control or participation with each other as a result of a holding or control relationship, or a situation in which at least two natural or legal persons are permanently linked to the same person by a control relationship.
 8. External rating agency: a rating agency approved or certified in accordance with Regulation (EC) No. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302 of 17 November 2009, page 1), as most recently amended by Regulation (EU) No. 462/2013 (OJ L 146 of 31 May 2013, page 1), or a central bank that issues ratings and is exempted from the provisions of the aforementioned Regulation.
 9. Function: an internal capacity within a business organisation that assumes responsibility for certain practical tasks; key functions include:
 - a) the independent risk control function,
 - b) the compliance function,
 - c) the internal audit function,
 - d) the actuarial function.
 10. Mixed financial holding company: a parent undertaking that is not a supervised undertaking in a financial conglomerate within the meaning of section 2 (1) of the German Supervision of Financial Conglomerates Act (*Finanzkonglomerate-Aufsichtsgesetz* – FKAG) but that, together with its subsidiaries, of which at least one is a supervised undertaking in a financial conglomerate with a registered office in Germany or in another member state or EEA signatory state, and with other undertakings forms a financial conglomerate.
 11. Mixed-activity insurance holding company: a parent undertaking
 - a) that is not an insurance undertaking, a third country insurance undertaking, an insurance holding company with the meaning of no. 31 or a mixed financial holding company within the meaning of no. 10 and
 - b) whose subsidiaries include at least one insurance undertaking.
 12. Fundamental spread: the spread decided upon and published at least on a quarterly basis by the European Insurance and Occupational Pensions Authority concerning each relevant duration, credit quality and asset class for the calculation of the matching adjustment as specified in Article 77e (1b) of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II) (OJ L 335 of 17 December 2009, page 1), as most recently amended by Directive 2014/51/EU (OJ L153 of 22 May 2014, page 1).
 13. Group: a combination of undertakings that

- a) comprises a participating undertaking, its subsidiaries and undertakings in which the participating undertaking or its subsidiaries hold a holding and undertakings that form part of a horizontal corporate group as defined in no. 15, or
 - b) is based on the establishment of contractual or other strong, sustainable financial relationships between all these undertakings and can include mutual or similar societies provided that
 - aa) one of these undertakings exercises, by means of central coordination, control over the decisions of all the undertakings in the group, including financial decisions; and
 - bb) for the purposes of this Act, the prior consent of the group's supervisory authority is required before such relationships can be established or dissolved;

the undertaking responsible for exercising the central coordination is deemed to be the parent undertaking; the other undertakings are deemed subsidiaries.
14. Intra-group transactions: transactions by which, in order to fulfil an obligation, an insurance undertaking relies either directly or indirectly on the support of other undertakings within the same group or on the support of natural or legal persons linked to the undertakings in the group by close links, regardless of whether this support is of a contractual or non-contractual nature or whether or not it is remunerated.
15. Horizontal corporate group: a group in which an undertaking is affiliated to one or more other undertakings where
- a) all of the undertakings concerned are subject to common control based on a provision in the articles of association or on a contract; or
 - b) the majority of the persons on the administrative, management and supervisory bodies in office during the financial year and for the time periods set out in section 290 (1) of the German Commercial Code are the same persons, regardless of whether the group is required to prepare consolidated financial statements or not.
16. Control: the exercise of control within the meaning of section 290 of the German Commercial Code.
17. Concentration risk: all risk exposures with a loss potential that is large enough to threaten the solvency or the financial position of insurance undertakings.
18. Credit risk: the risk of loss or adverse change in financial position arising from fluctuations in the credit quality of issuers of securities, counterparties or other debtors to which insurance undertakings are exposed, in the form of counterparts default risk, spread risk or market risk concentrations.
19. Liquidity risk: the risk that an insurance undertaking will not be in a position to realise investments or other assets so that it can meet its financial obligations when they fall due.
20. Market risk: the risk of loss or adverse change in financial position arising directly or indirectly from fluctuations in the level and volatility of market prices for assets, liabilities and financial instruments.
21. Relevant risk-free reference rate: the interest rate decided upon and published at least on a quarterly basis by the European Insurance and Occupational Pensions Authority in accordance with Article 77e(1)(a) of Directive 2009/138/EC.
22. Member state or EEA signatory state: a member state of the European Union or another signatory state to the Agreement on the European Economic Area (EEA).
23. Parent undertaking: a parent undertaking as defined in Article 1 of Directive 83/349/EEC; for the purposes of supervision under sections 245 to 287, a parent undertaking is also defined as any undertaking that effectively exercises control in the view of the supervisory authorities.
24. Operational risk: the risk of loss arising from inadequate or failed internal processes, personnel or systems, or from external events.
25. Qualifying central counterparty: a central counterparty that is either authorised in accordance with Article 14 of Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201 of 27 July 2012, page 1) or recognised in accordance with Article 25 of the same Regulation.

26. Risk concentration: any exposure of undertakings in a group or a financial conglomerate within the meaning of section 1 (2) of the German Supervision of Financial Conglomerates Act that is subject to default risk and large enough to threaten the solvency or the general financial position of one or more of the supervised financial conglomerate undertakings or supervised group undertakings, by which the default risk arises or may arise from counterparty default risk, credit risk, investment risk, insurance risk, market risk, other risk, a combination of these risks or from any interaction between these risks.
27. Risk measure: a mathematical function that assigns a monetary amount to a given probability distribution forecast and increases monotonically with the level of risk exposure underlying that probability distribution forecast.
28. Risk mitigation techniques: all techniques that enable an insurance undertaking to transfer part or all of its risks to another party.
29. Subsidiary: a subsidiary within the meaning of section 290 of the German Commercial Code, including a subsidiary's own subsidiaries; for the purposes of supervision under sections 245 to 287, a subsidiary is also defined as any undertaking over which a parent undertaking effectively exercises control in the view of the supervisory authorities concerned.
30. Affiliated undertaking: a subsidiary or other undertaking in which another undertaking has a holding or an undertaking that forms part of a horizontal corporate group as defined in no. 15.
31. Insurance holding company: a parent undertaking that is not a mixed financial holding company within the meaning of no. 10 and whose main activity is to acquire and hold participations in subsidiaries, where those subsidiaries are exclusively or mainly insurance undertakings or third country insurance undertakings, and at least one of those subsidiaries is an insurance undertaking.
32. Underwriting risk: the risk of loss or adverse change in the value of insurance liabilities due to inadequate pricing and provisioning assumptions.
33. Insurance undertaking: a primary insurance undertaking or reinsurance undertaking that carries on insurance business and is not a social insurance institution; the purpose of a reinsurance undertaking is solely to carry on reinsurance business.
34. Third country insurance undertaking: a primary insurance undertaking or reinsurance undertaking that has its registered office in a third country and would require official authorisation in accordance with Article 14 (1) of Directive 2009/138/EC if it had its registered office in a state within the EEA.
- 34a. Insurance distribution: insurance distribution activities and reinsurance distribution activities as defined in Article 2(1) numbers 1 and 2 of Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (OJ L 26 of 2 February 2016, page 19).
- 34b. Distribution remuneration: any commission, fee, charge or other payment, including an economic benefit of any kind or any other financial or non-financial advantage or incentive offered or given in respect of insurance distribution activities, with the exception of those relating to reinsurance activities.
35. Volatility adjustment: adjustment to the relevant risk-free interest rate term structure adopted and published at least on a quarterly basis by the European Insurance and Occupational Pensions Authority in accordance with Article 77e(1)(c) of Directive 2009/138/EC.
36. Probability distribution forecast: a mathematical function that assigns a probability of realisation to an exhaustive set of mutually exclusive future events.
37. Home country: the member state or EEA signatory state in which
 - a) an insurance undertaking to which Directive 2009/138/EC applies has its head office,
 - b) an institution for occupational retirement provision is authorised or registered in a national register in accordance with Article 9(1) of Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (recast) (OJ L 354 of 23 December 2016, page 37).

Part 2 Provisions governing primary insurance and reinsurance

Chapter 1 Business activities

Segment 1 Authorisation to carry on business activities

Section 8 Authorisation; separation of lines of business

- (1) Insurance undertakings may not carry on business without authorisation from the supervisory authority.
- (2) The authorisation may only be granted to public limited companies including those incorporated in the form of a European Company, mutual societies and corporations and institutions governed by public law.
- (3) The head office must be located in Germany.
- (4) ¹A reinsurance undertaking will only be authorised to carry on reinsurance business. ²In the case of primary insurance undertakings, the authorisation to carry on life insurance business within the meaning of Annex 1 nos. 19 to 24 and the authorisation to carry on other classes of insurance are mutually exclusive; the same applies to the authorisation to carry on health insurance within the meaning of section 146 (1) and the authorisation to carry on other classes of insurance.
- (5) ¹The supervisory authority will publish the granting or revocation of an authorisation electronically as specified in section 318 (3) and will report such granting or revocation of an authorisation to the European Insurance and Occupational Pensions Authority. ²If such information relates to an insurance undertaking subject to guarantee requirements under section 221, the supervisory authority must also inform the guarantee scheme.

Section 9 Application

- (1) The business plan must be submitted together with the application for authorisation; it must disclose the purpose and structure of the undertaking, the region in which business is to be conducted and explain the financial circumstances that will enable the undertaking to meet its future obligations over the long term.
- (2) The following must be submitted as part of the business plan:
1. the articles of association to the extent that they do not refer to general policy conditions;
 2. information about the classes of insurance that are to be provided and which risks of a class of insurance are to be covered; in the case of undertakings that only intend to carry on reinsurance business, the undertaking concerned must instead provide information on the risks that are to be covered by the reinsurance and on the types of reinsurance contract that the reinsurance undertaking intends to enter into with the ceding insurers;
 3. the main features of the reinsurance and retrocession;
 4. information on the basic components of own funds intended to cover the absolute minimum capital requirement; and
 5. an estimate of expenses for setting up a administration and the sales network; the undertaking must prove that it has the necessary funds for this purpose (organisational funds); if an application is filed for authorisation to carry on insurance business in the class under no. 18 of Annex 1, information about the resources available to the undertaking to enable it to provide the promised assistance.

(3) ¹In addition, the insurance undertaking must submit the following items as part of the business plan, in each case covering the first three financial years:

1. a budgeted balance sheet and a budgeted income statement;
2. estimates of the future solvency capital requirement on the basis of the budgeted balance sheet and income statement specified in no. 1, together with the methodology used to determine the estimates;
3. estimates of the future minimum capital requirement on the basis of the budgeted balance sheet and income statement specified in no. 1, together with the methodology used to determine the estimates;
4. an estimate of the financial resources expected to be available
 - a) to cover technical provisions,
 - b) to ensure compliance with the minimum capital requirement and the solvency capital requirement;
5. for non-life insurance and reinsurance,
 - a) an overview of the projected administrative expenses, in particular the ongoing overhead expenses and commissions, excluding the costs of setting up the administration,
 - b) an overview of the projected premium income and the anticipated claims expenditures, and
6. for life insurance, a plan showing detailed estimates for income and expenditure relating to primary insurance business and also to inward and outward reinsurance business.

²If the undertaking is not required to prepare a solvency statement under chapter 2 part 2, the estimate under sentence 1 number 4 (a) must be submitted solely for the technical provisions under the German Commercial Code.

(4) In addition, the following must be submitted:

1. details on the nature and scope of the business organisation, including
 - a) information that is essential to enable the supervisory authority to assess whether the requirements specified in section 24 are satisfied; this applies in respect of the members of the senior management, other persons who effectively run the undertaking, the members of the supervisory board, the appointed actuary and any other persons responsible for other key tasks;
 - b) details of enterprise agreements as specified under sections 291 and 292 of the German Stock Corporation Act (*Aktiengesetz – AktG*); and
 - c) details of contracts for the outsourcing of key functions or activities;
2. if other parties have qualifying holdings in the insurance undertaking,
 - a) the names of the holders and the amounts of the holdings;
 - b) the information necessary to assess if the requirements under section 16 are met;
 - c) if the holders of such qualifying holdings are required to prepare annual financial statements, the annual financial statements for the previous three financial years, including the audit reports by independent auditors provided that such reports are to be prepared; and
 - d) if the holders belong to a group, details of the group's structure and, if consolidated financial statements are to be prepared, the consolidated financial statements for the previous three financial years, including the audit reports by independent auditors provided that such reports are to be prepared and there are no provisions under German law barring their release to the applicant;
3. details of any indication of close links between the insurance undertaking and other natural persons or undertakings;
4. for compulsory insurance, the general insurance policy conditions;
5. for health insurance within the meaning of section 146 (1),
 - a) the principles used for calculating the premiums and technical provisions within the meaning of sections 341e to 341h of the German Commercial Code, including the actuarial assumptions, mathematical formulas, a actual

calculations made and statistical evidence used;

- b) the general insurance policy conditions; and
6. for coverage of the risks specified in no. 10 (a) of Annex 1, the names and addresses of the claims representatives to be appointed in accordance with section 163.

(5) ¹Except in the case of applications for a authorisation to carry on insurance business as a funeral expenses fund or as one of the schemes specified in section 1 (4), the supervisory authority must consult the competent authorities in the other member states or EEA signatory states before granting authorisation if the undertaking concerned is

1. a subsidiary or sister company of an insurance undertaking, a CRR credit institution within the meaning of section 1 (3d) sentence 1 of the German Banking Act, an electronic money institution within the meaning of section 1 (3d) sentence 6 of the German Banking Act, or a securities trading firm within the meaning of section 1 (3d) sentence 4 of the German Banking Act and its parent company or the other sister undertaking is already authorised to carry on business in another member state or EEA signatory state; or
2. controlled by the same natural persons or undertakings that control an insurance undertaking, CRR credit institution, electronic money institution or securities trading firm domiciled in another member state or EEA signatory state.

²The relevant competent authorities are the authorities in the member states or EEA signatory states in which the parent undertaking, the sister company or the controlling undertaking has its head office or in which the habitual residence of the controlling persons is located. ³Sister companies within the meaning of sentence 1 no. 1 above are undertakings that have a common parent undertaking. ⁴The consultation must cover, in particular, the information necessary for assessing whether the persons referred to in section 24 are fit and proper, and for assessing compliance with the fit and proper requirement for the holders of qualifying holdings in undertakings belonging to the same group within the meaning of sentence 1 above that are domiciled in the relevant member state or EEA signatory state, as well as the information concerning own funds.

Section 10 Scope of authorisation

(1) ¹The supervisory authority grants the authorisation for an unlimited period of time unless otherwise provided for in the business plan. ²The authorisation is valid for the territory covered by all member states or EEA signatory states.

(2) ¹In the case of undertakings that intend to carry on primary insurance business alone or to carry on both primary insurance and reinsurance business, the authorisation is issued separately for each of the classes of insurance specified in Annex 1. ²It covers the entire class of insurance unless the undertaking intends to cover only part of the risks of such class of insurance according to its business plan. ³The authorisation may also be granted jointly for several classes of insurance under the designations specified in Annex 2.

(3) ¹In the case of undertakings that intend to carry on reinsurance business alone, the authorisation is granted for property and casualty reinsurance including personal reinsurance other than life reinsurance (non-life reinsurance), for life reinsurance or for all classes of reinsurance. ²Unless otherwise indicated in the application or business plan, the authorisation is issued for all classes of reinsurance.

(4) ¹The authorisation granted for one or several classes of insurance also includes coverage of additional risks of other classes of insurance if these risks relate to a risk of a class of insurance operated, concern the same object of the insurance and are covered by the same contract. ²Risks from the classes of insurance specified in nos. 14, 15 and 17 of Annex 1 are not covered as additional risks by an authorisation granted for other classes of insurance. ³Risks from the class of insurance specified in Annex 1 no. 17 that meet the requirements of sentence 1 above, however, are covered by an authorisation granted for other classes of insurance if they refer to disputes or claims arising from the operation of ships at sea or relating to such operation or if the authorisation is granted for carrying on the class of insurance business under Annex 1 no. 18a.

Section 11 Refusal and restriction of authorisation

(1) The supervisory authority must refuse to grant an authorisation if

1. the business plan and documents submitted in accordance with section 9 (2) to (4) do not provide sufficient evidence that the obligations under the insurance contracts can be fulfilled at all times;
2. there is evidence to suggest that the members of the senior management or the members of the supervisory board do not satisfy the requirements in section 24; or
3. there is evidence to suggest that the holder of a qualifying holding in the insurance undertaking, or if such holder is a legal person, a legal representative or representative according to the articles of association, or, if such holder is a commercial partnership, a partner in this partnership, is not a fit and proper person or for any other reason does not meet the demands required in the interest of ensuring a sound and prudent management of the insurance undertaking; this also applies if there is evidence to suggest that the funds raised in order to purchase the qualifying holding have been acquired by an action that objectively constitutes a criminal offence;
4. in the case of primary insurance undertakings, over and above the criteria specified in nos. 1 to 3;
 - a) the business plan and documents submitted in accordance with section 9 (2) to (4) do not provide sufficient evidence that the interests of the insured are adequately safeguarded;
 - b) after an authorisation has already been issued, the insurance undertaking becomes a subsidiary of an insurance holding company or of a mixed financial holding company and there is evidence to suggest that a person who actually manages the insurance holding company or mixed financial holding company in practice is not a fit and proper person to manage the business affairs of the insurance holding company or mixed financial holding company; or
 - c) in the case of the operation of health insurance business, there is evidence to suggest that the undertaking will introduce premium rates granting insurance cover that is similar within the meaning of section 204 of the German Insurance Contract Act (*Versicherungsvertragsgesetz – VVG*) to that provided under the premium rates offered by another affiliated insurance undertaking where the interests of the insured are not adequately safeguarded in connection with the introduction of such premium rates.

(2) ¹The authorisation may be refused if there is evidence to suggest that effective supervision of the insurance undertaking will be hindered. ²This is the case, in particular, if

1. the insurance undertaking is affiliated or closely linked with other persons or undertakings through corporate links which, due to the complex web of ownership or poor economic transparency, hinder the effective supervision of the insurance undertaking;
2. effective supervision of the insurance undertaking is hindered as a result of the statutory provisions or administrative regulations in a third country applicable to persons or undertakings in accordance with no. 1; or
3. the effective supervision of the insurance undertaking is hindered due to a lack of effective supervision over persons or undertakings in accordance with no. 1 in the states where they have their registered office or head office, or due to unwillingness by their competent authority to cooperate satisfactorily with the supervisory authority.

³The authorisation may also be refused if, contrary to section 9 (4), insufficient information or documents have been submitted with the application.

(3) Authorisation may not be refused for reasons other than those given under subsections (1) and (2) above.

Section 12 Changes to the business plan and to enterprise agreements

(1) ¹Any changes to the components of a primary insurance undertaking's business plan as specified in section 9 (2) no. 1 and 2, any extension of its business operations to a territory outside the member states or EEA signatory states and the primary insurance undertaking's enterprise agreements within the meaning of section 9 (4) no. 1 (b) or any changes

the retro must first be approved by the supervisory authority before they can come into effect. ²The same applies to any extension of a reinsurance undertaking's operations to cover a territory outside the member states or EEA signatory states or to cover other classes of reinsurance. ³Sentence 1 does not apply to amendments to the articles of a association intended to permit a capital increase. ⁴Section 11 must be applied, with the necessary modifications.

(2) If business operations are to be extended to other classes of insurance or other classes of reinsurance, the documentation under section 9 (2) to (4) must be submitted.

(3) If business operations are to be extended to cover a territory outside the member states or EEA signatory states, the following must be submitted:

1. information on the classes of insurance and insurance segments or classes of reinsurance in which the undertaking intends to operate; and
2. documentary evidence demonstrating that the insurance undertaking
 - a) will satisfy the provisions on capital adequacy in the member states and EEA signatory states even after the intended extension of the operating territory; and
 - b) in the case of the establishment of a branch in a territory outside the member states and EEA signatory states, that the insurance undertaking has been granted any business operation authorisation necessary in the territory concerned or that such a authorisation is not required.

Section 13 Transfers of portfolios

(1) ¹Any contract by which the insurance portfolio of a primary insurance undertaking is to be transferred wholly or partly to another insurance undertaking is subject to a approval by the supervisory authorities responsible for the undertakings in question. ²Such approval must be given if the interests of the insured are safeguarded and there is sufficient evidence that the obligations under the insurance contracts can be fulfilled at all times; section 9 (5) regarding consultation with the competent authorities in another member state or EEA signatory state and section 8 (4) apply, with the necessary modifications.

(2) ¹If a domestic primary insurance undertaking wholly or partly transfers to an insurance undertaking domiciled in a member state or EEA signatory state a portfolio of insurance contracts entered into via a branch or through the provision of cross-border services under section 57, only the approval of the transferor insurance undertaking's competent supervisory authority is required, in derogation of subsection (1) sentence 1 above. ²Approval will be granted if the criteria specified in subsection (1) sentence 2 are satisfied and if

1. evidence is provided in the form of certification from the supervisory authority in the transferee insurance undertaking's country of domicile that the transferee insurance undertaking will have adequate eligible own funds after the transfer to comply with the solvency capital requirement;
2. the supervisory authorities of the member states or EEA signatory states in which the risks in the insurance portfolio are situated have given their approval, and
3. in the case of an insurance portfolio transfer from a branch, the supervisory authority of the member state or EEA signatory state where the branch is located has been consulted.

³Sentences 1 and 2 no. 1 above also apply to the transfer of a portfolio of insurance-related contracts acquired in Germany. ⁴In the cases of sentences 1 and 3, subsection (5) applies, with the necessary modifications; subsections (3) and (4) remain unaffected.

(3) If members of a mutual society lose some or all of their rights as members of the society as a result of the transfer of the portfolio, the approval can only be granted if the portfolio transfer agreement provides for a appropriate compensation unless the transferee insurance undertaking is also a mutual society and the members of the transferor insurance undertaking affected by the transfer of the portfolio become members of the transferee insurance undertaking.

(4) ¹If with-profits insurance contracts are involved, the transfer can only be approved if the value of the profit participation attributable to the insured persons of both the transferor insurance undertaking and the transferee insurance undertaking after the transfer is not lower than the equivalent value before the transfer. ²For this purpose,

the assets and liabilities of the transferor insurance undertaking and the transferee insurance undertaking must, to the extent that these assets and liabilities can influence the profit participation, be compared at their fair values whereby the assets and liabilities of the transferor insurance undertaking are measured as if the insurance contracts concerned continued to be operated by the transferor insurance undertaking and the assets and liabilities of the transferee insurance undertaking are measured on the assumption that the transferee insurance undertaking takes over the insurance contracts in accordance with the transfer agreement for which approval is sought.

(5) As part of the portfolio transfer, the rights and obligations of the transferor insurance undertaking under the insurance contracts in relation to the policyholders are also transferred to the transferee insurance undertaking; section 415 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*) must not be applied.

(6) The portfolio transfer agreement must be in writing; section 311b (3) of the German Civil Code must not be applied.

(7) ¹Approval of the portfolio transfer must be published in the German Federal Gazette (*Bundesanzeiger*). ²As soon as the portfolio transfer comes into effect, the transferee insurance undertaking must inform the policyholders of the cause, structure and consequences of the portfolio transfer and, in particular, must provide information on any resulting change in the competent authorities responsible for legal or financial supervision and/or any change affecting a claim against a guarantee scheme in the event of insolvency on the part of the insurance undertaking. ³If there is a change in the competent authority responsible for financial supervision, the policyholder may terminate the insurance contract with immediate effect within one month of receiving the notification from the insurer. ⁴In the notification, the insurer must draw the policyholder's attention to the right to termination.

Section 14 Transformations

(1) ¹Any transformation of a primary insurance undertaking under sections 1 and 122a of the German Transformation Act is subject to approval by the supervisory authority. ²Section 13 (1) sentence 2 and (2), (4) and (5) applies, with the necessary modifications.

(2) The supervisory authority may also refuse approval if the rules governing transformation have not been observed.

Section 15 Non-insurance business

(1) ¹Beyond insurance business, primary insurance undertakings are only permitted to transact such other business as is directly related with insurance business. ²Such a relationship is deemed to exist in the case of dealings in futures, options and similar financial instruments if these instruments are intended as hedges against price and interest rate risks in connection with existing assets or future purchases of securities or if an additional income is to be generated on existing securities without causing the possibility of underfunding in respect of the guarantee assets on settlement. ³In the case of debt taken on by an insurance undertaking, there is generally no direct relationship within the meaning of sentence 1. ⁴In the case of any other business, such a relationship must only be deemed to exist if the business does not involve any additional financial risk.

(2) ¹Reinsurance undertakings are only permitted to conduct reinsurance business, together with associated business and services. ²Holding company functions and activities in relation to undertakings in the financial sector within the meaning of section 2 (3) of the German Supervision of Financial Conglomerates Act are also deemed to be business associated with reinsurance business.

(3) Insurance distribution as defined in section 7 number 34a belongs to an insurance contract's business operations.

Section 15a Consumer mortgage loans; power to issue statutory orders

(1) ¹Section 18a (1) to (10) of the Banking Act applies to the granting of consumer mortgage loans, with the necessary modifications. ²Credit checks carried out by undertakings that are not supervised by the supervisory authorities of the federal states are subject to the guidelines of the statutory order issued under section 18a (10a) of the Banking Act, with the necessary modifications.

(2) ¹The Federal Ministry of Finance is authorised, by way of a statutory order requiring the consent of the Bundesrat, to adopt more detailed requirements governing the knowledge and competence of internal and external staff involved in granting consumer mortgage loans required under section 1 in conjunction with section 18a (6) of the Banking Act. ²The Federal Ministry of Finance may delegate the authority under sentence 1 to BaFin by way of a statutory order requiring the consent of the Bundesrat.

Segment 2 Qualifying holdings

Section 16 Holders of qualifying holdings

¹The holders of qualifying holdings as defined in section 7 no. 3 in insurance undertakings must meet the demands required in the interest of ensuring a sound and prudent management of the undertaking; in particular, they must be fit and proper persons. ²If the holding is attributable to legal entities or trading partnerships, the same applies to the natural persons who have been appointed by virtue of law, the articles of association or the partnership agreement to manage the business affairs and represent the legal entity or partnership concerned and to the personally liable partners.

Section 17 Notification of qualifying holdings

(1) Any natural or legal person or any trading partnership must notify the supervisory authority in writing without delay if it intends

1. to acquire, alone or in conjunction with other persons or undertakings, a qualifying holding in an insurance undertaking (prospective acquirer); with the notification, the prospective acquirer must submit the information and documents necessary to enable the supervisory authority to verify the amount of the holding, establish whether there is significant influence, assess whether the prospective acquirer is a fit and proper person and review the other criteria for a prohibition under section 18 (1); the prospective acquirer must also provide details of the persons from whom, and the undertakings from which, it intends to acquire the holding concerned; if the prospective acquirer is a legal person or a trading partnership, the prospective acquirer must include in the notification the material facts necessary to enable the supervisory authority to assess whether the prospective acquirer's legal representative or representative in accordance with the articles of association or personally liable partner is a fit and proper person;
2. to increase, alone or in conjunction with other persons or undertakings, the amount of the qualifying holdings such that the threshold of 20 per cent, 30 per cent or 50 per cent of the voting rights or of the nominal capital is reached or exceeded or such that control over the insurance undertaking is exercised as defined in section 7 no. 16; or
3. to give up a qualifying holding in an insurance undertaking or reduce the amount of a qualifying holding below the threshold of 20 per cent, 30 per cent or 50 per cent of the voting rights or of the capital, or change the holding such that no control is exercised over the insurance undertaking; the remaining amount of the holding must be specified; the supervisory authority may set a deadline date by which the person or trading partnership submitting the notification must inform the supervisory authority as to whether the intended reduction or change has been carried out or not.

(2) The holder of a qualifying holding must notify the supervisory authority in writing without delay of any newly appointed legal representative or representative in accordance with the articles of association or any new personally liable partner and must include with the notification the material facts necessary to enable the supervisory authority to

assess whether the person concerned is fit and proper.

(3) The supervisory authority must send the person or undertaking subject to notification requirement written confirmation of receipt of a complete notification under subsection (1) nos. 1 or 2, such confirmation to be sent without delay, but no later than two working days after receipt of the notification by the supervisory authority.

(1a) ¹The supervisory authority must review a notification sent in accordance with subsection (1) nos. 1 or 2 within 60 working days of the date of the letter in which the supervisory authority confirmed in writing receipt of the complete notification (review period). ²In the confirmation sent in accordance with subsection (3), the supervisory authority must inform the person or undertaking subject to notification requirement of the date on which the review period will end. ³No later than the 50th working day of the review period, the supervisory authority may request further information necessary to complete the review. ⁴Such request must be made in writing, specifying the information that is additionally required. ⁵The supervisory authority must send the person or undertaking subject to notification requirement written confirmation of receipt of the additional information within two working days of receipt of the information by the supervisory authority. ⁶The review period is suspended from the date of the request for further information until the information is received by the supervisory authority. ⁷In the event of a suspension in accordance with sentence 6, the review period must not exceed 80 working days. ⁸The supervisory authority may request additions or clarifications in relation to this information; this does not lead to a new suspension of the review period. ⁹In derogation of sentence 7, the review period may be extended in the event of a suspension to a maximum of 90 working days if the person or undertaking subject to notification requirement

1. is domiciled or supervised outside the European Economic Area or
2. is a natural person or undertaking not subject to supervision under one of the following Directives:
 - a) 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302 of 17 November 2009, page 32);
 - b) 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145 of 30 April 2004, page 1, L 45 of 16 February 2005, page 18);
 - c) 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking-up and pursuit of the business of credit institutions (OJ L 177 of 30 June 2006, page 1); or
 - d) 2009/138/EC.

Section 18 Prohibition or restriction of a qualifying holding

(1) Within the review period, the supervisory authority may prohibit the intended acquisition of or increase in the qualifying holding if there is evidence to suggest that

1. the person or undertaking subject to notification requirement or, if the undertaking subject to the notification requirement is a legal person, a legal representative or representative according to the articles of association or, if the undertaking subject to the notification requirement is a commercial partnership, a partner, is not fit and proper or for any other reason does not meet the demands required in the interest of ensuring a sound and prudent management of the insurance undertaking; this also applies if the acquirer of the qualifying holding is unable to provide evidence that it has adequate business plans for the continuation and development of the business of the insurance undertaking and that the interests of the insured or the legitimate interests of the ceding insurers are adequately safeguarded; moreover, section 11 (1) no. 3 second half-sentence applies, with the necessary modifications;
2. the insurance undertaking is not or will not remain in a position to satisfy the supervisory requirements or the insurance undertaking would, through the acquirer's acquisition of or increase in the holding, become affiliated with the holder of the qualifying holding with corporate ties that, due to the complex web of ownership or poor economic transparency, could hinder the effective supervision of the insurance undertaking, adversely impact effective information-sharing between the competent authorities or make it difficult to divide responsibilities between these competent authorities;

3. the acquisition of or increase in the qualifying holding would make the insurance undertaking a subsidiary of an insurance undertaking that has its registered office in a third country and the parent undertaking is not effectively supervised in the country where it has its registered office or head office or the competent supervisory authority in the country concerned is not willing to cooperate satisfactorily;
4. the future member or members of the senior management are not fit and proper persons;
5. in connection with the intended acquisition of or increase in the holding, there is or has been money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309 of 25 November 2005, page 15), such offences have been attempted or the intended acquisition of or increase in the holding could increase the risk of such activity; or
6. the person or undertakings subject to the notification requirement does not have the necessary financial strength, in particular with regard to the nature of the actual and planned business to be carried on by the insurance undertaking; this applies especially if the person or undertakings subject to notification requirement does not have the capital adequacy or assets to meet those particular requirements of the insurance undertaking related to capital adequacy or cash and cash equivalents, ensuring that the undertaking can at all times fulfil its obligations under the insurance contracts and/or avoid liquidity bottlenecks.

(2) The supervisory authority can also prohibit the acquisition of or the increase in the holding if the details under section 17 (1) no. 1 and 2 or the additional information requested under section 17 (4) sentence 3 is incomplete or inaccurate; the supervisory authority may not specify conditions precedent relating to the amount of the intended acquisition of or increase in the holding, nor may it base its review on the economic needs of the market.

(3) ¹If, on completion of the review, the supervisory authority decides to prohibit the acquisition of or the increase in the holding, it must inform the person or undertaking subject to notification requirement in writing, specifying the reasons for the decision, within two working days and in compliance with the review period deadline. ²Comments and reservations made by the competent authority relevant to the person or undertakings subject to notification requirement must be set out in the decision; the acquisition of or increase in the holding may only be prohibited for the reasons specified in subsections (1) and (2). ³If the acquisition of or the increase in the holding is not prohibited in writing within the review period, the acquisition or the increase can be carried out; this does not affect the rights of the supervisory authority under section 20. ⁴If the acquisition of or the increase in the holding is not prohibited, the supervisory authority may specify a period at the end of which the person or undertaking subject to notification requirement must inform the supervisory authority without delay whether the intended acquisition or increase has been carried out or not.

Section 19 Prohibition of the exercise of voting rights

(1) The supervisory authority may prohibit the holder of a qualifying holding, as well as the undertakings it controls, from exercising its voting rights and stipulate that control over or use of the shares be subject to the approval of the supervisory authority if

1. the criteria for a prohibition order under section 18 (1) or (2) above are satisfied;
2. the holder of the qualifying holding has not fulfilled the duty under section 17 (1) nos. 1 or 2 to notify the supervisory authority beforehand and has not subsequently submitted such notification within a period of time set by the supervisory authority; or
3. the holding has not been acquired or increased within the periods specified in accordance with section 18 (3) sentence 4 or has been acquired or increased despite an enforceable prohibition under section 18 (1) or (2).

(2) ¹In the event of a prohibition under subsection (1) above, the court at the location of the registered office of the insurance undertaking must, at the request of the supervisory authority, the insurance undertaking or one of the insurance undertaking's shareholders, appoint a trustee to whom the court then transfers responsibility for exercising the voting rights. ²In exercising the voting rights, the trustee must take into account the need to ensure sound and prudent management of the insurance undertaking. ³Over and above the action specified in subsection (1), the supervisory authority can instruct a trustee to sell the shares, to the extent that they constitute a qualifying holding, if the holder of the qualifying holding does not provide proof of a reliable buyer to the supervisory authority within a reasonable period to be set by the latter; the holders of the shares must cooperate in the sale to the extent necessary. ⁴If the criteria in subsection (1) are no longer met, the supervisory authority must apply for the appointment of the trustee to be withdrawn. ⁵The trustee is entitled to be refunded for reasonable expenses and to receive remuneration

for services rendered.⁶The court determines the amount of the expenses and remuneration at the request of the trustee; no appeal against the specified remuneration is permissible.⁷The insurance undertaking and the relevant holder of a majority holding are jointly and severally liable for the costs arising as a result of the appointment of the trustee and for the remuneration and expenses to be paid to the trustee.⁸The Federal Government advances the expenses and the remuneration.

Section 20 Audit of the holder of a qualifying holding

If there is evidence to suggest that the holder of a qualifying holding does not satisfy the requirements specified in section 16 or that the affiliation with other persons or undertakings could hinder effective supervision of the insurance undertaking due to the complex web of ownership or poor economic transparency, the supervisory authority may stipulate that the holder of the qualifying holding must submit the documents specified in section 9 (4) nos. 2c and 2d and have these documents audited by an independent auditor to be determined by the supervisory authority, such audit to be at the expense of the holder of the qualifying holding.

Section 21 Cooperation with the competent authorities in other member states or EEA signatory states

(1) When assessing the acquisition, the supervisory authority must work in close cooperation with the competent authorities in the other member states or EEA signatory states if the person or undertaking subject to notification requirement is

1. a CRR credit institution, an electronic money institution or a securities trading firm, an insurance undertaking or a management company within the meaning of Article 2 (1b) of Directive 2009/65/EC that is authorised to operate in a member state or sector other than the state or sector of the intended acquisition;
2. a parent undertaking of a CRR credit institution, electronic money institution or securities trading firm, insurance undertaking or management company within the meaning of Article 2 (1b) of Directive 2009/65/EC that is authorised to operate in a member state or sector other than the state or sector of the intended acquisition; or
3. a natural or legal person that controls a CRR credit institution, an electronic money institution or a securities trading firm, an insurance undertaking or a management company within the meaning of Article 2 (1b) of Directive 2009/65/EC that is authorised to operate in a member state or sector other than the state or sector of the intended acquisition.

(2) ¹The competent authorities must ensure that they send each other without delay any information that is material or relevant to the assessment. ²The competent authorities must notify each other on request of all relevant information and must send all material information without the need for a request. ³All remarks or reservations made by the competent authority responsible for the prospective acquirer must be noted in the decision by the competent authority that authorised the insurance undertaking in which the holding is intended to be acquired.

Section 22 Authorisation to issue statutory orders

¹The Federal Ministry of Finance is authorised to issue a statutory order governing the nature, scope, timing and form of submission for the information to be provided in accordance with section 17 (1) and (2) above if this is required to enable the supervisory authority to fulfil its duties. ²For insurance undertakings that are not subject to supervision by the supervisory authorities in the federal states, the statutory order may include a stipulation specifying that, either generally or on a case-by-case basis, prospective acquirers must submit the documents specified in section 9 (4) nos. 2c and 2d and have these documents audited by an independent auditor to be determined by the supervisory authority, such audit to be at the expense of the prospective acquirer. ³This authorisation may be delegated by statutory order to BaFin. ⁴Statutory orders under sentences 1 to 3 do not require the consent of the Bundesrat.

Segment 3 Business organisation

Section 23 General business organisation requirements; product approval process

(1) ¹Insurance undertakings must have a proper, effective business organisation that is appropriate for the nature, scope and complexity of their activities. ²The business organisation must ensure both compliance with the laws, regulations and supervisory requirements applicable to insurance undertakings and sound, prudent management of the undertaking. ³This includes not only compliance with the requirements in this segment, but also, in particular, an appropriate, transparent organisational structure with clear assignment of functions, an appropriate segregation of responsibilities and an effective internal communications system.

(1a) ¹Undertakings that manufacture insurance products for sale must maintain, operate and regularly review a process for internal approval for distribution of each insurance product or any significant modification of existing insurance products (product approval process). ²The process must ensure that an identified target market is specified for each insurance product before it is distributed to clients. ³All relevant risks for the identified target market must be assessed when the target market is specified. ⁴The process must also ensure that the intended distribution strategy is consistent with the identified target market. ⁵Undertakings must have an appropriate business organisation which ensures that the insurance products are distributed to the identified target market.

(1b) ¹Undertakings must regularly review the insurance products. ²They must take into account any event that could materially affect the potential risk to the identified target market and assess at least whether the insurance product remains consistent with the needs of the identified target market and whether the intended distribution strategy remains appropriate.

(1c) ¹Undertakings that manufacture insurance products must make available to all distributors all appropriate information on the insurance product and the product approval process, including the identified target market of the insurance product. ²Where an undertaking distributes or advises on insurance products that it does not manufacture, it must have in place adequate arrangements to obtain the information referred to in sentence 1 and to understand the characteristics and identified target market.

(1d) Subsections (1a) to (1c) do not apply to insurance products that consist of the insurance of large risks within the meaning of section 210 (2) of the Insurance Contract Act and do not apply to reinsurance undertakings.

(2) The management board must ensure that the business organisation is subject to a regular internal review.

(3) ¹Undertakings must prepare internal guidelines that are subject to prior approval by the board of management, and whose implementation must be ensured. ²As a minimum, such guidelines must include requirements relating to risk management, the internal control system, internal audit and, where relevant, the outsourcing of functions and activities. ³They must be reviewed at least once a year. ⁴They must be modified accordingly in the event of significant changes in the business units or systems to which they relate.

(4) Undertakings must implement appropriate precautionary measures, including the development of contingency plans, to ensure that business continuity is maintained and that activities are properly conducted at all times.

(5) ¹The rules and regulations governing the organisational and operational structures, together with the details of the internal control system, must be documented such that they are comprehensible for third parties. ²The documentation must be retained for six years; section 257 (3) and (5) of the German Commercial Code applies, with the necessary modifications.

(6) Undertakings must establish a process that allows its employees, while preserving the confidentiality of their identity, to report potential or actual breaches

1. of this Act,
2. of statutory orders adopted on the basis of this Act,
3. of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173 of 12 June 2014, page 1),
4. of Regulation (EU) No. 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352 of 9 December 2014, page 1; L 358 of 13 December 2014, page 50), as amended,

and any criminal offences within the undertaking to an appropriate organisational unit.

Section 24 Requirements for persons who effectively run the undertaking or assume responsibility for other key tasks

(1) ¹Persons who effectively run the undertaking or assume responsibility for other key tasks must be fit and proper. ²The fit and proper requirement includes a requirement for professional skills and qualifications, knowledge and experience that ensures sound, prudent management of the undertaking. ³This requires appropriate theoretical and practical knowledge of insurance business and, if the person concerned is to take on management responsibilities, a adequate management experience. ⁴A person can generally be deemed to have adequate management experience if the person concerned can demonstrate that he/she has held a managerial position in an insurance undertaking of comparable size and with a comparable type of business for at least three years.

(2) ¹Persons who effectively run the undertaking include, in addition to the members of the senior management, persons who are authorised to make material decisions for the undertaking. ²Members of the senior management are those natural persons appointed by virtue of law or the articles of association or as authorised agents of a branch in a member state or EEA signatory state to manage the business affairs and represent the insurance undertaking.

(3) ¹Persons who are already members of the senior management of two insurance undertakings, pension funds, insurance holding companies or special purpose insurance companies cannot be appointed as a member of the senior management of a further insurance undertaking. ²If the insurance undertaking involved forms part of the same insurance or corporate group, the supervisory authority may permit persons to hold further senior management positions. ³Appointment as a member of the senior management does not preclude the exercise of a function as defined in section 7 sentence 1 no. 9.

(4) ¹If a person has been a member of the senior management of an undertaking, such person cannot become a member of the administrative or supervisory authority of the same undertaking if two former members of the senior management of the undertaking are already members of the administrative or supervisory authority concerned. ²A person who already holds five supervisory authority positions in undertakings subject to supervision by BaFin cannot be appointed to a further administrative or supervisory authority; in this regard, positions held on administrative or supervisory bodies in undertakings in the same insurance or corporate group are disregarded in determining the number of positions held.

Section 25 Remuneration

(1) The remuneration systems for members of the senior management, employees and members of the supervisory board of insurance undertakings must be reasonable, transparent and aimed at achieving sustainable development of the undertaking.

(2) Insurance undertakings may only award remuneration to members of the senior management and members of the supervisory board for other activities that they carry out for the undertaking concerned if this is compatible with their tasks as members of the governing bodies.

(3) ¹Superordinate undertakings in a group must ensure that the remuneration systems for members of the senior management, employees and members of the supervisory board within the overall group are reasonable, transparent and aimed at achieving sustainable development of the undertaking. ²The superordinate company in a group within the meaning of this subsection is the undertaking at the head of the group and can be either an insurance undertaking itself or an insurance holding company.

(4) ¹Subject to the preconditions specified in section 134 (1), the supervisory authority should stipulate that the insurance undertaking must limit the total annual amount that it allocates for the variable remuneration to be granted to all members of the senior management and employees (total amount of variable remuneration) to a certain proportion of the profit for the year or that the insurance undertaking must withdraw such variable remuneration in full. ²Subject to the preconditions specified in section 134 (1), the supervisory authorities should also prohibit the payment of variable remuneration components or limit them to a certain proportion of the profit for the year. ³The authority to issue stipulations, prohibitions and limitations as set out in sentences 1 and 2 must be taken into account in relevant contractual agreements between insurance undertakings and members of their senior management, employees and

members of their supervisory boards. ⁴If contractual agreements governing the granting of variable remuneration are not consistent with a stipulation, prohibition or limitation issued in accordance with sentence 1 or 2, no rights can be claimed on the basis of such contractual agreements.

(5) Subsections (1), (3) and (4) do not apply if the remuneration is agreed by collective agreement or within the ambit of such collective agreement through agreement by the parties to the employment contract on the application of collective agreement regulations or in a works or service agreement based on a collective agreement.

(6) For the conclusion or mediation of consumer mortgage loans, the structure of the remuneration of the intermediaries may not impair their ability to act in the best interests of the consumer, and in particular it may not be linked to sales targets.

Section 26 Risk management

(1) ¹Insurance undertakings must have an effective risk management system that is well integrated into the organisational structure and decision-making processes of the undertaking and that, by means of an appropriate internal reporting system, duly takes into account the information needs of the persons who effectively run the undertaking or are responsible for the key functions. ²The risk management system must encompass the strategies, processes and internal reporting procedures that are necessary to ensure that the risks to which the undertaking is or could be exposed can be identified, assessed, monitored and controlled and to ensure that these risks can be reported in a meaningful way. ³The system must enable the undertaking to manage the risks continuously, both individually and on an aggregated basis, taking into account the interdependencies between the risks. ⁴At the request of the supervisory authority, insurance undertakings must prepare a recovery plan (general recovery plan). ⁵The general recovery plan must describe scenarios that could represent a risk to the undertaking and describe the corrective measures intended to combat such risks.

(2) The strategies to be developed by an undertaking include, in particular, a risk strategy aligned with the management of the undertaking, taking into account the nature, scope and complexity of the business operated and the associated risks.

(3) If insurance undertakings apply the matching adjustment as specified in section 80 or the volatility adjustment in accordance with section 82, they must draw up a liquidity plan with a projection of the cash inflows and outflows in relation to the assets and liabilities on which these adjustments are based.

(4) If an undertaking applies the volatility adjustment in accordance with section 82, the guiding principles specified in writing for the risk management system under section 23 (3) must include guiding principles relating to the criteria for the application of the volatility adjustment.

(5) ¹The risk management system must encompass all the insurance undertaking's risks and, in particular, cover the following areas:

1. the underwriting of insurance risks and the recognition of provisions;
2. asset liability management;
3. investments, in particular derivatives and instruments of similar complexity;
4. the management of liquidity and concentration risk;
5. the management of operational risk; and
6. reinsurance and other risk mitigation techniques.

²As a minimum, the internal guiding principles for risk management must specify requirements for the areas referred to above.

(6) In relation to investment risk, the insurance undertaking must demonstrate that it is complying with the requirements in section 124.

(7) ¹In relation to asset liability management, an insurance undertaking must regularly analyse

1. the sensitivity of its technical provisions and eligible own funds in relation to the assumptions on which the extrapolation of the relevant risk-free interest rate term structure under section 7 no. 21 is based;
2. if the matching adjustment in accordance with section 80 is applied,
 - a) the sensitivity of its technical provisions and eligible own funds in relation to the assumptions on which the calculation of the matching adjustment is based, including the calculation of the underlying spread in accordance with section 81 no. 2 and the potential impact from the forced sale of assets on its eligible own funds;
 - b) the sensitivity of its technical provisions and eligible own funds in relation to changes in the composition of the assigned asset portfolio;
 - c) the impact from a reduction in the matching adjustment to zero;
3. if the volatility adjustment in accordance with section 82 is applied,
 - a) the sensitivity of its technical provisions and eligible own funds in relation to the assumptions on which the calculation of the volatility adjustment is based and the potential impact from the forced divestiture of assets on its eligible own funds;
 - b) the impact from a reduction in the volatility adjustment to zero.

²Insurance undertakings must send the analyses specified in sentence 1 to the supervisory authority annually as part of the information to be submitted under section 43. ³If a reduction of the matching adjustment or volatility adjustment to zero would lead to a failure to comply with the solvency capital requirement, the undertaking concerned must also submit an analysis of the corrective action it could take in a situation of this nature to increase the eligible own funds to the level required to ensure compliance with the solvency capital requirement or to reduce the risk profile such that compliance with the solvency capital requirement is restored.

(8) ¹The insurance undertaking must set up an independent risk control function, structured such that it significantly advances the implementation of the risk management system. ²In insurance undertakings that use an internal model, the risk control function must also have responsibility for developing, implementing, testing and validating the internal model as well as documenting the model, including any subsequent changes. ³The function must also analyse the efficiency of the internal model, report a summary of this analysis to the management board, submit proposals to the management board for improving the model and keep the management board up to date about any corrective action taken in respect of weaknesses or deficiencies that have been identified.

Section 27 Risk and solvency assessment

(1) ¹The risk management system must include an own risk and solvency assessment (ORSA), which insurance undertakings must carry out both regularly and without delay in the event of material changes in their risk profile. ²The own risk and solvency assessment must be a fixed component of the undertaking's business strategy and must be taken into account at all times in strategic decision-making. ³Insurance undertakings must inform the supervisory authority of the findings within 14 days of completing each own risk and solvency assessment.

(2) As a minimum, the own risk and solvency assessment must include:

1. a discrete assessment of the solvency needs, taking into account the undertaking's specific risk profile, its specified risk tolerance limits and its business strategy;
2. an assessment, in the solvency statement and within risk-bearing capacity, as to whether the regulatory own funds requirements and the requirements for technical provisions can be satisfied at all times; and
3. an assessment of the materiality of any deviations in the undertaking's risk profile from the assumptions on which the calculation of the solvency capital requirement with the standard formula or with the internal model is based.

(3) ¹For the assessment specified in subsection (2) no. 1, an undertaking must have processes that are appropriate to the

nature, scope and complexity of its risks and that enable the undertaking concerned to identify and assess in a proper manner all risks to which it is or could be exposed over both the short and long terms. ²These processes include, in particular, an undertaking's processes for carrying out its own independent stress tests and scenario analyses.

(4) Insurance undertakings must explain the methods used to assess the solvency needs in accordance with subsection (2) no. 1.

(5) If an internal model is used, the assessment in the cases specified in subsection (2) no. 3 must be carried out together with a recalibration in which the results from the internal model are transferred to the risk measure and the calibration of the solvency capital requirement.

(6) ¹Undertakings that provide long-term guarantees must, as part of the assessment in accordance with subsection (2) no. 2, also take into account the long-term risk-bearing capacity of the undertaking. ²If the insurance undertaking applies the matching adjustment in accordance with section 80, the volatility adjustment in accordance with section 82 or the transitional measures in accordance with sections 351 and 352, compliance with the capital requirement in accordance with subsection (2) no. 2 must be assessed with and without the inclusion of these adjustments or transitional measures.

Section 28 External credit rating

(1) In order to avoid excessive trust being placed on external credit assessment institutions, when they use external credit ratings to calculate technical provisions and solvency capital requirement in the course of their risk management insurance undertakings examine the appropriateness of such external ratings by calculating additional assessments as much as they practically and possibly can to prevent an automatic dependence on external credit ratings.

(2) The companies within the scope of Regulation (EC) No. 1060/2009 that are subject to supervision under this Act must comply with the obligations resulting from that Regulation, as amended.

Section 29 Internal control system

(1) ¹Insurance undertakings must have an effective internal control system, which includes at a minimum administrative and accounting procedures, an internal framework for control and appropriate internal company reporting at all corporate levels. ²The internal control system must also have a function for monitoring compliance with the requirements (compliance function).

(2) ¹The tasks of the compliance function include advising the board of management in relation to compliance with the laws and administrative regulations which apply to the pursuit of insurance business. ²The compliance function must also evaluate the potential effects of changes to the legal environment for the undertaking and identify and assess the risk associated with a breach of the legal regulations (compliance risk).

(3) Insurance undertakings must have appropriate systems and structures in place in order to meet the requirements in sections 40 to 42 and be able to provide the information which needs to be transmitted to the supervisory authorities in accordance with this Act.

(4) The undertakings must use internal guidelines approved by the board of management in order to determine how the suitability of the information to be published and transmitted must be guaranteed on a continuous basis.

Section 30 Internal audit

(1) Insurance undertakings must implement an effective internal audit which reviews the suitability and effectiveness of the entire business organisation, and in particular the internal control system.

(2) ¹The internal audit must be objective and independent of other operational activities. ²It must report the results and

recommendations from its audit directly to the board of management.³The board of management must decide which measures must be taken based on the determinations of the audit reports and will ensure that these measures are implemented.

Section 31 Actuarial function

(1)¹Insurance undertakings must have an effective actuarial function in place.²In relation to the technical functions, this function must be responsible for

1. coordinating the calculation;
2. guaranteeing the suitability of the methods applied and the underlying model along with the assumptions made;
3. evaluating the adequacy and quality of the underlying data;
4. comparing the estimated values with the empirical values;
5. notifying the board of management of the reliability and suitability of the calculation; and
6. monitoring the calculation in the cases stated in section 79.

(2)¹Furthermore the actuarial function must provide an opinion regarding the general signature and acceptance policy and the suitability of the reinsurance agreements.²It contributes to the effective implementation of the risk management system.³This applies in particular to the development of new models.⁴The actuarial function also contributes to risk and solvency assessments.

(3) Any individual who exercises the actuarial function must have knowledge of insurance and financial mathematics that is appropriate for the type, scope and complexity of the risks of the insurance undertaking, and be able to demonstrate relevant experience with the essential professional and other standards.

Section 32 Outsourcing

(1) Any insurance undertaking which outsources functions or insurance activities must remain responsible for fulfilling all of the regulations and requirements applicable under supervisory law.

(2)¹The proper execution of functions and insurance activities outsourced, the governance and control options for the board of management along with the audit and control rights of the supervisory authority must not be impaired as a result of the outsourcing.²In particular, in relation to the functions and insurance activities affected by the outsourcing, the outsourcing company must ensure that

1. the company itself, its official auditors and the supervisory authority are able to access all of the data;
2. the service provider cooperates with the supervisory authority; and
3. the supervisory authority gains rights of access to the service provider's premises which either it or a third party is able to exercise.

(3) In the event that important functions and insurance activities are outsourced, insurance undertakings must also ensure that any essential impairment of the quality of the business organisation, excess increase in operational risk or any risk to continuous and satisfactory service to the policyholder are avoided.

(4)¹The outsourcing insurance undertaking must in particular guarantee the required rights related to information and to issuing instructions by contract and include the outsourced functions and insurance activities in its risk management.²A right to issue instructions is not required if an insurance undertaking outsources functions to a parent enterprise as part of a consolidated entity for tax purposes and in terms of exercising the functions or insurance activities this parent enterprise is subject contractually to the same requirements under supervisory law which also apply to the outsourcing company.

Section 33 Application of company law provisions, with the necessary modifications

(1) Section 188 (1) sentence 1 and section 195 (3) also apply to insurance stock corporations, with the necessary modifications.

(2) ¹If this Act includes provisions relating to the management board or supervisory board, and insurance undertakings under public law do not have governing bodies so designated, the relevant executive body takes the place of the board of management, and the relevant supervisory authority takes the place of the supervisory board. ²With respect to the executive body of public law insurance undertakings, sections 80 and 91 (2) of the German Stock Corporation Act apply, with the necessary modifications. ³With respect to the supervisory authority of public law insurance undertakings, section 80 of the German Stock Corporation Act applies, with the necessary modifications.

Section 34 Authorisation to issue statutory orders

(1) ¹In the case of insurance undertakings not subject to supervision by the supervisory authorities of the individual federal states, the Federal Ministry of Finance is authorised to issue further provisions by statutory order concerning the content of the general restructuring plans in accordance with section 26 (1). ²This authorisation may be delegated by statutory order to BaFin. ³The Insurance Advisory Council is to be consulted before the regulations are issued. ⁴Statutory orders under sentences 1 to 3 do not require the consent of the Bundesrat.

(2) ¹The Federal Ministry of Finance is authorised to stipulate, by statutory order, further details on the configuration, monitoring, further development and transparency of the remuneration systems within the meaning of section 25, including the decision-making processes and responsibilities, the composition of the remuneration, the positive and negative remuneration parameters, the payment periods and the disclosure of the configuration of the remuneration systems and the remuneration paid, the disclosure medium and the frequency of the disclosure, along with the admissibility of other remuneration within the meaning of section 25 (2). ²The regulations must be based in particular on the size and remuneration structure of the undertaking along with the type, scope, complexity, risk content and internationality of the business activities as a whole. ³In the case of undertakings which belong to an insurance group, the regulations must also be based on the size of the group along with the type, scope, complexity, risk content and internationality of the business activities of the group. ⁴Within the framework of the provisions under sentence 1, the commercial law provisions related to the disclosure of remuneration in accordance with section 341a (1) and (2) in conjunction with section 341l (1) sentence 1 of the Commercial Code remain unaffected. ⁵This authorisation may be delegated by statutory order to BaFin. ⁶Statutory orders under sentences 1 to 5 do not require the consent of the Bundesrat.

Segment 4 General reporting obligations

Subsegment 1 Annual audit

Section 35 Duties of the official auditor

(1) ¹With the audit of the annual financial statements the auditor must determine whether the insurance undertaking has fulfilled the following notification requirements and other requirements:

1. the notification requirements in accordance with section 47 numbers 1 to 5 and 7 to 9, section 58 (1) and (4) and section 59 (1) and (4);
2. the notification requirements of section 28 (5) of the German Supervision of Financial Conglomerates Act;
3. the requirements in accordance with Article 4(1), (2) and (3) subparagraph 2, Article 9(1) to (4) as well as Article 11(1) to (11) subparagraph 1 and (12) of Regulation (EU) No. 648/2012,
4. the requirements in accordance with Article 4(1) subparagraph 1, Article 5a(1) as well as Articles 8b to 8d of Regulation (EU) No. 1060/2009, as amended,

5. the requirements in accordance with Article 4(1) to (5) and Article 15 of Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No. 648/2012 (OJ L 337 of 23 December 2015, page 1), as amended,
6. the requirements in accordance with Article 16(1) to (4), Article 23(3) sentence 1, paragraphs (5), (6) and (10), Article 28(2) and Article 29 of Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No. 596/2014 (OJ L 171 of 29 June 2016, page 1),
7. the requirements in accordance with Article 28(1) to (3) of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No. 648/2012 (OJ L 173 of 12 June 2014, page 84; L 6 of 10 January 2015, page 6; L 270 of 15 October 2015, page 4) and
8. the requirements in accordance with Articles 5 to 9, 18 to 26, 27(1) and (4) and Article 43(5) and (6) of Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No. 1060/2009 and (EU) No. 648/2012 (OJ L 347 of 28 December 2017, page 35).

²The result must be included in the audit report.

(2) The auditor will review the solvency sheet at the individual and group levels and provide a separate report on the findings.

(3) The auditing requirement under section 317 (4) of the Commercial Code applies to all insurance undertakings subject to section 91 (2) of the German Stock Corporation Act.

(4) ¹The auditor is required to report to the supervisory authority without delay all facts and decisions in relation to the audited undertaking of which they become aware while exercising their tasks and which affect the following:

1. a breach of the legal or insurance regulations which govern the certification conditions or which apply to the exercise of the undertaking's activity;
2. an impairment to the continuation of the company's activities;
3. rejection of the confirmation of proper accounting or reservations;
4. non-compliance with the solvency capital requirement or
5. non-compliance with the minimum capital requirement.

²Sentence 1 applies, with the necessary modifications, to facts and decisions of which the auditor becomes aware in exercising their responsibilities at an insurance undertaking which maintains a close link to the audited insurance undertaking as a result of a control relationship. ³Notifications in accordance with sentences 1 and 2 are not considered to be a breach of a duty of confidentiality stipulated by contract or through the legal or administrative regulations, unless they are not made in good faith.

(5) ¹In the case of insurance undertakings within the meaning of section 52 the auditor must also review whether these have fulfilled their obligations in accordance with sections 53 to 56 as well as under the German Money Laundering Act (*Geldwäschegesetz - GwG*). ²A separate report must be provided on the audit.

Section 36 Notification of the auditor to the supervisory authority; audit engagement

(1) ¹The management board must immediately notify the supervisory authority of the auditor appointed by the supervisory board. ²The supervisory authority may, if it has any objections to the auditor of the annual financial statements, require that a different auditor be appointed within a reasonable period of time. ³If no new appointment is made or if the supervisory authority also has objections to the newly appointed auditor, it must itself appoint an auditor.

⁴In this case, section 318 (1) sentence 4 of the Commercial Code applies, subject to the proviso that the legal representatives must immediately issue the audit engagement to the auditor appointed by the supervisory authority.

(2) Subsection (1) does not apply to insurance undertakings that are exempt from the requirement to have their annual financial statements audited in accordance with section 330 (1), (3) and (4) of the Commercial Code and on the statutory order enacted based upon this authorisation.

Section 37 Submission to the supervisory authority

(1) ¹Insurance undertakings must immediately submit to the supervisory authority the annual financial statements prepared by the legal representatives and later the adopted annual financial statements and management report.

²Insurance undertakings that prepare consolidated financial statements or a group management report must submit these documents to the supervisory authority immediately.

(2) Insurance undertakings must submit the audited solvency sheet and the audit report for the solvency overview (section 35 (2)) to the supervisory authority without delay in each case.

(3) Insurance undertakings must send every insured, on request, the annual financial statements and management report in the financial year following the year under review.

(4) The provisions under subsections (1) and (3) apply to separate financial statements within the meaning of section 325 (2a) of the Commercial Code.

(5) ¹Immediately after the audit report has been adopted, the board of management must submit a copy of the report, with the notes and remarks of the management and supervisory boards, to the supervisory authority. ²The supervisory authority may discuss the report with the auditor and, if necessary, require additional audits and supplements to the report at the expense of the insurance undertaking.

(6) Subsection (4) does not apply to the undertakings stated in section 36 (2).

Section 38 Accounting and auditing of public law insurance undertakings

(1) The provisions of the second subsegment of the fourth segment in conjunction with the provisions of the first and second parts of the third book of the Commercial Code apply, with the necessary modifications, to undertakings under public law which carry on insurance business and are not social insurance institutions.

(2) Sections 36 and 37 do not apply to public law insurance undertakings established under the laws of the individual federal states and subject to supervision at state level, for which additional requirements with respect to the auditing of the annual financial statements in accordance with section 341k of the Commercial Code have been imposed under the laws of the individual federal states.

Section 39 Authorisation to issue statutory orders

(1) ¹The Federal Ministry of Finance is authorised to issue, by statutory order, provisions for insurance undertakings not subject to supervision by the supervisory authorities of the individual federal states with respect to

1. the bookkeeping, contents, form, period and number of copies of the internal report to be submitted to the supervisory authority, comprising the balance sheet, broken down for supervisory purposes, profit and loss account broken down by classes and types of insurance and special explanatory notes to the balance sheet and profit and loss account if required for supervisory purposes in accordance with this Act;

2. the contents, form and number of copies of the internal interim report to be submitted to the supervisory authority quarterly, comprising a compilation of the latest accounting and portfolio data and information about the number of claims, if required for supervisory purposes in accordance with this Act;
3. the content, form and period of the audit reports under section 35 (1) and (5) and section 341k of the Commercial Code, if required for supervisory purposes in accordance with this Act, in particular in order to obtain consistent documentation for the purposes of evaluating the insurance business carried out by the insurance undertakings;
4. the auditing by an independent expert of the annual financial statements and management report of insurance undertakings not subject to section 341k of the Commercial Code, as well as the contents and the deadlines for the report's submission if required for supervisory purposes in accordance with this Act;
5. the contents, form and number of copies of the solvency sheet to be compiled along with the timeline for submission to the supervisory authority;
6. the timelines for the transmission of information which must be transmitted based on delegated legislative acts in accordance with Article 35 (9) and technical implementation standards in accordance with Article 35 (10) of Directive 2009/138/EC; and
7. the type and manner of the data transmission, the data formats to be used, the data quality to be complied with and the company name to be provided.

²The Insurance Advisory Council is to be consulted before the regulations are issued. ³This authorisation may be delegated by statutory order to BaFin. ⁴Statutory orders under sentences 1 to 3 do not require the consent of the Bundesrat. ⁵Statutory orders in accordance with sentence 1 numbers 1, 3 and 4 and with sentence 3 are promulgated in consultation with the Federal Ministry of Justice and for Consumer Protection, provided that they include the authorisation under sentence 1 numbers 1, 3 and 4.

(2) ¹The governments of the individual federal states may, in consultation with BaFin, enact regulations via statutory order in accordance with subsection (1) above, which are applicable to insurance undertakings subject to supervision by the supervisory authorities of the individual federal states. ²They may delegate this power by statutory order to the supervisory authority of the federal state.

Subsegment 2 Report on solvency and financial position

Section 40 Solvency and financial position report

(1) ¹Insurance undertakings must publish a solvency and financial position report at least once per annum, and no later than 14 weeks following the end of the financial year. ²The deadline must be extended by six weeks for the report at group level. ³The report must be approved by the executive body prior to disclosure. ⁴The report must be sent to the supervisory authority without delay following disclosure.

(2) ¹The solvency and financial position report must include essential information on the insurance undertaking's solvency and financial position. ²In terms of the level of detail the statements in this report must be determined in accordance with the type, scope and complexity of the business activities and the risks of the undertaking, and be generally understandable. ³The following must be specified here:

1. the business activity and trading results of the undertaking;
2. the business organisation with assessment of its suitability for the undertaking's risk profile;
3. the risk potential, risk concentration, risk mitigation measures and risk sensitivity separately for each risk category;
4. separately in each case the bases and methods used to evaluate the assets, technical provisions and other liabilities in accordance with the solvency sheet, together with an explanation of the crucial differences with the bases and methods used to evaluate these in the annual financial statements; along with

5. the capital management with details at least on the structure and the amount of own funds and their quality along with the amounts of the solvency capital requirement and the minimum capital requirement.

(3) ¹If the matching adjustment stated in section 80 is applicable, the description stated in subsection (2) number 4 must include a description of the matching adjustment, the portfolio of obligations and the assets allocated to which the matching adjustment is applied, along with quantification of the effects of the change of the matching adjustment to zero on an undertaking's financial position. (3) ²The description stated in subsection (2) number 4 must also include an explanation regarding whether the volatility adjustments stated in section 82 is used by the undertaking, along with a quantification of the effects of the change of the matching adjustment to zero on an undertaking's financial position.

(4) ¹The description of own funds must include

1. an analysis of all essential changes as compared with the reporting period for the previous year;
2. an explanation of all greater differences in relation to the value of the own funds components in the annual financial statements; and
3. a brief presentation of the transferability of the capital.

²Insurance undertakings which use an internal or partially internal model to calculate the solvency capital requirement must also provide adequate information explaining the main differences between the assumptions underlying the standard formula and its model.

(5) If there has been a failure to comply with the minimum capital requirement or an essential failure to comply with the solvency capital requirement during the reporting period, then

1. the maximum amount of the shortfall below the relevant capital requirement must be provided,
2. the reasons and consequences of the failure to comply must be explained and
3. the remedies that are planned or have been taken must be illustrated.

(6) ¹If a capital add-on has been determined then this must be stated separately. ²Furthermore the amount that has been determined in accordance with the regulations on the calculation of the solvency capital requirement must also be stated. ³If the insurance undertaking is required to use company-specific parameters to calculate the solvency capital requirement upon the orders of the supervisory authority, the effects of these on the calculation must be quantified in detail and also stated separately. ⁴In both cases the reasons stated by the supervisory authority for the measure taken must be addressed.

(7) If the supervisory authority is still reviewing the final amount of the solvency capital requirement then this must be pointed out in the disclosure in accordance with section (1).

(8) ¹With the consent of the supervisory authority statements in the report may be replaced with references to information which has been published within the framework of other general or supervisory law regulations. ²Consent will be given provided that the information which is intended to be referenced is equivalent in terms of type and scope.

Section 41 Non-disclosure of information

(1) ¹Statements may be dispensed with in the solvency and financial position report with the approval of the supervisory authority; this does not apply to the statements in accordance with section 40 (2) sentence 3 number 5, (4) sentence 2 and (5). ²In this case the reason why the statements have not been included must be outlined in the solvency and financial position report.

(2) The supervisory authority will provide the approval under subsection (1) if the disclosure would result in

1. competitors of the undertaking gaining a crucial unfair advantage or

2. the breach of one of the undertaking's obligations of confidentiality or secrecy in relation to the policyholders or based on a relationship with other counterparties.

Section 42 Updates to the solvency and financial position report

(1) ¹In the event that a significant development considerably changes the importance of the information published in the solvency and financial position report, the relevant insurance undertaking will publish appropriate statements regarding the type and effects of the significant development. ²A significant development occurs in particular if

1. a failure to comply with the minimum capital requirement is determined and either the supervisory authority is of the opinion that the relevant insurance undertaking is unable to submit a realistic short-term financing plan or no such plan has been submitted within one month of the determination of the failure to comply with the minimum capital requirement;
2. an essential failure to comply with the solvency capital requirement is determined and the supervisory authority does not receive a restructuring plan within twelve months of the determination of the non-compliance that it considers to be realistic.

³In the cases under sentence 2 the amount of the non-compliance, the explanation for its reasons and effects along with remedies that have been implemented or are planned must in each case at a minimum be published without delay.

(2) ¹Information must also be published if

1. the failure to comply with the minimum capital requirement has not been rectified within three months following determination of this or
2. the essential failure to comply with the solvency capital requirement has not been rectified six months following determination of this.

²The disclosure must state which remedies have already been implemented and which are still being planned. ³The disclosure must be made at the end of three months in the event of a failure to comply with the minimum capital requirement or otherwise at the end of a six-month period.

Subsegment 3 Information to be provided for supervisory purposes

Section 43 Duties to inform; calculations

(1) Insurance undertakings must transmit such information to the supervisory authorities in accordance with this Act which they require in order to fulfil their responsibilities under this Act (section 294 (1)).

(2) ¹The information must be complete, current and precise. ²It must take account of the type, scope and complexity of the business activities of the relevant undertaking and in particular the risks associated with this business activity. ³The undertakings must submit the information to the supervisory authority in good time and in a comprehensible format.

Section 43a Reporting requirements for financial stability purposes; power to issue statutory orders

(1) The supervisory authority can require supervised undertakings and supervised groups to provide information

1. that it needs to perform its functions under section 294 (2) sentences 3 and 4 or
2. that it must provide to the European Insurance and Occupational Pensions Authority under Article 35 of Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European supervisory authority (European Insurance and Occupational Pensions Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331 of 15 December 2010, page 48), as amended by Directive 2014/51/EU (OJ L 153 of 22 May 2014, page 1).

(2) ¹The Federal Ministry of Finance is authorised to adopt provisions by way of statutory orders that establish reporting requirements under subsection (1) for supervised undertakings and supervised groups that are not subject to supervision by the supervisory authorities of the federal states, and to determine the content, the format of the information to be provided and the period for submission to BaFin. ²This authorisation may be delegated by statutory order to BaFin. ³Statutory orders under sentences 1 and 2 do not require the consent of the Bundesrat.

Section 44 Projections

¹The supervisory authority may demand calculations from the supervised undertaking which include projections if this is required for financial supervision. ²Projections may relate to the following in particular:

1. The projected business results to the end of the current financial year or future financial years; for life insurance undertakings together with a statement of the surplus participation already declared or expected for future financial years;
2. The insurance undertaking's risk-bearing capacity in stress situations.

³In such cases, the supervisory authority must determine the parameters, relevant dates and calculation methods, as well as the form and the deadline for the projections. ⁴The supervisory authority permits the insurance undertaking to use its own methods of calculation, provided these do not hinder assessment of the undertaking or the insurance market. ⁵It may require the calculations to be based on certain assumptions.

Section 45 Exemption from reporting obligations

(1) ¹If reports must be submitted to the supervisory authority more frequently than once per year based on delegated legislative acts in accordance with Article 35 (9) and technical implementation standards in accordance with Article 35 (10) of Directive 2009/138/EC, the supervisory authority may exempt insurance undertakings from this reporting obligation in whole or in part if

1. transmission of this information would be associated with disproportionately high effort in relation to the type, scope and complexity of the risks associated with the business; and
2. the information is submitted at least once per year.

²An exemption is excluded in the event of quarterly reporting for the purposes of calculating the minimum capital requirement under section 123 (1) sentence 1. ³An exemption is also excluded if the insurance undertaking belongs to a group as defined in section 7 number 13, unless the undertaking demonstrates that regular reporting throughout the year is unreasonable considering the type, scope and complexity of the risks associated with the group's business.

(2) ¹The supervisory authority may exempt insurance undertakings from regular reporting obligations based on delegated legislative acts in accordance with Article 35 (9) or technical implementation standards in accordance with Article 35 (10) of Directive 2009/138/EC in whole or in part if

1. transmission of the relevant information would be associated with disproportionately high effort considering the type, scope and complexity of the risks associated with the undertaking's business; and

2. transmission of the relevant information is not required for effective supervision of the undertaking;
3. the exemption does not adversely affect the stability of the relevant financial systems in the union; and
4. the undertaking is capable of transmitting the information without delay upon request.

²An exemption is excluded if the insurance undertaking belongs to a group as defined in section 7 number 13, unless the undertaking demonstrates that regular reporting throughout the year is unreasonable considering the type, scope and complexity of the risks associated with the group's business with due regard to the objective of financial stability.

(3) ¹The proportion of all insurance undertakings within the non-life insurance market that are exempted from reporting obligations in accordance with subsections (1) and (2) may not exceed a market share of 20 per cent in each case. ²The same applies to the proportion of all insurance undertakings within the life insurance market. ³The market share must be determined based on the booked gross premiums for the non-life insurance market and based on technical gross provisions for the life insurance market.

(4) The supervisory authority will give priority to the undertakings with the lowest market shares when providing exemptions for undertakings.

(5) The supervisory authority will consider the following criteria at a minimum when reviewing whether the effort involved in transmitting information would be disproportionately high in relation to the type, scope and complexity of the undertaking's risks:

1. the volume of the premiums, technical provisions and assets of the undertaking;
2. the volatility of the insurance benefits covered by the undertaking;
3. the market risks that arise as a result of the undertaking's investments;
4. the amount of the risk concentrations;
5. the total number of classes of insurance for which a licence has been issued;
6. the potential effects on the financial stability of administration of the undertaking's assets;
7. the undertaking's systems and structures for transmitting information for the supervisory purposes and the guidelines set out in writing that are stated in section 29 (4);
8. the suitability of the undertaking's governance system;
9. the level of own funds for compliance with the solvency capital requirement and the minimum capital requirement; and
10. whether the undertaking is a captive insurance undertaking which only covers risks associated with the industrial or trading group to which it belongs.

Section 46 Duties to inform BaFin

(1) ¹All undertakings subject to supervision under this Act must submit the required statistical information about their business operations to BaFin. ²The Insurance Advisory Council must be consulted with respect to the nature of this information.

(2) Upon request, public law insurance undertakings that are not subject to supervision under this Act must submit to BaFin the same statistical information about their business operations as insurance undertakings that are subject to supervision under this Act.

Section 47 Notification requirements

Insurance undertakings must notify the supervisory authority without delay in relation to the following:

1. the appointment of a member to the supervisory board along with the intention to appoint a manager and the

- further individuals who are responsible for key tasks, with details on the facts that are essential for the purposes of evaluating whether they are fit and proper persons (section 24 (1));
2. the fact that one of the individuals stated in number 1 has left the undertaking or their authority to represent the insurance undertaking has been withdrawn, with the reasons provided in each case, provided that these are significant in terms of assessing whether they are fit and proper persons (section 24 (1));
 3. amendments to the articles of association, with the purpose of a capital increase;
 4. if the undertaking is a reinsurance undertaking, any change to the sections of the business plan stated in section 9 (2) numbers 1 and 2, any change to the actual field of business, any change to company agreements of the type designated in sections 291 and 292 of the German Stock Corporation Act along with an intention to implement a transformation under sections 1 and 122a of the Transformation Act, unless subject to mandatory approval in accordance with section 166 (3);
 5. the acquisition or disposal of a qualified participating interest in the own insurance undertaking, reaching, exceeding or falling below the thresholds of 20 percent, 30 percent and 50 percent of the voting rights or capital, as well as the fact that the insurance undertaking will become a subsidiary of another undertaking, as soon as the change in ownership structure becomes known to the insurance undertaking;
 6. the existence, modification or termination of any close link as defined in section 7 number 7 with another natural person or undertaking;
 7. the name and address of the holder of a qualified participating interest in the insurance undertaking and the amount of that participating interest annually, as soon as the undertaking has received this knowledge;
 8. the intention to outsource important functions or insurance activities with submission of the draft contract;
 9. essential circumstances which arise after formation of the contract related to important outsourced functions and insurance activities;
 10. the indirect or direct hedging of claims risks or other risks if based on the issuing of debt securities or other financing mechanisms and with the participation of a company which exists exclusively for such purposes; the issue prospectus, the contractual regulations underlying the risk transfer and a schedule of the identified risks to the undertaking resulting from the transaction must be included in the notification;
 11. if the undertaking is a primary insurance undertaking, the acquisition of participating interests; however, if these participating interests consist of shares and other participating interests, only if the interests exceed 10 percent of the nominal capital of the other undertaking; for the purpose of this provision, the interests of several insurance undertakings belonging to a group within the meaning of section 18 of the German Stock Corporation Act and of the controlling entity in another undertaking are consolidated;
 12. if the undertaking is a primary insurance undertaking, statements related to an affiliated company within the meaning of section 15 of the German Stock Corporation Act; and
 13. with respect to compulsory insurance, the intended use of new or amended general policy conditions, with submission of the relevant documents.

Segment 5 Insurance distribution

Section 48 Requirements for insurance distribution

- (1) Insurance undertakings are required to cooperate only with professional insurance intermediaries who
1. are authorised under section 34d (1) of the Trade Regulation Code, are exempted from the authorisation

requirement in accordance with section 34d (6) of the Trade Regulation Code or are not subject to the authorisation requirement under section 34d (7) sentence 1 number 1 or (8) of the Trade Regulation Code and

2. are entitled to receive assets from or for the benefit of the policyholder or can provide proof of a financial guarantee, if such a guarantee is required by a statutory order under section 34e (1) sentence 1 no. 2 (b) of the Trade Regulation Code.

(2) ¹Insurance undertakings must ensure that their employees who are directly or significantly involved in the distribution of insurance products are fit and proper persons, have well-ordered finances, are adequately qualified to mediate the relevant insurance product(s) and participate in regular training activities. ²Insurance undertakings may only cooperate with professional insurance intermediaries who

1. are not subject to the authorisation requirement under section 34d (7) sentence 1 number 1 of the Trade Regulation Code or
2. are exempted from the authorisation requirement in accordance with section 34d (6) of the Trade Regulation Code and carry on their insurance mediation activities on behalf of one or more insurance undertakings,

if those insurance intermediaries meet the conditions set out in sentence 1. ³The adequacy of the intermediaries' qualifications depends on the requirements concerning the products they sell. ⁴Sentences 1 to 3 do not apply to persons within the meaning of section 24 to the extent that those persons meet the fit and proper requirements set out there.

⁵The content, scope and documentation of qualification measures to be documented must comply with section 1 of the Regulation on Insurance Mediation.

(2a) ¹Insurance undertakings must ensure that appropriate measures are in place in their system of governance to ensure that the requirements of subsections (1) and (2) are met, monitored and documented in respect of their employees and intermediaries in accordance with subsection (1) numbers 1 and 2 and their employees directly or significantly involved in the distribution of insurance products, to the extent that compliance with these requirements is not already ensured by authorisation procedures under the Trade Regulation Code. ²For this purpose, they must issue corresponding internal guidelines, establish adequate internal processes and establish a function that ensures proper implementation.

(3) Insurance undertakings may only cooperate with insurance intermediaries from other member states or EEA signatory states if the intermediaries are authorised to mediate insurance contracts in accordance with the regulations of their home country.

(4) ¹At the initiative of an insurance intermediary under section 34d (7) sentence 1 number 1 of the Trade Regulation Code, the insurance undertaking or undertakings on whose behalf the insurance intermediary acts on an exclusive basis must communicate to the registration authority the data required to be recorded under section 11a (1) of the Trade Regulation Code. ²The insurance undertaking or undertakings must ensure that the requirements set forth in section 34d (7) sentence 1 number 1 of the Trade Regulation Code have been met.

(5) The insurance undertakings must inform the registration authority under section 11a (1) of the Trade Regulation Code without delay of the termination of cooperation with an insurance intermediary not subject to the authorisation requirement under section 34d (7) sentence 1 number 1 of the Trade Regulation Code and request that the intermediary concerned be deleted from the register.

(6) ¹Sections 48a to 50 do not apply to the distribution of reinsurance products. ²Sections 48 and 51 do not apply to the distribution of reinsurance products relating to risks that are not located in a member state or EEA signatory state.

Section 48a Distribution remuneration and avoidance of conflicts of interest

(1) ¹The distribution remuneration of insurance undertakings and their employees may not conflict with their duty to act in the best interests of their clients. ²Insurance undertakings must not make any arrangement by way of distribution remuneration, sales targets or otherwise that could provide an incentive to itself or its insurance intermediaries to recommend a particular insurance product to a client when they could offer a different insurance product which would

better meet the client's needs.

(2) ¹An insurance undertaking carrying on the distribution of insurance-based investment products must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients. ²Those arrangements must be proportionate to the activities performed and the insurance products sold.

(3) Conflicts of interest under subsection (2) are those that can arise between insurance intermediaries and insurance undertakings themselves, including their managers and employees, or any person directly or indirectly linked to them by control, and their clients, or between one client and another, in the course of carrying out any insurance distribution activities.

(4) Where organisational or administrative arrangements made by the insurance undertaking in accordance with subsection (2) to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the insurance undertaking must clearly disclose to the client the general nature or sources of the conflicts of interest, in good time before the conclusion of an insurance contract.

(5) Disclosure of the general nature of sources of conflicts of interest must

1. be made in a durable medium and
2. include sufficient detail, taking into account the nature of the client, to enable that client to take an informed decision with respect to the insurance distribution activities in the context of which the conflict of interest arises.

(6) Insurance undertakings that pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit in connection with the distribution of an insurance-based investment product or an ancillary service, to or by any party except the client or a person acting on behalf of the client must ensure that the fee or commission or the benefit does not have a detrimental impact on the quality of the relevant service to the client and does not impair compliance with the insurance undertaking's duty to act honestly, fairly and professionally in accordance with the best interests of its clients.

Section 48b Prohibition on the passing on of special allowances and commissions

(1) ¹Insurance undertakings and insurance intermediaries within the meaning of section 59 (1) of the Insurance Contract Act are prohibited from granting or promising special allowances to policyholders, insureds or beneficiaries under an insurance contract. ²This prohibition also applies to the employees of insurance undertakings and insurance intermediaries. ³Any contractual arrangement to the contrary is ineffective.

(2) ¹A special allowance means any direct or indirect inducement in addition to the benefit agreed in the insurance contract, in particular any

1. passing on of commissions in full or in part,
2. any benefit in kind or service that does not relate to the insurance benefit,
3. rebates granted on goods or services,

to the extent that it is not of low value. ²Low-value inducements mean rewards or gifts for initiating or concluding a contract, provided that they do not exceed a total value of EUR 15 per insurance relationship and calendar year.

(3) The granting of commissions to policyholders who are also intermediaries of the insurance undertaking concerned does not qualify as a special allowance unless the mediation relationship was only established to provide such inducements to them for the undertaking's own insurance products.

(4) ¹Subsection (1) does not apply if the special allowance is used to permanently increase the benefits or reduce the premiums for the contract concerned. ²This is without prejudice to section 138 (2), section 146 (2) sentence 1, section

161 (1) and section 177 (1).

Section 48c Pass-through provision on crediting clients with commissions included in premiums

(1) ¹As soon as the insurance consultant informs the insurance undertaking in accordance with section 34d (2) sentence 6 of the Trade Regulation Code that the consultant has mediated to the policyholder an insurance product containing inducements that do not benefit the insurance contract (gross premium rate), the insurance undertaking is required to disburse that inducement to the policyholder without undue delay. ²The disbursement must be made in the form of a credit to a premium account to be maintained for the contract for the policyholder. ³The credit amount is a maximum of 80 per cent of the relevant inducement up to the equivalent of 80 per cent of the premiums payable in the first five years after the contract was concluded. ⁴The credit balance on the premium account must be used exclusively to settle the policyholder's obligation to pay the premiums and must be credited in the amount of 80 per cent of the premium payable for the relevant insurance period. ⁵By way of derogation from sentences 2 to 4, the disbursement may also be made by reducing the premiums for the mediated contract in accordance with section 48b (4). ⁶Sentences 1 to 5 apply, with the necessary modifications, if, in the case of the provision of advice within the meaning of section 34d (2) sentence 2 number 1 of the Trade Regulation Code, the policyholder submits to the insurance undertaking before the contract is concluded a certificate issued by the insurance consultant concerning the provision of advice on the insurance policy. ⁷The certificate must state the date on which the advice was provided. ⁸There must be no more than six months between the date on which the advice was provided and the date of the application to conclude the insurance contract.

(2) The insurance undertaking must document the disbursement of the inducement appropriately and notify the policyholder of the disbursement, in the case of subsection (1) sentence 2 by providing a premium account statement at least once a year until its balance has been reduced to zero in accordance with subsection (1) sentence 4.

(3) ¹Inducements within the meaning of this provision mean the cost of insurance mediation, in particular commissions, fees or other cash payments and any non-cash benefits, regardless of when they become due. ²The inducements must be estimated by applying prudent commercial judgement. ³To the extent that statutory provisions contain requirements governing the calculation of distribution costs for an insurance product, these may be applied instead of the requirements of sentences 1 and 2.

Section 49 Liability for cancellation

(1) ¹The insurance undertakings must ensure that, at least in the event of a termination of a contract by the policyholder, unless this relates to a termination in accordance with section 205 (2) of the German Insurance Contract Act, or in the event of a suspension in payments in accordance with section 193 (6) sentence 4 of the German Insurance Contract Act or a premium exemption in accordance with section 165 (1) of the German Insurance Contract Act in the first five years following formation of the contract, the insurance intermediary only retains the commission accrued for mediating a contract for substitutive health insurance or life insurance up to the amount which would have been accrued if there had been an equal distribution of the commission over the first five years since formation of the contract until the time of its termination, the suspension or the premium exemption. ²If the agreed term for the payment of premiums is less than five years then this term may be applied.

(2) Any contractual arrangement to the contrary between the insurance undertaking and the insurance intermediary is ineffective.

Section 50 Fee for the mediation of substitutive health insurance contracts

(1) ¹In connection with the conclusion of substitutive health insurance contracts in a financial year, insurance undertakings must not grant insurance intermediaries any initial commission or other fees that in total exceed 3 per cent of the total gross premiums for the new insurance contracts. ²The total gross premiums equate to the initial premium extrapolated over 25 years excluding the loading specified in section 149. ³The payments and other non-cash benefits granted to an individual insurance intermediary in a financial year in return for the conclusion of substitutive health insurance contracts must not exceed 3.3 per cent of the total gross premiums generated from the business brokered by the insurance intermediary concerned. ⁴The initial commission and other fees granted in each individual case in return for the conclusion of a contract must not exceed 3.3 per cent of the total gross premiums for the contract concerned.

(2) ¹If an insurance undertaking uses insurance intermediary services that extend beyond those involved in brokering insurance contracts and such extended services are in connection with contracts for work or services, rental agreements, leases or other contracts of a similar nature, the charge must be limited to the amount which a prudent and conscientious manager would also negotiate with a non-affiliated undertaking, taking into account the interests of the insured. ²Contracts under sentence 1 above are to be concluded in writing. ³If the insurance undertaking pays an advance on the basis of any such contract, this is deemed to be other remuneration within the meaning of subsection (1). ⁴In addition, a payment for services or other non-cash benefit may only be granted if the agreed services have led to a corresponding saving in costs for the insurance undertaking.

(3) Any agreement between the insurance undertaking and the insurance intermediary that is inconsistent with the requirements of subsection (1) sentences 2 to 4 or subsection (2) is invalid.

Section 51 Complaints about insurance intermediaries

¹Insurance undertakings must respond to complaints by clients about insurance intermediaries or other insurance undertakings that mediate their insurance products. ²Consumer associations are also entitled to make complaints. ³Insurance undertakings must inform the competent authority under section 34d (1) sentence 1 of the Trade Regulation Code of repeated complaints that can be of significant importance for assessing the reliability of an intermediary.

Segment 6 Prevention of money laundering and terrorist financing

Section 52 Obligated undertakings

The requirements of this segment apply to all insurance undertakings defined in section 2 (1) number 7 of the Money Laundering Act (*Geldwäschegesetz*).

Section 53 Internal controls and safeguards

(1) ¹In individual cases, the obliged undertakings may communicate information to each other if there are actual indications that the recipient of the information needs it to assess whether there is a requirement to report a matter in accordance with section 43 (1) of the Money Laundering Act to the Financial Intelligence Unit or a criminal complaint has to be made under section 158 of the Code of Criminal Procedure (*Strafprozessordnung*). ²The recipient may use the information solely for preventing money laundering, terrorist financing or other criminal offences, or for making criminal complaints under section 158 of the Code of Criminal Procedure. ³The recipient may only use the information under the conditions stipulated by the insurance undertaking communicating the information.

(2) If the obliged undertakings have an internal audit function, they must ensure that a report on the result of an audit by the internal audit function under section 6 (2) number 7 of the Money Laundering Act is submitted promptly in each

case to the management, the money laundering officer and the supervisory authority.

Section 54 General due diligence requirements relating to beneficiaries

(1) ¹Without prejudice to section 10 (1) number 2 of the Money Laundering Act, an obliged undertaking is also required when entering into a business relationship to establish the identity of a beneficiary under the insurance contract who differs from the policyholder in accordance with section 11 (5) of the Money Laundering Act. ²In cases where beneficiaries are identified by characteristics, by categories or by other means, the obliged undertaking must obtain sufficient information about them in order to ensure that it is able at the date of payment to establish and review their identity. ³If the policyholder or a beneficiary who differs from the policyholder is a legal person or an association of persons, obliged undertakings must also identify their beneficial owners, if applicable, in accordance with section 11 (5) of the Money Laundering Act.

(2) ¹An obliged undertaking must also fulfil the obligation under section 10 (1) number 4 of the Money Laundering Act in respect of the beneficiary differing from the policyholder and, if applicable, in respect of its beneficial owner. ²By way of derogation from section 11 (1) of the Money Laundering Act, in the case of the partial or complete assignment of an insurance policy to a third party, insurance undertakings must also establish the identity of the third party after being informed of the assignment and, if applicable, the identity of its beneficial owner if claims under the transferred policy are assigned. ³The establishment of the identity of a beneficiary differing from the policyholder and, if applicable, the identity of its beneficial owner, can also be completed after the business relationship has been entered into, but in any event no later than the time when the payment is made or the beneficiary intends to assert its rights under the insurance contract.

(3) ¹The obliged undertaking must record and store the data collected and information obtained under sentences 1 and 2 in accordance with section 8 of the Money Laundering Act. ²Section 43 (1) of the Money Laundering Act applies, with the necessary modifications.

Section 55 Enhanced due diligence

If the beneficiary differing from the contracting party or, if applicable, the beneficiary's beneficial owner, is a politically exposed person, its family members or a person known to be a close associate in accordance with section 1 (12), (13) or (14) of the Money Laundering Act, obliged undertakings must carry out the following in addition to the obligations under section 15 (4) of the Money Laundering Act if they identify a higher risk of money laundering or terrorist financing:

1. inform a member of the management level before any payout,
2. conduct enhanced scrutiny of the entire business relationship with the policyholder,
3. examine whether the conditions for a report under the Money Laundering Act are met.

Section 56 (Repealed)

Segment 7 Cross-border business activities

Subsegment 1 Cross-border provision of services, branches

Section 57 Operation of insurance business via branches or cross-border provision of services

(1) In accordance with sections 58 and 59, primary insurance undertakings may operate insurance business in the other member states or EEA signatory states via branches or as a cross-border provision of services.

(2) ¹An agency or branch office of a primary insurance undertaking in the territory of another member state or EEA signatory state is considered a branch. ²It is also considered to be a branch if insurance business is operated through a person who is independent, but permanently in charge of such business, from a permanent establishment in such other member state or EEA signatory state.

(3) ¹A cross-border provision of services within the meaning of this Act is deemed to exist if, from its registered office or branch in a member state or EEA signatory state, the primary insurance undertaking domiciled in a member state or EEA signatory state covers risks situated in another member state or EEA signatory state, without the undertaking making use of a branch in that state. ²A member state or EEA signatory state where the risk is situated is

1. as regards the coverage of risks relating to immovables, in particular buildings, plants and their installations covered by the same contract, the member state or EEA signatory state where these are situated,
2. as regards the coverage of risks relating to vehicles of any kind, which must be entered into an official or officially recognised register and are provided with an identifier in a member state or EEA signatory state, such member state or EEA signatory state; by way of derogation from this, the destination member state or destination EEA signatory state must be considered to be the member state or EEA signatory state in which the risk is situated if a vehicle which is transferred from one member state or EEA signatory state to another, for a period of 30 days following acquisition of the vehicle by the purchaser,
3. as regards the coverage of travel and tourism risks in insurance contracts with a maximum term of four months, the member state or EEA signatory state in which the policyholder performed the actions legally required for formation of the contract, and
4. in all other cases,
 - a) if the policyholder is a natural person, the member state or EEA signatory state where the policyholder has his habitual residence, and
 - b) if the policyholder is not a natural person, the member state or EEA signatory state where the undertaking, permanent establishment or relevant facility to which the contract refers is located.

Section 58 Setting up a branch

(1) ¹The primary insurance undertaking must notify the supervisory authority of the intended establishment, indicating the respective member state or EEA signatory state. ²The notification must contain:

1. the information and estimates under section 9 (2) nos. 1 and 2 and subsection (3) nos. 5 and 6 above; if the undertaking is to be active in the health insurance business within the meaning of Article 206 (2) of Directive 2009/138/EC, then in addition to the information under section 9 (4) no. 5 (a):
2. information about the organisational structure,
3. the name of the designated authorised agent who possesses sufficient authority to bind the undertaking in relation to third parties and to represent it vis-à-vis the administrative authorities and courts of the other member state or EEA signatory state,

4. the prospective address, which must also be the business address of the authorised agent, and
5. if the risks defined in no. 10 (a) of Annex 1 are to be covered through the branch, a declaration to the effect that the undertaking has become a member of the national guarantee fund for the victims of road accidents caused by uninsured or unidentified motor vehicles, and of the national insurers' bureau in the other member state or EEA signatory state.

(2) ¹For the purpose of the above, within a period of three months of receiving the documents mentioned under subsection (1) sentence 2 above, the supervisory authority must assess the lawfulness, as well as the adequacy of the business organisation and financial position of the undertaking, and whether the authorised agent and responsible managers of the branch meet the requirements of section 24 (1). ²Provided that there are then no objections before the above period expires, it must send the following to the supervisory authority of the other member state or EEA signatory state

1. these documents and
2. A certification that the undertaking has eligible own funds for compliance with the solvency capital requirement or the minimum amount of the minimum capital requirement required for the classes of insurance operated, in the event that this minimum amount is higher,

and notify the undertaking accordingly. ³Otherwise, it must inform the undertaking before the above period expires that approval for the establishment of a branch will not be granted, naming the grounds for refusal. ⁴If the undertaking's financial position has deteriorated within the meaning of section 132 (2), this suggests that a certification under sentence 2 no. 2 should not be issued, if the rights of the policyholder are at risk.

(3) In the case of subsection (2) sentence 2 above, the branch may be set up and start operating if two months have elapsed since the undertaking received the notification, unless the supervisory authority of the other member state or EEA signatory state has specified an earlier date.

(4) ¹The insurance undertaking must report to the supervisory authority any changes in the information provided in accordance with subsection (1) sentence 2 nos. 1 to 4 above, no later than one month before such changes are to be put into effect. ²In all other respects, subsection (2) above applies, with the necessary modifications.

Section 59 Cross-border provision of services

(1) ¹The primary insurance undertaking must notify the supervisory authority of its intention to provide cross-border services, naming the relevant member state or EEA signatory state. ²It must also state which classes of insurance it intends to operate and which risks of an insurance class it intends to cover there; if the undertaking intends to conduct health insurance business within the meaning of Article 206 (2) of Directive 2009/138/EC, the information under section 9 (4) no. 5 must also be provided. ³As regards the coverage of risks under no. 10 (a) of Annex 1, the notification must also include the following:

1. A declaration to the effect that the undertaking has become a member of the national guarantee fund for the victims of road accidents caused by uninsured or unidentified motor vehicles, and of the national insurers' bureau in the other member state or EEA signatory state, and
2. The name and business address of a representative (claims representative) residing or established in the other member state or EEA signatory state to whom section 24 (1) sentence 1 applies, with the necessary modifications, and who
 - a) collects all the necessary information about losses and has the necessary facilities for this purpose,
 - b) has sufficient powers to represent the undertaking vis-à-vis persons making damages claims in or out of court, in particular before administrative authorities and to confer powers of attorney in this context,
 - c) has sufficient powers until final settlement of the damages claims to pay the amounts due in relation to such claims, and

d) has the power to represent the undertaking vis-à-vis the authorities of the other member state or EEA signatory state as regards the existence and validity of the insurance contracts.

(2) ¹Within a period of one month from receipt of the documents mentioned in subsection (1) sentences 2 and 3 above, the supervisory authority must assess the lawfulness of the intended business. ²Provided that there are then no objections before the above period expires, it must send the following to the supervisory authority of the other member state or EEA signatory state

1. These documents,
2. A certificate specifying the classes of insurance the undertaking is permitted to operate and the risks of an insurance class it is permitted to cover, and
3. A certification that the undertaking has eligible own funds for compliance with the solvency capital requirement or the minimum amount of the minimum capital requirement required for the classes of insurance operated, in the event that this minimum amount is higher,

and notify the undertaking accordingly. ³Otherwise, it must inform the undertaking before the above period expires that the approval to provide cross-border primary insurance services will not be granted, naming the grounds for refusal.

⁴Approval is deemed to have been refused if the supervisory authority has not made a decision by the end of the above period. ⁵If the undertaking's financial position has deteriorated within the meaning of section 132 (2), this suggests that a certification under sentence 2 no. 3 should not be issued, if the rights of the policyholder are at risk.

(3) In the case of subsection (2) sentence 2 above, the undertaking may commence its activities upon receipt of the relevant notification.

(4) Subsections (1) to (3) above also apply if the undertaking wishes to operate additional classes of insurance or cover additional risks or appoint another claims representative.

Section 60 Statistical information regarding cross-border activities

(1) ¹Every primary insurance undertaking must notify the supervisory authority of the following for the transactions carried out within the scope of freedom of establishment and on a freedom of services basis

1. the booked premium amounts,
2. the amount of reimbursements and
3. the amount of commissions

without deduction of reinsurance, and classified by Member State. ²In relation to the industry stated in no. 10 of Annex 1 – with the exception of the liability of the freight forwarder – the undertaking will also notify the supervisory authority of the frequency and average costs of the reimbursements.

(2) Upon request the supervisory authority will provide a summary of the details stated in subsection (1) to the supervisory bodies in each relevant member state within a reasonable period.

Subsegment 2 Undertakings domiciled in a member state of the European Union or another signatory state to the Agreement on the European Economic Area (EEA)

Section 61 Activities via a branch or cross-border provision of services

(1) ¹Primary insurance undertakings domiciled in another member state or EEA signatory state may, with the exception of the undertakings mentioned in sections 65 and 66, carry on insurance business in Germany via a branch or under the freedom to provide cross-border services only in accordance with subsections (2) to (4) below. ²Section 57 (2) and (3) apply, with the necessary modifications.

(2) ¹If the undertaking intends to operate via a branch, the supervisory authority of the home member state must forward to BaFin the information specified in Article 145 (2) and (3) of Directive 2009/138/EC while notifying the undertaking. ²The branch may not commence business operations until a period of two months has elapsed from the date on which such notification is received by the undertaking. ³This only applies if BaFin has not notified the undertaking of an earlier approved commencement date. ⁴The undertaking must inform BaFin and the supervisory authority of the country where it has its registered office of any changes to the content of the information referred to in Article 145 (2) (b), (c) or (d) of Directive 2009/138/EC one month before these changes are to become effective. ⁵If these changes are associated with an expansion of business operations, such expansion will only be permissible after one month has passed since BaFin's receipt of the notification from the undertaking.

(3) The start or change of the undertaking's activities in cross-border provision of services is only permitted once the supervisory authority of the home country has transmitted to BaFin the details designated in Article 148 (1) and (2) of Directive 2009/138/EC and has notified the undertaking of this fact.

(4) The operation of health insurance within the meaning of section 146 (1) and of compulsory insurance in the cases referred to in subsections (2) and (3) above is only permitted once the undertaking has submitted its general policy conditions to BaFin.

(5) ¹BaFin must inform the supervisory authorities of the other member states or EEA signatory states on an ongoing basis about those provisions that the insurance undertakings domiciled in these states must observe if they carry on business in accordance with subsection (1), and with regard to which the supervisory authority monitors compliance within the framework of its supervisory duties, with the exception of financial supervision. ²BaFin must inform the supervisory authority of the undertaking's home country of any provisions that have not been disclosed under sentence 1 within a period of two months from receipt of the information specified in subsection (2) or (3).

Section 62 Supervision of business activities

(1) ¹Financial supervision of any business within the meaning of section 61 is the sole responsibility of the supervisory authority of the home country, while all other supervision is also the responsibility of BaFin. ²For the purpose of supervision by BaFin under sentence 1, the following apply, with the necessary modifications, in addition to the provisions of section 61 (1) and (2) above:

1. section 1 (1) and (2) as well as sections (3) and (4) from the general regulations;
2. section 68 (2) sentence 4 of the regulations on cross-border business activities;
3. sections 48 to 49 of the provisions governing business activities and, for undertakings that carry out business through a branch, additionally section 15a (1) and section 25 (6);
4. from the regulations on the prevention of money laundering and terrorist financing, section 53 (1) to (3) as well as sections 54 and 55, provided that this involves branches within the meaning of section 57 (2) which transact business as stated in section 52;
5. from the regulations for individual sectors, sections 142, 144, 146, 147, 149 and 150 (1) to (3), section 152 (1) to (4), sections 155 and 156 (1), section 157 (1), section 159 with the exception of the reference to section 160;
6. from the regulations on supervision, section 294 (2) sentences 2 to 4, sections 298 and 299 no. 1, sections 303, 305 (1), (2) nos. 1 and 2, (3) to (5), section 306 (1) sentence 1 nos. 1 to 3, (2) sentence 1 nos. 1 and 2, (4) to (8) as well as sections 308 and 310, along with
7. section 17 of the German Act Establishing the Federal Financial Supervisory Authority (*Finanzdienstleistungsaufsichtsgesetz - FinDAG*).

(2) If BaFin has reasons to believe that the financial security of an undertaking carrying on business in accordance with

section 61 (1) could be impaired, it must inform the competent authority in the home country responsible for financial supervision.

(3) ¹If, in the case of the business specified in section 61 (1), a primary insurance undertaking does not comply with BaFin's requirements or orders to rectify an irregularity (section 298 (1)), BaFin must inform the supervisory authority of the home country concerning the measures it intends to take in accordance with sentence 2, and ask it for its cooperation. ²If this request is unsuccessful and if attempts to enforce orders via coercive measures or coercive penalties are futile or unsuccessful, BaFin may prohibit the undertaking from continuing to do business in Germany, wholly or partly, if other measures are also ineffective or infeasible. ³In urgent cases the orders referred to in sentence 2 may be promulgated without informing the supervisory authority of the home country. ⁴BaFin may also address the matter to the European Insurance and Occupational Pensions Authority under Article 19 of Regulation (EU) No. 1094/2010 and ask that authority for support.

(4) If the authorisation of an undertaking that carries on business in Germany in accordance with section 61 (1) is revoked, BaFin must, after it has been informed by the supervisory authority of the home country, impose the measures deemed appropriate and necessary to prevent any further business activities in Germany.

Section 63 Transfers of portfolio

¹Any contract by which a primary insurance undertaking domiciled in another member state or EEA signatory state intends to transfer to an undertaking domiciled in a member state or EEA signatory state part or all of its portfolio of insurance contracts that it has concluded in accordance with section 61 (1) via a branch or through cross-border provision of services requires the consent of BaFin before the contract can be authorised by the competent supervisory authority in the home country responsible for the transferor undertaking. ²Such consent must be given if the interests of the insured are safeguarded and there is sufficient evidence that the obligations under the insurance contracts can be fulfilled at all times; section 13 (4), (5) and (7) sentence 1 apply, with the necessary modifications.

(2) If the insurance portfolio of a branch does not cover any risks situated in Germany, BaFin merely states its opinion on the contract.

(3) If BaFin does not comment on the request for consent or for an opinion within a period of three months, this will be deemed a tacit approval or positive statement of opinion.

(4) In the event that the competent supervisory authority responsible for the authorisation within the meaning of subsection (1) sentence 1 above requests the certification under section 13 (2) sentence 2 no. 1 from BaFin, section 58 (2) sentence 4 and section 59 (2) sentence 5 apply, with the necessary modifications.

Section 64 Lloyd's underwriters

(1) The individual underwriters of the Lloyd's association of underwriters may only conduct business if, in instances where there is a writ of execution against the assets of Lloyd's underwriters located in Germany, the association waives on behalf of the underwriters any rights that could be derived from the fact that this execution would also be against assets of the underwriters to which the executory writ does not apply; the waiver must be irrevocable until the insurance contracts concluded in Germany have been processed to completion.

(2) ¹Any claims arising from insurance business carried on by the underwriters of the Lloyd's association of underwriters through a branch in Germany may only be enforced by legal action by and against the authorised agent. ²An executory writ obtained under sentence 1 above is valid for and against the individual underwriters taking part in the insurance transaction. ³Section 727 of the German Code of Civil Procedure applies, with the necessary modifications. ⁴If an executory writ is obtained against the authorised agent, it is possible to execute against the assets of all underwriters of the Lloyd's association of underwriters managed by him and located in Germany.

Section 65 Branch

(1) ¹Insurance undertakings domiciled in another member state or EEA signatory state to which Directive 2009/138/EC does not apply and which wish to carry on direct insurance business through a branch are subject to authorisation.

²BaFin decides on the application.

(2) Section 67 (2) and (3) as well as section 68 (2) apply, with the necessary modifications, to these undertakings subject to the fact that

1. the articles of association of the undertaking, together with the balance sheet and profit and loss account for each of the preceding three financial years, must also be submitted; if the undertaking has been in business for less than three years, these documents only need to be submitted for each of the concluded financial years that it has been in business;
2. the names of the members of the governing body authorised to legally represent the undertaking must be disclosed;
3. the documents concerning the branch must be retained there and
4. Section 13 (2) is not applicable.

(3) Subsections (1) and (2) above also apply if business is to be carried on by way of the cross-border provision of services; however, the provisions of subsection (2) related to the existence of a branch do not apply.

Section 66 Cross-border provision of services; co-insurance

(1) Primary insurance undertakings that, in the cross-border provision of services, only write the classes of insurance mentioned in nos. 4 to 7 and no. 12 of part A of Annex 1 and only take on the types of risks specified under no. 10 (b) are not subject to the provisions of this Act.

(2) Furthermore, primary insurance undertakings that conduct the sort of insurance business specified in section 210 (2) of the German Insurance Contract Act as co-insurance are not subject to the provisions of this Act, provided that they do not conduct their business via a registered office or branch in Germany, except via the lead insurer, and such co-insurance does not relate to compulsory third party liability insurance in connection with losses caused by nuclear energy or medications.

(3) ¹If a primary insurance undertaking abuses the possibility under subsection (2) as lead insurer to have insurance undertakings from other member states or other EEA countries participate in co-insurance contracts, the supervisory authority may give any order necessary to remedy the abuse with respect to this undertaking. ²In serious cases, the supervisory authority may also prohibit the undertaking from concluding such co-insurance contracts or take the measures specified under section 304 (3). ³Section 304 (4) to (6) applies, with the necessary modifications. ⁴Abuse, in particular, is deemed to exist in cases where an undertaking does not fulfil the duties generally attributable to a lead insurer or where it invites insurance undertakings that are not authorised to do so in accordance with subsection (2) to participate in the contract.

(4) The Federal Ministry of Finance is authorised to declare, by statutory order not requiring the consent of the Bundesrat, that:

1. subsections (1) and (2) above are applicable to third country insurance undertakings if the interests of the insured are adequately safeguarded and the interests of the Federal Republic of Germany do not preclude such action, and
2. the provisions relating to foreign insurance undertakings domiciled in another member state or EEA signatory state are also applicable to undertakings domiciled in a third country, to the extent that this is required under agreements of the European Union.

(5) If the requirements of subsection (4) no. 1 above have been met, BaFin may also grant exemptions in individual cases by means of an administrative act.

Subsegment 3 Undertakings with their registered office outside of the European Economic Area

Section 67 Authorisation; separation of lines of business

(1) ¹Third country insurance undertakings that intend to carry on primary insurance business or reinsurance business in Germany through intermediaries are subject to authorisation from the supervisory authority. ²Sentence 1 does not apply to third country insurance undertakings that conduct only reinsurance business in Germany from their registered office, if the European Commission has decided under Article 172 (2) or (4) of Directive 2009/138/EC that the solvency systems for reinsurance activities by companies in this third country are equivalent to the system described in this Directive; in this case reinsurance contracts with these undertakings must be treated in exactly the same way as reinsurance contracts with undertakings that are authorised in a member state or EEA signatory state.

(2) ¹The special regulations of this subsegment apply to undertakings in accordance with subsection (1) sentence 1 and the remaining regulations of this Act and the legislative acts, technical regulation standards and technical implementation standards enacted based on Directive 2009/138/EC also apply, with the necessary modifications, to such undertakings. ²The regulations under part 2 chapter 2 segment 3 apply, with the necessary modifications, to the insurance business concluded in accordance with subsection (1) sentence 1.

(3) ¹Primary insurance undertakings operating life insurance together with other classes of insurance cannot be authorised to operate life insurance business in Germany. ²Primary insurance undertakings operating health insurance together with other classes of insurance cannot be authorised to operate health insurance under section 146 (1) in Germany.

(4) The requirements of this subsegment apply, with the necessary modifications, to institutions for occupational retirement provision as defined in Article 6 number 1 of Directive (EU) 2016/2341 whose registered office is in a third country.

Section 68 Branch; authorised agent

(1) ¹The undertakings to which section 67 (1) applies must establish a branch in Germany, where they must retain all records concerning the branch. ²The provisions of sections 13d to 13f of the German Commercial Code relating to branches apply, with the necessary modifications. ³Separate accounts must be kept for the business activities of the branch. ⁴Section 37, section 38 (1) and section 39 as well as section 43 (1) apply subject to the fact that

1. on request, the annual financial statements and management report of the head office are also sent in German to every insured and
2. the internal report comprises the annual financial statements and management report published in the home country of the undertaking in the language of the home country and in German and the report submitted to the supervisory authority of the home country in the language of the home country.

(2) ¹An authorised agent whose domicile and permanent residence is in Germany must be appointed for the branch. ²This agent is subject to the same obligations and personal requirements that this Act prescribes for the management board of an undertaking domiciled in Germany. ³The authorised agent is deemed empowered to bind the undertaking in relation to third parties, in particular to write insurance contracts with policyholders in Germany and in relation to real estate located in Germany, as well as to represent the undertaking vis-à-vis the authorities and courts. ⁴The authorised agent must be registered and entered in the commercial register.

(3) If collateral has to be furnished in accordance with the provisions below, BaFin may reserve the right in the conditions for the return of the collateral to take control of such collateral in the interest of the insured.

Section 69 Application; procedure

(1) ¹The application under section 67 must be made to BaFin. ²The following must be submitted together with the

application:

1. the business plan in accordance with section 9 (2) and (3) and the information and documents referred to in section 9 (4) for the branch and the articles of association of the undertaking; at the same time, the members of the body charged with legal representation of the undertaking and of a supervisory authority must be designated;
2. a certificate from the competent authority in the home country stating
 - a) that the undertaking may, at the place of its registered office, acquire rights and incur liabilities, sue and be sued in court, under its own name, and
 - b) which classes of insurance the undertaking is authorised to operate and which types of risks it actually covers and
3. the balance sheet and the profit and loss account for each of the preceding three financial years; if the undertaking has been in business for less than three years, these documents must only be submitted for each of the concluded financial years that it has been in business.

(2) ¹The requirements related to financial adequacy are based on part 2 chapter 2 segments 1 and 2. ²These are calculated in accordance with the scope of the business operated by the branch. ³The assets which constitute the equivalent value for the solvency capital requirement must be situated in Germany at least for the amount of the minimum capital requirement, with any further amounts situated in the territory of the member states or EEA signatory states. ⁴They may not fall below 50 per cent of the absolute floor for the minimum capital requirement set out in accordance with the statutory instrument under section 122 (2). ⁵Moreover, the undertaking must furnish collateral (fixed guarantee deposit). ⁶The fixed guarantee deposit must amount to at least 25 per cent of the absolute floor of the minimum capital requirement. ⁷The fixed guarantee deposit is counted towards the own funds.

(3) Authorisation may be granted if

1. none of the grounds in section 11 above for refusal of the authorisation exists,
2. the requirements of section 68 (1) and (2) above have been met, and
3. the amount required as a fixed guarantee deposit has been provided.

(4) If business operations are to be extended to other classes of insurance or to another area in Germany, subsections (1) to (3) above apply, with the necessary modifications.

(5) Subsection (2) sentences 5 and 6, subsection (3) no. 3, subsection (4), section 70 (1) sentence 1 no. 2 and section 71 sentence 1 no. 2 do not apply to German branches of reinsurance undertakings domiciled in a third country.

Section 70 Relief measures for undertakings that are already authorised in another member state or EEA signatory state

(1) ¹For an undertaking that has been authorised or has applied for a authorisation to carry on business in another member state or EEA signatory state, a revocable authorisation may be granted upon a application to the effect that

1. the solvency capital requirement is calculated based on its overall business activities in the member states or EEA signatory states,
2. the undertaking is exempted from the obligation to provide a guarantee deposit in Germany or
3. assets which constitute the equivalent value for the minimum capital requirement can be situated in another member state or EEA signatory state in which the undertaking conducts its business.

²The relief measures may only be granted together. ³The application must be made to the supervisory authorities of all member states or EEA signatory states in which the insurance undertaking is authorised to conduct business or has applied for a authorisation to conduct business. ⁴The application must state the authority which is due to monitor the capital adequacy for the entire business activity in the member states or EEA signatory states in future (selected supervisory agency); grounds must be provided for the choice of supervisory authority. ⁵The guarantee deposit within the meaning of section 69 (2) sentence 5 must be deposited in the member state of the selected supervisory authority. ⁶The approval may only be granted if all authorities to which the application was made provide their consent. ⁷It will be

granted at the point in time at which the selected supervisory authority has stated that it is prepared to monitor the capital adequacy to the other supervisory authorities.⁸The relief measures must be revoked simultaneously by all supervisory authorities following a demand by at least one of the authorities that approved the application.

(2) ¹If BaFin is the selected supervisory authority, it must inform the competent authorities of the member states or EEA signatory states concerned of the measures taken in accordance with section 134 (7) and section 135 (3). ²It may request these authorities to take the same measures. ³If a different authority is the selected supervisory authority then BaFin must provide all information required for it to monitor the overall solvency requirement; if it has imposed statutory restrictions on the assets of the undertaking due to insufficient own funds, BaFin must, at the request of this competent authority, take corresponding action with respect to the assets located in Germany. ⁴This is without prejudice to sections 133 to 137.

Section 71 Revocation of authorisation

¹BaFin must revoke the authorisation if

1. the undertaking loses its authorisation to carry on business in its home country, or
2. in the case under section 70 the selected supervisory agency revokes the authorisation to carry on business because the own funds calculated in accordance with section 70 (1) sentence 1 no. 1 are insufficient.

²This is without prejudice to section 304.

Section 72 Insurance for risks in Germany

Third country primary insurance undertakings that have been granted the authorisation to carry on business in accordance with section 67 are permitted to conclude insurance contracts with policyholders who have their habitual residence in Germany, as well as insurance contracts covering real estate located therein, only through authorised agents residing within Germany.

Section 73 Portfolio transfer

(1) ¹Any contract by which the portfolio of insurance-related contracts of a German branch within the meaning of section 68 (1) is transferred in whole or in part to

1. an insurance undertaking domiciled in member state or EEA signatory state or
2. the foreign branch of a third country insurance undertaking,

must be approved by BaFin. ²The approval may only be granted if the transferee in the third country or the transferee insurance undertaking domiciled in a member state or EEA signatory state provides evidence that it has sufficient eligible own funds to comply with the solvency capital requirement following the transfer. ³The evidence must be provided by way of a certificate

1. from the competent authority of the other member state or EEA signatory state, if the transferee has its registered office in another member state or EEA signatory state, or
2. from the selected supervisory authority as defined in section 70 (1) sentence 4, if the capital adequacy of the third country branch is monitored by this.

⁴Section 63 (4) applies, with the necessary modifications, to primary insurance undertakings.

(2) ¹In the event that the assets covered by the approval include primary insurance contracts, the approval can only be granted if the supervisory authorities in the countries to which the risks in the insurance portfolio pertain also provide their consent. ²Consent is deemed to have been provided if these supervisory authorities have not responded within three months following receipt of the application.

(3) ¹The portfolio transfer must be concluded in writing; section 311b (3) of the German Civil Code does not apply. ²For the purpose of the portfolio transfer, the rights and obligations of the transferor under the insurance or reinsurance contracts, also in relation to the policyholders or the ceding insurers, are transferred to the transferee; section 415 of the German Civil Code does not apply. ³Approval of the portfolio transfer must be published in the Federal Gazette. ⁴Once the portfolio transfer has taken effect, the transferee branch must notify the policyholders or the ceding insurers of the portfolio transfer in writing or electronically without delay.

(4) If the insurance portfolio of a branch in Germany is transferred to the German branch of another third country insurance undertaking, and if the capital adequacy of the branch of such an insurance undertaking is monitored by the supervisory authority of another member state or EEA signatory state, the collateral furnished by a branch for the transferred portfolio must remain in place unless otherwise specified by the supervisory authority responsible for the transferee.

Chapter 2 Financial adequacy

Segment 1 Solvency statement

Section 74 Assessment of the assets and liabilities

(1) ¹Under subsections (2) and (3) as well as sections 75 to 87, insurance undertakings must prepare a comparison of the balance sheet assets and liabilities for the purposes of determining the existing own funds (solvency statement). ²This is without prejudice to the provisions of this Act regarding own funds along with the accounting obligations under commercial law.

(2) The assets must be assessed in the solvency statement at an amount at which they may be exchanged between expert independent business partners willing to enter into a contract.

(3) ¹The liabilities must be assessed at an amount at which they may be transferred or settled between expert independent business partners willing to enter into a contract. ²There must be no adjustment to the assessment for the purposes of accounting for the creditworthiness of the insurance undertaking.

Section 75 General regulations for the recognition of technical provisions

(1) ¹Technical provisions must be recognised in the solvency statement for all insurance commitments to policyholders and those entitled to benefits. ²These must be calculated in a careful, reliable and objective manner.

(2) The value of the technical provisions must equate to the current amount that insurance undertakings would have to pay if they were to immediately transfer their insurance commitments to another insurance undertaking.

(3) When calculating the technical provisions the insurance undertakings must partition their insurance commitments into homogeneous risk groups which are at least divided according to business units.

(4) The technical provisions must be calculated with due regard to the information provided by the financial markets and to generally available data regarding underwriting risks and this calculation must be consistent with these (market consistency).

(5) The principles stated in section 74 (3) must be observed when calculating the technical provisions.

Section 76 Value of the technical provisions

(1) ¹The value of the technical provisions must equate to the total sum of

1. the best estimate calculated in accordance with section 77 and
2. the risk margin calculated in accordance with section 78.

²The best estimate and the risk margin must be calculated separately.

(2) ¹In the event that future payments associated with insurance commitments with financial instruments for which a reliable market value must be ascertained can be reliably reproduced, then the value of the technical provisions associated with these future payments must be determined based on the market value of these financial instruments.

²Subsection (1) sentence 2 does not apply in this case.

Section 77 Best estimate

(1) The best estimate equates to the probability-weighted average of future payments with due regard to the current value of the monetary funds (projected cash value of future payments) and with application of the relevant risk-free interest rate term structure.

(2) ¹The best estimate must be calculated based on current and credible information along with realistic assumptions. ²It must also be based on appropriate, suitable and reasonable actuarial and statistical methods.

(3) All incoming and outgoing payments that are required to account for insurance liabilities over their term must be taken into account in projecting future payments.

(4) ¹The best estimate must be calculated with no deduction made for amounts recoverable from reinsurance contracts and by special purpose entities. ²These amounts are calculated separately in accordance with section 86.

(5) In the case of currencies and internal markets for which the adjustment stated in Article 77e (1) (c) of Directive 2009/138/EC is not included in the implementing acts under Article 77e (2) of Directive 2009/138/EC, no volatility adjustment to the relevant risk-free interest rate term structure is applied in order to calculate the best estimate.

Section 78 Risk margin

(1) The risk margin ensures that the value of the technical provisions equates to the amount that the insurance undertakings would demand in order to be able to assume and fulfil the insurance commitments.

(2) ¹The risk margin is calculated by determining the costs that are required in order to provide an amount of eligible own funds. ²This amount must meet the solvency capital requirement which is required in order to cover the insurance commitments over their term. ³If the European Commission stipulates a capital cost rate for the provision of eligible own funds in accordance with Article 86 (d) of Directive 2009/138/EC then this must be applied.

Section 79 General principles for the calculation of the technical provisions

(1) Insurance undertakings must have internal processes and procedures in order to guarantee the accuracy, completeness and appropriateness of the data used to calculate the technical provisions.

(2) If the insurance undertakings do not have adequate information available of an appropriate quality in order to apply a reliable actuarial method to a group or subgroup of their insurance commitments or to recoverable amounts from reinsurance contracts and towards special purpose entities, the insurance undertakings may use appropriate approximate values including individual case analyses for the calculation.

Section 80 Matching adjustment to the relevant risk-free interest rate term structure

(1) ¹With the approval of the supervisory agency, insurance undertakings may carry out a matching adjustment to the relevant risk-free interest rate term structure in order to calculate the best estimate of the portfolio of life insurance or reinsurance commitments, including pension insurance, which originate from non-life insurance or reinsurance contracts. ²The approval will be provided if the following requirements are met:

1. the insurance undertaking has determined a portfolio of assets consisting of bonds and other assets with similar payment characteristics in order to cover the best estimate of the portfolio of insurance or reinsurance commitments and retains this amount that has been determined while the commitments remain in place, unless there is a variance in order to maintain the replication of the expected payments between assets and liabilities if the payments have essentially changed;
2. the portfolio of insurance or reinsurance commitments for which the matching adjustment is supposed to be carried out and the allocated portfolio of assets are identified, organised and managed separately from the undertaking's other activities, and the allocated portfolio of assets cannot be used for the purposes of covering losses from the undertaking's other activities;
3. the projected payment flows for the allocated asset portfolio replicate all future payment flows for the portfolio of insurance or reinsurance commitments in the same currency and there are no essential risks involved in any mismatches as compared with the risks inherent in the insurance or reinsurance business for which a matching adjustment is implemented;
4. the insurance and reinsurance contracts underlying the portfolio of commitments do not result in future premium payments;
5. the only underwriting risks associated with the portfolio of insurance or reinsurance commitments are the longevity risk, the cost risk, the revision risk and the mortality risk;
6. the mortality risk is part of the underwriting risks associated with the portfolio of insurance or reinsurance commitments and the best estimate of the portfolio of insurance or reinsurance commitments does not increase by more than 5 per cent under a mortality risk stress which is calibrated in accordance with section 97;
7. the contracts underlying the portfolio of insurance and reinsurance commitments do not contain any options for the policyholder or merely a redemption option, for which the redemption value does not exceed the value of the assets assessed in accordance with section 74, which cover the insurance or reinsurance commitments at the time that the redemption option is exercised;
8. the assets of the allocated asset portfolio generate fixed payment flows which cannot be changed by the issuers of the assets or third parties; and
9. the insurance or reinsurance commitments in an insurance or reinsurance contract are not divided into different parts when the portfolio of insurance or reinsurance commitments is assembled for the purposes of this subsection.

³Without prejudice to sentence 2 no. 8, insurance undertakings may use assets whose payment flows are fixed without regard to inflation dependency, if these assets replicate the inflation contained in the payment flows of the portfolio of inflation-dependent insurance or reinsurance commitments. ⁴If issuers or third parties are entitled to modify payment flows for assets in such a way that the investor receives a adequate compensation in order to receive the same payment flow by way of reinvestment in assets of equal or better credit quality, the right to modify payment flows does not exclude the asset from admissibility for the portfolio under sentence 2 no. 8.

(2) ¹Insurance or reinsurance undertakings that carry out the matching adjustment for a portfolio of insurance or reinsurance commitments may not revert to an approach which does not include a matching adjustment. ²If an insurance or reinsurance undertaking that carries out the matching adjustment is no longer able to fulfil the conditions stated in subsection (1), it must notify the supervisory authority of this fact without delay and take the measures required in order for these conditions to be fulfilled once again. ³If the undertaking is unable to fulfil the conditions once again within two months from the point in time of the failure to comply with the conditions stated in subsection (1), it may not carry out any further matching adjustments for its insurance or reinsurance commitments and may only resume the matching adjustment after a further 24 months.

(3) The matching adjustment may not be applied to insurance or reinsurance commitments for which the relevant risk-free interest rate term structure for calculation of the best estimate for these commitments includes a volatility adjustment under section 82 or a transitional measure to the risk free interest rates under section 351.

Section 81 Calculation of the matching adjustment

The matching adjustment under section 80 must be calculated in accordance with the following principles for every currency:

1. the matching adjustment corresponds with the difference between
 - a) the effective annual interest rate that is calculated as a constant discount rate, which applied to the payment flows for the portfolio of the insurance or reinsurance commitments results in a value which corresponds with the value under section 74 of the portfolio of the allocated assets;
 - b) the effective annual interest rate that is calculated as a constant discount rate, which applied to the payment flows for the portfolio of the insurance or reinsurance commitments results in a value which corresponds with the best estimate of the portfolio of the insurance or reinsurance commitments if the time value of money is taken into account with the underlying risk-free interest rate term structure applied;
2. the matching adjustment does not include the underlying spread which reflects the risks retained by the insurance undertaking;
3. without prejudice to no. 1 the underlying spread is increased as required in order to ensure that the matching adjustment for assets whose credit quality is below the investment grade, is not higher than the matching adjustment for assets whose credit quality has been categorised as investment grade which feature the same duration and which belong to the same category of assets;
4. any use of external ratings in calculating the matching adjustment must be in line with the delegated legislative acts enacted by the European Commission under Article 111 (1) (n) of Directive 2009/138/EC.

Section 82 Volatility adjustment

- (1) With the approval of the supervisory authority, insurance undertakings may carry out a volatility adjustment of the relevant risk-free interest rate term structure in order to calculate the best estimate under section 77.
- (2) The volatility adjustment may not be carried out for insurance commitments for which the relevant risk-free interest rate term structure for calculation of the best estimate for these commitments includes a matching adjustment under section 80.
- (3) By way of derogation from section 97 the solvency capital requirement does not cover the risk of loss for basic own funds from modifications to the volatility adjustment.

Section 83 Technical information to be taken into account

- (1) If implementing legislative acts are enacted by the Commission under Article 77e (2) of Directive 2009/138/EC with the technical information stated in Article 77e (1), the insurance undertakings must use this technical information for the purposes of calculating the best estimate under section 77, the matching adjustment under section 80 and the volatility adjustment under section 82.
- (2) If the Commission publishes a higher volatility adjustment for a country, the insurance undertakings making use of section 82 must apply this in order to calculate the best estimate for insurance and reinsurance commitments from contracts which are sold on the insurance market for this country.
- (3) If no technical information is published under subsections (1) or (2), insurance undertakings must reproduce the derivations underlying this information as best as possible for their own calculations.

Section 84 Additional circumstances to be considered in the calculation of the technical provisions

(1) The following circumstances must also be observed when calculating the technical provisions:

1. all expenditures incurred in servicing the insurance commitments,
2. inflation along with inflation for the expenditures and the insurance claims as well as
3. all payments to policyholders and those entitled to benefits, including future profit participation which the insurance undertakings expect to implement, irrespective of whether they are guaranteed by contract or otherwise.

(2) In the case of life insurance, health insurance pursued on a similar technical basis to that of life insurance (SLT health) and accident insurance with return of premium, future payment flows to policyholders and those entitled to benefits from the part of the existing provision for bonuses as at the assessment date which may be used in part in order to compensate for losses and which is not attributable to bonuses that have been determined, are not to be considered as expected payments within the meaning of subsection (1) no. 3.

Section 85 Financial guarantees and contractual options in insurance contracts

(1) When calculating the technical provisions the value of the financial guarantees and other contractual options that are the subject matter of the insurance contracts must be taken into account.

(2) The assumptions related to the probability that the policyholders will exercise their contractual options including the cancellation and redemption rights must be made realistically and must be based on current and credible information.

(3) The assumptions must explicitly or implicitly account for the effects that future amendments to the financial and non-financial conditions may have on exercising these options.

Section 86 Recoverables from reinsurance contracts and in relation to special purpose entities (SPEs)

(1) Section 1 Recoverables from reinsurance contracts and in relation to special purpose entities (SPEs) are in accordance with sections 75 to 85.

(2) The time difference between receipt of the amounts and the disbursements to the claimant must be taken into account when calculating these recoverables.

(3) ¹The result of this calculation must be adjusted in order to account for the expected losses in the event of default by the counterparty. ²The adjustment is based on an estimate of the probability of default by the counterparty and the average loss resulting from this.

Section 87 Comparison with empirical data

(1) Insurance undertakings must use appropriate processes and procedures to ensure that the best estimates and the assumptions underlying their calculations are compared with empirical data on a regular basis.

(2) If the comparison shows a systematic deviation between the calculations for the best estimate and the empirical data, the relevant undertaking must implement corresponding adjustments to the actuarial methods used or to the underlying assumptions.

Section 88 Regulatory powers of the supervisory authority related to technical provisions; authorisation to issue statutory orders

(1) Following a request from the supervisory authority the insurance undertakings must provide evidence of the following:

1. the appropriateness of the level of its technical provisions,
2. the suitability and the relevance of the methods used as well as

3. the appropriateness of the statistical base data used.

(2) If the calculation of the technical provision carried out by the insurance undertaking does not comply with the regulations under sections 75 to 87, the supervisory authority may order that the amount of technical provisions be increased to the level provided for in accordance with the stated regulations.

(3) ¹The Federal Ministry of Finance is authorised in consultation with the Federal Ministry of Justice and for Consumer Protection to issue statutory orders specifying the following for the purpose of calculating the premium reserve in accordance with German Generally Accepted Accounting Principles:

1. for insurance contracts with interest guarantee, one or several maximum technical interest rates,
2. further specifications for the purposes of ascertaining the discounting rate under section 341f (2) of the Commercial Code,
3. the maximum amounts for zillmerisation and
4. the actuarial calculation assumptions and valuation methods for the premium reserve.

²Sentence 1 applies, with the necessary modifications, to accident insurance as defined in section 161, as well as to pension benefits paid on the classes of insurance named in section 162. ³In consultation with the Federal Ministry of Justice and for Consumer Protection this power may be delegated by statutory order to BaFin. ⁴Statutory orders under sentences 1 to 3 do not require the consent of the Bundesrat.

Segment 2 Solvency requirements

Subsegment 1 Determination of own funds

Section 89 Own funds

(1) ¹Insurance undertakings must in all cases have eligible own funds at the level of the solvency capital requirement. ²They must in all cases have allowable basic own funds at the level of the minimum capital requirement. ³Own funds are allowable if they comply with the requirements under sections 94 and 95.

(2) An insurance undertaking's own funds comprise its basic own funds and the ancillary own funds.

(3) Basic own funds consist of:

1. the surplus of the assets over the liabilities minus the amount of own shares in the solvency statement and
2. subordinated liabilities.

(4) ¹The ancillary own funds are those funds that are not part of the basic own funds and that may be recovered in order to offset losses. ²They may include the following components:

1. the portion of the unpaid share capital, initial capital or the item at insurance undertakings under public law corresponding to the share capital of public limited companies that has not been recovered,
2. for mutual societies with variable additional payment liabilities, the future receivables that the society has against its members if it recovers the additional payments within the next twelve months,
3. letters of credit and warranties as well as
4. all other legally binding payment obligations from third parties to the insurance undertaking.

(5) Once a component of the ancillary own funds has been paid in or recovered, it must be treated as an asset for the purposes of the solvency statement and form part of the basic own funds.

Section 90 Approval for ancillary own funds

(1) Ancillary own funds may only be assessed with the prior approval of the supervisory authority.

(2) ¹The supervisory authority will approve either an amount for each ancillary component of the own funds or a method for determining the amount of each component of the own funds. ²In the latter case, the approval will only be provided for a certain period and will also cover the amount ascertained using this method.

(3) ¹The amount imputed to the individual ancillary components of the own funds reflects the component's ability to offset losses and is based on prudent and realistic assumptions. ²If a component of the own funds has a fixed nominal amount then the amount for this component corresponds with its nominal amount if this amount reflects its ability to offset losses in a suitable manner.

(4) The supervisory authority will consider the following in its decision regarding the request for an assessment of ancillary own funds:

1. the ability and readiness of the counterparties to effect payment,
2. the recoverability of the funds with due regard to the legal arrangement of the component and any other circumstances which may prevent successful payment in or recovery of this component and
3. any information regarding the result of existing demands from the insurance undertaking for ancillary own funds of this type, provided that this information can be used reliably in order to assess the projected results of future demands.

Section 91 Classification of the own fund components

(1) Insurance undertakings must classify their own fund components in three tiers.

(2) Classification of the own fund components is determined based on whether these involve basic own funds or ancillary own funds and the extent to which they

1. are available or recoverable for the purposes of offsetting losses completely for a going concern and in the event of liquidation and
2. are subordinated to all other liabilities in the event of a liquidation.

(3) ¹The relevant term must be considered in the assessment regarding the extent to which own fund components feature the characteristics stated in subsection (2) for the present and the future. ²In the event of a limited term, a comparison of the limited term with the average term of the undertaking's insurance commitments must also be included in the consideration.

(4) Consideration is also required regarding whether, and the extent to which, an own fund component is free from

1. commitments or incentives to repay the nominal amount,
2. fixed mandatory costs and
3. other encumbrances.

(5) ¹The classification requires the approval of the supervisory authority. ²This does not apply to own fund components whose classification is published in delegated legislative acts of the European Commission.

Section 92 Criteria for classification

(1) Basic own funds are classified as tier 1 if they largely feature the characteristics stated in section 91 (2) nos. 1 and 2 with due regard in addition to section 91 (3) and (4).

(2) Basic own funds are classified as tier 2 if they largely feature the characteristics stated in section 91 (2) no. 2 with due regard in addition to section 91 (3) and (4).

(3) Ancillary own funds are classified as tier 2 if they largely feature the characteristics stated in section 91 (2) nos. 1 and 2 with due regard in addition to section 91 (3) and (4).

(4) All other basic own funds and ancillary own funds that do not come under subsections (1) to (3) must be classified as tier 3.

Section 93 Classification of the own fund components

(1) The probability-weighted average of future payments to policyholders and those entitled to benefits must be classified as tier 1, with due regard to the current value of the monetary funds (projected cash value of future payments) and with application of the relevant risk-free interest rate term structure from the part of the provision for bonuses available at the valuation date which may be used to cover losses and is not attributable to with-profit bonuses that have been determined

1. for life insurance,
2. for SLT health insurance and
3. for accident insurance with premium refunds.

(2) The following must be classified as tier 2:

1. letters of credit and warranties that are held in trust by an independent trustee for the insurance creditors and have been provided by credit institutions authorised under Directive 2006/48/EC, and
2. all future receivables which can be claimed by mutual societies formed by shipping companies against their members by way of requests for back payments within the next twelve months, with variable premium income which only insure the risks stated in Appendix 1 nos. 6, 12 and 17.

Section 94 Own funds for the purposes of compliance with the solvency capital requirement

(1) For the purposes of compliance with the solvency capital requirement, the eligible own funds consist of the own funds from tier 1 and the eligible own funds from tiers 2 and 3.

(2) The own fund components from tiers 2 and 3 are only eligible if they meet the following terms and conditions:

1. the own fund components in tier 1 amount to at least one third of the solvency capital requirement and
2. the eligible amount of own fund components in tier 3 amounts to less than one third of the solvency capital requirement.

Section 95 Own funds for the purposes of compliance with the minimum capital requirement

(1) For the purposes of compliance with the minimum capital requirement the eligible own funds consist solely of the own funds from tier 1 and the eligible basic own funds from tier 2.

(2) The own fund components in tier 1 must cover at least half of the minimum capital requirement.

Subsegment 2 Solvency capital requirement

Section 96 Ascertainment of the solvency capital requirement

(1) ¹The solvency capital requirement may be ascertained using a standard formula or an internal model. ²In both cases the regulations of section 97 apply to a ascertainment of the solvency capital requirement.

(2) If the insurance undertaking's risk profile differs significantly from the assumptions underlying the calculation using the standard formula, the supervisory authority may order the insurance undertaking to develop and use an internal model to calculate the solvency capital requirement or the relevant risk modules for this requirement within a reasonable period.

Section 97 Calculation of the solvency capital requirement

(1) The solvency capital requirement must be calculated based on the assumption of a going concern.

(2) ¹The solvency capital requirement must be calibrated in such a way that all quantifiable risks to which an insurance undertaking is exposed are reflected. ²The volume of the business as well as the new business expected in the next twelve months must both be taken as a basis for this. ³In relation to the current volume of business, the solvency capital requirement only covers unexpected losses. ⁴It corresponds with the value at risk (VAR) of the basic own funds of an insurance undertaking at a confidence level of 99.5 per cent over a period of one year.

(3) ¹The amount of the solvency capital requirement must cover the following risks at a minimum:

1. the non-life insurance underwriting risk,
2. the life insurance underwriting risk,
3. the health insurance underwriting risk,
4. the market risk,
5. the credit risk and
6. the operational risk.

²The operational risk also includes legal risks. ³However, it does not include reputational risks or risks arising from strategic decisions.

(4) The effects of techniques aimed at risk mitigation must be taken into account in ascertaining the solvency capital requirement, provided that the credit risk and other risks that could arise from using these techniques are adequately taken into account in the solvency capital requirement.

Section 98 Frequency of calculation

(1) ¹Insurance undertakings must calculate the solvency capital requirement at least once per year and report the result of this calculation to the supervisory authority. ²Insurance undertakings must monitor the level of the solvency capital requirement and the amount of the existing eligible own funds on an ongoing basis.

(2) If an insurance undertaking's risk profile deviates significantly from the assumptions that formed the basis of the last reported solvency capital requirement, then the undertaking must recalculate the solvency capital requirement without delay and report this new calculation to the supervisory authority.

(3) If there are facts that justify the assumption that the insurance undertaking's risk profile has changed significantly since the last solvency capital requirement reported, the supervisory authority may require a recalculation of the solvency capital requirement from the undertaking.

Section 99 Structure of the standard formula

If the solvency capital requirement is calculated using the standard formula, then it must consist of the following

components:

1. the basic solvency capital requirement in accordance with sections 100 to 106,
2. the capital requirement for operational risk as set out in section 107 and
3. the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes in accordance with section 108.

Section 100 Design of the basic solvency capital requirement

(1) ¹The basic solvency capital requirement must comprise individual risk modules, which are aggregated in accordance with Appendix 3. ²It must consist of at least the following risk modules:

1. the non-life insurance underwriting risk,
2. the life insurance underwriting risk,
3. the health insurance underwriting risk,
4. market risk; and
5. counterparty default risk.

³Insurance operations must be allocated to the underwriting risk module that best reflects the technical nature of the underlying risks.

(2) The correlation coefficients for the aggregation of the risk modules referred to in subsection (1), as well as the calibration of the capital requirements for each risk module, must result in an overall Solvency Capital Requirement which complies with the principles set out in section 97.

(3) ¹Each of the risk modules referred to in subsection (1) must be calibrated using a Value-at-Risk measure, with a 99.5% confidence level, over a one-year period. ²Where appropriate, diversification effects must be taken into account in the design of each risk module.

(4) The same design and specifications for the risk modules must be used for all insurance undertakings, both with respect to the Basic Solvency Capital Requirement and to any simplified calculations as laid down in section 109 (1).

(5) With regard to risks arising from catastrophes, geographical specifications may, where appropriate, be used for the calculation of the life, non-life and health underwriting risk modules.

Section 101 Non-life underwriting risk module

(1) ¹The non-life underwriting risk module must reflect the risk arising from non-life insurance obligations, in relation to the perils covered and the processes used in carrying on the business. ²The risk module must take account of the uncertainty in the results of insurance undertakings related to the existing insurance obligations as well as to the new business expected to be written over the following 12 months.

(2) The non-life insurance underwriting risk module must be calculated in accordance with Appendix 3 as a combination of the capital requirements for at least the risk of loss, or of adverse change in the value of insurance liabilities, resulting from:

1. fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements (non-life premium and reserve risk), and
2. significant uncertainty of pricing and provisioning assumptions related to technical provisions for extreme or exceptional events (non-life catastrophe risk).

Section 102 Life underwriting risk module

(1) The life underwriting risk module must reflect the risk arising from life insurance obligations, in relation to the perils covered and the processes used in carrying on the business.

(2) The life underwriting risk module must be calculated in accordance with Appendix 3 as a combination of the capital requirements for at least the risk of loss, or of adverse change in the value of insurance liabilities, resulting from:

1. changes in the level, trend, or volatility of mortality rates, where an increase in the mortality rate leads to an increase in the value of insurance liabilities (mortality risk),
2. changes in the level, trend, or volatility of mortality rates, where a decrease in the mortality rate leads to an increase in the value of insurance liabilities (longevity risk),
3. changes in the level, trend or volatility of disability, sickness and morbidity rates (disability – morbidity risk),
4. changes in the level, trend, or volatility of the expenses incurred in servicing insurance contracts (life-expense risk),
5. fluctuations in the level, trend, or volatility of the revision rates applied to annuities, due to changes in the legal environment or in the state of health of the person insured (revision risk),
6. changes in the level or volatility of the rates of policy lapses, terminations, renewals and surrenders (lapse risk) and
7. significant uncertainty of pricing and provisioning assumptions related to extreme or irregular events (life-catastrophe risk).

Section 103 Health underwriting risk module

(1) ¹The health underwriting risk module must reflect the risk arising from the underwriting of health insurance obligations, following from both the perils covered and the processes used in carrying on the business. ²This applies irrespective of whether the health insurance is pursued on a similar technical basis to that of life insurance or not.

(2) The health underwriting risk module must include at least the risk of loss, or of adverse change in the value of insurance liabilities, resulting from

1. changes in the level, trend, or volatility of the expenses incurred in servicing insurance contracts,
2. fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements at the time of recognising the technical provisions and
3. the significant uncertainty of pricing and provisioning assumptions related to technical provisions for outbreaks of major epidemics, as well as the unusual accumulation of risks under such extreme circumstances.

Section 104 Market risk module

(1) ¹The market risk module must reflect the risk arising from the level or volatility of market prices of financial instruments which have an impact upon the value of the assets and liabilities of the undertaking. ²It must properly reflect the structural mismatch between assets and liabilities, in particular with respect to the duration thereof.

(2) ¹The market risk module must be calculated in accordance with Appendix 3 as a combination of the capital requirements in relation to the sensitivity of the values of parts of assets, liabilities and financial instruments in relation to the following changes at least:

1. changes in the term structure of interest rates, or in the volatility of interest rates (interest rate risk),
2. changes in the level or in the volatility of market prices of equities (equity risk),
3. changes in the level or in the volatility of market prices of real estate (property risk),
4. changes in the level or in the volatility of credit spreads over the risk-free interest rate term structure (spread risk) and
5. changes in the level or in the volatility of currency exchange rates (currency risk).

²Additional risks stemming either from lack of diversification in the asset portfolio or from large exposure to default risk by a single issuer of securities or a group of related issuers (market risk concentrations) must also be calculated.

Section 105 Counterparty default risk module

(1) The counterparty default risk module must reflect possible losses due to an expected default, or deterioration in the credit standing, of the counterparties and debtors of insurance undertakings over the following 12 months.

(2) ¹The counterparty default risk module must cover

1. risk-mitigating contracts, such as reinsurance arrangements, securitisations and derivatives,
2. receivables from intermediaries, as well as
3. any other credit exposures which are not covered in the spread risk in accordance with section 104 (2) sentence 1 no. 4.

²The counterparty default risk module take appropriate account of collateral or other security held by or for the account of the insurance undertaking and the risks associated there with.

(3) For each counterparty, the counterparty default risk module must take account of the overall counterparty risk exposure of the insurance undertaking concerned to that counterparty, irrespective of the legal form of its contractual obligations to that undertaking.

Section 106 Equity risk module

(1) The equity risk module must include a symmetrical adjustment of the factor in the scenario for stock investments which records the risk from changes in the level of equity prices.

(2) ¹The symmetric adjustment made to the standard capital requirement for equity prices, calibrated in accordance with section 100 (3), must be based on a function of the current level of an appropriate equity index and a weighted average level of that index. ²The weighted average must be calculated over an appropriate period of time which must be the same for all insurance undertakings.

(3) The adjustment may not result in a factor in the scenario for share investments which is more than 10 percentage points lower or higher than the standard factor for equity investments.

Section 107 Capital requirement for operational risk

(1) ¹The capital requirement for operational risk must reflect operational risks to the extent they are not already reflected in the risk modules referred to in section 100. ²It must be calibrated in accordance with section 97 (2).

(2) With respect to life insurance contracts where the investment risk is borne by the policy holders, the calculation of the capital requirement for operational risk must take account of the amount of annual expenses incurred in respect of those insurance obligations.

(3) ¹With respect to insurance operations other than those referred to in subsection (2), the calculation of the capital requirement for operational risk must take account of the volume of those operations, in terms of earned premiums and technical provisions which are held in respect of those insurance obligations. ²In this case, the capital requirement for operational risks must not exceed 30% of the Basic Solvency Capital Requirement relating to those insurance operations.

Section 108 Adjustment for the loss-absorbing capacity of technical provisions and deferred taxes

(1) The adjustment referred to in section 99 no. 3 for the loss-absorbing capacity of technical provisions and deferred taxes must reflect potential compensation of unexpected losses through a simultaneous decrease in technical provisions or deferred taxes or a combination of the two.

(2) ¹That a adjustment must take account of the risk mitigating effect provided by future discretionary benefits of insurance contracts, to the extent insurance undertakings can establish that a reduction in such benefits may be used to cover unexpected losses when they arise. ²The risk mitigating effect provided by future discretionary benefits must be no higher than the sum of technical provisions and deferred taxes relating to those future discretionary benefits.

(3) For the purpose of subsection (2), the value of future discretionary benefits under adverse circumstances must be compared to the value of such benefits under the underlying assumptions of the best-estimate calculation.

Section 109 Deviations from the standard formula

(1) ¹Insurance undertakings may use a simplified calculation for a specific sub-module or risk module where the nature, scale and complexity of the risks they face justifies it and where it would be disproportionate to require all insurance undertakings to apply the standardised calculation. ²Simplified calculations must be calibrated in accordance with section 97 (2).

(2) ¹Following approval from the supervisory authority, insurance undertakings may use company-specific parameters in place of a sub-group of parameters when calculating the technical modules. ²Parameters of this type must be calibrated based on the undertaking's internal data or based on data that is directly relevant for this undertaking's business using standardised methods. ³The data used must be precise, complete and adequate.

Section 110 Significant deviations from the assumptions underlying the standard formula calculation

¹Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula, because the risk profile of the insurance undertaking concerned deviates significantly from the assumptions underlying the standard formula calculation, the supervisory authority may require the undertaking concerned to replace a subset of the parameters used in the standard formula calculation by parameters specific to that undertaking when calculating the underwriting risk modules. ²Those specific parameters must be calculated in such a way to ensure that the undertaking complies with section 97 (2) and section 109 (2) sentences 2 and 3.

Subpart 3 Internal models

Section 111 Use of internal models

(1) Insurance undertakings may use an internal model in the form of a full or partial model for the calculation of the solvency capital requirement.

(2) ¹Written internal policies must be compiled on the model and they must stipulate which changes the insurance undertaking is allowed to make to the internal model. ²The internal policies must set out when a change must be qualified as being minor or major.

(3) ¹Use of a model, the internal policies and the changes to these, changes to the model as well as termination of use of the model and a complete or partial return to the standard formula must be approved by the supervisory authority. ²Sentence 1 above does not apply to minor changes to the model. ³The supervisory authority will approve the request if the systems for risk identification, risk measurement, risk monitoring, risk management and risk reporting are fulfilled appropriately, and in particular if the requirements stated in subsection (4) are complied with. ⁴A complete or partial return to the standard formula may only be approved if there is sufficient justification for this.

(4) The request for approval must be submitted together with the internal policies under subsection (2) along with the documents which show that the internal model meets the requirements of section 112 (2) and sections 115 to 121.

(5) The supervisory authority must decide on the request for approval within six months following receipt of the complete request.

(6) The supervisory authority may require an estimate of the solvency capital requirement in accordance with the

standard formula in accordance with sections 96 to 110 in relation to insurance undertakings for which the supervisory authority has approved the use of an internal model.

Section 112 Internal models in the form of partial internal models

(1) ¹Insurance undertakings may use partial internal models for the calculation of

1. one or more risk modules, or sub-modules, of the Basic Solvency Capital Requirement, as set out in sections 101 to 106,
2. the capital requirement for operational risk as set out in section 107 and
3. the adjustment referred to in section 108.

²Partial modelling may be applied to the whole business or only to one or more major business units.

(2) ¹Sections 115 to 121 apply, with the necessary modifications; the limited scope of the model must be taken into account. ²In addition,

1. the solvency capital requirement derived from the model must take better account of the risk profile of the insurance undertaking than the solvency capital requirement calculated using the standard formula and
2. the model
 - a) must be consistent with the principles in sections 96 to 98 and
 - b) must be able to be fully integrated into the standard formula for the solvency capital requirement as well as be consistent with sections 96 to 98 in terms of its design.

(3) To a reasonable extent, the insurance undertaking must explain why the limited scope of the model is justified.

(4) If the partial internal models only covers certain sub-modules in a risk module or only some areas of activity in an insurance undertaking in relation to a specific risk module or parts of both aspects, the supervisory authority may demand that a transition plan be implemented to extend the scope of the model to other sub-modules or areas of activity in a risk module until the vast majority of insurance activities in relation to this risk module are covered.

Section 113 Responsibility of the management board; involvement of third parties

(1) The management board is itself responsible

1. for submitting the application to use the internal model in accordance with section 111 (3) and any application for authorisation of subsequent major changes to the model,
2. for introducing systems to ensure that the internal model functions properly at all times,
3. for ensuring that the structure and mode of operation of the internal model are adequate on an ongoing basis and
4. for ensuring that the internal model appropriately reflects the risk profile of the insurance undertaking at all times.

(2) The full or partial provision of the model or of data by third parties does not absolve the insurance undertaking of the obligation to satisfy the internal model requirements specified in sections 115 to 121.

Section 114 Non-compliance with the requirements for the internal model

(1) If an insurance undertaking no longer satisfies the requirements specified in sections 115 to 121 after the supervisory authority has granted authorisation to use an internal model, the insurance undertaking must submit a plan to the supervisory authority without delay explaining how it can restore compliance with the requirements within a reasonable period or submit evidence demonstrating that the impact from non-compliance with the requirements is immaterial.

(2) If the plan in accordance with subsection (1) is not properly implemented, the supervisory authority may instruct the insurance undertaking to return to the standard formula for calculating the solvency capital requirement.

Section 115 Usage test

(1) The internal model must be used extensively for the management of the undertaking and play a key role in the organisation of the business, in particular

1. in the risk management system under section 26 and in decision-making processes as well as
2. in the assessment of economic capital and solvency capital, and in allocation processes, including the assessment under section 27.

(2) The frequency with which the solvency capital requirement is calculated using the internal model must be consistent with the frequency with which the internal model is used for the purposes specified in subsection (1).

(3) The onus is on the insurance undertaking to demonstrate that the requirements in subsections (1) and (2) have been satisfied.

Section 116 Statistical quality standards for probability distribution forecasts

(1) ¹The internal model must cover all significant risks faced by the insurance undertaking. ²The risks specified in section 97 (3) must be taken into account at all times. ³Regardless of the calculation method selected, the risk classification must be sufficient to ensure that the internal model is used extensively and plays a key role within the meaning of section 115 (1) in the business organisation, in particular in the risk management system, in decision-making processes and in capital allocation.

(2) The insurance undertaking must be in a position at all times to provide evidence to the supervisory authority of the plausibility of the assumptions on which the internal model is based.

(3) ¹The methods used to calculate the underlying probability distribution forecast in the internal model must be based on suitable and reasonable actuarial and statistical procedures. ²These methods must be consistent with the methods used for calculating the technical provisions.

(4) The calculation of the probability distribution forecast must be based on up-to-date, reliable information and on realistic assumptions.

(5) ¹The data used for the internal model must be accurate, complete and appropriate. ²The data series used for calculating the probability distribution forecast must be updated at least once a year.

Section 117 Other statistical quality standards

(1) Dependencies within the risk categories and between the risk categories in relation to diversification effects can be incorporated into the internal model if the systems for measuring diversification effects are appropriate.

(2) Effects from risk mitigation techniques can be included in the internal model if the credit risk and other risks arising from the use of risk mitigation techniques are adequately reflected in the model.

(3) ¹Significant risks arising from financial guarantees and contractual options must be measured accurately. ²Risks arising from options in favour of policyholders or other insurance undertakings must also be assessed. ³The impact from

future changes in financial and non-financial conditions on the exercise of these options must be factored into the assessment.

(4) ¹Future action that is reasonably likely to be taken by members of the senior management in certain circumstances can be taken into account in the internal model. ²The amount of time required for the implementation of action of this nature must also be taken into account.

(5) The internal model must take into account expected payments to the insured, regardless of whether such payments are contractually guaranteed or not.

Section 118 Calibration standards

(1) In derogation of section 97 (2), insurance undertakings may use a different time period or an alternative risk measure for internal modelling purposes if they ensure that the output from the internal model is used to calculate the solvency capital requirement in such a way that the insured are given a level of protection equivalent to that specified in section 97.

(2) ¹Where practicable, insurance undertakings must derive the solvency capital requirement directly from the probability distribution forecast generated by the internal model. ²Insurance undertakings must use the risk measure "value at risk" as specified in section 97.

(3) The supervisory authority may permit approximations for the purposes of calculating the solvency capital requirement if the solvency capital requirement cannot be derived directly from the probability distribution forecast generated by the internal model and the insurance undertaking concerned demonstrates to the supervisory authority that the policyholders are given the level of protection in accordance with section 97 (2).

(4) ¹At the request of the supervisory authority, the internal model must be applied to relevant benchmark portfolios. ²In this regard, the insurance undertaking must, at the request of the supervisory authority, use assumptions that are largely based on external data in order to review the calibration of the internal model and determine whether its specifications are in line with generally accepted market practice.

Section 119 Profit and loss attribution

¹Insurance undertakings must investigate the causes and sources of profits and losses in each principal area of activity at least once a year. ²In this process, they must examine how the risk categorisation selected in the internal model explains the causes and sources of the profits and losses. ³The risk categorisation and the allocation of profits and losses must reflect the risk profile of the insurance undertaking concerned.

Section 120 Validation standards

(1) Insurance undertakings must operate a regular cycle of model validation, which must include monitoring the performance capability of the internal model, reviewing the ongoing appropriateness of its specification and testing its results against experience.

(2) The model validation process must include an effective statistical procedure for validating the internal model, enabling the insurance undertaking concerned to demonstrate to the supervisory authority that the capital requirements determined with the internal model are appropriate.

(3) The statistical methods applied must test the appropriateness of the probability distribution forecast compared not only to loss experience but also to all material new data and information relating thereto.

(4) ¹The model validation process must include an analysis of the stability of the internal model and, in particular, the testing of the sensitivity of the results of the internal model to changes in key underlying assumptions. ²It must also include an assessment of the accuracy, completeness and appropriateness of the data used for the internal model.

Section 121 Documentation standards

(1) ¹The design of the internal model and its mode of operation must be documented. ²It must be clear from this documentation that the undertaking concerned is complying with the requirements in sections 115 to 120.

(2) The documentation must include a detailed description of the theoretical principles, assumptions and mathematical and empirical bases underlying the internal model and must also describe all scenarios in which the internal model does not function effectively.

(3) Insurance undertakings must document all major changes to their internal models (section 111 (2)).

Subsegment 4 Minimum capital requirement

Section 122 Determining the minimum capital requirement; authorisation to issue statutory orders

(1) The minimum capital requirement equates to that amount of eligible basic own funds below which, in a situation in which the insurance undertaking continues as a going concern, the policyholders and those entitled to benefits are exposed to an unacceptable level of risk.

(2) ¹The Federal Ministry of Finance is authorised to use a statutory order to stipulate the amount of the minimum capital requirement specified in subsection (1); Article 129 (1) to (3) of Directive 2009/138/EC, delegated legislative acts of the European Commission in accordance with Article 130 of Directive 2009/138/EC and information published by the European Commission in accordance with Article 300 of Directive 2009/138/EC must be observed. ²This authorisation may be delegated by statutory order to BaFin. ³Statutory orders under sentences 1 and 2 do not require the consent of the Bundesrat.

Section 123 Calculation frequency; reporting obligations

(1) ¹Insurance undertakings must calculate the minimum capital requirement quarterly and report the result of the calculation to the supervisory authority. ²It is not necessary to calculate the solvency capital requirement quarterly for the purposes of determining the threshold values for the minimum capital requirement.

(2) If one of the threshold values specified in Article 129 (3) of Directive 2009/138/EC determines the minimum capital requirement of an insurance undertaking, the insurance undertaking concerned must explain the reasons for this to the supervisory authority.

Segment 3 Investments; guarantee assets

Section 124 Investment principles

(1) ¹Insurance undertakings must invest their entire assets in accordance with the principle of corporate prudence. ²In doing so, insurance undertakings must comply with the following requirements:

1. insurance undertakings may invest solely in assets and instruments whose associated risks they can
 - a) sufficiently identify, assess, monitor, control, manage, include in their reporting systems,
 - b) adequately take into account in the assessment of their solvency needs under section 27 (2) number 1;
2. all assets must be invested so as to ensure the security, quality, liquidity and profitability of the portfolio as a whole; assets must also be located so as to ensure access and availability;
3. assets held to cover the technical provisions must also be invested in a manner appropriate to the nature and maturity of the primary insurance and reinsurance liabilities of the undertaking; these assets must be invested in the interests of all policyholders and those entitled to benefits, taking into account the investment policy, if such an investment policy has been published;
4. in the case of a conflict of interest, action must be taken to ensure that the assets are invested in the best interest of the policyholders and those entitled to benefits;
5. derivative financial instruments may only be used to help reduce risk or facilitate efficient portfolio management; this criterion is not satisfied if derivative financial instrument transactions are used solely to build up trading positions (arbitrage) or if the insurance undertaking concerned is not actually in possession of the relevant investment portfolios involved in the transaction (short-selling);
6. investments and assets that are not admitted to trading on a regulated financial market must be kept at prudent levels;
7. assets must be mixed and diversified appropriately to avoid excessive dependency on a certain asset, issuer, group of undertakings or geographical area and an excessive concentration of risk in the portfolio as a whole; and
8. investments in assets involving the same issuer or issuers who belong to the same group of undertakings must not result in an undue concentration of risk.

(2) ¹Subsection (1) nos. 5 to 8 does not apply to life insurance contracts in which the investment risk is borne by the policyholder, subject to the application of sentence 2 no. 3. ²The following stipulations also apply to the assets involved in the case of such contracts, over and above the requirements in subsection (1) nos. 1 to 4:

1. if the benefits under a contract are directly linked to the value of units in undertakings for collective investment in transferable securities within the meaning of Directive 2009/65/EC or to the value of assets that are contained in an internal fund held by the insurance undertakings concerned and usually divided into units, the technical provisions in respect of those benefits must be represented as closely as possible by the units concerned or, if no units have been created, by the assets concerned;
2. if the benefits provided by a contract are directly linked to a share index or to a reference value other than as specified in no. 1 above, the technical provisions for these benefits must be reflected as closely as possible by the units or shares that represent the reference value; if no units or shares have been established, the provisions must be reflected by a appropriately secure and recoverable assets that correspond as closely as possible those values on which the relevant reference value is based; and
3. if the benefits specified in nos. 1 and 2 above include a guarantee of investment performance or some other guaranteed benefit, subsection (1) nos. 5 to 8 must be applied to the assets held to cover the corresponding additional technical provisions.

(3) If insurance contracts form part of any independent portfolio of an insurance undertaking in a country outside the member states or EEA signatory states, subsections (1) and (2) must be applied unless otherwise specified under foreign law.

Section 125 Guarantee assets

(1) ¹During the financial year, the management board of a primary insurance undertaking must allocate to the guarantee assets, and invest in accordance with regulations, amounts equivalent to the expected increase of the minimum guarantee assets in accordance with subsection (2) below. ²If primary insurance undertakings invest assets in

1. claims for repayment of a loan,
2. bonds and participation rights,
3. book-entry securities;
4. shares;
5. equity investments;
6. land and land rights;
7. shares within the meaning of section 215 (2) sentence 1 no. 6 or
8. current account balances and deposits at credit institutions,

these assets must be added to the guarantee assets in an amount up to the amount of the total balance sheet values specified in subsection (2). ³Overall, the assets specified in sentence 2 must at least match the level of the entire portfolio in terms of investment protection, liquidity, profitability and quality.

(2) ¹As a minimum, the total guarantee assets must correspond to the total balance sheet values for the following items:

1. the unearned premiums,
2. the premium reserve,
3. the provision for
 - a) claims outstanding and surrenders,
 - b) rebates and
 - c) unexpired premiums from suspended insurance contracts,
4. the portions of the provision for bonuses attributable to with-profits bonuses declared but not yet allocated,
5. the liabilities to policyholders under direct insurance business, and
6. the premium income to be refunded by an insurance undertaking in the event of cancellation or rescission of an insurance contract or a transaction defined in section 2 (2).

²Balance sheet values within the meaning of sentence 1 are the gross amounts for direct insurance business before deduction of the amounts for ceded reinsurance business.

(3) ¹For the purpose of determining the guarantee assets, unencumbered land and land rights must be included at the balance sheet value. ²If the balance sheet value is higher than the fair value, then the fair value must be used. ³The supervisory authority may permit a reasonable increase in this value if it can be demonstrated by an experts' report that the fair value exceeds the balance sheet value by at least 100 per cent. ⁴In the case of encumbered land and land rights, the supervisory authority must determine the value on a case-by-case basis.

(4) ¹The guarantee assets must be managed separately from any other assets and must be kept in the territory of the member states and EEA signatory states. ²The supervisory authority must be informed about the manner in which they are kept. ³The supervisory authority may permit the guarantee assets to be kept at a different location.

(5) A guarantee asset account (investment portfolio) must be created for each type of investment if life insurance contracts provide for insurance benefits linked

1. to units or shares in open-ended investment funds within the meaning of section 1 (4) of the German Investment Code (*Kapitalanlagegesetzbuch – KAGB*),
2. to shares or units issued by an investment company,

3. to assets within the meaning of section 2 (4) of the German Investment Act (*Investmentgesetz – InvG*) in the version in force until 21 July 2013, with the exception of money, or
4. directly to an equity index or other reference values.

(6) ¹Separate accounts may be established within the guarantee assets with the approval of the supervisory authority. ²The rules relating to the guarantee assets and any rights attached then apply, with the necessary modifications, to each of the separate accounts.

Section 126 Register of assets

(1) ¹The insurance undertaking must ensure that the asset items in the guarantee assets are individually entered in a register of assets. ²The rules relating to the guarantee assets apply to all assets entered in the register of assets. ³Any rights to use conferred by individual assets within the guarantee assets are deemed part of the guarantee assets, even if not entered in the register of assets. ⁴Any receivables arising from advances or loans granted against the undertaking's own insurance policies may, to the extent that they are part of the guarantee assets, be registered in an aggregate amount. ⁵In the case of receivables secured by a charge over land and repayable in instalments, the register of assets must be amended as prescribed by the supervisory authority; the same applies to charges over land that do not serve as collateral for any amounts due from an individual.

(2) ¹At the end of each financial year, the insurance undertaking must submit a copy of the entries made during that year to the supervisory authority; the management board must certify the accuracy of the copy. ²The supervisory authority must retain the copy.

(3) ¹With regard to the gross technical provisions within the meaning of sections 341e to 341h of the German Commercial Code for direct insurance business, the portions of such provisions attributable to the reinsurers and the portions attributable to special purpose entities or vehicles within the meaning of Article 211 of Directive 2009/138/EC that have been authorised to conduct business also form part of the guarantee assets, even if not entered in the register of assets. ²In the case of receivables due from special purpose insurance companies domiciled in a third country, this only applies if the special-purpose insurance company has been authorised to carry on business and is supervised by the national authorities in the home country in accordance with the requirements in section 168 and has comparable capital adequacy.

(4) ¹Subsection (3) applies to life insurance, health insurance of the type specified in section 146, private compulsory long-term-care insurance in accordance with section 148 and accident insurance with premium refund in accordance with section 161 only for the unearned premiums in accordance with section 341e (2) no. 1 of the German Commercial Code and the provision for claims outstanding in accordance with section 341g of the German Commercial Code. ²In the classes of insurance referred to above, the undertaking must itself also retain and manage the proportion of guarantee assets for the portion ceded to reinsurers save for the unearned premiums in accordance with section 341e (2) no. 1 of the German Commercial Code and the provision for claims outstanding in accordance with section 341g of the German Commercial Code.

Section 127 Additions to guarantee assets

(1) ¹If guarantee assets do not meet the minimum level specified in section 125 (2), the management board must make up the deficiency without delay. ²The necessary addition to the guarantee assets need not be carried out only in cases where a special security deposit has to be furnished out of premium income in favour of certain insurance undertakings abroad.

(2) ¹The supervisory authority may order an insurance undertaking to make further additions to the guarantee assets over and above the minimum requirement under section 125 (2) if this is deemed necessary to safeguard the interests of the insured. ²Such additions may be necessary, in particular, if the fair values of assets within the guarantee assets are lower than their balance sheet carrying amounts.

Section 128 Guarantee asset trustee

(1) ¹A trustee and deputy trustee must be appointed to monitor the guarantee assets for life insurance, health insurance of the type specified in section 146, private compulsory long-term-care insurance in accordance with section 148 and accident insurance with premium refund in accordance with section 161. ²Public law insurance undertakings do not need to appoint any trustee. ³Smaller mutual societies within the meaning of section 210 (1) sentence 1 only need to appoint a trustee if instructed to do so by the supervisory authority.

(2) The regulations governing the trustee also apply to the deputy trustee, with the necessary modifications.

(3) ¹The trustee is appointed by the supervisory board. ²If a smaller mutual society does not have a supervisory board, the trustee is appointed by the management board.

(4) ¹Before appointment, the supervisory authority must be informed of the name of the designated trustee. ²If the supervisory authority has reservations about the appointment it may request that another person be proposed within a reasonable period. ³If this requirement is not met or if the supervisory authority also has reservations about the newly proposed trustee, it may itself appoint the trustee. ⁴Sentences 2 and 3 also apply if the supervisory authority has reservations about an appointed trustee continuing in office.

The trustee must certify at the end of the balance sheet in the annual financial statements that the guarantee assets have been invested and maintained in compliance with the applicable rules, without this requirement affecting the responsibility of the bodies representing the undertaking.

The supervisory authority decides on any disputes between the trustee and the insurance undertaking concerning the trustee's duties.

Section 129 Protecting the guarantee assets

(1) Action must be taken to protect the guarantee assets such that any decisions regarding the use of the assets are possible only with the consent of the trustee.

(2) ¹The trustee must, in particular, maintain the guarantee assets in joint custody with the insurance undertaking. ²The trustee may only release an item of guarantee assets if the remaining assets are sufficient to cover the minimum requirement for guarantee assets as specified in section 125 (2) or the insurance undertaking concurrently ensures that the guarantee assets are covered in some other way. ³If the insurance undertaking is under an obligation to release a deed, the trustee must consent to the release, even if the criteria specified in sentence 2 are not satisfied; section 127 (1) applies, with the necessary modifications. ⁴If the insurance undertaking needs a deed for temporary use, the trustee must release the deed without any obligation on the part of the insurance undertaking to provide alternative cover for the guarantee assets.

(3) The trustee may approve any decision regarding the use of assets in writing only; if an item is to be deleted from the register of assets, it is sufficient for the trustee to write his/her name beside or underneath the deletion annotation.

(4) The trustee is authorised to inspect the books and records of the insurance undertaking at any time, insofar as they relate to the guarantee assets.

Section 130 Withdrawals from the guarantee assets

(1) Other than the funds required for investments or changes in investments, only such amounts released upon occurrence or settlement of an insured event, a surrender, any other termination of an insurance contract or changes to the business plan may be withdrawn from the guarantee assets.

(2) ¹Execution levied on, or attachment of, guarantee assets is only permitted to the extent that allocations to the guarantee assets have been prescribed and actually been made under section 125 (1) to (3), section 126 and section 127

with respect to the claim for the settlement of which the assets are now to be used. ²Sentence 1 applies, with the necessary modifications, to any set-off against claims that form part of guarantee assets.

Section 131 Authorisation to issue statutory orders

(1) For insurance undertakings that are not subject to supervision by the supervisory authorities in the federal states, the Federal Ministry of Finance is authorised to issue statutory orders covering the following, such orders to be issued taking into account delegated legislative acts by the European Commission in accordance with Article 135 of Directive 2009/138/EC:

1. the reporting by insurance undertakings on the investment of all their assets;
2. the identification, assessment, monitoring, management and reporting of or concerning
 - a) risks arising from investments and
 - b) specific risks arising from investments in derivative financial instruments; and
3. the determination of requirements in connection with loans securitised to create negotiable securities and other financial instruments, specifically
 - a) requirements that the originator must satisfy so that insurance undertakings are permitted to invest in securities or financial instruments of this nature issued after 1 January 2011, including such requirements to ensure that the originator retains a net economic interest of not less than 5 per cent and
 - b) qualitative requirements that must be satisfied by insurance undertakings investing in such securities or financial instruments.

(2) This power under subsection (1) may be delegated by statutory order to BaFin.

(3) Statutory orders in accordance with subsections (1) and (2) do not require the consent of the Bundesrat.

Segment 4 Insurance undertakings in special situations

Section 132 Identification and notification of a deteriorating financial position

(1) An insurance undertaking must have suitable systems in place to enable it to identify a deterioration in its financial position.

(2) An insurance undertaking must notify the supervisory authority without delay of any deterioration in its financial position that could jeopardise its ability to fulfil its obligations under insurance contracts or represent a risk to the solvency of the insurance undertaking.

Section 133 Inadequate level of technical provisions

(1) If an insurance undertaking recognises inadequate technical provisions in breach of the obligations specified in sections 74 to 88, the supervisory authority may restrict or prohibit the free disposal of the assets of the undertaking.

(2) Subsection (1) applies, with the necessary modifications, if an insurance undertaking does not recognise adequate technical provisions within the meaning of sections 341e to 341h of the German Commercial Code.

(3) If the supervisory authority intends to restrict or prohibit the free disposal of assets in accordance with subsection (1), it must notify in advance the supervisory authority in the member state or EEA signatory state in which the undertaking maintains a branch or provides services and designate the assets that are to be covered by the intended action.

Section 134 Non-compliance with the solvency capital requirement

(1) If the solvency capital requirement is no longer covered or if this situation is likely to arise within the subsequent three months, the insurance undertaking must inform the supervisory authority accordingly without delay.

(2) Within two months of the date on which the insurance undertaking has identified that the solvency capital requirement is no longer covered, the undertaking must submit a realistic recovery plan to the supervisory authority for approval.

(3) ¹Within six months of the date on which the insurance undertaking has identified that the solvency capital requirement is no longer covered, the undertaking must implement appropriate measures and increase its eligible own funds or reduce its risk profile until compliance with the solvency capital requirement is re-established. ²The supervisory authority may extend the deadline by three months.

(4) ¹If the European Insurance and Occupational Pensions Authority has identified the existence of exceptional adverse circumstances within the meaning of Article 138 (4) of Directive 2009/138/EC, the supervisory authority may extend the period specified in subsection (3) sentence 2 for affected undertakings, taking into account all relevant factors, by maximum of seven years. ²The possibility of the period extension comes to an end as soon as the European Insurance and Occupational Pensions Authority has identified that there are no longer any exceptional adverse circumstances.

(5) ¹The European Insurance and Occupational Pensions Authority decides on the existence of exceptional adverse circumstances in response to a request from a supervisory authority. ²BaFin may submit the request if insurance undertakings that account for a substantial proportion of the market or of the areas of activity involved will in all probability not satisfy one of the conditions specified in subsection (3).

(6) ¹If the supervisory authority has extended the period under subsection (3) sentence 1 by more than three months, the insurance undertakings involved must submit a progress report to the supervisory authority every three months. ²These reports must include a description of the measures taken and the progress made to increase eligible own funds to the level required to cover the solvency capital requirement or to reduce the risk profile to re-establish compliance with the solvency capital requirement. ³The extension of the period must be revoked if the progress report shows that there was no significant progress in achieving the establishment of compliance with the solvency capital requirement between the date on which non-compliance with the solvency capital requirement was identified and the date on which the progress report was submitted.

(7) If there is evidence to suggest that the financial position of the insurance undertaking concerned will deteriorate further, the supervisory authority may restrict or prohibit the free disposal of the assets of that insurance undertaking; section 133 (3) applies, with the necessary modifications.

(8) ¹If the supervisory authority has restricted or prohibited the free disposal of assets in accordance with subsection (7), it must inform the supervisory authorities in the member states or EEA signatory states in which the undertaking concerned maintains a branch or provides services. ²It may request these authorities to take the same measures. ³In this case, it must designate the assets to be covered by such measures.

Section 135 Non-compliance with the minimum capital requirement

(1) If the minimum capital requirement is no longer covered, or there is a threat of this occurring within the next three months, the insurance undertaking must inform the supervisory authority of this fact without delay.

(2) ¹The insurance undertaking will submit a realistic financing plan in the short term to the supervisory authority for approval within one month of the undertaking's determination that the minimum capital requirement is no longer covered. ²This plan will show how the allowable basic own funds are due to be increased at least to the level of the minimum capital requirement amount or how the risk profile is due to be lowered in such a way that the minimum capital requirement is covered once again.

(3) The supervisory authority may restrict or prohibit free disposal over the insurance undertaking's assets; section 133 (3) and section 134 (8) applies, with the necessary modifications.

Section 136 Recovery plan and finance scheme

(1) The recovery plan and finance scheme must include the following information at a minimum:

1. Estimates of operating costs, in particular current general expenses and commissions,
2. Estimated income and expenditure for the primary insurance business and for the reinsurance business assumed and transferred,
3. A forecast for the solvency statement,
4. Estimates of the financial resources that are due to be available to cover technical provisions, the solvency capital requirement and the minimum capital requirement, and
5. The reinsurance policy as a whole.

(2) If a restructuring plan or a financing plan must be submitted to the supervisory authority, then it may only issue a certification under section 13 (2) no. 1 if it believes that the rights of the policyholders are no longer at risk.

Section 137 Progressive deterioration in solvency

(1) ¹In the event of a progressive deterioration in an insurance undertaking's solvency, then in addition to the measures stated in sections 134 and 135, the supervisory authority may also implement all measures that are appropriate, required and reasonable for the purposes of safeguarding the interests of the policyholders arising from the insurance contracts or of fulfilling the obligations from reinsurance contracts. ²The degree and duration of the deterioration in the insurance undertaking's solvency position must be considered when selecting the relevant measure.

(2) The supervisory authority may in particular

1. require the provision of a higher amount of *eligible* own funds than that required for compliance with the solvency capital requirement,
2. prohibit or ring-fence withdrawals from the reserves as well any distribution of profits,
3. prohibit or ring-fence measures aimed at compensating for any net loss for the financial year or at stating an unappropriated surplus.

Chapter 3 Special regulations for individual classes of insurance

Segment 1 Life insurance

Section 138 Premium calculation in life insurance; equal treatment

(1) ¹Premiums in life insurance must be calculated on the basis of reasonable actuarial assumptions and be sufficient to enable the life insurance undertaking to meet all its liabilities, and in particular, to recognise adequate premium reserves

for the individual contracts. ²For this purpose, the financial position of an insurance undertaking may be taken into account, without the inclusion of any regular and permanent funding from resources other than premiums.

(2) All factors being equal, the same principles must be used to calculate premiums and benefits.

Section 139 Profit participation

(1) The amounts earmarked for profit participation, provided that they have not been directly allocated to the insured, must be recognised under a provision for bonuses in the balance sheet.

(2) ¹In the case of insurance stock corporations, the management board, with the consent of the supervisory board, must set the amounts to be allocated for profit participation. ²However, allocations to the provision not based on a legal claim by the insured may only be earmarked for profit participation if at least 4 per cent of share capital can still be distributed out of the remaining unappropriated surplus. ³A net profit can only be distributed if it exceeds any safeguard amount (*Sicherungsbedarf*) provided for in accordance with subsection (4).

(3) Valuation reserves from fixed-income investments and interest rate hedging transactions held directly or indirectly by the insurance undertaking must only be taken into account for the participation of the policyholders in the valuation reserves in accordance with section 153 of the German Insurance Contract Act to the extent that they exceed any safeguard amount from the insurance contracts with interest guarantee in accordance with subsection (4).

(4) ¹The safeguard amount from the insurance contracts with guaranteed interest are the total sum of the safeguard amounts of the insurance contracts whose essential actuarial interest rate is above the essential euro interest rate swap rate at the time that the valuation reserves (reference interest) are determined. ²The safeguard amount of an insurance contract is the actuarial interest-rate obligation under an insurance contract valued with due regard to the reference interest, minus the premium reserve. ³Funeral expenses funds can calculate the safeguard amount from the insurance contracts with interest guarantee in accordance with a divergent procedure with the approval of the supervisory authority.

Section 140 Provision for bonuses

(1) ¹The amounts allocated to the provision for bonuses may only be used for the purpose of profit participation for the insured, including the participation in the valuation reserves stipulated by section 153 of the Insurance Contract Act. ²With the consent of the supervisory authority, however, provided that it is not attributable to bonuses that have already been determined, the insurance undertaking is entitled to use the provision for bonuses in exceptional cases in the interest of the insured in order to

1. avoid an impending emergency situation,
2. compensate for unforeseeable losses from the insurance contracts entitled to the bonuses which are attributable to the general changes in conditions, or
3. increase the premium reserve if the calculation assumptions have to be adjusted on account of an unforeseeable change in conditions that is not merely temporary.

³Measures in accordance with sentence 2 nos. 2 or 3 must be charged to the groups of the insured based on cause.

(2) An irregularity jeopardising the interests of the insured is also deemed to exist if in the case of insurance which is entitled to a bonus

1. there is no reasonable allocation to the provision for bonuses or

2. there is no reasonable use of the funds in the provision for bonuses.

This must be assumed in particular if

in the case of sentence 1 no. 1, the allocations to the provision for bonuses of a life insurance undertaking, taking into account direct credit and the actuarial interest rate, do not meet the minimum allocation requirement as defined by statutory order in accordance with section 145 (2) and

in the case of sentence 1 no. 2, the uncommitted portion of the provision for bonuses exceeds the maximum amount stipulated by statutory order in accordance with section 145 (3).

(3) The supervisory authority may require

1. that a plan is submitted to it that will ensure adequate allocations to the provision for bonuses (allocation plan), if the allocations to the provision do not comply with the minimum requirement in accordance with the statutory order under section 145 (2), or
2. that a plan is submitted to it that will ensure that reasonable use is made of the provision for bonuses (distribution plan) if the uncommitted portion of the provision exceeds the maximum amount under the statutory order under section 145 (3).

(4) Life insurance undertakings may establish one or more collective portions within the provision for bonuses that must be allocated overall to the contracts entitled to the bonuses.

Section 141 Appointed actuary in life insurance

(1) ¹Every life insurance undertaking must have an appointed actuary. ²This appointed actuary must be a fit and proper person for the position. ³To meet the fit and proper requirement, the person concerned must have sufficient knowledge of actuarial theory and professional experience. ⁴The person can generally be assumed to have sufficient professional experience if they can demonstrate that they have held a position as an actuary for at least three years.

(2) ¹The name of the designated appointed actuary must be submitted to the supervisory authority before appointment, together with the information necessary to assess whether the person is fit and proper in accordance with subsection (1) above. ²If there is evidence that the designated appointed actuary does not meet the fit and proper requirement, the supervisory authority may require that another person be appointed. ³If, after the appointment, evidence emerges of circumstances that would have prevented a appointment, or if the appointed actuary does not properly fulfil the duties under this Act, then the supervisory authority may require that another person be appointed. ⁴If the designated or the newly appointed actuary in the cases mentioned in sentences 2 and 3 also fails to meet the requirements, or if no new appointment is made, the supervisory authority may itself appoint an actuary. ⁵The supervisory authority must be informed immediately upon resignation or dismissal of the appointed actuary. ⁶If there is an intention to terminate the contract with the appointed actuary or to bring the contract to an end by mutual consent, the governing body specified in subsection (3) must notify the supervisory authority in advance stating the reasons.

(3) The appointed actuary must be engaged or dismissed by the supervisory board or, if there is no such board, by a corresponding highest-level governing body.

(4) ¹The appointed actuary must attend the meeting of the supervisory board for the purposes of approval of the year-end financial statements and report on the main findings in his or her explanatory report accompanying the actuarial certification. ²In the supervisory board's report to the annual general meeting, the supervisory board must comment on the explanatory report from the appointed actuary.

(5) ¹The appointed actuary must

1. ensure that the calculation of premiums and the premium reserve is in line with the principles set out in section 138 and section 341f of the German Commercial Code as well as the principles of the statutory order enacted based on section 88 (3); they must subsequently review the undertaking's financial position in order to ensure that the ability

to fulfil the obligations under the insurance contracts is guaranteed at all times;

2. certify below the balance sheet that the premium reserve has been recognised in accordance with section 341f of the German Commercial Code and the statutory orders issued in accordance with section 88 (3) (actuarial certification); this is without prejudice to section 341k of the German Commercial Code relating to the audit; in the report to the undertaking's board of management, the actuary must explain the calculation methods and additional assumptions underlying the certification.
3. inform the management board in the event that, in the performance of the assigned duties, they recognise a possibility that circumstances will preclude the granting of a certification in accordance with no. 2, or allow only a qualified certification, and inform the supervisory authority without delay if the board does not immediately remedy the situation; if when performing their duties, the appointed actuary discovers information that could threaten the going concern status of the undertaking or seriously hinder its development, they must immediately inform the management board and the supervisory authority and
4. submit to the management board proposals for an appropriate share of profits for insurance contracts with profit participation; the appointed actuary must take into account the need to ensure that the undertaking is in a position to fulfil its obligations under the insurance contracts at all times; the actuary must explain in a report to the board of management the facts and assumptions from which the reasonableness of their proposal arises.

²The duties under sentence 1 number 2 do not apply to the appointed actuary if the life insurance undertaking is a small mutual association within the meaning of section 210.

(6) The management board of the undertaking must

1. make available to the appointed actuary all the information necessary to enable it to fulfil its duties properly under subsection (5),
2. submit to the supervisory authority the explanatory report accompanying the actuarial certification in accordance with subsection (5) no. 2 and the appropriateness report in accordance with subsection (5) no. 4, and
3. submit to the supervisory authority without delay the proposals made by the appointed actuary in accordance with subsection (5) no. 4 and inform the supervisory authority if it intends to approve a level of profit participation that differs from the proposals made by the appointed actuary; the reasons for the deviation must be communicated to the supervisory authority in writing or electronically.

Section 142 Trustees in life insurance

¹In the case of life insurance contracts entered into after 28 July 1994, in which the premiums may be changed with an effect on existing insurance contracts, any such changes may only be implemented after approval by an independent trustee. ²Section 157 (1) and (2) applies to the trustee, with the necessary modifications. ³The involvement of an independent trustee is not required if changes under sentence 1 are subject to the approval of the supervisory authority.

Section 143 Special notification obligations in life insurance

When the authorisation to operate life insurance has been granted, the undertaking must immediately report the principles for the calculation of the premiums and the premium reserve to the supervisory authority, also submitting the relevant documents, including the calculation assumptions, mathematical formulas, actual calculations made and statistical evidence used; this also applies, with the necessary modifications, to the use of new or amended principles.

Section 144 Information for occupational retirement provision

(1) In cases where life insurance undertakings provide occupational retirement benefits, sections 234k to 234p apply to the information provided to members and beneficiaries, with the necessary modifications.

(2) Subsection (1) applies to insurance transactions in other member states or EEA signatory states if the insurance contracts are based on German law.

Section 145 Authorisation to issue statutory orders

(1) The Federal Ministry of Finance may stipulate further details by statutory order in relation to

1. the fixed-income investments and interest-rate hedging transactions to be included in the procedure in accordance with section 139 (3);
2. stipulation of the essential euro interest rate swap rate in accordance with section 139 (4) sentence 1;
3. the valuation method for the interest-rate obligation of an insurance contract in accordance with section 139 (4) sentence 2.

(2) ¹For the purpose of safeguarding the interests of the insured as well as taking into account the market conditions and the solvency needs of the life insurance undertaking, the Federal Ministry of Finance is authorised to issue by statutory order provisions with respect to section 140 (2) concerning allocations to the provision for bonuses, in particular the minimum allocations subject to the investment income, the risk result and the remaining results. ²Regulation is required here regarding whether and to what extent negative earnings and results can be offset against positive earnings and results. ³The minimum allocation must be ascertained separately for insurance relationships based on approved business plans. ⁴If a collective portion of the provision for bonuses within the meaning of section 140 (4) is established, the minimum allocation for this must also be ascertained separately.

(5) The Federal Ministry of Finance is authorised to stipulate, by statutory order, a maximum amount of the uncommitted portion of the provision for bonuses.

(4) The Federal Ministry of Finance is authorised to specify, by means of a statutory order, the wording of the actuarial certification, further details regarding the content, scope and submission deadline for the explanatory report under section 141 (5) sentence 1 no. 2, and further details regarding the content, scope and submission deadline for the report under section 141 (5) sentence 1 no. 4.

(5) ¹The powers in subsections (1) to (4) may be delegated by statutory order to BaFin. ²Statutory orders under subsections (1) to (4) do not require the consent of the Bundesrat.

(6) ¹By way of statutory order that requires the approval of the Bundesrat, the Federal Ministry of Finance may stipulate further details on the configuration of the collective portions of the provision for bonuses in order to safeguard the interests of the insured parties, in particular related to limitation of the collective portions and allocations to and repayments from the collective portions to the non-collective portions of the provision for bonuses. ²The Federal Ministry of Finance may, by statutory order, delegate this power to BaFin with the approval of the Bundesrat. ³BaFin will enact the statutory order without the approval of the Bundesrat in agreement with the supervisory authorities of the individual federal states.

Segment 2 Health insurance

Section 146 Substitutive health insurance

(1) If health insurance is suitable as a full or partial substitute for the health and long-term care insurance protection provided for in the state social insurance system (substitutive health insurance), then subject to the requirements in subsection (3) it may only be operated in Germany according to the technical principles of life insurance, whereby

1. premiums must be calculated in accordance with actuarial principles on the basis of probability tables and other pertinent statistical data, specifically taking into account any relevant assumptions with respect to the risk of invalidity and illness, to mortality, to the dependence of the risk on age and gender and to the probability of

- cancellation, also taking into account safety loadings and other loadings and a technical interest rate,
2. the provision for increasing age must be recognised in accordance with section 341f of the German Commercial Code,
 3. the right of termination without cause for the insurance undertaking must be excluded in the insurance contract, in daily benefits insurance this must be from the fourth policy year at the latest, and a premium increase must be reserved,
 4. the insurance contract must grant the policyholder the right to policy alteration by choosing other premium scales with comparable coverage while maintaining the rights and provision for increasing age entitlements acquired so far under the contract,
 5. the insurance contract must, for situations where the policyholder switches to another private health insurance undertaking, include stipulations ensuring the provision of the transfer value for that part of the insurance in which the benefits correspond to the basic tariff within the meaning of section 152 (1); this does not apply to contracts entered into prior to 1 January 2009 and
 6. prior to entering into the contract, the potential applicant must receive an official information sheet issued by BaFin explaining the different principles behind the statutory and private health insurance systems; receipt of the information sheet must be confirmed by the potential applicant.

(2) ¹Section 138 (2) applies, with the necessary modifications, to substitutive health insurance. ²The premiums for new business may not be lower than the premiums for the insured of the same age under the existing portfolio of insurance contracts, not including their provision for increasing age. ³Sentence 2 does not apply to the difference in premiums arising from the fact that the premiums for new business are calculated on a gender-neutral basis.

(3) Substitutive health insurance contracts with fixed terms in accordance with section 195 (2) and (3) of the German Insurance Contract Act as well as daily benefits insurance after the insured has reached the age of 65 under section 196 of the German Insurance Contract Act may be calculated without provision for increasing age.

Section 147 Other health insurance

If the non-substitutive health insurance business is pursued on a similar technical basis to that of life insurance (SLT health), section 146 (1) nos. 1 to 4 and subsection (2) as well as section 156 apply, with the necessary modifications.

Section 148 Long-term care insurance

¹Subject to sections 110 and 111 of the Eleventh Book of the German Social Security Code, section 146 (1) nos. 1 to 4 and subsection (2) as well as sections 155 to 157 and 160 apply, with the necessary modifications, to private compulsory long-term care insurance and to subsidised long-term care provision. ²Insurance contracts for private compulsory long-term-care insurance must include stipulations ensuring that the transfer value is provided if the policyholder switches to another private health insurance undertaking.

Section 149 Premium supplement in substitutive health insurance

¹In substitutive medical expenses insurance, a loading of 10 per cent of the annual zillmerised gross premium must be

charged to the insured at the latest with the beginning of the calendar year following the year in which the insured reaches the age of 21 and ending in the calendar year in which the insured person reaches the age of 60.²This must be allocated annually and directly to the provision for increasing age under section 341f (3) of the German Commercial Code, and used for the purpose of premium reduction in old age in accordance with section 150 (3).³Sentences 1 and 2 above do not apply to insurance contracts with fixed terms in accordance with section 195 (2) and (3) of the German Insurance Contract Act, to premium rates that generally come to an end when the policyholder reaches the statutory retirement age, or to the hardship tariff under section 153.

Section 150 Credit for provision for increasing age; direct credit

(1)¹In medical expense insurance and voluntary long-term care insurance (long-term care costs and long-term care daily benefits insurance) pursued on a similar technical basis to that of life insurance, the insurance undertaking must annually credit to the insured the investment income attributable to the total of the positive provision for increasing age for the policies concerned at the end of the preceding financial year.²The amount credited must total 90 per cent of the average investment income generated beyond the level of the technical interest rate (excess yield).

(2)¹The share of the amount determined in accordance with subsection (1) attributable to that portion of the provision for increasing age arising from the loading must be credited in full each year directly to the insured persons who paid the loading under section 149 until the end of the financial year in which the persons concerned reach the age of 65.²Of the remaining amount, 50 per cent must be credited annually directly to the provision for increasing age for all insured persons.³The percentage rate defined in sentence 2 above is increased by two per cent annually from the financial year of the insurance undertaking that begins in 2001 until the rate reaches 100 per cent.

(3)¹When the insured reaches the age of 65, the amounts referred to in subsection (2) must be used to fund, for an unlimited period, the additional premiums arising from premium increases, or a portion of the additional premiums if the available funds are not sufficient to fully fund the additional premiums.²Unused amounts must be utilised for premium reduction as of the point at which the insured reaches the age of 80.³Any subsequent allocations must be used for an immediate premium reduction.⁴In voluntary long-term care daily benefits insurance, the general policy conditions may provide for a corresponding increase in benefits instead of a premium reduction.

(4)¹The share of the investment income determined in accordance with subsection (1) remaining after deduction of the amounts used in accordance with subsection (2) must be set aside for a rebate for the insured who have reached the age of 65 by the balance sheet date and be used within a period of three years to offset or limit premium increases, or to reduce premiums.²The premium reduction in accordance with sentence 1 above may be limited to prevent the premium of the insured from falling below the level paid at the initial age at entry; the unused portion of the amount credited must be credited additionally in accordance with subsection (2) above.

Section 151 Profit participation for the insured

(1) Section 139 (1) and (2) sentences 1 and 2 as well as section 140 (1) with the exception of section 140 (1) sentence 2 nos. 2 and 3 apply, with the necessary modifications, to health insurance contracts that provide for a bonus for the insured.

(2)¹An irregularity jeopardising the interests of the insured is also deemed to exist in health insurance operated according to the technical principles of life insurance if no adequate allocations are made to the provision for bonuses.²Unless there is no profit participation due to the type of business operated, this must in particular be deemed to be the case if the allocations to the provision for bonuses of a health insurance undertaking do not comply with the rate stipulated for allocations by statutory order in accordance with section 160 sentence 1 no. 6.

(3) The supervisory authority may require that a plan is submitted to it that will ensure a adequate allocations to the provision for bonuses (allocation plan) if the allocations to the provision do not comply with the minimum requirement in accordance with the statutory order under section 160 sentence 1 no. 6.

Section 152 Basic tariff

(1) ¹Insurance undertakings domiciled in Germany that operate substitutive health insurance business must offer a standard industry-wide basic tariff in which the nature, scope and amount of the benefits under the contract are in each case comparable with the benefits under the third section of the Fifth Book of the German Social Security Code to which there is an entitlement. ²The basic tariff must in each case provide for a variant covering

1. children and young people; in this variant, no provisions for increasing age are recognised until the age of 21 is reached;
2. persons and their eligible family members who are entitled to assistance in the event of sickness under the provisions or principles of civil service law; in this variant, the benefits under the contract are limited to supplements to the assistance.

³The insured must be granted the option of agreeing an excess of 300, 600, 900 or 1,200 euros and requesting a change in the excess level at the end of the contractually agreed period subject to three months' notice. ⁴The minimum commitment period for contracts with an excess under the basic tariff is three years; if the agreed excess does not lead to a reasonable reduction in the premium, the policyholder may at any time submit a request to the insurer to switch the contract to the basic tariff without excess; the switch must then be made within three months. ⁵In the case of persons eligible for assistance, the possible levels of excess are determined by applying the percentage rate not covered by the assistance rate to the values 300, 600, 900 or 1,200 euros. ⁶Persons are permitted to take out supplementary medical expenses insurance.

(2) ¹The insurer is under an obligation to grant the following persons insurance at the basic tariff:

1. all parties insured voluntarily as part of statutory health insurance within six months of the start of the switching option period provided for in the Fifth Book of the German Social Security Code as part of the insured's voluntary insurance relationship;
2. all persons domiciled in Germany who are not subject to compulsory insurance under statutory health insurance, who are not included in the group of persons specified in number 1 or section 193 (3) sentence 2 nos. 3 and 4 of the German Insurance Contract Act and who have not already taken out private medical expenses insurance that is agreed with an insurance undertaking authorised to conduct insurance business in Germany and that satisfies the obligation under section 193 (3) of the German Insurance Contract Act;
3. all persons who are eligible for assistance or are entitled to similar support if such persons require supplementary insurance cover to satisfy the obligation under section 193 (3) sentence 1 of the German Insurance Contract Act, as well as
4. all persons domiciled in Germany who have a agreed private medical expenses insurance with an insurance undertaking authorised to conduct business in Germany and whose contract was entered into after 31 December 2008.

²If a private medical expenses insurance contract was entered into prior to 1 January 2009, the policyholder may, in the event of a contract switch or termination of the contract, not demand a contract under the basic tariff with the existing or a different insurance undertaking, including the transfer of the provision for increasing age in accordance with section 204 (1) of the German Insurance Contract Act. ³The application under sentence 1 must be accepted, even if, in the case of the termination of a contract with another insurer, the termination in accordance with section 205 (1) sentence 1 of the German Insurance Contract Act has not yet come into effect. ⁴The application may only be rejected if the applicant has already been insured with the insurer and the insurer

1. cancelled the insurance contract because of a threat or malicious deception or
2. rescinded the insurance contract because of a wilful breach of pre-contractual notification requirements.

(3) ¹The premium for the basic tariff without excess and at all excess levels must not exceed the maximum contribution for statutory health insurance. ²This maximum contribution is determined by multiplying the general contribution rate

plus the average supplementary contribution rate under section 242a (2) of the Fifth Book of the German Social Security Code by the prevailing income limit for the assessment of contributions in statutory health insurance.³In the case of persons eligible for assistance under the principles of civil service law, sentences 1 and 2 apply subject to the proviso that the maximum contribution for statutory health insurance is replaced by a maximum contribution that reflects the percentage proportion represented by the benefit entitlement that supplements the assistance.

(4) If there is a need for support within the meaning of the Second or Twelfth Book of the Social Security Code, or if a need for support would arise solely because of payment of the premium under subsection (3) sentences 1 or 3, the premium must be reduced by half for the period in which support is needed; at the request of the insured, the need for support must be verified and certified by the relevant sponsoring agency in accordance with the Second or Twelfth Book of the Social Security Code.

(5) The premiums for the basic tariff, excluding the costs incurred in operating the insurance business, are determined uniformly using a common calculation basis for all the undertakings involved.

Section 153 Hardship tariff

(1)¹Non-payers within the meaning of section 193 (7) of the German Insurance Contract Act form a tariff within the meaning of section 155 (3) sentence 1.²The hardship tariff provides for the reimbursement of expenses solely in connection with benefits necessary for the treatment of serious illness and pain and those associated with pregnancy and maternity.³By way of derogation from the above provision, expenses for insured children and young persons, in particular expenses for preventive medical examinations aimed at the early discovery of illnesses under statutory programmes and for immunisation recommended by the German Standing Committee on Vaccination (*Ständige Impfkommision* – STIKO) at the Robert Koch Institute under section 20 (2) of the German Protection against Infection Act (*Infektionsschutzgesetz* – IfSG) must be reimbursed.

(2)⁴A standard premium must be calculated for all insured persons under the hardship tariff; section 146 (1) nos. 1 and 2 applies in all other respects.⁵In the case of insured persons whose insurance contract only provides for the reimbursement of a percentage of the expenses incurred, the hardship tariff provides benefits equivalent to 20, 30 or 50 per cent of the insured treatment costs.⁶Section 152 (3) applies, with the necessary modifications.⁷The calculated premiums under the hardship tariff must not exceed the amount required to cover the claims expenditures under the tariff.⁸Additional expenses that arise in connection with guaranteeing the limitations specified in sentence 3 must be allocated equally to all the insurer's policyholders with an insurance contract that satisfies an obligation under section 193 (3) sentence 1 of the German Insurance Contract Act.⁹The provision for increasing age must be offset against the premium to be paid under the hardship tariff such that up to 25 per cent of the monthly premium is covered by a withdrawal from the provision for increasing age.

Section 154 Risk equalisation

(1)¹Insurance undertakings that offer a basic tariff must participate in the equalisation of the insurance risk under the basic tariff to ensure that obligations under insurance contracts are satisfied at all times and, to this end, must create and maintain an equalisation system to which they belong.²The equalisation system must ensure that the different burdens are equalised effectively and on a long-term basis.³Additional expenses that arise under the basic tariff because of pre-existing conditions must be distributed evenly among all insured persons in the basic tariff; additional expenses that arise in connection with ensuring the limitations specified in section 152 (3) and (4) must be allocated over all insurance undertakings involved such that these undertakings share the burden equally.

(2) The establishment, design, modification and implementation of the equalisation system are subject to supervision by BaFin.

Section 155 Premium adjustments

(1) ¹For SLT health insurance, premium adjustments may only be implemented after approval by an independent trustee. ²The trustee must verify whether the premiums have been calculated in accordance with the applicable legal provisions. ³For this purpose, all technical calculation bases required for scrutiny, including actual calculations made and statistical evidence, are to be provided to the trustee. ⁴The technical calculation bases must show in full the principles for the calculation of the premiums and provision for increasing age, including the actuarial assumptions and mathematical formulas used. ⁵Approval must be granted if the requirements of sentence 2 above have been met.

(2) ¹The following are subject to the approval of the trustee:

1. the date and the amount of the withdrawal and the use of funds from the provision for return of premiums, to the extent that they are to be used in accordance with section 150 (4);
2. the use of the funds from the provision for bonuses.

²In the cases mentioned in sentence 1 nos. 1 and 2 above, the trustee must ensure that the requirements set forth in the articles of association and the general policy conditions are met and that the interests of the insured are sufficiently safeguarded. ³If the funds are utilised to limit premium increases, the trustee must ensure, in particular, an appropriate distribution amongst the groups of the insured who paid the premium loading under section 149 and those who did not, and sufficiently take into account the aspect of reasonableness of the premium increases, in percentage and absolute terms, for the older insured.

(3) ¹For every insurance tariff calculated according to the technical principles of life insurance, the insurance undertaking must compare, at least annually, the required benefits with the calculated benefits. ²If the comparison to be submitted to the supervisory authority and the trustee indicates a deviation of more than 10 per cent for a certain tariff, provided the general policy conditions do not require a lower percentage, the undertaking must examine all premiums subject to this tariff and, if the deviation may be considered to be more than just temporary, adjust them with the approval of the trustee. ³In this context, the fixed amount of any excess may also be adjusted and any agreed premium loading changed accordingly if this has been stipulated in the contract. ⁴There must be no adjustment if the insurance benefits were inadequately calculated at the time of initial calculation, or recalculation, and a prudent and conscientious actuary ought to have recognised this, in particular on the basis of the statistical calculation bases available at that time. ⁵If the trustee finds that premium increases or reductions are necessary for a tariff, wholly or in part, and if no agreement on this can be reached with the undertaking, the trustee must immediately inform the supervisory authority.

(4) ¹For every tariff calculated according to the technical principles of life insurance, the insurance undertaking must each year compare the required mortality probability with the calculated figure using an analysis of present values. ²If the comparison to be submitted to the supervisory authority and the trustee indicates a deviation of more than 5 per cent for a certain tariff, the undertaking must examine all premiums subject to this tariff and adjust them with the approval of the trustee. ³Subsection 3 sentences 3 to 5 applies, with the necessary modifications.

Section 156 Appointed actuary in health insurance

(1) ¹Insurance undertakings that operate substitutive health insurance business must have an appointed actuary.

²Section 141 (1) sentences 2 to 4 and (2) and (3) applies, with the necessary modifications.

(2) ¹The appointed actuary must be responsible for the following:

1. ensuring that the calculation of premiums and the technical provisions is in line with the principles set out in sections 341e to 341h of the German Commercial Code, in particular the provision for increasing age, the actuarial methods under section 146 (1) nos. 1 and 2, as well as the principles of the statutory order enacted based on section 160; they must in particular review the undertaking's financial position in order to ensure that the ability to fulfil the obligations under the insurance contracts is guaranteed at all times and
2. certifying at the end of the balance sheet that the provision for increasing age has been calculated in accordance with no. 1 above (actuarial certification); this does not apply to smaller mutual societies within the meaning of

section 210.

²Section 141 (5) sentence 1 no. 3 and (6) no. 1 applies, with the necessary modifications.

Section 157 Trustees in health insurance

(1) ¹Only persons who are fit and proper, independent of the insurance undertaking and, in particular, have not entered into an employment contract or other service contract with the insurance undertaking or any affiliated undertaking and have no outstanding claims against the undertaking under such a contract may be appointed as trustee. ²To meet the fit and proper requirement, the trustee must have sufficient knowledge in the field of premium calculation in health insurance. ³The appointment of a person already active as trustee or appointed actuary for ten insurance undertakings or pension funds is generally excluded. ⁴The supervisory authority may permit a person to hold a higher number of such positions.

(2) ¹The name of the designated trustee must be submitted to the supervisory authority before appointment, together with the information necessary to assess whether the person meets the requirements specified in subsection (1) above. ²If there is evidence that the designated trustee does not meet the requirements specified in subsection (1), the supervisory authority may require that another person be appointed. ³If, after the appointment, evidence emerges of circumstances that would have prevented a appointment in accordance with subsection (1), or if the trustee does not properly fulfil the duties under this Act, in particular if they approve any premium adjustment that does not comply with the legal provisions, the supervisory authority may require that another trustee be appointed. ⁴If the designated or the newly appointed trustee in the cases mentioned in sentences 2 and 3 also fails to meet the requirements, or if no new appointment is made, the supervisory authority may itself appoint a trustee. ⁵The supervisory authority must be informed immediately upon resignation or dismissal of the trustee.

(3) ¹For the appointment of a trustee in the event of a contract adjustment under section 203 (3) of the German Insurance Contract Act, subsection (1) sentences 1, 3 and 4, and subsection (2) apply, with the necessary modifications. ²To meet the fit and proper requirement, the trustee must have sufficient legal knowledge, relating in particular to the field of health insurance.

Section 158 Special notification obligations in health insurance; benefits in the basic and hardship tariff

(1) Health insurance undertakings must notify the supervisory authority immediately regarding:

1. with respect to health insurance within the meaning of section 146 (1), the intended use of new or amended general policy conditions, submitting the relevant documents;
2. with respect to health insurance within the meaning of section 146 (1), the intended use of new or amended principles within the meaning of section 9 (4) no. 5, submitting all documents referred to therein.

(2) ¹It is left to the German Association of Private Health Insurers to specify the nature, scope and the amount of the benefits in the basic tariff in accordance with the provisions in section 152 (1) and in the hardship tariff in accordance with the provisions in section 153 (1). ²The Federal Ministry of Finance is responsible for the relevant supervision in this regard.

Section 159 Statistical data

(1) ¹BaFin must publish general probability tables not related to specific premium scales, as well as other relevant statistical data for health insurance within the meaning of section 146 (1). ²Section 318 (3) applies, with the necessary modifications.

(2) ¹Primary insurance undertakings domiciled in Germany that conduct health insurance business are required to communicate annually to BaFin the data required for the publication under subsection (1) on the basis of data from their insurance portfolios. ²The insurance portfolios and data to be taken into account must be set forth in the statutory order referred to in section 160.

(3) BaFin must communicate the information relating to health insurance published in accordance with subsection (1) to the supervisory authorities of the home country.

Section 160 Authorisation to issue statutory orders

¹As regards SLT health insurance, the Federal Ministry of Finance is authorised to carry out the following by statutory order:

1. specify the actuarial methods for calculating the premiums, including premium adjustments and the technical provisions within the meaning of sections 341e to 341h of the German Commercial Code, specifically the provision for increasing age, in particular to take into account any relevant assumptions with respect to the risk of invalidity and illness, long-term care requirements, mortality, dependence of the risk on age and gender, and probability of cancellation, as well as the amount of the safety loading and discount rate and the principles for measuring and limiting the other loadings;
2. issue more detailed provisions with regard to the equivalence of the insurance coverage and eligibility of acquired rights and the provision for increasing age in the event of a change of tariff under section 146 (1) no. 4;
3. issue more detailed provisions for calculating the transfer value as specified in section 146 (1) no. 5 and section 148 sentence 2;
4. issue more detailed provisions covering a switch to the basic tariff as specified in section 152 (2) and a subsequent switch out of the basic tariff;
5. specify how the excess yield as defined in section 150 (1) is to be calculated, how the amounts are to be distributed among the eligible insured persons in accordance with section 150 (2) and (4), and how the initial premium at the age of entry is to be determined;
6. enact regulations regarding the minimum allocation to the provision for bonuses under section 151 (2) in order to safeguard the interests of the insured, in particular regarding the amount and calculation of the allocation rate; a percentage of the sum of the annual surplus and expenses for performance-related bonuses is to be set separately for health insurance within the meaning of section 146 (1) sentence 1, private compulsory long-term care insurance within the meaning of section 148 and for subsidised long-term care provision within the meaning of section 148; for this purpose, any direct crediting and the average solvency needs of the health insurance undertakings must be taken into account;
7. specify the procedure for comparing the required insurance benefits and the last published mortality probability with the calculated insurance benefits under section 155 (3) and the deadline for submitting this comparison to the supervisory authority and the trustee.

²This authorisation may be delegated by statutory order to BaFin. ³Statutory orders under sentences 1 and 2 do not require the consent of the Bundesrat; with the exception of sentence 1 no. 6 they must be enacted in consultation with the Federal Ministry of Justice and for Consumer Protection.

Segment 3 Other non-life insurance

Section 161 Accident insurance with premium refunds

(1) Sections 138, 139, 140 (1), sections 141, 142 and 145 (4) and section 336 apply, with the necessary modifications, if an accident insurance undertaking takes over insurance with premium refunds.

(2) Immediately after commencement of operations in accident insurance with premium refunds the insurance undertaking must disclose to the supervisory authority the principles for the calculation of the premiums and the premium reserve, with the relevant information submitted, including the calculation assumptions made, mathematical formulas used, derivations underlying the calculations and statistical evidence used; this also applies, with the necessary modifications, for the use of new or amended principles.

Section 162 Premium reserve for annuity obligations in third-party liability and accident insurance

For the calculation of the premium reserve for annuity obligations under general third party liability insurance, motor third party liability insurance, motor vehicle accident insurance and general accident insurance without premium refund, section 141 (1) to (3), (5) and (6) and section 145 (4) apply, with the necessary modifications.

Section 163 Claims representatives in motor vehicle liability insurance

(1) ¹For authorisation to provide coverage for the risks named in no. 10 (a) of the Annex, the insurance undertaking must appoint a claims representative in all other member states or EEA signatory states. ²This person must work on behalf of the insurance undertaking to process and settle damages claims for personal injury and property damage resulting from an accident, which took place in another member state or EEA signatory state than the member state of residence of the claimant, involving the use of a motor vehicle insured in a member state or EEA signatory state and normally based there.

(2) Appointment of any claims representative must be notified to the supervisory authority immediately with the documents stated in section 9 (4) no. 6 also submitted.

(3) ¹The claims representative must be domiciled or be established in the country for which the appointment is made. ²The claims representative may act for the account of one or more insurance undertakings. ³The representative must have sufficient authority to represent the insurance undertaking vis-à-vis claimants and to satisfy their compensation claims in full. ⁴They must be able to process the case in the official language or languages of the country of appointment.

(4) ¹The claims representative must compile any and all of the information required to settle claims that arise in connection with a vehicle insured by the undertaking in question. ²If the accident has occurred in a third country, this only applies if

1. the claimant is domiciled in a member state or EEA signatory state;
2. the vehicle that caused the accident is normally located in one of these countries; and
3. the national insurer's bureau within the meaning of Article 1 no. 3 of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ L 263 of 7 October 2009, page 11) of the country in which the accident occurred is a member of the Green Card scheme.

³In such cases, section 3a (1) nos. 1 and 2 of the German Compulsory Insurance Act (*Pflichtversicherungsgesetz – PflVG*) applies, with the necessary modifications.

(5) The appointment of a claims representative in Germany by a foreign insurance undertaking does not in itself constitute the establishment of a branch; the claims representative is not deemed to be a branch.

Section 164 Loss adjustment in legal expenses insurance

(1) ¹An insurance undertaking that conducts legal expenses insurance business together with other classes of insurance must transfer the claims administration under legal expenses insurance to another undertaking with a legal form as specified under section 8 (2) or with another incorporated company legal form (loss adjustment firm). ²The transfer is deemed to be outsourcing.

(2) The loss adjustment firm may not operate in any classes of insurance other than legal expenses insurance and may not be involved in the processing of benefit claims in other classes of insurance.

(3) ¹Section 24 (1) applies, with the necessary modifications, to the managers of the loss adjustment firm. ²They may not at the same time conduct activities for an insurance undertaking that operates in other classes of insurance in addition to legal expenses insurance. ³Employees entrusted with the processing of benefit claims may not conduct any similar activity for such an insurance undertaking.

(4) ¹The members of the management board and the employees of an insurance undertaking specified in subsection (1) above may not issue any instructions to the loss adjustment firm with respect to the administration of individual claims. ²The members of the senior management and employees of the loss adjustment firm may not provide any such insurance undertaking with information that could result in conflicts of interest to the disadvantage of the insured.

(5) Subsections (1) to (4) above do not apply to legal expenses insurance if it relates to disputes or claims arising from or linked to the operation of ships at sea.

Segment 4 Reinsurance

Section 165 Run-off in reinsurance undertakings

(1) With the exception of section 215, the following subsections and the regulations applicable to small insurance undertakings apply to all reinsurance undertakings that had ceased writing new reinsurance business up to 10 December 2007 and that manage their portfolios solely with the objective of discontinuing their activities.

(2) ¹The portfolios of assets which are for the purposes of ensuring the ongoing ability to fulfil the obligations under the reinsurance contracts include assets equivalent to the amount of the technical provisions within the meaning of sections 341e to 341h of the German Commercial Code and of the liabilities and deferred income arising under reinsurance contracts (qualified assets). ²These portfolios must be invested in a way that ensures maximum security and profitability taking into consideration the type of insurance business conducted, while maintaining the reinsurance undertaking's liquidity at all times and ensuring an adequate diversification and spread. ³This applies subject to the proviso that the undertaking must ensure that there is an adequate level of currency matching and must assess whether the mix and diversification in the portfolios is appropriate taking into account the special features of the reinsurance undertaking concerned. ⁴The undertaking's capital adequacy as well as its overall financial situation and group structure must also be taken into account with this. ⁵Investments in derivative financial instruments are permissible provided that such investments make a contribution to reducing investment risk or to facilitating portfolio management.

(3) ¹When determining the amount of the liabilities to be covered, liabilities that are covered by cash deposits with the ceding insurer must not be included. ²The portions of liabilities attributable to retrocessionaires and to special purpose entities authorised to conduct business within the meaning of Article 13 No. 26 of Directive 2009/138/EC are not considered. ³Portions of liabilities attributable to special purpose entities domiciled in a third country are only disregarded if the special-purpose insurance company has been authorised to conduct business and is supervised by the national authorities in the home country in accordance with the requirements of the delegated legislative acts enacted in accordance with Article 211 (2) of Directive 2009/138/EC and has comparable capital adequacy.

(4) If reinsurance contracts form part of an independent portfolio held by a reinsurance undertaking in a third country, subsection (2) and section 125 (1) apply, with the necessary modifications, to the portfolios of assets arising from these reinsurance contracts unless otherwise prescribed by foreign law.

Section 166 Portfolio transfers; transformations

(1) ¹Any contract by which the insurance portfolio of a German reinsurance undertaking is to be transferred wholly or partly to another insurance undertaking domiciled in another member or EEA signatory state is subject to approval by BaFin. ²The portfolio transfer agreement must be in writing; section 311b (3) of the German Civil Code does not apply. ³The approval will be granted if evidence is provided through a certificate from the competent authority of the member state or EEA signatory state that the transferee has eligible own funds enabling compliance with the solvency capital requirement with due regard to the transfer. ⁴For the purpose of the portfolio transfer, the rights and obligations of the transferor under the reinsurance contracts, also in relation to the ceding insurers, are transferred to the transferee; section 415 of the German Civil Code does not apply. ⁵Approval of the portfolio transfer must be published in the Federal Gazette. ⁶Once the portfolio transfer has taken effect, the transferee must notify the ceding insurers of the portfolio transfer in writing without delay.

(2) ¹The complete or partial transfer of an insurance portfolio by a German reinsurance undertaking to a branch of an insurance undertaking in a third country requires approval by BaFin. ²The approval may only be granted if the transferee branch provides evidence that it has eligible own funds to comply with the solvency capital requirement following the transfer. ³If the capital adequacy of the branch in the third country is monitored by the supervisory agency of another member state or EEA signatory state, the evidence must be provided by way of a certificate by the competent authority of the other member state or EEA signatory state. ⁴Subsection 1 sentences 2, 4 and 6 applies, with the necessary modifications.

(3) ¹Any transformation of a reinsurance undertaking in accordance with sections 1 and 122a of the German Transformation Act which involves reinsurance contracts as part of the assets covered by the transformation is subject to approval by the supervisory agency. ²Subsection 1 sentences 3 and 4 applies, with the necessary modifications. ³Approval may also be refused if the rules governing transformation have not been observed. ⁴The supervisory authority must be notified immediately of any intention to transform a reinsurance undertaking in accordance with sections 1 and 122a of the German Transformation Act unless the authorisation requirement under sentence 1 applies.

Section 167 Financial reinsurance

(1) ¹Financial reinsurance is reinsurance via which the overall economic risk exposure arising from the assumption both of a significant underwriting risk as well as the risk related to the execution time exceeds the total amount of the premium over the entire term of the insurance contract by a limited but considerable amount (sufficient risk transfer) if at the same time at least

1. interest payment factors (time value of money) are expressly accounted for to a considerable extent or
2. there are contractual provisions that the economic results between the contractual parties will be balanced out over the entire term of the contract in order to permit a targeted risk transfer.

²The regulations under this Act that also apply to existing reinsurance only apply to contracts with sufficient risk transfer; contracts without sufficient risk transfer must be part of business operations subject to the regulations on non-insurance business.

(2) Insurance undertakings that enter into financial reinsurance treaties or conduct financial reinsurance business must ensure that they are able adequately to identify, assess, monitor, control and verify the risks arising from these contracts or transactions and can report on these.

Section 168 Special purpose insurance companies

(1) ¹A special purpose insurance company is a corporation or partnership that is not an existing insurance undertaking and that assumes risks from insurance undertakings, hedging in full against risks of loss from the issue of debt securities or another financing mechanism for which the lender's repayment claims or the financing mechanism are subordinate to the company's reinsurance obligations. ²The term of the debt securities or of the other financing mechanism must correspond with that of the reinsurance contract at least. ³Special purpose insurance companies with their registered office or headquarters in Germany require authorisation from the supervisory agency prior to starting business operations.

(2) Sections 4, 8 (3), section 9 (1), section 10 (1), sections 11, 16, 24, 25, 47 no. 1, 2, 5, section 294 (2) sentences 1, 3 and 4 and (3), (6) and (7), sections 305, 306, 307 and 310 to 315 with the exception of section 312 (1) apply, with the

necessary modifications, to special purpose insurance companies.

(3) ¹If the funds of a special purpose insurance company are not adequate within the meaning of the implementing measure of the European Commission enacted in accordance with Article 211 (2) of Directive 2009/138/EC, the special purpose insurance company must, if required by the supervisory agency, submit a plan for the restoration of a sound financial position to the latter for approval. ²The supervisory authority may revoke the authorisation to conduct business operations if the special purpose insurance company is unable to demonstrate adequate funds once again within a reasonable period set by the supervisory authority.

Section 169 Reinsurance undertakings domiciled in another member state or EEA signatory state

(1) ¹Reinsurance undertakings domiciled in another member state or EEA signatory state which have official authorisation in accordance with the legal regulations which have been enacted in the home country for the purpose of implementing Article 14 of Directive 2009/138/EC, may operate reinsurance business in Germany via a branch or through cross-border provision of services. ²BaFin is responsible for supervision with the exception of financial supervision and must cooperate with the competent supervisory agency in the home country on this.

(2) ¹If BaFin determines that a reinsurance undertaking within the meaning of subsection (1) does not comply with the legal regulations to be adhered to for the purposes of exercising these activities, it must require the undertaking cease these irregularities. ²It will also notify the supervisory authority in the home country at the same time. ³BaFin will also notify the supervisory agency in the home country if it has reason to assume that the activities of the reinsurance undertaking may lead to an impairment of its financial stability. ⁴Upon request by the supervisory authority of the home country of the reinsurance undertaking, BaFin will implement the measures in the cases governed in sections 133, 134 and 135. ⁵The supervisory authority of the home country must designate the assets which ought to be subject to these measures.

(3) ¹If the reinsurance undertaking continues to breach the regulations which must be observed despite the measures introduced under subsection (2), then BaFin may itself take all measures required to remedy earlier breaches and to prevent future ones after informing the competent authority in the home country once again. ²If attempts to enforce orders via coercive measures or coercive penalties are futile or unsuccessful, BaFin may prohibit the undertaking from continuing to do business in Germany wholly or partly, if other measures are also ineffective or unsuitable. ³BaFin may also address the matter to the European Insurance and Occupational Pensions Authority under Article 19 of Regulation (EU) No. 1094/2010 and ask that authority for support.

(4) ¹In addition to subsections 2 and 3, sections 4, 68 (2) sentence 4, sections 298, 299 No. 1, sections 303, 305 (1) no. 2, (3) and (5), section 306 (1) sentence 1 nos. 1 to 3, (2) sentence 1 no. 2, (5) to (8), section 310 and section 17 of the German Act Establishing the Federal Financial Supervisory Authority also apply, with the necessary modifications, to BaFin supervision under subsection (1). ²Section 305 (1) no. 1 applies, with the necessary modifications, subject to the proviso that the ceding insurers take the place of the policyholders.

Section 170 Authorisation to issue statutory orders

¹The Federal Ministry of Finance is authorised to enact regulations on the following by statutory order:

1. the form of the duties under section 167 (2), unless the area is governed by delegated legislative acts of the Commission in accordance with Article 210 (2) of Directive 2009/138/EC, and
2. financial reinsurance within the meaning of section 167 (1) for financial reinsurance treaties and contracts without adequate risk transfer regarding,
 - a) the conditions under which a risk transfer must be considered to be sufficient;
 - b) the minimum regulations that must be included in every financial reinsurance contract; and
 - c) the manner in which undertakings are required to ascertain the risk transfer under a contract using appropriate internal procedures.

²This authorisation may be delegated by statutory order to BaFin. ³Statutory orders under sentences 1 and 2 do not require the consent of the Bundesrat.

Chapter 4 Mutual societies

Section 171 Legal personality

A society that intends to insure its members according to the mutual principles acquires legal capacity with permission by the supervisory authority to conduct business as a “mutual society”.

Section 172 Application of the German Commercial Code

¹Unless otherwise stipulated by this Act, the requirements of the first and fourth books of the German Commercial Code with respect to merchants, with the exception of sections 1 to 7, also apply, with the necessary modifications, to mutual societies. ²With respect to accounting, the provisions of the second subpart of the fourth part apply, with the necessary modifications, in conjunction with the provisions of the first and second parts of the third book of the German Commercial Code.

Section 173 Articles of association

(1) The governing framework of a mutual society is laid down in its articles of association, unless otherwise stipulated in this Act.

(2) The articles of association require notarial certification according to German standards.

Section 174 Company name

(1) The articles of association must define the name and registered office of the society.

(2) ¹The name should make apparent the location of the society's registered office. ²The name or in addition thereto must also convey the fact that the society operates mutual insurance.

Section 175 Liabilities

¹The creditors of a mutual society are only entitled to satisfaction from the assets of the society. ²The members are not liable for claims of the creditors.

Section 176 Membership

¹The articles of association should include provisions about the membership inception. ²A requirement for membership is an insurance relationship with the mutual society. ³Membership ends upon termination of the insurance relationship unless otherwise stipulated in the articles of association.

Section 177 Equal treatment

(1) All factors being equal, member contributions and benefits must be calculated based on the same principles.

(2) The mutual society may not offer insurance coverage for a set charge without the policyholder becoming a member, unless this is expressly permitted by the articles of association.

Section 178 Initial fund

(1) ¹The articles of association must provide for the establishment of an initial fund to cover the costs of establishing the mutual society and serve as guarantee and operational funds. ²The articles of association should contain the conditions of access by the society to the initial fund and, in particular, stipulate rules for repayment of the initial fund, as well as if and to what extent the persons who provided the fund are entitled to participate in the administration of the mutual society.

(2) ¹Only legal tender, cheques certified by the Bundesbank, transfers to a domestic account with the Bundesbank or a credit institution of the society or its management board, available at its free disposal, may be used to contribute to the initial fund. ²Any claims of the management board against these paid-in funds are deemed claims of the society. ³The articles of association may permit promissory notes instead of the above payments.

(3) ¹The persons who provided the initial fund may not be granted an early repayment right. ²In addition to interest payments from the annual income, the articles of association may grant them a right to participation in the surplus as shown in the annual balance sheet; the supervisory authority will decide on the maximum percentage of the interest and total emoluments received on the paid-in cash amount. ³The initial fund may be divided into shares for which share certificates may be issued.

(4) The initial fund may be repaid only out of the annual income and only to the extent that the loss reserve under section 193 has increased; repayment must begin as soon as the capitalised start-up costs have been fully amortised.

(5) ¹The articles of association may permit another initial fund to be established after the formation of the society with the purpose of safeguarding the society's long-term risk-bearing capacity. ²Payments into the additional initial fund and its repayment require the approval of the supervisory authority. ³Subsection (4) does not apply.

Section 179 Contributions

(1) The articles of association must stipulate whether the expenses are to be covered by single or recurring contributions to be paid in advance, or by contributions allocating actual costs among the members.

(2) If the contributions are to be paid in advance, the articles of association must also specify whether a right to call for supplementary contributions is reserved or excluded; if it is to be excluded, the articles of association must also stipulate whether benefits may be reduced.

(3) ¹The articles of association may provide maximum amounts for supplementary contributions and cost allocations. ²Any restrictions to the effect that payments of supplementary contributions or cost allocations may only be called for to cover insurance claims of the members are impermissible.

Section 180 Liability to pay contributions of former or subsequent members

(1) ¹Members who left or joined the mutual society during the financial year are also liable to pay supplementary contributions or cost allocations. ²The liability to pay contributions depends on the length of time that they were members within the financial year.

(2) If the supplementary contribution or the cost allocation amount of a member is determined on the basis of the contribution paid in advance or the sum insured, and if the contribution or sum insured was increased or reduced during the financial year, the higher amount must be used as a basis for the calculation.

(3) Subsections (1) and (2) above apply only to the extent that the articles of association do not stipulate otherwise.

Section 181 Prohibition of setting-off

A member is not entitled to set off the obligation to pay contributions against any claim the member may have against the mutual society.

Section 182 Call for cost allocations or supplementary contributions

- (1) The articles of association must specify the conditions under which supplementary contributions or cost allocations may be called for, in particular to what extent other funds such as the initial fund or reserves must be used first.
- (2) The articles of association must also specify how the supplementary contributions or cost allocations are to be called for and collected.

Section 183 Publication of notices

- (1) The articles of association must stipulate how notices of the mutual society are to be published.
- (2) Notices of the mutual society are to be published in the Federal Gazette.

Section 184 Governing bodies

The articles of association must specify how a management board, a supervisory board and senior representative body (senior governing body; assembly of members or of representatives of the members) must be established.

Section 185 Commercial register application

- (1) ¹An application for registration of the mutual society in the commercial register by all members of the management and supervisory board must be filed with the court of the district where the society has its registered office. ²The application must state the powers of the board members to represent the society.
- (2) The supervisory authority must inform the Registration Court of any authorisation granted to carry on business within the meaning of section 171.

Section 186 Registration documents

- (1) The registration on the commercial register must be accompanied by:
 1. the certificate authorising the society to operate;
 2. the articles of association;
 3. the documents relating to the appointment of the management board and the supervisory board;
 4. a list of the members of the supervisory board signed by the applicants and specifying the name, surname, profession and domicile of each member;
 5. the documents relating to the establishment of the initial fund, together with a declaration by the management board and the supervisory board as to how and to what extent the initial fund has been paid in and that the management board has the paid-in amount at its free disposal;
 6. an overview of whether the expenses are to be covered by contributions paid in advance or allocated among the members later and, if contributions are to be paid in advance, whether a right to call for supplementary contributions is reserved or excluded, whether the liability to pay contributions is limited and whether benefits may be reduced.
- (2) Section 12 (2) of the German Commercial Code applies, with the necessary modifications, to the submission of

documents under this Act.

Section 187 Entry in the commercial register

(1) ¹The following must be stated for the entry in the commercial register:

1. the society's name and registered office;
2. the class of insurance due to be covered by the society;
3. the amount of the initial fund;
4. the date upon which the business operations were authorised; and
5. the board members.

²The powers of the board members to represent the society must also be entered.

(2) If the articles of association include any provision with regard to the duration of the society this must also be entered.

Section 188 Management board

(1) ¹The management board must consist of at least two members. ²Section 76 (1), (3) and (4), sections 77 to 91 and 93 (1), (2) and (4) to (6) as well as section 94 of the German Stock Corporation Act apply to the management board, with the necessary modifications, subject to the proviso that the resolutions of the highest level representative body must replace the resolutions of the annual general meeting. ³Section 93 (3) of the German Stock Corporation Act is replaced by the regulation in subsection (2).

(2) The board members are in particular liable for damages if, contrary to this Act:

1. the initial fund is repaid or interest is paid thereon;
2. the assets of the mutual society are distributed;
3. payments are made after the society has become insolvent or over-indebted; this does not apply for payments which, even after this point, are consistent with the care of a prudent and conscientious manager; or
4. loans are granted.

Section 189 Supervisory board

(1) ¹The supervisory board consists of three members. ²The articles of association may specify a higher number which must be divisible by three. ³The maximum number of supervisory board members is 21.

(2) ¹The supervisory board of mutual societies subject to the rules of one-third co-determination under section 1 (1) no. 4 of the German One-Third Participation Act (*Drittelbeteiligungsgesetz* – *DrittelbG*) must be composed of members elected by the senior representative body and by employee representatives. ²For other societies the supervisory board is composed only of members elected by the senior representative body.

(3) ¹Section 30 (2) and (3) sentence 1 and first half of sentence 2, section 96 (4), sections 97 to 100, 101 (1) and (3), sections 102 and 103 (1) and (3) to (5) as well as sections 104 to 116 of the German Stock Corporation Act apply, with the necessary modifications, to the supervisory board. ²The duties assigned therein to the annual general meeting must in this context be performed by the senior representative body. ³Every member of the senior representative body has

the right of petition in accordance with section 98 (2) no. 3 and section 104 (1) sentence 1 of the German Stock Corporation Act. ⁴Section 113 (3) of the German Stock Corporation Act is replaced by the regulations in subsections 4 and 5 which apply in addition to section 116 of the German Stock Corporation Act.

(4) ¹If the members of the supervisory board are entitled to participation in the profit, this is calculated on the basis of the annual surplus less accumulated losses brought forward, and transfers to retained earnings; the share of the surplus which has been appropriated to the persons who provided the initial fund under section 178 (3) must be deducted. ²Any provisions to the contrary are null and void.

(5) The members of the supervisory board are in particular liable for damages if any of the acts under section 188 (2) are performed with their knowledge and without their intervention.

Section 190 Liability for damages

Section 117 of the German Stock Corporation Act applies, with the necessary modifications.

Section 191 Senior representative body

¹Sections 118, 119 (1) nos. 1 to 3, 5, 7 and 8 as well as subsection (2), section 120 (1) to (3) and section 121 (1) to (4), (5) sentence 1 and (6), sections 122 and 123 (1), sections 124 to 127, 129 (1) and (4), section 130 (1) sentences 1 and 2 as well as (2) to (5), sections 131 to 133 and 134 (4) as well as sections 136, 142 to 149, 241 to 253 and 257 to 261 of the German Stock Corporation Act applicable to the annual general meeting also apply, with the necessary modifications, to the senior representative body. ²Section 256 of the German Stock Corporation Act applies, with the necessary modifications. ³If the senior representative body is the Members Meeting, section 134 (3) of the German Stock Corporation Act also applies, with the necessary modifications. ⁴Participation rights within the meaning of section 214 (2) may only be granted based on a resolution of the senior representative body. ⁵A majority of three quarters of votes cast is required to pass the resolution. ⁶The articles of association may stipulate a different majority and additional requirements.

Section 192 Minority rights

To the extent that the provisions of the German Stock Corporation Act that apply, with the necessary modifications, under sections 188, 190 and 191, grant rights to a minority of shareholders (section 93 (4) sentence 3, section 117 (4), section 120 (1), sections 122, 142 (2) and (4), sections 147, 258 (2) sentence 3 as well as section 260 (1) sentence 1 and (3) sentence 4 of the German Stock Corporation Act), the articles of association must specify the required minority of the members of the senior representative body.

Section 193 Loss reserve

The articles of association must stipulate that a reserve to cover extraordinary operational losses (loss reserve, reserve fund) must be established, the annual amounts to be transferred to the reserve and the minimum amount of the reserve.

Section 194 Use of surplus

(1) ¹Any surplus shown in the balance sheet must be distributed among the members specified in the articles of association, unless such a surplus is to be allocated to the loss reserve or other reserves or used for the payment of remunerations or carried forward to the next financial year in accordance with the articles of association. ²This is without prejudice to section 214 (2).

(2) The articles of association must stipulate the rules for any such distribution and whether the surplus is to be distributed only among the existing members at the end of the financial year or also among the former members of the mutual society.

Section 195 Amendments to the articles of association

(1) Only the senior representative body is entitled to amend the articles of association.

(2) The senior representative body may delegate the power to make amendments that only affect the form to the supervisory board.

(3) The senior representative body may authorise the supervisory board to make any changes required by the supervisory authority before the approval of an amendment resolution.

(4) ¹A resolution by the senior representative body to discontinue operating a class of insurance or to introduce a new one requires a majority of three quarters of votes cast; the articles of association may stipulate additional requirements. ²Such a majority is only required for other resolutions under subsections (1) to (3) if not otherwise specified in the articles of association.

Section 196 Registration of amendments to the articles of association

(1) ¹An application for registration in the commercial register must be filed for any amendment to the articles of association. ²The application must be accompanied by the certificate of approval. ³The complete text of the articles of association must also be submitted; this must be accompanied by notarial certification that the amended provisions of the articles of association comply with the amendment resolution and that the non-amended provisions comply with the last version of the articles of association submitted for registration in the commercial register.

(2) The documents submitted to the court relating to the amendment may be referred to for registration, unless the amendment pertains to the information under section 187.

(3) The amendment does not become effective until it has been entered in the commercial register with the competent court of the district where the mutual society has its registered office.

Section 197 Amendments to the general policy conditions

(1) Subject to subsection (2), section 195 (1) and (2) also apply, with the necessary modifications, to amendments to the general policy conditions.

(2) ¹The articles of association may authorise the management board to introduce or amend general policy conditions with the approval of the supervisory board. ²If neither the management board nor the supervisory board are authorised by the articles of association to amend the general policy conditions, the senior representative body may authorise the supervisory board to make preliminary amendments to the general policy conditions in cases of urgent need; the amendments must be submitted to the senior representative body at its next meeting and repealed if so required by this body.

(3) ¹Any amendment to the articles of association or the general policy conditions must only affect an existing insurance contract if the insured explicitly approves the amendment. ²This does not apply to provisions for which the articles of association expressly stipulate that amendments may also have an effect on existing contracts.

Section 198 Dissolution of the society

The mutual society must be dissolved:

1. after expiry of the period of time specified in the articles of association;
2. through a resolution by the senior representative body;
3. upon opening of insolvency proceedings against the mutual society; or
4. from the date on which the opening of insolvency proceedings due to a lack of assets attains legal force.

Section 199 Dissolution resolution

(1) ¹The resolution under section 198 no. 2 requires a majority of three quarters of votes cast, unless otherwise stipulated in the articles of association. ²Members of the senior representative body who voted against the dissolution may have their objection to the dissolution recorded.

(2) ¹The resolution is subject to approval by the supervisory authority. ²The supervisory authority must inform the Registration Court of its approval.

(3) ¹If the mutual society has been dissolved by a resolution of the senior representative body, the insurance relationships entered into between the members and the society must cease to exist on the date specified in the resolution, at the earliest, however, after a period of four weeks. ²Any claims arising by that date may be asserted; in all other respects as regards to any contributions paid in advance for future periods of insurance, these may be reclaimed only after deduction of the expenses incurred. ³These provisions do not apply to life insurance contracts; these are not affected unless otherwise set forth in the articles of association.

Section 200 Portfolio transfer

¹Contracts for the purpose of transferring the insurance portfolio of a mutual society wholly or partly to another undertaking are subject to approval by the senior representative body before coming into effect. ²The resolution requires a majority of three quarters of votes cast, unless otherwise stipulated in the articles of association. ³The amount of compensation under section 201 must also be decided with the approval. ⁴The criteria according to which the compensation must be distributed among the members must be stipulated in the resolution.

Section 201 Loss of membership

(1) ¹If a policyholder loses their rights as a member of the society in whole or in part as a result of a portfolio transfer and does not become a member of a transferee mutual insurance association, then they must be entitled to reasonable cash compensation for this loss. ²This must take into account the society's circumstances at the time of the resolution in accordance with section 200.

(2) The society may decide to restrict this claim to members who belonged to the society at least three months before the resolution.

(3) ¹Every entitled member must receive the same amount of compensation. ²A different distribution can only be stipulated in accordance with one or more of the following criteria:

1. the amount of the sum insured;
2. the amount of the contributions;
3. the amount of the life insurance premium reserve;
4. the criteria determined in the articles of association of the society for distribution of the surplus;

5. the criteria determined in the articles of association of the society for distribution of the assets; and
6. the length of membership.

Section 202 Registration of dissolution

¹The management board must apply for registration of the dissolution of the mutual society in the commercial register. ²This does not apply to the cases under section 198 nos. 3 and 4. ³In these cases the court must officially register the dissolution of the society and the grounds for this; the office of the insolvency court must send to the Registration Court a certified copy of the order to open insolvency proceedings or a certified copy of the order to dismiss an insolvency petition, certifying that the order has legal force.

Section 203 Run-off

(1) Run-off follows dissolution of the mutual society, unless insolvency proceedings have been opened in relation to the assets of the mutual society.

(2) ¹During run-off, the same provisions apply as beforehand, unless otherwise stipulated in the following provisions or implied from the purpose of the run-off. ²In particular, supplementary contributions or cost allocations within the meaning of section 179 may be called for and collected. ³New insurance may no longer be written; the existing policies may not be increased or renewed.

Section 204 Run-off procedure

(1) ¹Run-off is performed by the board members as liquidators, unless other persons have been designated by the articles of association or a resolution of the senior representative body. ²The liquidator may also be a legal entity.

(2) ¹If cause exists, the court must appoint and dismiss liquidators at the request of the supervisory board or a minority of members to be specified in the articles of association. ²Section 402 of the Law on Procedures in Family Matters applies, with the necessary modifications. ³Any liquidators who have not been appointed by the court may be dismissed by the senior representative body at any time. ⁴For claims under the employment contract, the generally applicable rules apply.

(3) ¹In all other respects section 265 (4), sections 266 to 269, 270 (1) and 2 sentence 1 and sections 272, 273 of the German Stock Corporation Act apply, with the necessary modifications, to the run-off. ²Without prejudice to application of section 270 (2) sentence 3 and subsection (3) of the German Stock Corporation Act, with the necessary modifications, the provisions applicable to the preparation and auditing of the annual financial statements and management report of a mutual society and sections 175, 176 of the German Stock Corporation Act and sections 325, 328 of the Commercial Code apply, with the necessary modifications, to the opening balance sheet, the management report, the annual financial statements and management report.

Section 205 Repayment of the initial fund; distribution of assets

(1) ¹The initial fund may not be repaid unless the claims of all the other creditors, in particular the claims of the members under insurance contracts have been met or collateral has been furnished. ²Supplementary contributions or cost allocations may not be imposed for repayment purposes.

(2) ¹The assets of the mutual society remaining after the liabilities have been met are to be distributed among the existing members at the time of dissolution of the society. ²The ratio used is the same as for surplus distribution.

(3) The articles of association may provide for alternative asset distribution; they may authorise the senior representative body to designate other eligible recipients.

Section 206 Continuation of the society

(1) ¹If a mutual society has been dissolved due to lapse of time or a resolution of the senior representative body, the senior representative body may resolve to continue operation of the society until distribution of the assets among those eligible has commenced. ²The resolution requires a majority of three quarters of votes cast, unless otherwise stipulated in the articles of association. ³It is subject to a approval by the supervisory authority, which must inform the Registration Court of such approval.

(2) The same applies if the mutual society has been dissolved following the opening of insolvency proceedings, but the proceedings have been discontinued upon petition by the mutual society, or set aside after an insolvency plan intended for the continued operation of the mutual society has been confirmed.

(3) The liquidators must file an application for registration of the continuation of the society's operations in the commercial register; on filing the application, they must prove that distribution of the assets of the society among those eligible has not yet been started.

(4) The resolution to continue operations does not become effective until it has been entered in the commercial register of the place where the mutual society has its registered office.

Section 207 Liability to pay contributions during insolvency proceedings

(1) If existing or former members are required to pay contributions by virtue of law or under the articles of association, they are liable for the society's debts if insolvency proceedings are opened.

(2) Members who left the society in the year before the petition for insolvency proceedings was filed or after the filing of such petition are liable for the society's debts as if they were still members.

Section 208 Ranking of creditor claims in insolvency

(1) ¹Any claims for repayment of the initial fund rank after all the other creditor claims. ²Among the insolvency claims, any claims under insurance relationships of members who were members at the time the insolvency proceedings were opened or who left the society in the year prior to filing of the petition for insolvency proceedings or after such petition was filed rank after the claims of any other creditors.

(2) No supplementary contributions or cost allocations may be imposed for the purpose of repayment of the initial funds.

Section 209 Supplementary contributions and cost allocations in insolvency proceedings

(1) ¹Any supplementary contributions or cost allocations required for the insolvency proceedings must be fixed and requested by the insolvency administrator. ²Immediately after the statement of affairs has been filed with the court according to section 153 of the German Insolvency Code, the insolvency administrator must calculate the amounts to be advanced by the members to cover the deficit represented in the statement of affairs in accordance with their liability to pay contributions. ³For the calculation of any such advance payments and additional payments, section 106 (1), sentence 2, subsection (2) and (3), as well as sections 107 to 113 of the German Act Concerning Industrial and Trading Cooperative Societies (*Genossenschaftsgesetz – GenG*) apply, with the necessary modifications.

(2) ¹Soon after final distribution has commenced under section 196 of the Insolvency Code, the insolvency administrator must calculate the final contributions to be paid by the members. ²Section 114 (2) and sections 115, 115a, 115c and 115d (1) as well as sections 115e to 118 of the German Act Concerning Industrial and Trading Cooperative Societies apply, with the necessary modifications.

Section 210 Small mutual associations

(1) ¹For mutual societies whose operations are limited to a certain range of business, territory or group of persons (small

mutual associations) only sections 171 and 172 sentence 2, section 173 (1), section 174 (1), sections 175, 176 and 177 (1), sections 178 to 182 and 183 (1), section 188 (1) sentence 1, sections 193, 194 and 195 (1) to (3), sections 197, 198 and 199 (1), (2) sentence 1 and (3) as well as sections 200, 205 and 207 to 209 apply from the regulations under this Chapter. ²Insurance policies with a fixed charge may not be written unless the policyholders become members.

(2) ¹Unless otherwise set forth in subsection (1), small mutual associations are only subject to sections 24 to 53 of the German Civil Code. ²In the cases of sections 29 and 37 (2) of the Civil Code, however, the Local Court is replaced by the supervisory authority. ³If the articles of association provide for a supervisory board, section 34 (1) and (2) sentence 1 and (6), section 36 (2) and (3) and sections 37 to 40 of the German Act Concerning Industrial and Trading Cooperative Societies apply, with the necessary modifications.

(3) ¹The supervisory authority may permit deviations from sections 39 (1) as well as from sections 125, 138, 141, 146, 147, 149, 152 and 156 for the authorisation to carry on business and for the management of small mutual associations. ²If the deviations relate to management, they may be permitted on the particular condition that business operations and the financial position are audited by an expert at the expense of the association at intervals of several years, and that the audit report is submitted to the supervisory authority.

(4) The supervisory authority must decide whether a society is to be considered a small mutual association.

Chapter 5 Small insurance undertakings and funeral expenses funds

Segment 1 Small insurance undertakings

Section 211 Small insurance undertakings

(1) ¹Small insurance undertakings within the meaning of this Act are primary insurance undertakings:

1. whose annual booked gross contribution revenues do not exceed the amount stated in Article 4 (1) letter a of Directive 2009/138/EC;
2. whose total technical provisions as defined in section 75 without deduction of the recoverable amounts from reinsurance contracts and of special purpose entities do not exceed the amount stated in Article 4(1)(b) of Directive 2009/138/EC;
3. whose business activities do not include reinsurance activities which exceed
 - a) the amounts stated in Article 4(1)(e) of Directive 2009/138/EC in relation to their booked gross contribution revenues or their technical provisions as defined in section 75 without deduction of the recoverable amounts from reinsurance contracts and of special purpose entities; or
 - b) 10 per cent of their booked gross contribution revenues; or
 - c) 10 per cent of their technical provisions as defined in section 75 without deduction of the recoverable amounts from reinsurance contracts and of special purpose entities;
4. whose business activities do not include insurance activities to cover third-party liability, loan or suretyship insurance, unless these relate to additional risks within the meaning of section 10 (4) sentence 1;
5. which do not exercise cross-border business activities under sections 57 to 59.
6. that are not *Pensionskassen* or funeral expenses funds.

²If the primary insurance undertaking is part of a group, then the total gross technical provisions of the group may not exceed the amount stated in Article 4 (1) letter c of Directive 2009/138/EC. ³If authorisation is requested to operate a business as a primary insurance undertaking, sentence 1 nos. 1 to 3 must not be applied if there is an expectation that one of the amounts stated there will be exceeded within the next five years.

(2) If a primary insurance undertaking meets the conditions under subsection (1) and the total limits stipulated in subsection (1) have not been exceeded in the last three successive years, the supervisory authority will officially determine that it must be considered to be a small insurance undertaking, unless one of these total limits is expected to be exceeded in the next five years.

(3) ¹If one of the total limits stated in subsection (1) is exceeded in three successive years then the supervisory authority will revoke this decision. ²The primary insurance undertaking will no longer be considered to be a small insurance undertaking as of the fourth year.

(4) Following a request, a primary insurance undertaking that would have been considered to be a small insurance undertaking under subsections 1 and 2 must no longer be treated as such.

Section 212 Applicable provisions

(1) The provisions in this Act applicable to primary insurance undertakings that are not funeral expenses funds or *Pensionskassen* apply to small insurance undertakings unless otherwise provided for in this chapter.

(2) The following provisions do not apply to small insurance undertakings:

1. of the provisions concerning business organisation, section 23 (1a) to (1c), section 26 (3), (4) and (6) to (8), sections 27, 28 (1), 29 (2) to (4) and sections 30 and 31;
2. of the provisions concerning the audit of financial statements, section 35 (2) and section 37 (2);
3. of the provisions concerning the report on solvency and financial position, sections 40 to 42;
- 3a. of the provisions governing insurance distribution, section 48 (2a),
4. of the provisions concerning insurance business via a cross-border provision of services or branches, sections 57 to 59;
5. of the provisions concerning financial adequacy, sections 74 to 124, 125 (1) sentence 2 and (3), and sections 131 and 133;
6. (Repealed)
7. of the provisions concerning responsibilities and general requirements, section 301; and
8. of the transitional and concluding provisions, sections 340 to 352.

(3) The following provisions apply subject to the general proviso that "own funds" replaces "eligible basic own funds" and subject to the specific provisos stated in each case:

1. section 9 (2) no. 4 subject to the proviso that details of the components of own funds that represent the absolute minimum capital requirement must be submitted as part of the business plan;
2. (Repealed)
3. section 9 (4) no. 1 (a) subject to the proviso that details on the nature and scope of the business organisation only need to be provided in respect of the members of the senior management, the members of the supervisory board and, if appointed, the appointed actuary;
4. section 12 (1) and (3) subject to the proviso that the requirement applies to any extension of business operations to a territory outside Germany;
5. section 15 (1) sentence 3 subject to the proviso that an injection of capital in return for the granting of participation rights or resulting in the recognition of subordinated liabilities that, as a minimum, satisfy the requirements of tier 2 in accordance with section 92 (2) is not deemed to be taking on debt;

6. section 23 (3) subject to the proviso that the guiding principles must not include any requirements relating to internal audit;
7. section 24 (1) no. 1 subject to the proviso that the requirement relates only to members of the senior management and members of the supervisory board;
8. section 26 (1) subject to the proviso that the risks to which the undertaking is or could be exposed must be appropriately documented on a regular basis;
9. section 29 (1) subject to the proviso that no compliance function needs to be maintained;
10. section 47 nos. 1 and 2 subject to the proviso that only the proposed appointment of a member of the senior management, the appointment of a member of the supervisory board, the retirement or departure from the undertaking of such persons, or the withdrawal of the authority for one of these persons to represent the insurance undertaking needs to be notified;
11. section 141 (5) subject to the proviso that the basic principles in the statutory order issued on the basis of section 217 sentence 1 nos.
12. section 303 (1) and (2) no. 1 subject to the proviso that a warning, dismissal or prohibition is only possible in respect of a member of the senior management or a member of the supervisory board; and
13. section 304 (1) no. 2 subject to the proviso that the supervisory authority can revoke the authorisation if the undertaking does not succeed in meeting the approved financing plan within three months of identifying that the minimum capital requirement is not covered, and the proviso that the supervisory authority must revoke the authorisation if the undertaking does not succeed in meeting the approved financing plan within nine months of identifying that the minimum capital requirement is not covered.

Section 213 Solvency and minimum capital requirement

¹Small insurance undertakings must in all cases have own funds at the level of the solvency capital requirement. ²The solvency capital requirement must be calculated in accordance with the statutory order relating to section 217 sentence 1 number 1. ³One-third of the solvency capital requirement is deemed to be the minimum capital requirement.

Section 214 Own funds

(1) The following are included in the calculation of own funds:

1. for public limited companies, the paid-in share capital less the amount of treasury shares; for mutual societies, the paid-in amount of the initial fund; for insurance undertakings under public law, the items corresponding to the paid-in share capital of public limited companies;
2. capital reserves and revenue reserves;
3. profit carried forward after dividend distribution;
4. capital paid in exchange for participation rights in accordance with subsections (2) and (5) below;
5. capital paid in connection with subordinated liabilities taken on by the undertaking in accordance with subsections (3) and (5) below;
6. capital raised in the form of securities with no specified maturity date in accordance with subsections (4) and (5) below,
7. in the case of life insurance undertakings and health insurance undertakings operating health insurance according to the technical principles of life insurance, the provision for bonuses to the extent that such provision may be used to cover losses and to the extent that it is not accounted for by declared with-profit bonuses; and
8. on application to and with the approval of the supervisory authority, and observing the maximum amount under subsection (6):
 - a) half of the unpaid portion of the share capital, the initial fund or, in the case of insurance undertakings under

public law, the items equivalent to the share capital of public limited companies if the paid-in portion amounts to 25 per cent of the share capital, the initial fund or, in the case of public law insurance undertakings, the items equivalent to the share capital of public limited companies;

- b) in the case of insurance undertakings that
 - aa) are mutual societies or insurance undertakings under public law operating in accordance with mutual principles and
 - bb) do not conduct either health or life insurance,half of the difference between the supplementary contributions permissible under the articles of association in a financial year and the actual supplementary contributions required;
- c) any net hidden reserves resulting from the valuation of assets, provided that these reserves are not of an exceptional nature;
- d) for life insurance undertakings in accordance with the provisions issued under section 217 sentence 1, the value of acquisition costs included in the premium, to the extent that these have not been taken into account in the premium reserve.

The own funds are calculated as the total of the amounts under sentence 1 numbers 1 to 8, less

1. the loss carryforward increased by the dividend to be distributed,
2. the intangible assets reported on the balance sheet, in particular any recognised goodwill in accordance with section 246 (1) sentence 4 of the Commercial Code, and
3. the holdings and receivables stated in subsection (7).

(2) ¹Capital within the meaning of subsection 1 sentence 1 no. 4 may only be included in own funds if

1. it must bear a share of losses up to the full amount of the capital and the insurance undertaking is obliged in case of loss to defer interest payments;
2. it has been agreed that, in the event that insolvency proceedings are opened or in the event of liquidation of the insurance undertaking, the capital will not be repaid until all non-subordinated creditors have been satisfied;
3. it is made available to the insurance undertaking for a period of at least five years and, under the agreements entered into,
 - a) must be repaid early at most in the event of liquidation and under no circumstances if requested by the creditor, and
 - b) may only be repaid early with the consent of the supervisory authority and
4. any change in the agreements made is subject to the condition that the supervisory authority has declared that it has no objections to the change.

²In the case of agreements with a fixed term, insurance undertakings must submit to the supervisory authority for a approval no later than one year before the end of the term a plan that shows how the adequacy of own funds will be maintained or increased to the required level by the end of the term. ³If the insurance undertaking intends to repay capital early in the case of an agreement with or without a fixed term, it must ask the supervisory authority for a approval at least six months before the chosen repayment date. ⁴An insurance undertaking may not acquire securities representing its own profit-sharing rights.

(3) ¹Capital within the meaning of subsection 1 sentence 1 no. 5 may only be included in own funds if

1. it has been agreed that, in the event that insolvency proceedings are opened or in the event of liquidation of the insurance undertaking, the capital will not be repaid until all non-subordinated creditors have been satisfied;
2. it is made available to the insurance undertaking for a period of at least five years and, under the agreements entered into,
 - a) must be repaid early at most in the course of liquidation and under no circumstances if requested by the creditor, and

- b) may only be repaid early with the consent of the supervisory authority and
- 3. the right to repayment cannot be set off against receivables due to the insurance undertaking and no contractual security is provided by the insurance undertaking or any third parties for the liabilities; and
- 4. any change in the agreements made is subject to the condition that the supervisory authority has declared that it has no objections to the change.

²In the case of agreements with a fixed term, insurance undertakings must submit to the supervisory authority for approval no later than one year before the end of the term a plan that shows how the adequacy of own funds will be maintained or increased to the required level by the end of the term. ³If the insurance undertaking intends to repay capital early in the case of an agreement with or without a fixed term, it must ask the supervisory authority for approval at least six months before the chosen repayment date. ⁴An insurance undertaking may not acquire securities representing its own subordinated liabilities. ⁵By way of derogation from sentence 1 no. 3, an insurance undertaking may provide subordinated collateral for subordinated liabilities incurred by a subsidiary of the insurance undertaking set up exclusively for the purpose of raising capital.

(4) ¹Capital within the meaning of subsection 1 sentence 1 no. 6 may only be included in own funds if

- 1. the claims of all non-subordinated creditors rank prior to the claims of holders of the securities,
- 2. under no circumstances may it be required if requested by the creditor,
- 3. it may only be repaid with the consent of the supervisory authority,
- 4. the contract of issue allows the insurance undertaking to defer interest payments at any time and
- 5. under the terms and conditions of issuance, unpaid interest participates in any loss in addition to the paid-in capital, without restricting the ability of the insurance undertaking to continue its business activities.

²If the insurance undertaking intends to repay the capital, it must ask the supervisory authority for approval at least six months before the chosen repayment date.

(5) ¹Capital that is paid in

- 1. against the granting of participation rights under subsection (2),
- 2. due to the issuance of subordinated liabilities under subsection (3) or
- 3. in the form of securities under subsection (4)

can only be attributed to own funds subject to the limits set out in sentence 2. ²Attribution is possible if

- 1. the total amount of this capital does not exceed 50 per cent of own funds and 50 per cent of the solvency capital requirement after it has been raised, and
- 2. the portion of the capital for which fixed maturities have been agreed and that is attributed to own funds does not exceed 25 per cent of own funds and 25 per cent of the solvency capital requirement after it has been raised.

(6) Funds in accordance with subsection (1) sentence 1 no. 8 (a) and (b) may only be attributed to own funds up to a limit of 50 per cent of the amount representing the minimum own funds and the solvency capital requirement.

(7) ¹The following are included in the deductions under subsection (1) sentence 2 number 3:

- 1. holdings of the insurance undertaking as defined in section 7 number 4 in
 - a) credit institutions as defined in section 1 (1) sentence 2 numbers 1 to 5 and 7 to 10 of the Banking Act,
 - b) financial services institutions as defined in section 1 (1a) sentence 2 numbers 1 to 4 of the Banking Act,
 - c) financial enterprises as defined in section 1 (3) of the Banking Act,
 - d) insurance undertakings whose registered office is in a member state or an EEA signatory state,
 - e) third country insurance undertakings,

- f) insurance holding companies and
 - g) pension funds, and
2. receivables from participation rights within the meaning of subsection (1) sentence 1 no. 4 and receivables from subordinated liabilities within the meaning of subsection (1) sentence 1 no. 5 from the undertakings set forth in number 1 (a) to (g) in which the insurance undertaking has a holding or together with which it forms a horizontal group.

²At the request of the insurance undertaking, the supervisory authority may grant exemptions with regard to the items to be deducted in accordance with sentence 1 if the insurance undertaking temporarily has a holding in the undertakings set forth in sentence 1 number 1 (a) to (g) in order to provide financial support to save the undertaking in question and aid recovery.

(8) ¹Subsections (2) and (3) in the version in force until 12 January 2019 can continue to be applied to capital within the meaning of subsection (1) sentence 1 numbers 4 and 5 that was paid in before 13 January 2019. ²Sentence 1 applies for the last time to the financial year beginning after 31 December 2027.

Section 215 Investment principles for guarantee assets

(1) With due regard to the nature of the insurance business operated by the undertaking and the undertaking's structure, guarantee assets in accordance with section 125 must be invested in a way that ensures the greatest possible security and profitability, while maintaining the insurance undertaking's liquidity at all times and providing an adequate mix and diversification in the portfolio.

(2) ¹Guarantee assets may be invested only in

1. claims for repayment of a loan, bonds and participation rights;
2. book-entry securities;
3. shares;
4. equity investments;
5. land and land rights;
6. shares or units in undertakings for collective investment in transferable securities within the meaning of Directive 2009/65/EC or in undertakings for other investments made in accordance with the principle of risk diversification provided that the undertakings are subject to effective public supervision for the protection of the shareholders or unit holders;
7. current account balances and deposits at credit institutions; and
8. other types of investment, provided that they are authorised in the regulation issued in accordance with section 217 sentence 1 no. 6.

²Guarantee assets may only be invested otherwise if temporarily authorised by the supervisory authority on a case-by-case basis in exceptional circumstances in response to an application submitted to the supervisory authority.

Section 216 Notification requirements

(1) A calculation of the solvency capital requirement and evidence of own funds must be submitted to the supervisory authority each year together with the annual financial statements and management report prescribed in accordance with section 341a (1) of the German Commercial Code.

(2) ¹Insurance undertakings must report on their entire invested assets, broken down into new investments and existing portfolios. ²The obligations under section 126 (2) remain unaffected.

Section 217 Authorisation to issue statutory orders

¹The Federal Ministry of Finance is authorised to issue statutory orders to specify regulations for small insurance undertakings governing the following:

1. the calculation and the amount of the solvency capital requirement;
2. the minimum capital requirement relevant for the individual classes of insurance and the calculation of such minimum capital requirement;
3. the method for calculating the own funds not reported on the balance sheet of life insurance undertakings and the extent to which these own funds are eligible for inclusion in the solvency capital requirement and the minimum capital requirement;
4. the content, form and number of copies of the solvency statement to be prepared in accordance with section 216, the content, form and number of copies of the report on invested assets and the timeframe for the submission of these documents to the supervisory authority;
5. the methods to be used for data transmission, the data formats to be used and the required data quality;
6. quantitative and qualitative requirements for the investment of guarantee assets in accordance with section 215 (1) and (2) sentence 1; the regulation may permit other types of investment if these alternatives offer a level of asset protection and liquidity that is comparable with the assets specified in section 215 (2) sentence 1 nos. 1 to 7;
7. one or more maximum values for the technical interest rate in the case of insurance contracts with a guaranteed rate of return;
8. further requirements for determining the discount rate in accordance with section 341f (2) of the German Commercial Code;
9. the maximum amounts for zillmerising; and
10. the actuarial assumptions and the methods to be used for determining the premium reserve.

²The Federal Ministry of Finance may transfer its powers under sentence 1 nos. 1 to 5 to BaFin by statutory order.

³Statutory orders under sentences 1 and 2 do not require the consent of the Bundesrat. ⁴Statutory orders in accordance with sentence 1 nos. 6 to 10 above must be issued in agreement with the Federal Ministry of Justice and Consumer Protection.

Segment 2 Funeral expenses funds

Section 218 Funeral expenses funds

(1) Funeral expenses funds are life insurance undertakings that, in accordance with their business plan, only insure death risk in Germany, whereby the amount of the benefits paid out in each case does not exceed the average value of the funeral expenses for a single death or the benefits are paid in kind.

(2) Funeral expenses funds must not transact business as specified in section 1 (2).

Section 219 Applicable provisions

(1) Regardless of the level of premium income and technical provisions in funeral expenses funds, the provisions of this

Act applicable to small insurance undertakings as specified in sections 212 to 217, to the extent that these provisions concern life insurance undertakings, also apply to funeral expenses funds unless otherwise specified in this segment.

(2) ¹Of the particular provisions relating to life insurance, section 140 (2) to (4) does not apply to funeral expenses funds.

²The appointed actuary is not required to prepare the reports specified in section 141 (5) sentence 1 nos. 2 and 4; section 141 (6) nos. 2 and 3 does not apply.

(3) The following provisions apply to funeral expenses funds, in each case with the stated proviso:

1. section 9 (2) number 2, subject to the condition that the following must also be submitted:
 - a) the general insurance policy conditions and
 - b) the documents related to the insurance business, specifically the premium rates and principles for calculating the premiums and the technical provisions in accordance with the German Commercial Code, including the actuarial assumptions, mathematical formulas, actual calculations made, and statistical evidence used,
2. section 141 (5) sentence 1 no. 1 subject to the condition that the appointed actuary only has to assess the financial position of the undertaking to establish whether or not the undertaking is in a position to fulfil its obligations under the insurance contracts at all times and whether it has adequate resources in the amount of the solvency capital requirement; and
3. section 141 (5) sentence 1 no. 2 subject to the condition that the certification specified in that provision is replaced with a certification that the premium reserve has been recognised in compliance with the approved business plan (actuarial certification).

Section 220 Authorisation to issue statutory orders

¹The Federal Ministry of Finance is authorised to issue, by means of statutory order, regulations covering the calculation and amount of the solvency capital requirement for funeral expenses funds. ²This authorisation may be delegated by statutory order to BaFin. ³Statutory orders under sentences 1 and 2 do not require the consent of the Bundesrat.

Part 3 Guarantee schemes

Section 221 Compulsory membership

(1) Undertakings that are authorised to carry on business in insurance classes 19 to 23 defined in Annex 1 in accordance with section 8 (1) or section 67 (1) or are authorised to provide substitutive health insurance in accordance with section 146, with the exception of *Pensionskassen* and funeral expenses funds, must belong to a guarantee scheme, the purpose of which is to safeguard the rights of their policyholders, insured persons, beneficiaries and other individuals with rights under the insurance contract.

(2) ¹*Pensionskassen* may voluntarily join a guarantee scheme. ²In order to ensure a comparable financial situation amongst all members, the guarantee scheme may make admission contingent upon the fulfilment of certain conditions.

Section 222 Maintenance of insurance contracts

(1) If the supervisory authority establishes that an insurance undertaking which is a member of a guarantee scheme fulfils the conditions set forth in section 314 (1) sentence 1, or a notification under section 311 (1) sentence 1 or 2 has been submitted by such an insurance undertaking, the supervisory authority must inform the guarantee scheme of the situation and notify the insurance undertaking in question accordingly.

(2) If other measures designed to safeguard the interests of the insured are deemed insufficient, the supervisory authority must order that the entire portfolio of insurance contracts held by the undertaking in question, together with all of the assets required to cover the liabilities under these contracts, be transferred to the relevant guarantee scheme;

section 13 does not apply.

(3) With the portfolio transfer, the rights and obligations of the transferor under the insurance contracts, including such rights and obligations in relation to the policyholders, are transferred to the guarantee scheme; section 415 of the German Civil Code does not apply.

(4) ¹The guarantee scheme must manage the transferred contracts separately from its other assets and must also account for these contracts separately. ²Without delay, the guarantee scheme must determine the amount necessary to cover the obligations under the insurance contracts in full and make available suitable eligible assets. ³In this regard, section 15 (1), sections 39, 124, 139, 141, 142, 146 to 158 and section 336 apply, with the necessary modifications; section 140 (2) and (3) applies to the insurance contracts managed by the guarantee scheme as soon as the supervisory authority has established that the recovery of the transferred insurance portfolio has been completed and the capital made available to the guarantee scheme for this purpose has been returned to the insurance undertakings that provided such capital.

(5) ¹If the assessment under subsection (4) reveals that the funds available to the guarantee scheme in accordance with section 226 (4) to (6) are insufficient to guarantee the continuation of the contracts, the supervisory authority must, in the case of life insurance undertakings, reduce the obligations under the contracts by a maximum of 5 per cent of the contractually guaranteed benefits. ²The supervisory authority may also issue orders to prevent an undue increase in the number of premature contract terminations.

(6) ¹The guarantee scheme may transfer the portfolio of contracts, either in full or in part, to undertakings authorised to conduct insurance business in Germany; section 13 applies to such transfers, with the necessary modifications. ²Upon transfer of the portfolio, the guarantee scheme may amend the general policy conditions and the premium rate terms applicable to the transferred contracts in order to align them with the portfolio of the transferee, provided that this is appropriate to allow the continuation of the contracts at the transferee and that such a change does not place an unreasonable burden on the persons insured. ³The amendment becomes effective if due consideration is given to the interests of the insured, the objective of the contract in question is safeguarded and an independent trustee confirms that these conditions have been met. ⁴Sections 142 and 157 (3) apply to the trustee, with the necessary modifications.

(7) The insurer's authorisation to conduct business lapses as soon as the supervisory authority has ordered that the portfolio of contracts be transferred to the guarantee scheme.

(8) Objections and action to have the orders issued by the supervisory authority declared null and void have no suspensory effect.

Section 223 Guarantee schemes

(1) ¹A guarantee scheme for life insurance undertakings and a guarantee scheme for health insurance undertakings are set up as Federal Government funds without legal personality by the KfW Banking Group (Kreditanstalt für Wiederaufbau). ²The guarantee schemes may act with legal effect, sue or be sued.

(2) ¹The purpose of the guarantee schemes is to protect the rights of the policyholders, insured persons, beneficiaries and other individuals with rights under the insurance contracts in question. ²To this end, the guarantee schemes ensure that the contracts of the insurance undertaking in question continue in force.

(3) ¹The KfW Banking Group (Kreditanstalt für Wiederaufbau) administers the guarantee schemes. ²The KfW Banking Group (Kreditanstalt für Wiederaufbau) receives a fee paid out of the common fund to cover the costs of administration.

(4) BaFin is responsible for deciding on any objections to administrative acts by a guarantee scheme.

Section 224 Assignment of duties and powers to persons under private law

(1) ¹The Federal Ministry of Finance is authorised to assign, by means of a statutory order in consultation with the Federal Ministry of Justice and Consumer Protection but without the need for the consent of the Bundesrat, the duties

and powers of one or both guarantee schemes to a legal person under private law, provided that the latter is prepared to assume the duties of the guarantee scheme concerned and can offer sufficient warranty that the rights of those covered by the guarantee scheme will be fulfilled. ²A legal person is deemed to provide sufficient warranty if

1. the individuals responsible for managing and representing the legal person by virtue of law or the undertaking's articles of association are fit and proper;
2. the legal person has the necessary facilities and organisation to allow it to fulfil its duties, in particular with regard to the collection of premiums, processing of benefit claims and the management of funds, and has financial resources equivalent to at least one million euros for this purpose; and
3. the legal person can document that it is able to organise, in particular, the collection of premiums, processing of benefit claims and the management of funds upon transfer of the contract portfolio in accordance with section 222 (2).

³The duties and powers in question may also be assigned to an undertaking that is authorised in accordance with section 8. ⁴The Federal Ministry of Finance may, by means of the statutory order under sentence 1, reserve the right to approve the articles of association of the legal person and any amendments thereto.

(2) ¹In the event of assignment in accordance with subsection (1), the legal person under private law succeeds to the rights and obligations of the guarantee scheme in question. ²Section 223 (4) applies, with the necessary modifications. ³There is no transfer of assets.

Section 225 Supervision

¹BaFin must counteract any irregularities that could adversely impact the ability of the guarantee schemes to perform their functions properly. ²BaFin may issue any orders that are appropriate and necessary to remedy or prevent such irregularities. ³BaFin also has the right to request information from and to audit the guarantee schemes in accordance with sections 305 and 306. ⁴Otherwise, only the provisions in this chapter and in section 332 apply to the guarantee schemes.

Section 226 Financing

(1) ¹Insurance undertakings that belong to a guarantee scheme must pay contributions to the guarantee scheme. ²These contributions are intended to cover any shortfalls from the transferred insurance contracts, the resulting administrative costs and other costs that arise as a result of the activities of the guarantee scheme concerned.

(2) ¹The liability of the guarantee scheme for fulfilment of the obligations under transferred insurance contracts is limited to the assets available as a result of the paid contributions net of costs in accordance with subsection (1) sentence 2 plus the assets transferred in accordance with section 222 (2) sentence 1. ²These assets cannot be used to cover the other liabilities of the guarantee scheme. ³A guarantee scheme within the meaning of section 224 must segregate these assets from its other assets and manage them separately.

(3) The funds accumulated for acquiring insurance contracts (guarantee assets) must be invested in accordance with the principles in section 124 (1).

(4) The value of these assets should not fall below one thousandth of the total net technical provisions within the meaning of sections 341e to 341h of the German Commercial Code of all insurance undertakings that belong to the guarantee scheme.

(5) ¹The member insurance undertakings must pay annual contributions to the guarantee scheme. ²The total annual contributions for all insurance undertakings belonging to the guarantee scheme for life insurance undertakings must amount to 0.2 thousandths of the total of their net technical provisions within the meaning of sections 341e to 341h of the German Commercial Code. ³The guarantee scheme must calculate the annual contribution to be paid by each individual insurance undertaking on an annual basis in accordance with the procedure set forth in the regulation issued under subsection (7). ⁴Any income generated by the guarantee scheme must be distributed to the member insurance undertakings on a pro rata basis in relation to their contributions. ⁵The guarantee scheme must levy special contributions up to a maximum of one thousandth of the total net technical provisions within the meaning of sections 341e to 341h of the German Commercial Code of the insurance undertakings that belong to the guarantee scheme if this

is necessary to enable the scheme to carry out its functions.⁶The share of the scheme assets accounted for by an insurance undertaking must be appropriate to cover its technical provisions within the meaning of sections 341e to 341h of the German Commercial Code.

(6) ¹Subsections (2) to (5) do not apply to the guarantee scheme for health insurance undertakings. ²After acquiring insurance contracts, the guarantee scheme must levy special contributions of up to two thousandths of the total net technical provisions within the meaning of sections 341e to 341h of the German Commercial Code of the member health insurance undertakings in order to enable it to perform its duties.

(7) ¹In consultation with the Federal Ministry of Justice and Consumer Protection, the Federal Ministry of Finance is responsible for detailing, by means of a statutory order not requiring the consent of the Bundesrat, the minimum amount of the guarantee assets, the annual and special contributions and the upper limit for payments per calendar year. ²The annual contributions must take into account the type and scope of the business covered, along with the number, size and business structure of the insurance undertakings that belong to the guarantee scheme. ³The amount of the contributions must also reflect the financial and risk situation of the contributors. ⁴The statutory order may also contain provisions relating to the investment of the funds held by the guarantee scheme.

(8) ¹The contribution notice issued by the guarantee scheme is enforced in accordance with the provisions contained in the German Act on Administrative Enforcement (*Verwaltungsvollstreckungsgesetz – VwVG*). ²The guarantee scheme issues the copy of the notice that includes the enforcement clause.

Section 227 Guarantee scheme accounting

(1) ¹The guarantee schemes must prepare an annual report for each completed calendar year and engage an independent auditor or an independent auditing firm to carry out an audit, verifying that the annual report is complete and that the disclosures contained therein are accurate. ²The guarantee schemes must immediately inform BaFin of their choice of auditor. ³Within one month of receiving notification of the appointment, BaFin may demand the appointment of a different auditor if this is deemed necessary to achieve the purpose of the audit; objections and action to have the demand issued by BaFin declared null and void have no suspensory effect. ⁴The annual report must contain information on the activities and the financial situation of the guarantee scheme, in particular the amount of funds and how these are invested, the use of these funds for compensation arrangements, the amount of contributions and the guarantee scheme's administrative costs.

(2) ¹The guarantee scheme must submit the formally adopted annual report to BaFin by 31 May each year. ²The auditor must submit the report on the audit of the annual report to BaFin without delay following completion of the audit. ³Upon request, BaFin must also be provided with more detailed information on the disclosures made in accordance with subsection (1) sentence 4 above.

Section 228 Duty to cooperate

(1) Upon request, the insurance undertakings must provide the guarantee scheme of which they are a member with all information and all documents that the guarantee scheme requires in order to perform its duties in accordance with this Act.

(2) ¹The parties obliged to furnish information may refuse to do so in respect of any questions, the answers to which would place themselves or one of their relatives as designated in section 383 (1) nos. 1 to 3 of the German Code of Civil Procedure at risk of criminal prosecution or proceedings under the German Act on Breaches of Administrative Regulations (*Ordnungswidrigkeitengesetz – OWiG*). ²Such parties must be informed of their right to refuse to furnish the information.

(3) ¹As soon as the supervisory authority has established the existence of a situation as specified in section 222 (1), the employees of the guarantee schemes, as well as any persons commissioned by them, may access the business premises of the insurance undertaking concerned during normal business hours. ²Such persons must be provided with all of the documents required for preparation of the portfolio transfer. ³If the insurance undertaking in question has outsourced functions to another undertaking, sentences 1 and 2 above apply to such undertaking, with the necessary modifications.

(4) ¹If the undertaking whose portfolio is being transferred has entered into outsourcing agreements concerning the administration of the portfolio, the guarantee scheme may become a party to the agreements in question in place of the

undertaking.²Section 415 of the German Civil Code does not apply.³The earliest date for ordinary termination of such an agreement by the service provider is the last day of the twelfth month after the date on which the guarantee scheme becomes a party to the agreement concerned.⁴If the other party calls on the guarantee scheme to exercise its option, the guarantee scheme must immediately declare whether or not it intends to become a party to the agreement.⁵If the guarantee scheme fails to make this declaration, it cannot insist on performance.

Section 229 Exclusion

(1)¹If an insurance undertaking fails to fulfil its obligation to pay contributions or cooperate in accordance with section 226 or 228, or fails to do so correctly, in full or in a timely manner, the guarantee scheme must inform BaFin.²If BaFin is not the competent supervisory authority, it must immediately inform the competent authority.³If the insurance undertaking also fails to fulfil its obligations within one month of being asked to do so by BaFin, the guarantee scheme may issue the insurance undertaking with a notice of exclusion from the guarantee scheme, subject to a notice period of twelve months.⁴After this notice period has expired, the guarantee scheme is entitled to exclude the insurance undertaking subject to the approval of BaFin if the insurance undertaking's obligations remain unfulfilled.⁵Following such exclusion, the guarantee scheme is only responsible for covering those liabilities of the insurance undertaking that arose before this notice period expired.

(2) The guarantee scheme is not responsible for covering any liabilities of the insurance undertaking that arose after the insurance undertaking's authorisation to conduct business lapsed or was withdrawn.

Section 230 Duty of confidentiality

¹Persons who are employed at, or perform activities on behalf of, a guarantee scheme may not disclose or utilise secrets relating to third parties, in particular business or trade secrets, without authorisation to do so.²BaFin must require these persons to fulfil their obligations conscientiously in accordance with the German Act on the Formal Obligation of Persons with Non-Civil Servant Status (*Gesetz über die förmliche Verpflichtung nichtbeamteter Personen – VerpflG*) of 2 March 1974 (Federal Law Gazette I, pages 469, 547).³The forwarding of information to BaFin is not to be deemed to be an authorised disclosure or use.

Section 231 Enforcement

(1) The guarantee scheme is entitled to enforce its orders in accordance with the provisions set forth in the German Act on Administrative Enforcement.

(2) For measures as set forth in section 226 (1), (5) sentence 1 and section 228 (1), the coercive penalty may be up to fifty thousand euros.

Segment 1 Differentiation versus other life insurance undertakings

Part 4 Institutions for occupational retirement provision

Chapter 1 *Pensionskassen*

Section 232 *Pensionskassen*

(1) A *Pensionskasse* is a legally independent life insurance undertaking, the purpose of which is to provide cover for a loss of income due to old age, invalidity or death and that

1. provides a funded insurance scheme;
2. does not, as a general rule, provide benefits until the actual loss of income takes place, although the general policy conditions may provide for pro rata benefits in the event of a partial loss of income;
3. in the event of death, may only provide benefits to surviving dependants, though a death grant, which may not exceed standard funeral costs, may be included for third parties;
4. affords the insured a separate entitlement to benefits from the *Pensionskasse* or provides benefits in the form of pension liability insurance.

(2) ¹*Pensionskassen* may only conduct primary insurance business. ²They can only be granted a authorisation in the classes of insurance set out in Annex 1 numbers 19, 21 and 24.

Section 233 Regulated *Pensionskassen*

(1) ¹*Pensionskassen* can be regulated with BaFin's approval (regulated *Pensionskassen*). ²The application to be regulated can be filed by

1. *Pensionskassen* with the legal form of a mutual society if
 - a) the articles of association provide that pension claims can be reduced,
 - b) under the articles of association, at least 50 per cent of the members of the senior representative body should be insured persons or their representatives or, if the *Pensionskasse* only operates pension liability insurance, the articles of association grants such a right to the policyholders,
 - c) only individuals covered by section 17 of the Occupational Pensions Act (*Betriebsrentengesetz – BetrAVG*), the members of the senior management or owners of the sponsoring undertakings are insured, as well as persons assigned to the *Pensionskasse* by virtue of law or who continue the insurance relationship with the *Pensionskasse* after the end of their employment relationship, and
 - d) they do not charge any actuarial acquisition cost loadings for the intermediation of insurance contracts and do not pay any fees for the intermediation or conclusion of insurance contracts, and
2. *Pensionskassen* for which BaFin has determined that they satisfy the criteria of section 156a (3) sentence 1 of the German Insurance Supervision Act, as amended on 15 December 2004.

³BaFin must approve the application if the requirements of sentence 2 numbers 1 or 2 are met.

(2) Separate ring-fenced funds in accordance with section 2 (1), *Pensionskassen* subject to supervision by the individual federal states and *Pensionskassen* that are collective agreements within the meaning of section 4 (2) of the German Collective Bargaining Act (*Tarifvertragsgesetz – TVG*) established under a generally binding collective bargaining agreement are always considered to be regulated *Pensionskassen*.

(3) ¹Section 140 (2) sentence 2 and (4), section 145 (2) and (3) and section 234 (2) sentences 2 and 3 and (6) do not apply to regulated *Pensionskassen*. ²Section 210 (3) sentence 1, section 219 (2) sentence 2 and (3) number 1 (b) and number 2 apply, with the necessary modifications. ³Where insurance relationships are entered into before *Pensionskassen* are regulated that are not based on any business plan approved by the supervisory authority, the documents related to the insurance business within the meaning of section 219 (3) number 1 (b) do not form part of the business plan, by way of derogation from sentence 2. ⁴Contrary to sentence 1, the general insurance policy conditions under section 234 (2) sentences 2 and 3 continue to apply in this case.

(4) ¹Section 139 (3) and (4) does not apply to regulated *Pensionskassen* that have issued general insurance policy conditions that differ from the requirements of section 153 of the Insurance Contract Act with the approval of the supervisory authority in accordance with section 211 (2) number 2 of the Insurance Contract Act. ²Regulated *Pensionskassen* that have not issued general policy conditions that deviate from the requirements specified in section 153 of the German Insurance Contract Act as permitted by section 211 (2) no. 2 of the German Insurance Contract Act may, for the purposes of calculating the safeguard amount in connection with insurance contracts with guaranteed interest as specified in section 139 (4), use a different calculation method, subject to the approval of the supervisory authority.

(5) ¹If a regulated *Pensionskasse* no longer satisfies the criteria in subsection (1) or (2), BaFin must issue a notice to the effect that the *Pensionskasse* concerned is no longer deemed a regulated *Pensionskasse*. ²Section 234 (6) applies, with the necessary modifications, to insurance relationships that came into force before the date specified in the notice.

Section 234 Special requirements relating to business activities that do not relate to governance

(1) ¹Section 341k of the German Commercial Code applies to *Pensionskassen*; section 36 (2) does not apply. ²Section 1 (2) sentence 4, section 35 (2), section 37 (2), sections 40 to 42 and 48 (2a), sections 52 to 56, 141 (5) sentence 2 and section 144 do not apply.

(2) ¹The general insurance policy conditions form part of the business plan as a component under section 9 (2) number 2. ²The approval requirement under section 12 (1) sentence 1 does not apply to them. ³Amendments to and the introduction of new general insurance policy conditions only come into force three months after their submission to the supervisory authority, unless the supervisory authority determines before that period that it has no objections.

(3) ¹*Pensionskassen* may depart from the requirements of section 138 with the approval of the supervisory authority. ²In section 141 (5) sentence 1 numbers 1 and 2, the principles of the statutory order enacted on the basis of section 235 (1) numbers 4 to 7 replace the principles of the statutory order enacted on the basis of section 88 (3). ³The trustee under section 142 must have sufficient knowledge in the field of occupational pensions. ⁴If the *Pensionskasse* is a small mutual association, the appointed actuary must certify that the requirements of the statutory order enacted under section 235 (1) sentence 1 numbers 8 or 9 are met.

(4) If the amount of benefits paid is contingent upon the performance of a fund established in accordance with the business plan, separate accounts must be kept for this fund in accordance with sections 67, 101, 120, 135, 148 and 158 of the German Investment Code or in accordance with section 44 of the German Investment Act as amended up to 21 July 2013; section 101 (2) of the German Investment Code and section 44 (2) of the German Investment Act as amended up to 21 July 2013 do not apply.

(5) ¹By way of derogation from section 210 (1) sentence 1, section 184 also applies if the *Pensionskasse* is a small mutual association. ²The articles of association must stipulate that the management board is to be appointed by the supervisory board or the senior governing body.

(6) ¹Section 336 applies, with the necessary modifications, to insurance relationships that came into force before 1 January 2006, provided they are based on a business plan approved by the supervisory authority. ²Section 142 does not apply in such cases.

Segment 2 Special requirements relating to governance

Section 234a Supplementary general requirements

(1) ¹In addition to meeting the requirements of section 23 (1), the system of governance of a *Pensionskasse* must be appropriate to the size of its activities. ²The system of governance must reflect whether and how ecological, social and governance factors are taken into account for assets in investment decisions.

(2) Section 23 (1a) to (1c) does not apply to *Pensionskassen*.

(3) ¹The internal policies under section 23 (3) must also include requirements governing any existing actuarial function. ²By way of derogation from section 23 (3) sentence 3, it is sufficient for *Pensionskassen* to review the policies at least once every three years.

(4) Special requirements relating to the appointment of representatives of the employers and employees of the sponsoring undertakings to the supervisory board must be taken into account.

(5) The remuneration systems within the meaning of section 25 must be proportionate to the size and internal organisation of the *Pensionskasse*, as well as to the size, nature, scale and complexity of its activities.

⁶Section 28 (1) does not apply.

(7) Section 29 (1) sentence 2 and (2) to (4) do not apply to the internal control system.

Section 234b Special requirements relating to key functions

(1) *Pensionskassen* must enable the persons responsible for key functions to undertake their duties effectively in an objective, fair and independent manner.

(2) The person responsible for the internal audit function may not perform any other key function within the *Pensionskasse*.

(3) ¹The person responsible for a key function may only perform a similar function in the sponsoring undertaking if

1. it is proportionate to the size, nature, scale and complexity of the activities of the *Pensionskasse* and
2. the *Pensionskasse* demonstrates to the supervisory authority how conflicts of interest with the sponsoring undertaking are avoided or managed.

²The *Pensionskasse* must send the supervisory authority a statement under sentence 1 number 2 without undue delay if the person responsible for a key function performs or is intended to perform a similar function in the sponsoring undertaking.

(4) ¹The person responsible for a key function must inform the board of management about all material findings and recommendations from that person's area of responsibility. ²The board of management determines what actions are to be taken. ³The person responsible for the key function must inform the supervisory authority that the board of management has not taken appropriate and timely action if the *Pensionskasse*

1. is exposed to a substantial risk of non-compliance with materially significant statutory requirements,
 - a) this was reported to the board of management and
 - b) it could significantly impact the interests of members and beneficiaries, or
2. there is a significant material breach of laws, regulations or administrative provisions in an area falling within the responsibility of the key function and this was reported to the board of management.

⁴No report need be made if in doing so the person responsible for the key function would place that person or one of that person's relatives designated in section 383 (1) numbers 1 to 3 of the Code of Civil Procedure at risk of criminal prosecution or proceedings under the Act on Breaches of Administrative Regulations (*Gesetz über Ordnungswidrigkeiten*). ⁵The person responsible for the key function may not be held responsible under either labour law or the provisions of criminal law because of a report under sentence 3. ⁶That person may not be held liable for damages unless the report made was intentionally or negligently untrue. ⁷The right of that person to make reports under sentence 3 may not be restricted by contractual arrangements. ⁸Any agreements to the contrary are ineffective.

(5) ¹The actuarial function must also supervise the calculation of the technical provisions. ²By way of derogation from section 31 (1) sentence 2 numbers 2 and 4, it must

1. assess the appropriateness of the methodologies and underlying models used in the calculation of technical provisions and the assumptions made for this purpose,
2. compare the assumptions underlying the calculation of the technical provisions with the experience.

³In addition, the actuarial function contributes to the own-risk assessment under section 234d. ⁴Section 31 (1) sentence 2 number 6 and subsection (2) sentences 3 and 4 does not apply.

(6) There is no need for a *Pensionskasse* to have an actuarial function if

1. it does not itself provide cover against biometric risks and
2. neither the investment performance nor a certain level of benefits are guaranteed.

(7) Persons or entities to which a key function has been outsourced must comply with the requirements of section 24 (1), with the necessary modifications.

Section 234c Risk management

(1) ¹In addition to meeting the requirements of section 26 (5), the risk management system of a *Pensionskasse* must also cover ecological, social and governance risks, to the extent that these risks relate to the investment portfolio and its management. ²The risks captured by the risk management system must be treated in such a way that is proportionate to the size and internal organisation of the *Pensionskasse*, as well as to the size, nature, scale and complexity of its activities.

(2) The risk-management system must also consider the risks to which members and beneficiaries are exposed under the conditions of a pension scheme from the perspective of members and beneficiaries.

(3) ¹*Pensionskassen* must submit the reports to the management board under section 26 (1) sentences 1 and 2 to supervisory authority within one month of their provision to the board of management. ²This requirement does not apply to reports that are provided to the board of management in the period of six months before and after the completion of an own risk assessment in accordance with section 234d for which the entire risk profile is assessed. ³The supervisory board may exempt *Pensionskassen* in part or in full from the requirement under sentence 1 if this is consistent with the supervisory objectives.

(4) Section 26 (3), (4), (6), (7) and (8) sentences 2 and 3 do not apply.

(5) ¹The *Pensionskasse's* risk management system includes the own-risk assessment under section 234d. ²Section 27 does not apply.

Section 234d Own-risk assessment

(1) ¹A *Pensionskasse's* risk management system includes an own-risk assessment, which must be documented. ²The own-risk assessment must be performed at least every three years for the entire risk profile, or more frequently if required by the supervisory authority. ³The *Pensionskasse* must perform an own-risk assessment without undue delay if there has been a significant change

1. in its risk profile or
2. in the risk profile of pension schemes it operates.

⁴If only a single pension scheme is involved in the case of sentence 3 number 2, the own-risk assessment can be limited to that pension scheme. ⁵*Pensionskassen* must inform the supervisory authority of the findings of each own-risk assessment performed within 14 days of its completion.

(2) ¹As part of the own-risk assessment, the *Pensionskasse* must

1. describe how the own-risk assessment is integrated into the management and decision-making processes of the *Pensionskasse*;
2. assess the effectiveness of the risk management system;
3. describe how it prevents or manages conflicts of interest with the sponsoring undertaking, if the person responsible for a key function also performs a similar function in the sponsoring undertaking;
4. assess the overall funding needs and describes any measures to cover the funding needs, where applicable;
5. assess the risks to members and beneficiaries relating to the paying out of their retirement benefits and the effectiveness of any remedial action taking into account, where applicable, any
 - a) indexation mechanisms,
 - b) mechanisms for reducing pension rights and pension benefits, including the conditions under which and the extent to which pension rights and pension benefits can be reduced, and by whom;

6. carry out a qualitative assessment of the mechanisms protecting pension rights and pension benefits including, as applicable, any of the following in favour of the *Pensionskasse* or the members and beneficiaries:
 - a) guarantees, covenants or any other type of financial support by the sponsoring undertaking,
 - b) insurance or reinsurance by an undertaking covered by Directive 2009/138/EC, or
 - c) coverage by a pension protection scheme;
7. undertake a qualitative assessment of the operational risks;
8. assess new and probable emerging risks because the *Pensionskasse* considers environmental, social and governance factors in its investment decisions.

²The assessment under sentence 1 number 8 must include, among other things, risks related to climate change, use of resources and the environment, social risks and risks related to the depreciation of assets due to regulatory change.

(3) ¹For the performance of the risk assessment under subsection (2), the *Pensionskasse* must have in place methods to identify and assess risks that

1. they could be exposed to in the short or long term and
2. that may have an impact on the *Pensionskasse's* ability to meet its obligations.

²The methods must be proportionate to the size, nature, scale and complexity of the *Pensionskasse's* activities and must also cover the risks referred to in subsection (2) sentence 2. ³They must be described in the own-risk assessment.

(4) The own-risk assessment must be taken into account in the *Pensionskasse's* strategic decisions.

Section 234e Supplementary requirements relating to outsourcing

(1) If activities are outsourced, *Pensionskassen* must select a suitable service provider and monitor the service provider on an ongoing basis to ensure that it performs the outsourced activities properly.

(2) *Pensionskassen* must enter into a written, legally enforceable outsourcing agreement with the service provider that defines the rights and obligations of the parties to the agreement.

(3) Section 32 (3) and section 47 numbers 8 and 9 apply to the outsourcing of other activities that are subject to the requirements of this Act.

Segment 3 Special requirements relating to financial adequacy

Section 234f General

(1) Sections 74 to 88 and 133, 134 (4) and (5), sections 301 and 304 (1) number 2 and sections 341 to 352 do not apply to *Pensionskassen*.

(2) ¹Section 234g (1) to (3) replaces sections 89 to 123. ²To the extent that reference is made in the requirements applicable to *Pensionskassen* to basic own funds or eligible own funds, they are replaced by the own funds under section 234g (3).

(3) ¹By way of derogation from section 134 (3) sentence 2, the supervisory authority may also extend the deadline under section 134 (3) sentence 1 by an appropriate period. ²On application by the *Pensionskasse*, it can extend the deadline under section 134 (2) by one month. ³The supervisory authority can extend the deadline under section 135 (2) sentence 1 by a maximum of two months and the deadline under section 135 (2) sentence 2 to a maximum of twelve months.

(4) ¹The supervisory authority can withdraw the authorisation if the *Pensionskasse* fails to comply with the approved

finance scheme within three months following determination of non-compliance with the minimum capital requirement. ²The supervisory authority must withdraw the authorisation if it believes that the finance scheme submitted is manifestly inadequate or the *Pensionskasse* fails to comply with the approved finance scheme within twelve months following determination of non-compliance with the minimum capital requirement.

Section 234g Solvency capital requirement, minimum capital requirement and own funds

(1) *Pensionskassen* must in all cases have eligible own funds at least at the level of the solvency capital requirement.

(2) ¹The solvency capital requirement is determined by the statutory order relating to section 235 (1) number 1. ²One-third of the solvency capital requirement is deemed to be the minimum capital requirement.

(3) ¹Section 214, with the exception of subsection (1) sentence 1 number 8 (b), applies to the determination of own funds. ²In section 214 (1) sentence 1 number 8 (d), the requirements adopted under section 235 (1) replace the requirements adopted under section 217 sentence 1.

(4) *Pensionskassen* must submit a calculation of the solvency capital requirement and evidence of own funds to the supervisory authority each year.

Section 234h Supplementary general investment rules

(1) ¹*Pensionskassen* are required to invest the assets in the best long-term interests of the members and beneficiaries as a whole. ²In the case of a potential conflict of interest, the *Pensionskasse*, or the entity that manages its portfolio, must ensure that the investment is made in the sole interest of members and beneficiaries.

(2) In the case of investments in derivative financial instruments, an excessive risk exposure to a single counterparty and to other derivative operations must be avoided.

(3) Within the prudent person rule, *Pensionskassen* can take into account the potential long-term impact of investment decisions on environmental, social and governance factors.

(4) Section 124 (1) sentence 2 number 1 (b) and number 4, as well as subsection (2) sentence 1, does not apply.

Section 234i Investment policy

¹*Pensionskassen* must submit to the supervisory authority a statement of their investment policy principles

1. at the latest four months after the end of a financial year and
2. without undue delay after any significant change in the investment policy.

²The statement must address, as a minimum, the investment risk measurement and risk management processes, the strategy and the question of how the investment policy takes environment, social and governance factors into account.

³*Pensionskassen* must make the statement publicly available. ⁴The statement must be reviewed at least every three years.

Section 234j Special requirements relating to guarantee assets

(1) ¹Guarantee assets may only be invested in

1. the categories of assets referred to in section 215 (2) sentence 1 numbers 1 to 7 and
2. other assets permitted under the statutory order relating to section 235 (1) number 10.

²Guarantee assets may only be invested otherwise if temporarily authorised by the supervisory authority on a case-by-case basis in exceptional circumstances in response to an application submitted to the supervisory authority.

(2) Section 125 (1) sentences 2 and 3, and section 131 do not apply.

(3) ¹*Pensionskassen* must report on their entire invested assets, broken down into new investments and existing portfolios. ²The obligations under section 126 (2) remain unaffected.

Segment 4 Information required to be given to members and beneficiaries

Section 234k Requirements relating to the information to be given

(1) The information prescribed for a pension scheme under this segment must

1. be prepared in German;
2. be written in a clear, succinct and comprehensible manner, avoiding the use of jargon and avoiding technical terms where everyday words can be used instead;
3. be coherent, and terms and designations must be used consistently throughout the information;
4. be presented in a way that is easy to read;
5. be regularly updated.

(2) The information may not be misleading.

(3) The prescribed information must be made available free of charge.

(4) The requirements of this segment do not apply to pension schemes that are operated by the *Pensionskasse* on a cross-border basis within the meaning of section 241.

Section 234l General information on a pension scheme

(1) For every pension scheme that is operated, the *Pensionskasse* must provide the members and beneficiaries with general information about that pension scheme.

(2) The *Pensionskasse* must inform the members and beneficiaries within a reasonable time of any relevant information regarding changes to the pension scheme rules.

(3) In the event of significant changes to the methods and assumptions used to calculate the technical provisions, the *Pensionskasse* must provide an explanation of the associated impact on the members and beneficiaries within a reasonable time.

Section 234m Information to be provided to members at the beginning of the pension arrangement

(1) The *Pensionskasse* must provide members with the following information at the beginning of the pension arrangement:

1. the name, address, legal form and registered office of the *Pensionskasse*,
2. the terms and conditions of the pension arrangement, including premium rate terms as well as the law applicable to the contract,
3. details on the term of the pension arrangement,
4. general information on the tax treatment applicable to this type of pension arrangement,
5. the financial, technical and other risks related to the pension scheme, as well as the nature and distribution of these risks, and

6. general information about the extent to which the pension benefits payable are subject to compulsory contributions to statutory health and long-term care insurance.

(2) Members who are enrolled automatically in the pension scheme must additionally receive the following information:

1. any relevant options available to them, including investment options,
2. the relevant features of the pension scheme including the kind of benefits,
3. information on whether and how environmental, climate, social and corporate governance factors are considered in the investment approach,
4. where further information is available.

Section 234n Information to be provided before enrolment in the pension scheme

The *Pensionskasse* must ensure that members who are not automatically enrolled in the pension scheme are provided with the information specified in section 234m (2) before they join that pension scheme.

Section 234o Information to be provided to members during the pre-retirement phase

(1) ¹*Pensionskassen* must provide the members with all relevant information about the status of their pension arrangement at least every twelve months. ²The information must be summarised in a concise form under the heading "Pension Benefit Statement".

(2) The Pension Benefit Statement must consider the specific nature of the statutory pension systems and the labour, social and tax law.

(3) ¹The *Pensionskasse* must include in the Pension Benefit Statement a projection of the retirement benefits until the expected retirement age. ²It must include a clear disclaimer that

1. the information in the projection is not guaranteed and that the final value of the retirement benefits received may differ from the projection, and
2. the member cannot base any claims against the *Pensionskasse* on the projection.

(4) Any material change to the information contained in the Pension Benefit Statement compared with the information in the previous Pension Benefit Statement must be clearly indicated.

(5) ¹The *Pensionskasse* must inform the members in good time before the date from which retirement benefits are expected to be paid of the form in which retirement benefits can be paid. ²It must also provide the member with this information on request.

Section 234p Information to be given to beneficiaries

(1) The *Pensionskasse* must notify the beneficiary regularly about the benefits due and any payout options for the benefits.

(2) The *Pensionskasse* must inform the beneficiary about any reduction in the level of benefits due

1. without undue delay after a final decision has been taken resulting in the reduction, and
2. three months before the date on which the reduction will take effect.

(3) When a significant level of investment risk is borne by beneficiaries in the payout phase, they must receive appropriate information regularly from the *Pensionskasse*.

Part 5 Authorisations to issue statutory orders

Section 235 Authorisation to issue statutory orders regarding financial supervision

(1) The Federal Ministry of Finance is authorised to enact requirements for *Pensionskassen* by way of a statutory order covering the following:

1. the calculation and the amount of the solvency capital requirement;
2. the relevant amount for the minimum capital requirement and the calculation of this amount;
3. the method for calculating own funds not reported on the balance sheet and the extent to which these own funds are eligible for inclusion in the solvency capital requirement and the minimum capital requirement;
4. one or more maximum values for the technical interest rate in the case of insurance contracts with a guaranteed rate of return;
5. further requirements for determining the discount rate in accordance with section 341f (2) of the German Commercial Code;
6. the maximum amounts for zillmerising;
7. the actuarial assumptions and the methods to be used for determining the premium reserve;
8. in the case of *Pensionskassen* in which both the employee and the employer are subject to a contractual obligation to pay premiums for life insurance contracts that are not based on any approved business plan, provisions specifying how the employee's share of surplus of revenues over and above the technical interest rate is to be determined and specifying an appropriate level for the employee's share in this income within the meaning of section 140 (2);
9. the actuarial methods for calculating the premiums including premium changes and the technical provisions within the meaning of sections 341e to 341h of the German Commercial Code, in particular the premium reserve; in the case of *Pensionskassen* with collective funding for life insurance contracts not based on any approved business plan, in particular how the relevant assumptions relating to mortality, the dependence of the risk on age and gender and the probability of cancellation, assumptions regarding the composition of existing and new business, the interest rate, including the safety loading, and the principles for assessing other loadings are to be taken into account;
10. qualitative and quantitative investment principles for the guarantee assets in addition to section 124 (1) sentences 1 and 2 number 1 (a), numbers 2, 3, 5 to 8 and section 234h (1) to (3) in order to ensure matching and to ensure that the relevant business plan can be fulfilled at all times, whereby the types of investments specified in section 215 (2) sentence 1 nos. 1 to 7 and other types of investment authorised by this regulation, together with the specifications in the business plan regarding investment risk and the bearer of such risk, must be taken into account; provisions governing limitations on investments in the sponsoring undertaking;
11. the content of the audit reports under section 35 (1) if required to enable the supervisory authority to fulfil its duties, in particular to enable the supervisory authority to obtain standardised documents so that it can assess the insurance business conducted by the *Pensionskassen*;
12. the content, form and number of copies of the solvency statement to be prepared in accordance with section 234g (4), the content, form and number of copies of the report on invested assets and the timeframe for the submission of these documents to the supervisory authority; and
13. the methods to be used for data transmission, the data formats to be used and the required data quality.

(2) ¹This power may be delegated by statutory order to BaFin. ²Statutory orders in accordance with subsection (1) sentence 1 and in accordance with sentence 1 above do not require the consent of the Bundesrat. ³Statutory orders in accordance with subsection 1 sentence 1 nos. 9 and 11 and in accordance with sentence 1 where they include the power under subsection 1 sentence 1 nos. 9 and 11 must be issued in consultation with the Federal Ministry of Justice and Consumer Protection.

Section 235a Power to issue statutory orders on the information requirements

¹For *Pensionskassen* that are not subject to supervision by the supervisory authorities of the federal states, the Federal Ministry of Finance is authorised to enact requirements by way of a statutory order, with the consent of the Federal Ministry of Labour and Social Affairs, covering the following:

1. the content, structure and design of the information to be provided under section 234l (1),
2. the content, structure and format of the Pension Benefit Statement under section 234o (1) to (3),
3. the content and frequency of the information to be given under section 234p (1) and (3),
4. the information to be provided in addition to the information specified in section 234m (1) or (2) at the beginning of the pension arrangement,
5. the additional information to be provided to the member in the case of section 234n before enrolment in the pension scheme,
6. the additional information the *Pensionskasse* has to provide to the member or beneficiary on request,
7. how information is to be provided to the member or beneficiary, and
8. the determination of the assumptions on which the projections under section 234o (3) are to be based.

²Statutory orders under sentence 1 do not require the consent of the Bundesrat.

Chapter 2 *Pensionsfonds*

Section 236 *Pensionsfonds*

(1) ¹A *Pensionsfonds* within the meaning of this Act is a scheme with legal personality that

1. offers funded occupational retirement provision for one or more employers for the benefit of employees;
2. is not permitted to guarantee, in the way that an insurance contract guarantees, the level of benefits or the level of future contributions required to provide a given level of benefits in respect of all benefit cases provided for;
3. affords employees an independent entitlement to payment of benefits from the *Pensionsfonds*; and
4. is obliged to provide the retirement benefits as a life annuity or one-off lump sum.

²An annuity within the meaning of sentence 1 no. 4 can be combined with a partial or full lump-sum option.

³*Pensionsfonds* may also make funeral expenses payments to surviving dependants, where the funeral expenses are limited to the level of normal burial costs.

(2) ¹*Pensionsfonds* may provide retirement benefits other than those specified in subsection (1) sentence 1 no. 4 above, provided contribution payments by the employer are to be continued during the payout phase. ²No fixed date may be set for the end of contribution payments. ³Sentence 1 does not apply for commitments within the meaning of section 1 (2) no. 2 of the German Occupational Pensions Act.

(3) ¹In the case of commitments as defined in section 1 (2) number 2 of the Occupational Pensions Act, *Pensionsfonds* may make lifetime payments as retirement benefits by way of derogation from subsection (1) sentence 1 number 4 if

1. the responsible collective bargaining partners agree,
2. the pension plan provides for a lifetime payment and a minimum level of that lifetime payment (minimum level) for payment of the pension capital to be provided under section 1 (2) number 2 of the Occupational Pensions Act,
3. the scheduled utilisation of the pension capital and the attributable interest and income for ongoing benefit payments is defined, and
4. the *Pensionsfonds* provides evidence of the commitment of the employer to guarantee the provision of the

minimum level, and the approval of the collective bargaining partners under number 1 has been submitted to the supervisory authority.

²Subsection (2) sentence 2 applies, with the necessary modifications.

(4) For the purposes of this provision, “employees” also refers to former employees as well as persons falling within the scope of section 17 (1) sentence 2 of the Occupational Pensions Act.

(5) The operation of *Pensionsfonds* must be authorised by the supervisory authority.

(6) ¹In the case of subsection (3), the Federal Ministry of Finance may, by way of a statutory order, adopt more detailed requirements on

1. payout limits on the *Pensionsfonds* if the employer is required to provide the minimum level,
2. provisions for calculating and adjusting the lifetime payment and for calculating the minimum level,
3. the form and content of the commitment by the employer to guarantee the provision of the minimum level, and the evidence of this commitment to be provided.

²This authorisation may be delegated by statutory order to BaFin. ³BaFin will enact the provisions in consultation with the insurance supervisory authorities of the federal states. ⁴Statutory orders under sentences 1 to 3 do not require the consent of the Bundesrat.

Section 237 Applicable provisions

(1) ¹The requirements for life insurance undertakings that are not *Pensionskassen* apply to *Pensionsfonds*, with the necessary modifications, unless specified otherwise in this part. ²In this case,

1. the pension plans replace the general insurance policy conditions,
2. the interests of the members and beneficiaries replace the interests of the insureds,
3. the pension arrangements replace insurance relationships.

³Pension plans are the terms and conditions applicable to the scheduled payment of pension benefits under the business plan.

(2) Section 8 (2), section 10 (4), section 13 (2), section 125 (5) and (6), section 139 (3) and (4), sections 210, 232 and 233, 234 (3) sentences 1, 2 and 4 and subsections (5) and (6), sections 234i and 234k (1), sections 235 and 312 (4) sentences 1, 3 and 4 and subsection (5) sentence 2, and section 313 do not apply.

(3) ¹The authorisation to conduct business may only be issued to stock corporations, including European companies and mutual *Pensionsfonds*. ²The requirements for mutual societies apply to mutual *Pensionsfonds*, with the necessary modifications, unless stipulated otherwise.

(4) ¹In section 140 (2), the statutory order enacted on the basis of section 240 sentence 1 number 7 replaces the statutory order enacted on the basis of section 145 (2). ²In section 141 (5) sentence 1 numbers 1 and 2, the principles of the statutory order enacted on the basis of section 240 sentence 1 numbers 10 to 12 replace the principles of the statutory order enacted on the basis of section 88 (3).

Section 238 Financial adequacy

(1) ¹Subsections (2) to (5) apply to *Pensionsfonds* instead of section 234g. ²In section 234f (2) sentence 2, subsection (4) replaces section 234g (3).

(2) *Pensionsfonds* must at all times have own funds equivalent to at least the solvency capital requirement, which is determined on the basis of the entire volume of business.

(3) ¹The solvency capital requirement is determined by the statutory order relating to section 240 sentence 1 number 9.

²One-third of the solvency capital requirement is deemed to be the minimum capital requirement.

(4) The statutory order enacted on the basis of section 240 sentence 1 number 9 governs the calculation of own funds.

(5) *Pensionsfonds* must submit a calculation of the solvency capital requirement and evidence of own funds to the supervisory authority each year.

Section 239 Investments

(1) ¹*Pensionsfonds* must establish guarantee assets, taking into account each of the pension plans. ²*Pensionsfonds* must ensure that the guarantee assets are invested in manner that reflects the nature and duration of the retirement provision to be provided taking into account the terms of each pension plan.

(2) ¹*Pensionsfonds* must submit to the supervisory authority a statement of their investment policy principles

1. at the latest four months after the end of a financial year and
2. without undue delay after any significant change in the investment policy.

²The statement must include a description of the risk assessment and risk management procedures and of the strategy in relation to each pension plan, in particular the allocation of assets according to the type and duration of retirement benefits. ³It must also address the question of how the investment policy takes environment, social and governance factors into account. ⁴*Pensionsfonds* must make the statement publicly available. ⁵The statement must be reviewed at least every three years.

(3) ¹The satisfaction of the obligations under a pension plan at all times may still be deemed to be guaranteed even if the plan is temporarily underfunded, provided that the deficit does not exceed 5 per cent of the amount of the technical provisions within the meaning of sections 341e to 341h of the German Commercial Code and provided that the interests of the beneficiaries are protected. ²In such cases, the employer and the *Pensionsfonds* must agree a plan to re-establish the cover provided by the guarantee assets and this plan requires the approval of the supervisory authority. ³The plan must satisfy the following conditions:

1. the plan must explain how the level of the assets required to cover the technical provisions within the meaning of sections 341e to 341h of the German Commercial Code in full is to be achieved within a reasonable period; this period must not exceed three years; and
2. the preparation of the plan must take into account the special situation of the *Pensionsfonds*, in particular the structure of its assets and liabilities, its risk profile, its liquidity plan, the age profile of the beneficiaries or, if appropriate, the fact that it is a newly created system.

⁴The supervisory authority must grant approval if the employer furnishes a guarantee or indemnity from a suitable credit institution or provides an arrangement in some other appropriate form, ensuring that the additional funding required to cover the technical provisions within the meaning of sections 341e to 341h of the German Commercial Code will be met in full. ⁵The *Pensionsfonds* must immediately notify the Pensions Insurance Association (*Pensionsversicherungsverein*) of the agreement.

(4) ¹In the case of pension plans in accordance with section 236 (2), subsection (3) above applies subject to the proviso that the deficit does not exceed 10 per cent of the amount of the technical provisions within the meaning of sections 341e to 341h of the German Commercial Code. ²The period for the restoration of full coverage of the provisions may be extended by the supervisory authority; this period must not exceed ten years in total.

Section 240 Authorisation to issue statutory orders

¹For *Pensionsfonds* that are not subject to supervision by the supervisory authorities of the federal states, the Federal Ministry of Finance is authorised to issue provisions by statutory order covering the following:

1. the wording of the actuarial certification, the content, scope and submission deadline for the disclosure report under section 141 (5) sentence 1 no. 2 and the content, scope and submission deadline for the report under section 141 (5) sentence 1 no. 4, in each case in conjunction with section 237 (1);

2. bookkeeping, the content, form and number of copies of the internal report to be submitted to the supervisory authority, comprising the balance sheet broken down for supervisory purposes, income statement and special notes to the balance sheet and income statement to the extent required for supervisory purposes in accordance with this Act;
3. the content, form and number of copies of the internal interim report to be submitted to the supervisory authority quarterly, comprising a compilation of the latest accounting and portfolio data and disclosures regarding the number of claims to the extent required for supervisory purposes in accordance with this Act;
4. the content of the audit reports under section 341k of the German Commercial Code to the extent required for supervisory purposes in accordance with this Act, in particular to enable the competent authority to obtain standardised documents so that it can assess the business conducted by the *Pensionsfonds*;
5. the content of the audit reports under section 35 (1) sentence 1 if required to enable the supervisory authority to fulfil its duties, in particular to enable the supervisory authority to obtain standardised documents so that it can assess the business conducted by the *Pensionsfonds*;
6. the methods to be used for data transmission, the data formats to be used and the required data quality;
7. the addition to the provision for bonuses under section 145 (2) in conjunction with section 237 (1);
8. qualitative and quantitative investment principles for the guarantee assets in addition to section 124 (1) sentences 1 and 2 number 1 (a), numbers 2, 3, 5 to 8 and section 234h (1) to (3) in order to ensure matching and to ensure that the relevant pension plan can be fulfilled at all times, whereby the types of investments specified in section 215 (2) sentence 1 nos. 1 to 7 and other types of investment authorised by this regulation, together with the specifications in the pension plan regarding investment risk and the bearer of such risk, must be taken into account; provisions governing limitations on investments in the sponsoring undertaking; Article 18 of Directive 2003/41/EU must be observed;
9. the calculation and the amount of the solvency capital requirement, the amount of the minimum capital requirement relevant for *Pensionsfonds* and associated authorisation powers, including the procedure; the items deemed to form part of own funds within the meaning of section 238 (2); provisions specifying that reports on the solvency capital requirement and own funds must be submitted to the supervisory authority and specifying the form, content and deadline for the submission of such reports to the supervisory authority;
10. maximum values for the technical interest rate in the case of contracts with a guaranteed rate of return;
11. further requirements for determining the discount rate in accordance with section 341f (2) of the German Commercial Code; and
12. the actuarial assumptions and the methods to be used for determining the premium reserve.

²This authorisation may be delegated by statutory order to BaFin. ³Statutory orders under sentences 1 and 2 do not require the consent of the Bundesrat. ⁴Statutory orders in accordance with sentence 1 nos. 4 and 10 to 12 and in accordance with sentence 2 where they include the powers under sentence 1 nos. 4 and 10 to 12 must be issued in consultation with the Federal Ministry of Justice and Consumer Protection.

Chapter 3 Cross-border business activities of institutions for occupational retirement provision and cross-border transfer of portfolios

Section 241 Cross-border business activities

(1) ¹Cross-border business activities of an institution for occupational retirement provision mean that it operates a pension scheme where the host country is not the same member state or EEA signatory state as the institution's home state. (2) The host country means the member state or EEA signatory state whose social and labour law relevant to the field of occupational pension schemes is applicable to the relationship between the sponsoring undertaking and its members or beneficiaries;

(2) ¹Sections 57 to 60 do not apply to *Pensionskassen* and *Pensionsfonds*. ²Sections 61 to 66 do not apply to institutions for occupational retirement provision whose home country is another member state or EEA signatory state.

Section 242 Cross-border business activities of *Pensionskassen* and *Pensionsfonds*

(1) ¹*Pensionskassen* and *Pensionsfonds* must notify their intention to carry out occupational pension schemes for a sponsoring undertaking through cross-border business activities to the supervisory authority. ²They must provide the following information:

1. the name of the host country,
2. the name and the location of the main administration of the sponsoring undertaking and
3. the main characteristics of the pension scheme to be operated for the sponsoring undertaking.

³The supervisory authority must examine whether the proposed business activities are lawful and whether the administrative structure, the financial situation and the good repute and professional qualifications of the managers of the proposed cross-border business activities are appropriate. ⁴It can require the establishment of segregated guarantee assets for the pension scheme to be operated. ⁵Section 232 (1) nos. 2 and 3 do not apply to the cross-border business activities of a *Pensionskasse*. ⁶Section 236 (1) sentence 1 nos. 2 to 4 and sentence 2 and subsection (2) and section 239 (3) and (4) do not apply to in the case of a *Pensionsfonds*.

(2) ¹As soon as all the information under subsection (1) sentences 1 and 2 has been received, the supervisory authority must decide within three months if the conditions under subsection (1) sentence 3 have been fulfilled. ²If the conditions have been fulfilled, it must communicate the information under subsection (1) sentence 2 to the competent authorities of the host country and must inform the *Pensionskasse* or *Pensionsfonds* that those authorities have been informed. ³If not, it must prohibit the *Pensionskasse* or *Pensionsfonds* from commencing the cross-border business activities.

(3) ¹In the case of subsection (2) sentence 2, the supervisory authority communicates to the *Pensionskasse* or *Pensionsfonds* the information received from the competent authorities of the host country relating to

1. the requirements of social and labour law relevant to the field of occupational pension schemes under that apply to the pension scheme operated for the sponsoring undertaking, and
2. the requirements of the host country that have been enacted under Title IV of Directive (EU) 2016/2341.

²*Pensionskassen* and *Pensionsfonds* are entitled to start carrying out the cross-border business activities in accordance with the requirements referred to in sentence 1 numbers 1 and 2 as soon as they have received the communication from the supervisory authority under sentence 1, but at the latest six months after they have received the communication under subsection (2) sentence 2.

(4) If the supervisory authority is informed by the competent authorities in the host country of any significant changes in the requirements referred to in subsection (3) sentence 1 numbers 1 and 2, the supervisory authority must communicate this information to the *Pensionskasse* or *Pensionsfonds*.

(5) ¹In coordination with the competent authorities in the host country, the supervisory authority must take the necessary measures to ensure that the *Pensionskasse* or *Pensionsfonds* puts a stop to the breaches of the requirements set out in subsection (3) sentence 1 numbers 1 and 2 detected by the competent authorities in the host country. ²The supervisory authority may prohibit or restrict the cross-border business activities if the *Pensionskasse* or *Pensionsfonds* does not comply with the requirements under subsection (3) sentence 1 number 1.

(6) ¹In the case of *Pensionskassen* and *Pensionsfonds* that are subject to supervision at federal state level, the competent state supervisory authority must inform BaFin of a notification under subsection (1) sentences 1 and 2. ²Upon request, BaFin must provide the state supervisory authority with assistance in implementing the procedure under subsections (2) and (3) and in implementing measures under subsection (5).

(7) ¹The supervisory authority must inform the European Insurance and Occupational Pensions Authority of the member states or EEA signatory states in which the *Pensionskasse* or *Pensionsfonds* is operating. ²It must notify EIOPA on an ongoing basis of any changes in this information.

Section 243 Cross-border business activities of institutions whose home country is another member state or EEA

signatory state

(1) Subsections (2) to (6) also apply to pension schemes

1. that are operated by an institution whose home country is a member state or EEA signatory state and is authorised within the meaning of Article 9(1) of Directive (EU) 2016/2341, as part of cross-border business activities for the sponsoring undertaking, and
2. for which Germany is the host country.

(2) ¹If BaFin has received from the competent authorities of the institution's home country the information referred to in Article 11(3) sentence 2 of Directive (EU) 2016/2341, it must inform those authorities within six weeks of

1. the requirements of social and labour law relevant to the field of occupational pension schemes that must be complied with if pension schemes are operated in Germany for a sponsoring undertaking, and
2. the requirements that have been enacted under Title IV of Directive (EU) 2016/2341.

²The institution is entitled to start carrying out the cross-border business activities in accordance with the requirements referred to in sentence 1 numbers 1 and 2 as soon as it has received from the competent authorities of the home country the information provided by BaFin, but at the latest after the end of the period stipulated in sentence 1.

(3) BaFin must determine the vehicle, within the meaning of section 1b (2) to (4) of the German Occupational Pensions Act, under which the institution is to be classified and must inform both the institution and the Pensions Insurance Association.

(4) BaFin must inform the competent authorities of the home country of any significant changes in the requirements referred to in subsection (2) sentence 1 numbers 1 and 2.

(5) ¹BaFin must monitor on an ongoing basis whether the institution complies with requirements referred to in subsection (2) sentence 1 numbers 1 and 2. ²In the event of any breaches of those requirements, it must notify the competent authorities of the home country without undue delay. ³If the institution persists in breaching the requirements, BaFin may, after informing the competent authorities of the home country, itself take appropriate measures to prevent or penalise further breaches. ⁴If no other solution can be considered, it may prohibit the institution from carrying out further activities in Germany for the sponsoring undertaking.

(6) For the purposes of subsection (5) sentence 1, section 305 (1) number 1, (2) numbers 1 and 2 and (5) apply, with the necessary modifications.

(7) At the request of the supervisory authority of the home country, BaFin may prohibit the free disposal of assets held by a custodian or depository located in Germany.

Section 243a Transfer of portfolios to a *Pensionskasse* or *Pensionsfonds*

(1) ¹Any contract by which all or part of the portfolio of pension arrangements of a pension scheme operated by an institution for occupational retirement provision whose home country is not Germany will be transferred to a *Pensionskasse* or *Pensionsfonds* requires the approval of the supervisory authority. ²The application for approval must be submitted by the *Pensionskasse* or *Pensionsfonds*. ³The supervisory authority must notify the application to the competent authority in the institution's home country without undue delay.

(2) The contract under subsection (1) sentence 1 must ensure that the costs of the transfer are not incurred by the incumbent members and beneficiaries of the *Pensionskasse* or *Pensionsfonds* or by the remaining members and beneficiaries of the institution.

(3) The transfer must be approved by

1. a majority of members and a majority of the beneficiaries concerned or by a majority of their representatives, where the relevant majority is defined by applicable national law, and
2. the institution's sponsoring undertaking, if its approval is required.

(4) The application under subsection (1) sentence 2 must contain

1. the written agreement between the institution and the *Pensionskasse* or *Pensionsfonds* setting out the conditions of the transfer;
2. a description of the main characteristics of the pension scheme of the portfolio to be transferred;
3. a description of the liabilities or technical provisions to be transferred, and other rights and obligations, as well as associated assets or cash equivalent to those assets;
4. for the institution and the *Pensionskasse* or *Pensionsfonds* in each case information on the
 - a) name,
 - b) location of the main administration,
 - c) home country;
5. the name and the main administration of the institution's sponsoring undertaking concerned;
6. evidence of the approval under subsection (3);
7. the names of the member states and EEA signatory states whose social and labour law relevant to the field of occupational pension provision is applicable to the pension scheme of the portfolio to be transferred.

(5) ¹Once the supervisory authority has received the application under subsection (1) sentence 2, it must assess whether

1. the information required by subsection (4) has been provided,
2. the following are appropriate to the transfer applied for:
 - a) the administrative structure and the financial situation of the *Pensionskasse* or *Pensionsfonds*,
 - b) the good repute and professional qualifications of the managers of the *Pensionskasse* or *Pensionsfonds*,
3. the long-term interests of the members and beneficiaries
 - a) of the *Pensionskasse* or *Pensionsfonds*,
 - b) the portfolio to be transferredare adequately protected during and after the transfer,
4. where the transfer results in a cross-border business activity of the *Pensionskasse* or *Pensionsfonds*, the technical provisions of the *Pensionskasse* or *Pensionsfonds* are fully funded at the date of the transfer, and
5. the assets to be transferred are sufficient and appropriate to cover the liabilities, technical provisions and other obligations and rights to be transferred, in accordance with the rules applicable to *Pensionskassen* and *Pensionsfonds*.

²The assessment under sentence 1 is designed to establish whether the interests of the members and beneficiaries are protected.

(6) ¹Based on the assessment under subsection (5), the supervisory authority must decide on an application under subsection (1) sentence 2 within three months. ²It must notify the competent authority of the institution's home country about the decision within two weeks. ³No authorisation can be issued if that authority has not approved the transfer.

(7) If the application under subsection (1) sentence 2 is approved, section 13 (5) and (7) sentences 1 and 2 apply.

(8) ¹If the transfer results in a cross-border business activity of the *Pensionskasse* or *Pensionsfonds*, section 242 (1) to 3 does not apply. ²The supervisory authority must communicate to the *Pensionskasse* or *Pensionsfonds* within one week the information about the requirements referred to in section 242 (3) sentence 1 numbers 1 and 2 that it received from the competent authority of the home country on the occasion of the transfer.

(9) *Pensionskasse* or *Pensionsfonds* can operate the transferred pension scheme,

1. as soon as it has received the approval under subsection (1) sentence 1, unless the transfer results in a cross-border business activity,
2. as soon as it has received the approval under subsection (1) sentence 1 and the information referred to in subsection 8 sentence 2 from the supervisory authority, but at the latest seven weeks after receipt of the information.

Section 243b Transfer of portfolios to an institution whose home country is another member state or EEA signatory state

(1) ¹Any contract by which all or part of the portfolio of pension arrangements of a pension scheme operated by a *Pensionskasse* or *Pensionsfonds* is to be transferred to an institution whose home country is another member state or EEA signatory state requires the approval of the competent authority of the home country. ²The application for approval must be submitted by the institution.

(2) The *Pensionskasse* or *Pensionsfonds* must ensure that the costs of the transfer are not incurred by the remaining members and beneficiaries of the *Pensionskasse* or *Pensionsfonds*.

(3) ¹The transfer must be approved by

1. a majority of
 - a) three-quarters of each of the members and beneficiaries concerned of the pension scheme or
 - b) three-quarters of the members of the representative body of the members and beneficiaries if a representative body is provided for by the articles of association of the *Pensionskasse* or *Pensionsfonds*, and
2. the sponsoring undertaking of the *Pensionskasse* or *Pensionsfonds* if its interests are affected.

²The *Pensionskasse* or *Pensionsfonds* must notify the members and beneficiaries concerned or the members of the representative body referred to in sentence 1 number 1 (b) of the conditions applying to the transfer in good time before the institution submits the application under subsection (1) sentence 2.

(4) ¹Once the supervisory body has received from the competent authority of the home country the application under subsection (1) sentence 2, it must assess whether

1. the long-term interests of the remaining members and beneficiaries of the *Pensionskasse* or *Pensionsfonds* are adequately protected;
2. the individual entitlements of the members and beneficiaries of the portfolio to be transferred and the remaining portfolio of the *Pensionskasse* or *Pensionsfonds* are at least the same after the transfer as before it;
3. the assets to be transferred are sufficient and appropriate to cover the liabilities, technical provisions and other obligations and rights to be transferred in accordance with the provisions in Germany.

²The assessment under sentence 1 is designed to establish whether the interests of the members and beneficiaries are protected. ³The supervisory body must notify the competent authority of the home country within eight weeks whether it approves the transfer or not based on the assessment under sentence 1.

(5) ¹If the transfer results in a cross-border business activity of the institution, the supervisory body must inform the competent authority of the institution's home country of the requirements referred to in section 243 (2) sentence 1 numbers 1 and 2. ²It must communicate the information within four weeks of being notified by the competent authority of the approval under subsection (1) sentence 1. ³Section 243 (2) does not apply.

Section 244 (Repealed)

Part 4a Pure defined contribution schemes in occupational retirement provision

Section 244a Scope

(1) In cases where pure defined contribution schemes under section 1 (2) number 2a of the Occupational Pensions Act are implemented, *Pensionsfonds*, *Pensionskassen* and other life insurance undertakings must comply with the requirements of this part.

(2) The provisions of this Act applicable to *Pensionsfonds*, *Pensionskassen* and other life insurance undertakings only apply to the extent that this part does not contain any provisions to the contrary.

Section 244b Obligations

(1) *Pensionsfonds*, *Pensionskassen* and other life insurance undertakings may only implement pure defined contribution schemes if

1. they do not incur any obligations containing guaranteed benefits,
2. the general insurance policy conditions or pension plans provide for a lifetime payment as the retirement benefit and
3. it is stipulated that the scheduled attributable pension capital and the attributable interest and income will be used for scheduled ongoing benefits.

(2) *Pensionskassen* and other life insurance undertakings require authorisation for the class referred to in number 21 of Annex 1.

Section 244c Guarantee assets

Taking into account the relevant collective agreements,

1. segregated guarantee assets must be established in the case of a *Pensionsfonds* and
2. a segregated investment portfolio within the meaning of section 125 (5) must be established in the case of a *Pensionskasse* or another life insurance undertaking.

Section 244d Authorisation to issue statutory orders

⁴The Federal Ministry of Finance is authorised, with the consent of the Federal Ministry of Labour and Social Affairs, to enact more detailed requirements relating to the following by way of a statutory order:

1. the calculation and adjustment of the lifetime payment,

2. the risk management requirements, in particular with the goal of limiting the volatility of the level of the lifetime payments,
3. the information required to be provided to the members and pensioners, and
4. reporting to the supervisory authority.

²In consultation with the Federal Ministry of Labour and Social Affairs, this authorisation may be delegated to BaFin by a statutory order. ³Statutory orders under sentences 1 and 2 do not require the consent of the Bundesrat.

Part 5 Groups

Chapter 1 Supervision of insurance undertakings in a group

Section 245 Application of group-wide supervision

(1) ¹In addition to solo supervision, insurance undertakings in a group are subject to supervision at group level in accordance with the provisions in this part of the Act. ²Unless otherwise specified in this part of the Act, the provisions for the solo supervision of insurance undertakings continue to apply to insurance undertakings in group.

(2) The following are subject to group-wide supervision:

1. insurance undertakings that are a participating undertaking in at least one insurance undertaking or in at least one third country insurance undertaking;
2. insurance undertakings whose parent undertaking is
 - a) an insurance holding company; or
 - b) a mixed financial holding company; or
 1. an insurance undertaking domiciled in member state or EEA signatory state or
3. insurance undertakings whose parent undertaking is
 - a) an insurance holding company; or
 - b) a mixed financial holding company; or
 - c) an insurance undertaking
 - c) an insurance undertaking domiciled in a third country; and
4. insurance undertakings whose parent undertaking is a mixed-activity insurance holding company.

(3) If the participating insurance undertaking or the insurance holding company or the mixed financial holding company domiciled in a member state or EEA signatory state is an affiliated undertaking of a supervised undertaking or a mixed financial holding company that is subject to supplementary supervision in accordance with Article 5 (2) of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35 of 11 February 2003, page 1) or is itself such an undertaking or such a company, the group supervisory authority may, in the cases specified in subsection (2) nos. 1 and 2 and after consulting the other supervisory authorities involved, decide not to monitor the risk concentration in accordance with section 273 or the intra-group transactions in accordance with section 274 or either of these two items

at the level of the participating insurance undertaking, the insurance holding company or the mixed financial holding company.

(4) ¹If a mixed financial holding company, in particular in relation to risk-based supervision, is subject to equivalent provisions in accordance with Directive 2009/138/EC and Directive 2002/87/EC, the group supervisory authority may, after consulting the other supervisory authorities involved, apply only the appropriate provisions in Directive 2002/87/EC at the level of this mixed financial holding company. ²If the mixed financial holding company is subject to equivalent provisions in accordance with Directive 2009/138/EC and Directive 2006/48/EC, the *group supervisory authority*, in consultation with the consolidating supervisory authority for the banking and investment services sectors, may only apply the provisions of the Directive applicable to the most important financial sector in the company in accordance with Article 3 (2) of Directive 2002/87/EC.

5. The provisions of this part do not apply if a group of undertakings subject to insurance supervision arises solely because of the inclusion of small insurance undertakings, funeral expenses funds, *Pensionskassen* or *Pensionsfonds*.

Section 246 Scope of group-wide supervision

(1) ¹Group-wide supervision in accordance with section 245 does not include solo supervision of a third country insurance undertaking, insurance holding company, mixed financial holding company or mixed-activity insurance holding company. ²This is without prejudice to section 293.

(2) ¹The group supervisory authority can determine that an undertaking will not be included in the group-wide supervision in accordance with section 245 if:

1. the undertaking is located in a third country in which there are legal impediments to the transfer of the necessary information; this is without prejudice to section 260;
2. the undertaking to be included is only of negligible interest in relation to the objectives of group-wide supervision; or
3. the inclusion of the undertaking would be inappropriate or misleading in relation to the objectives of group-wide supervision.

²If a number of undertakings in the same group could, if they were each evaluated separately, be excluded from group-wide supervision in accordance with sentence 1 no. 2, they should still nevertheless be included in the group-wide supervision if they are no longer of negligible interest when viewed collectively. ³If the group supervisory authority believes that an insurance undertaking should not be included in group-wide supervision in accordance with sentence 1 no. 2 or 3, it must consult the other supervisory authorities involved before reaching any decision.

(3) All the undertakings subject to group-wide supervision in the group are responsible for complying with the requirements in accordance with part 5 of this Act.

(4) At the request of the supervisory authority that is the competent authority in the relevant member state or EEA signatory state for the supervision of an insurance undertaking not included in group-wide supervision in accordance with subsection (2) sentence 1 no. 2 or 3, the undertaking at the head of the group must provide all the information required by such competent authority to enable it to carry out its supervisory activities.

Section 247 Ultimate parent undertaking at the level of the member state or EEA signatory state

(1) If the participating insurance undertaking specified in section 245 (2) no. 1 or the insurance holding company or mixed financial holding company specified in section 245 (2) no. 2 is itself a subsidiary of another insurance undertaking or of another insurance holding company or mixed financial holding company domiciled in a member state or EEA signatory state, sections 250 to 287 and 293 (1), section 298 (1) and (2), section 305 (1) no. 1 and section 306 (1) no. 1 only apply at the level of the ultimate parent undertaking that is an insurance undertaking or an insurance holding company or a mixed financial holding company domiciled in a member state or EEA signatory state.

(2) If such ultimate parent undertaking that is an insurance undertaking or an insurance holding company or a mixed financial holding company domiciled in a member state or EEA signatory state, as referred to in subsection (1), is a subsidiary of an undertaking that is subject to supplementary supervision under Article 5 (2) of Directive 2002/87/EC, the group supervisory authority may, after consulting the other supervisory authorities involved, decide not to monitor

the risk concentration in accordance with section 273 or the intra-group transactions in accordance with section 274 or either of these two items at the level of this ultimate parent undertaking.

Section 248 Ultimate parent undertaking at national level

(1) ¹If the participating insurance undertakings specified in section 245 (2) no. 1 or the insurance holding company or mixed financial holding company specified in section 245 (2) no. 2 is domiciled in Germany and if the ultimate parent undertaking specified in section 247 is domiciled in another member state or EEA signatory state, the supervisory authority may, after consulting the group supervisory authority and this ultimate parent undertaking, order that the ultimate parent insurance undertaking at national level or the ultimate parent undertaking at national level that is an insurance holding company or a mixed financial holding company be subject to group-wide supervision. ²The supervisory authority must give the reasons for its decision in this case to both the group supervisory authority and the ultimate parent undertaking at the level of the member state or EEA signatory state. ³The group supervisory authority must inform the college of supervisors (section 283) in accordance with Article 248 (1a) of Directive 2009/138/EC. ⁴Subject to subsections (2) to (6) below, sections 250 to 287, section 293 (1), section 298 (1) and (2), section 305 (1) no. 1 and section 306 (1) no. 1 apply, with the necessary modifications.

(2) The supervisory authority may specify that the group-wide supervision for the ultimate parent undertaking at national level be limited to individual provisions in sections 250 to 275.

(3) If the supervisory authority applies sections 250 to 272 to the ultimate parent undertaking at national level, the supervisory authority will recognise as binding and apply the method that has been selected by the group supervisory authority in accordance with section 252 for the ultimate parent undertaking at the level of the member state or EEA signatory state referred to in section 247.

(4) ¹If the supervisory authority applies sections 250 to 272 to the ultimate parent undertaking at national level and the ultimate parent undertaking at the level of the member state or EEA signatory state specified in section 247 has been authorised under section 262 or section 265 (5) to calculate the solvency capital requirement for the group and the solvency capital requirement for the insurance undertakings in the group using an internal model, the supervisory authority will recognise this decision as binding and will implement such decision. ²If, in such cases, the supervisory authority believes that the internal model authorised at the level of the member state or EEA signatory state is significantly different from the risk profile of the ultimate parent undertaking at national level, the supervisory authority may, if the undertaking does not adequately allay its concerns, demand in respect of the ultimate parent undertaking at national level an add-on to the group solvency capital requirement calculated using such model. ³If, in exceptional circumstances, such a capital add-on is not appropriate, the supervisory authority may request that the undertaking calculate its group solvency capital requirement using the standard formula. ⁴The supervisory authority must provide the reasons for such decisions to both the undertaking and the group supervisory authority. ⁵The group supervisory authority must inform the college of supervisors in accordance with Article 248 (1a) of Directive 2009/138/EC.

(5) If the supervisory authority applies the provisions in sections 250 to 272 to the ultimate parent undertaking at national level, this undertaking cannot be authorised in accordance with the provisions of section 267 or section 272 to apply sections 269 and 270 to one of its subsidiaries.

(6) An order in accordance with subsection (1) above cannot be issued or upheld if the ultimate parent undertaking at national level is a subsidiary of the ultimate parent undertaking at the level of the member state or EEA signatory state specified in section 247 and the latter has been authorised in accordance with the provisions of section 268 or section 270 to apply sections 269 and 270 to the subsidiary.

Section 249 Parent undertakings covering several member states or EEA signatory states

(1) ¹In conjunction with the supervisory authorities in other member states or EEA signatory states that are the location of an affiliated undertaking that is also an ultimate parent undertaking at national level, the supervisory authority may agree to conduct group-wide supervision at the level of a subgroup spanning a number of member states or EEA signatory states. ²If the supervisory authorities concerned have entered into such an agreement, there is no group-wide supervision at the level of an ultimate parent undertaking within the meaning of section 248 located in a member state or EEA signatory state other than that of the subgroup.

(2) Section 248 (2) to (6) applies, with the necessary modifications.

Chapter 2 Financial position

Segment 1 Group solvency

Section 250 Supervision of group solvency

(1) ¹The solvency of the group is supervised in accordance with subsections (2) and (3) below, sections 275 to 287, section 293 (1), section 298 (1) and (2), section 305 (1) no. 1 and section 306 (1) no. 1. ²Assets and liabilities are measured in accordance with section 74.

(2) In the case specified in section 245 (2) no. 1, the participating insurance undertakings must, at group level and at all times, have eligible own funds in an amount equivalent to at least the solvency capital requirement calculated in accordance with sections 252 to 265.

(3) In the case specified in section 245 (2) no. 2, the insurance undertakings in a group must, at group level and at all times, have eligible own funds in an amount equivalent to at least the solvency capital requirement calculated in accordance with section 266.

(4) Sections 132 and 134 (1) to (6) apply, with the necessary modifications.

Section 251 Frequency of calculation

(1) ¹The solvency capital requirement at group level must be calculated at least once a year by the participating insurance undertakings, the insurance holding company or the mixed financial holding company. ²If the ultimate participating undertaking is an insurance undertaking, this undertaking must report the data and results relevant to this calculation to the group supervisory authority. ³If the ultimate participating undertaking is an insurance holding company or a mixed financial holding company, this company must report the information specified in sentence 2 unless the group supervisory authority has, after consulting the other supervisory authorities involved and the group, specified an insurance undertaking as the undertaking with responsibility for submitting the reports.

(2) ¹The insurance undertakings, the insurance holding company and the mixed financial holding company within the meaning of subsection (1) must continuously monitor the solvency capital requirement for the group. ²If the group's risk profile is significantly different from the assumptions on which the most recent reported solvency capital requirement for the group was based, the solvency capital requirement must be recalculated without delay and reported to the group supervisory authority. ³If there is evidence to suggest that the risk profile of the group has changed significantly since the most recently reported solvency capital requirement, the group supervisory authority may demand that the solvency capital requirement be recalculated.

Section 252 Determining the method

(1) The solvency of the group headed by a participating insurance undertaking must be calculated on the basis of consolidated financial statements in accordance with sections 261 to 264 (accounting consolidation method).

(2) The group supervisory authority may, after consulting the other supervisory authorities involved and the group, specify the use of the method described in section 265 (deduction and aggregation method) or, if the use of the accounting consolidation method alone would be inadequate, the use of a combination of the two methods.

Section 253 Inclusion of the proportional share

(1) The calculation of group solvency must take into account the proportional share held by the participating undertakings in its affiliated undertakings.

(2) The proportional share within the meaning of subsection (1) refers to the following:

1. when using the accounting consolidation method, the percentages used in the preparation of the consolidated financial statements; or
2. when using the deduction and aggregation method, the share of subscribed capital directly or indirectly held by the participating undertaking.

(3) ¹If the affiliated undertaking is a subsidiary whose own funds are inadequate to comply with its solvency capital requirement, this solvency shortfall must be included in the calculation in full, regardless of the method used. ²In derogation of sentence 1, the group supervisory authority may permit the solvency shortfall to be included on a pro rata basis if, in the opinion of the supervisory authorities involved, the liability of the parent undertaking is limited exclusively to the share of capital held.

(4) After consulting the other supervisory authorities involved and the group, the group supervisory authority must specify the proportional share to be included if:

1. there are no capital relationships between some of the undertakings in a group;
2. a supervisory authority has decided that the direct or indirect holding of voting rights or capital in an undertaking is also deemed to be a qualifying holding because, in the opinion of the supervisory authority, a significant influence is exercised over this undertaking in practice; or
3. a supervisory authority has decided that an undertaking is the parent undertaking of another undertaking because, in the opinion of the supervisory authority, the former exercises a dominant influence over the latter in practice.

Section 254 Elimination of double use of eligible own funds

(1) ¹The double use of own funds eligible for the solvency capital requirement among the different insurance undertakings taken into account in the calculation of group solvency is not permitted. ²The following amounts are disregarded in the calculation of group solvency unless otherwise provided for in the methods described in sections 261 to 265:

1. the value of any asset of the participating undertaking that represents the financing of own funds eligible for the solvency capital requirement of one of its affiliated insurance undertakings;
2. the value of any asset of an insurance undertaking affiliated with the participating insurance undertaking that represents the financing of own funds eligible for the solvency capital requirement of this participating insurance undertaking; and
3. the value of any asset of an insurance undertaking affiliated with the participating insurance undertaking that represents the financing of own funds eligible for the solvency capital requirement of any other insurance undertaking affiliated with this participating insurance undertaking.

(2) The following may be included in the calculation only in so far as they are eligible for covering the solvency capital requirement of the affiliated undertaking concerned:

1. surplus funds in accordance with Article 91 (2) of Directive 2009/138/EC arising in an affiliated life insurance undertaking of the participating insurance undertaking for which the group solvency is calculated; and
2. any subscribed but unpaid capital of an insurance undertaking affiliated with the participating insurance undertaking for which the group solvency is calculated.

(3) In derogation of subsection (2) no. 2, the following are excluded from the calculation:

1. subscribed but unpaid capital that represents a potential liability for the participating insurance undertaking;
2. subscribed but unpaid capital of the participating insurance undertaking that represents a potential liability for an affiliated insurance undertaking; and
3. subscribed but unpaid capital of an affiliated insurance undertaking that represents a potential liability for another insurance undertaking affiliated with the same participating insurance undertaking.

(4) Where the supervisory authorities involved consider that certain own funds eligible for the solvency capital requirement of an affiliated insurance undertaking other than those referred to in subsections (2) and (3) cannot effectively be made available to cover the solvency capital requirement of the participating insurance undertaking for which the group solvency is calculated, those own funds may be included in the calculation only in so far as they are eligible for covering the solvency capital requirement of the affiliated undertaking.

(5) The sum of the own funds in accordance with subsections (2) to (4) must not exceed the solvency capital requirement of the affiliated insurance undertaking.

(6) If group solvency is calculated, the additional eligible own funds of an affiliated insurance undertaking of the participating insurance undertaking may only be included in the calculation if the supervisory authority responsible for supervising this affiliated insurance undertaking has authorised these own funds.

Section 255 Elimination of intra-group creation of capital

(1) When calculating group solvency, no account must be taken of any own funds eligible for the solvency capital requirement arising out of reciprocal financing between the participating insurance undertaking and any of the following:

1. an affiliated undertaking;
2. a participating undertaking; or
3. another affiliated undertaking of any of its participating undertakings.

(2) In addition, when calculating group solvency, no account must be taken of any own funds eligible for the solvency capital requirement of an affiliated insurance undertaking of the participating insurance undertaking where the own funds concerned arise out of reciprocal financing with any other affiliated undertaking of that participating insurance undertaking.

(3) Reciprocal financing is deemed to exist, in particular, where an insurance undertaking, or any of its affiliated undertakings, holds shares in, or makes loans to, another undertaking that, directly or indirectly, holds own funds eligible for the solvency capital requirement of the first insurance undertaking or any of its affiliated undertakings.

Section 256 Affiliated insurance undertakings

(1) If the insurance undertaking has more than one affiliated insurance undertaking, the calculation of group solvency must include all the affiliated insurance undertakings.

(2) In the case of an affiliated insurance undertaking that is domiciled in a member state or EEA signatory state other than that of the insurance undertaking for which the group solvency is to be calculated, the calculation of group solvency must take into account the solvency capital requirement of this other member state or EEA signatory state and the own funds eligible to satisfy the requirement in that other state.

Section 257 Intermediate insurance holding companies

(1) ¹If an insurance undertaking has a holding in an affiliated insurance undertaking or in a third country insurance undertaking through an insurance holding company or a mixed financial holding company, the insurance holding company or mixed financial holding company is included in the group solvency calculation. ²For the sole purpose of this calculation, the intermediate insurance holding company or intermediate mixed financial holding company is treated as if it were an insurance undertaking subject to the rules in sections 96 to 121 in respect of the solvency capital requirement and the rules in sections 89 to 95 in respect of eligible own funds.

(2) ¹If an intermediate insurance holding company or an intermediate mixed financial holding company holds subordinated liabilities or other eligible own funds subject to limitation in accordance with section 94, such debt or funds are recognised as own funds only in an amount up to the limits applicable at group level. ²Eligible ancillary own funds of an intermediate insurance holding company or an intermediate mixed financial holding company may only be included in the group solvency calculation if they have been duly authorised beforehand by the group supervisory authority.

Section 258 Affiliated third country insurance undertakings

(1) ¹If an insurance undertaking is participating undertaking in a third country insurance undertaking and if group solvency is calculated using the deduction and aggregation method, the third country insurance undertaking must be treated as an affiliated insurance undertaking for the purposes of this calculation. ²If the third country insurance undertaking is subject, in its home country, to authorisation and solvency rules that are at least equivalent to those specified in Title I Chapter VI of Directive 2009/138/EC, the solvency capital requirement and the eligible own funds must be calculated in accordance with the regulations in the third country concerned.

(2) ¹Any participating undertaking may apply for an equivalence verification in accordance with subsection (1) sentence 2. ²The group supervisory authority is responsible for deciding on equivalence after consulting the other supervisory authorities involved and the European Insurance and Occupational Pensions Authority. ³The decision must be taken on the basis of the criteria specified by the Commission in delegated legislative acts under Article 227 (3) of Directive 2009/138/EC. ⁴The group supervisory authority is bound by any previous decision taken in respect of a third country. ⁵This does not apply if a new review is required because the supervisory system described in Title I Chapter VI of Directive 2009/138/EC or the supervisory system in the third country has changed significantly. ⁶If the other supervisory authorities involved do not agree with the decision taken by the group supervisory authority, they may, within three months of the notification of the decision by the group supervisory authority, refer the matter for consultation to the European Insurance and Occupational Pensions Authority in accordance with Article 19 of Regulation (EU)

no. 1094/2010.

(3) ¹A delegated legislative act by the European Commission under Article 227 (4) of Directive 2009/138/EC specifying whether the solvency rules of a third country are equivalent or not is binding on the group supervisory authority and precludes any review under subsection (2) above. ²The same applies if and for as long as there is a delegated legislative act from the European Commission in force under Article 227 (5) of Directive 2009/138/EC covering provisional equivalence.

Section 259 Affiliated credit institutions, investment firms and financial institutions

(1) ¹When calculating the group solvency of an insurance undertaking that is a participating undertaking in a credit institution, investment firm or financial institution, the participating insurance undertakings may apply method 1 or 2 as specified in Annex I of Directive 2002/87/EC, with the necessary modifications. ²The accounting consolidation method may only be applied if, in the opinion of the group supervisory authority, the integrated management and the internal control in relation to the undertakings included in the scope of consolidation are appropriate. ³The selected method must be consistently applied over the long term.

(2) ¹The supervisory authority may, if it has assumed the role of group supervisory authority, order that a holding referred to in subsection (1) be deducted from the own funds eligible for inclusion in the group solvency of the participating undertaking. ²The participating undertaking may request such deduction.

Section 260 Non-availability of the necessary information

¹If the information concerning an affiliated undertaking domiciled in a member state or EEA signatory state or third country necessary for calculating the group solvency of an insurance undertaking is not available, the carrying amount for this undertaking recognised by the participating insurance undertaking is deducted from the own funds eligible for group solvency. ²Any unrealised gains associated with this holding may not be included in own funds eligible to cover group solvency.

Section 261 Accounting consolidation method

(1) ¹Under the accounting consolidation method, the group solvency of the participating insurance undertaking is calculated on the basis of the consolidated financial statements. ²The group solvency of the participating insurance undertaking is the difference between the own funds eligible to cover the solvency capital requirement calculated on the basis of the consolidated financial statements and the solvency capital requirement at group level calculated on the basis of the consolidated financial statements. ³Part 2 chapter 2 segment 2 applies, with the necessary modifications, to the calculation of the own funds eligible for the solvency capital requirement and the calculation of the solvency capital requirement at group level using the accounting consolidation method.

(2) The consolidated group solvency capital requirement must be calculated using either the standard formula or an approved internal model.

(3) ¹The minimum amount of the consolidated group solvency capital requirement is the sum of the minimum capital

requirement for the participating insurance undertaking and the proportional share of the minimum capital requirement for each of the affiliated insurance undertakings, such share in each case corresponding to the percentage holding. ²This minimum must be covered by eligible basic own funds as determined in section 95. ³Section 250 (1) sentence 2, sections 253 to 260 and section 135 (1) and (2) apply, with the necessary modifications.

Section 262 Group internal model

(1) ¹An insurance undertaking and its affiliated undertakings or, jointly, the affiliated undertakings of an insurance holding company or mixed financial holding company may apply for a authorisation to use an internal model to calculate the consolidated solvency capital requirement at group level and the solvency capital requirement for the insurance undertakings in the group. ²The application must be submitted to the group supervisory authority.

(2) ¹The group supervisory authority must inform the other members of the college of supervisors (section 283) without delay that it has received such an application. ²As soon as the application documents have been received in full, the group supervisory authority must forward them without delay to the other supervisory authorities involved. ³The supervisory authorities involved must cooperate to decide whether or not to grant the authorisation and to determine any conditions that they may wish to impose in connection with granting the authorisation. ⁴The decision should be reached by mutual consent. ⁵The supervisory authorities must do everything within their power to reach a joint decision on the application within six months of receiving the complete application.

(3) If the supervisory authorities come to a decision within the meaning of subsection (2) by mutual consent, the group supervisory authority sends notice of the decision to the applicant.

(4) ¹If no decision is reached by mutual consent within six months of receiving the complete application from the group, the group supervisory authority must decide on the application. ²The group supervisory authority must take due account of any views and reservations expressed by the other supervisory authorities involved within the six month period. ³The group supervisory authority must send notice of its decision to the applicant and inform the other supervisory authorities involved accordingly. ⁴The decision of the group supervisory authority must be accepted by the supervisory authorities involved as binding and implemented accordingly.

(5) ¹If, before the six-month period referred to in subsection (2) expires, one of the supervisory authorities involved refers the matter to the European Insurance and Occupational Pensions Authority in accordance with Article 19 of Regulation (EU) no. 1094/2010, the procedure at the group supervisory authority is suspended until the European Insurance and Occupational Pensions Authority decides in accordance with Article 19 (3) of the Regulation. ²The decision of the group supervisory authority must be consistent with the decision of the European Insurance and Occupational Pensions Authority. ³The decision of the group supervisory authority must be accepted by the supervisory authorities involved as binding and implemented accordingly.

(6) The matter is not referred to the European Insurance and Occupational Pensions Authority if a joint decision has been reached or the six-month period has expired.

(7) ¹If the European Insurance and Occupational Pensions Authority rejects the decision proposed by the panel in accordance with Article 41 (3) and Article 44 (1) of Regulation (EU) no. 1094/2010, the decision must be made by the group supervisory authority. ²The decision of the group supervisory authority must be accepted by the supervisory authorities involved as binding and implemented accordingly. ³The six-month period in subsection (2) is deemed to be a period for settling differences of opinion within the meaning of Article 19 (2) of Regulation (EU) no. 1094/2010.

Section 263 Capital add-on for a group undertaking

(1) ¹If an insurance undertaking calculates its solvency capital requirement on the basis of an internal model approved at group level and, in the opinion of the supervisory authority, the risk profile of this undertaking deviates significantly from the assumptions underlying this internal model, the supervisory authority may, in accordance with section 301, impose a capital add-on to the solvency capital requirement determined using the internal model. ²The capital add-on requirement must be withdrawn as soon as the insurance undertaking concerned has allayed the concerns of the supervisory authority.

(2) ¹If, in exceptional circumstances, a capital add-on in accordance with subsection (1) is not appropriate, the supervisory authority may require the undertaking concerned to calculate its solvency capital requirement using the standard formula. ²Subject to the requirements specified in section 301 (1) no. 1 or 3, the supervisory authority may also impose a capital add-on to the solvency capital requirement determined using the standard formula. ³The supervisory authority must explain the reasons for any decision made in accordance with subsection (1) and sentences (1) or (2) above to both the insurance undertaking and the other members of the college of supervisors.

Section 264 Capital add-on for the group

(1) ¹The group supervisory authority may impose a capital add-on to the consolidated solvency capital requirement for the group if the consolidated solvency capital requirement does not adequately reflect the risk profile of the group. ²This is the case, in particular, if

1. a specific risk at group level cannot be adequately covered because the risk is difficult to quantify with the standard formula or the internal model used by the group; or
2. capital add-ons must be imposed in respect of affiliated insurance undertakings in accordance with sections 301 and 263.

(2) Section 301 and the delegated legislative acts under Article 37 of Directive 2009/138/EC apply, with the necessary modifications.

Section 265 Deduction and aggregation method

(1) Under the deduction and aggregation method, the group solvency of the participating insurance undertaking is the difference between

1. the aggregated eligible own funds for the group in accordance with subsection (2); and
2. the value of the affiliated insurance undertakings recognised by the participating insurance undertaking plus the aggregated solvency capital requirement for the group in accordance with subsection (3).

(2) The aggregated eligible own funds for the group comprise the following:

1. the own funds eligible for the solvency capital requirement of the participating insurance undertaking;
2. the proportional share of the participating insurance undertaking in the own funds eligible for the solvency capital requirement of the affiliated insurance undertakings.

(3) The aggregated solvency capital requirement for the group comprises the following:

1. the solvency capital requirement of the participating insurance undertaking; and
2. the proportional share of the solvency capital requirement of the affiliated insurance undertakings.

(4) ¹In the case of a holding that is partially or wholly indirect, the value of the indirect holding is determined on the basis of the indirect proportional share. ²The proportional shares referred to in subsection (2) no. 2 and subsection (3) no. 2 are calculated accordingly.

(5) Sections 262 and 263 apply, with the necessary modifications, to an application for authorisation to calculate the solvency capital requirement for the insurance undertakings in a group using an internal model.

(6) ¹The aggregated solvency capital requirement for the group must appropriately reflect the risk profile of the group. ²In particular, specific risks at group level that are difficult to quantify must be adequately taken into account. ³If the risk profile of the group deviates significantly from the assumptions underlying the aggregated solvency capital requirement for the group, the group supervisory authority may impose a capital add-on to the aggregated solvency capital requirement for the group. ⁴Section 301 and the delegated legislative acts under Article 37 of Directive 2009/138/EC apply, with the necessary modifications.

Section 266 Group solvency of an insurance holding company or a mixed financial holding company

¹If insurance undertakings are subsidiaries of an insurance holding company or a mixed financial holding company, the solvency of the group in accordance with section 250 (1) sentence 2 and sections 252 to 265 must be calculated at the level of the insurance holding company or mixed financial holding company. ²For the purposes of this calculation, the insurance holding company or mixed financial holding company is treated as if it were an insurance undertaking. ³Its solvency capital requirement must be determined in accordance with part 2 chapter 2 segment 2 subsegments 2 and 3 and with the assumption that, in relation to eligible own funds, it is subject to the provisions specified in part 2 chapter 2 segment 2 subsegment 1.

Section 267 Conditions applicable to subsidiaries of an insurance undertaking

The provisions in sections 269 and 270 apply to any insurance undertaking that is a subsidiary of another insurance undertaking where:

1. the subsidiary is included in the group-wide supervision at the level of the parent undertaking;
2. the risk management system and internal control mechanisms of the parent undertaking include the subsidiary and the parent undertaking has satisfied the supervisory authorities concerned that the subsidiary is managed prudently;
3. the parent undertaking has received consent in accordance with section 275 (4);
4. the parent undertaking has received consent in accordance with section 277 (2); and
5. the parent undertaking has applied for the use of the provisions in sections 269 and 270 and this application has been approved in accordance with section 268.

Section 268 Supervision in the case of centralised risk management

(1) ¹All the supervisory authorities concerned must work together within the college of supervisors (section 283) to reach a decision on whether or not to approve an application for the solvency of a group with centralised risk management to be supervised in accordance with the provisions of sections 269 and 270 and to decide on any

conditions to be imposed in connection with the issue of such approval. ²The application must be submitted to the supervisory authority responsible for the subsidiary concerned. ³This supervisory authority must inform the other supervisory authorities in the college of supervisors without delay and forward the complete application to these other supervisory authorities.

(2) The supervisory authorities concerned should come to a decision on the application by mutual consent within three months of the date on which the complete application is received by all the supervisory authorities involved.

(3) If the supervisory authorities manage to come to a decision by mutual consent within the meaning of subsection (2), the supervisory authority responsible for the subsidiary sends notice of the decision to the applicant.

(4) ¹If no decision is reached by mutual consent within three months of receiving the complete application from the group, the group supervisory authority must decide on the application. ²The group supervisory authority must take due account of any views and reservations expressed by the other supervisory authorities represented in the college of supervisors within the three-month period. ³The group supervisory authority must send notice of its decision to the applicant and inform the other supervisory authorities involved accordingly. ⁴The decision of the group supervisory authority must be accepted by the supervisory authorities involved as binding and implemented accordingly.

(5) ¹If, before the three-month period referred to in subsection (2) expires, one of the supervisory authorities involved refers the matter to the European Insurance and Occupational Pensions Authority in accordance with Article 19 of Regulation (EU) no. 1094/2010, the group supervisory authority must await the decision of the European Insurance and Occupational Pensions Authority. ²The group supervisory authority is, as regards the details of its decision, bound by the decision of the European Insurance and Occupational Pensions Authority. ³The decision of the group supervisory authority must be accepted by the supervisory authorities involved as binding and implemented accordingly.

(6) The matter is not referred to the European Insurance and Occupational Pensions Authority if a joint decision has been reached or the three-month period has expired.

(7) ¹If the European Insurance and Occupational Pensions Authority rejects the decision proposed by the panel in accordance with Article 41 (3) and Article 44 (1) of Regulation (EU) no. 1094/2010, the decision must be made by the group supervisory authority. ²The decision of the group supervisory authority must be accepted by the supervisory authorities involved as binding and implemented accordingly.

Section 269 Determination of the solvency capital requirement for a subsidiary

(1) ¹The solvency capital requirement of a subsidiary must be calculated in accordance with subsections (2), (4) and (5) below. ²This is without prejudice to section 262.

(2) ¹If the solvency capital requirement of the subsidiary is calculated using an internal model approved at group level in accordance with section 262, the supervisory authority may impose a capital add-on to the solvency capital requirement for this undertaking if it believes that the risk profile deviates significantly from the internal model and the criteria in section 301 are satisfied. ²If a capital add-on would not be appropriate in an individual case, the supervisory authority that authorised the subsidiary may require the undertaking to calculate its solvency capital requirement using the standard formula. ³Before reaching a decision, the supervisory authority must consult both the subsidiary concerned and the other supervisory authorities represented in the college of supervisors in accordance with section 283.

(3) ¹If the solvency capital requirement for the subsidiary is calculated with the standard formula and the supervisory authority believes that the risk profile of the undertaking deviates significantly from the assumptions underlying the standard formula, and if the concerns of the supervisory authority are not satisfactorily addressed, the supervisory authority may in individual cases require that the undertaking replace a subgroup of the standard formula calculation parameters with undertaking-specific parameters in the calculation of the underwriting risk modules or may impose a capital add-on in the cases specified in section 301. ²Before reaching a decision, the supervisory authority must consult both the subsidiary concerned and the other supervisory authorities represented in the college of supervisors in accordance with section 283.

(4) ¹The college of supervisors must do everything within its power to reach an agreement on the proposal from the supervisory authority that authorised the subsidiary or on other possible measures. ²The decision must be accepted by the supervisory authorities involved as binding and implemented accordingly.

(5) ¹If the supervisory authority that authorised the subsidiary and the group supervisory authority disagree, either authority may, within one month of receiving the proposal from the supervisory authority, refer the matter to the European Insurance and Occupational Pensions Authority for consultation in accordance with Article 19 of Regulation (EU) no. 1094/2010. ²The matter is not referred to the European Insurance and Occupational Pensions Authority if a decision has been reached within the college of supervisors by mutual consent or the one-month period has expired.

(6) ¹The supervisory authority that authorised the subsidiary must await the decision of the European Insurance and Occupational Pensions Authority. ²The decision of the supervisory authority that authorised the subsidiary must be consistent with the decision of the European Insurance and Occupational Pensions Authority. ³The supervisory authority must send notice of its decision to the subsidiary and inform the college of supervisors accordingly. ⁴The decision of the supervisory authority must be accepted by the supervisory authorities involved as binding and implemented accordingly.

Section 270 Non-compliance with the capital requirement for a subsidiary

(1) ¹Within six months of the date on which non-compliance with the solvency capital requirement is identified, the subsidiary must increase its eligible own funds or reduce its risks such that compliance with the solvency capital requirement is restored. ²The supervisory authority that authorised the subsidiary must send to all of the supervisory authorities in the college of supervisors without delay the recovery plan submitted by the subsidiary. ³The supervisory authorities in the college of supervisors must come to a decision regarding approval of the recovery plan by mutual consent within four months of the date on which non-compliance with the solvency capital requirement was identified. ⁴If the supervisory authorities are unable to reach an agreement within this period, the supervisory authority that authorised the subsidiary must decide on the approval of the recovery plan taking into account the views of the other supervisory authorities.

(2) ¹If the supervisory authority identifies a deterioration in the financial position of the subsidiary in accordance with section 132 (2), it must notify the supervisory authorities in the college of supervisors without delay of the measures it believes ought to be taken. ²Unless the situation is critical, the proposed measures will be discussed by the college of supervisors. ³The college of supervisory authorities must do everything within its power to reach an agreement on the proposed measures to be taken. ⁴If the supervisory authorities are unable to reach an agreement within one month of receiving the notification referred to in sentence 1, the supervisory authority that authorised the subsidiary must make the decision taking due account of the views of the other supervisory authorities in the college of supervisors regarding the measures concerned.

(3) ¹In the event of non-compliance with the minimum capital requirement, the supervisory authority that authorised the subsidiary must, without delay, forward to the college of supervisors the short-term finance plans submitted by the subsidiary so that, within three months of the date on which non-compliance with the minimum capital requirement was identified, the eligible own funds are increased or the risk profile is reduced such that compliance with the minimum capital requirement is restored. ²The supervisory authority must also inform the college of supervisors of the measures it has initiated to enforce compliance with the minimum capital requirement.

(4) If the supervisory authority that authorised the subsidiary and the group supervisory authority cannot agree regarding

1. approval of the recovery plan, including any extension of the period for the restoration of compliance, within the four-month period specified in subsection (1); or
2. approval of the proposed measures within the one-month period specified in subsection (2),

they may refer the matter to the European Insurance and Occupational Pensions Authority for consultation in accordance with Article 19 of Regulation (EU) no. 1094/2010.

(5) The matter is not referred to the European Insurance and Occupational Pensions Authority if:

1. an agreement has been reached within the college of supervisors on the approval of the recovery plan in accordance with subsection (1) or the proposed measures in accordance with subsection (2);
2. the periods referred to in subsection (4) have expired; or
3. a critical situation as specified in subsection (2) sentence 2 has arisen.

(6) ¹The supervisory authority that authorised the subsidiary must await the decision of the European Insurance and Occupational Pensions Authority. ²The decision of the supervisory authority that authorised the subsidiary must be consistent with the decision of the European Insurance and Occupational Pensions Authority. ³The supervisory authority must send notice of its decision to the subsidiary and inform the college of supervisors accordingly. ⁴The decision of the supervisory authority must be accepted by the supervisory authorities involved as binding and implemented accordingly.

Section 271 End of derogations for a subsidiary

(1) ¹The rules provided for in sections 269 and 270 do not apply if:

1. the condition specified in section 267 no. 1 is no longer satisfied;
2. the conditions specified in section 267 no. 2 are no longer satisfied and the group does not ensure that it satisfies the conditions again within a reasonable period; or
3. the conditions specified in section 267 nos. 3 and 4 are no longer satisfied.

²If, in the case specified in sentence 1 no. 1 and after consulting the college of supervisors, the group supervisory authority decides that the subsidiary will no longer be included in the group-wide supervision, it must notify the supervisory authority responsible for the subsidiary and the parent undertaking without delay.

(2) ¹The parent undertaking is responsible for ensuring that the conditions specified in section 267 nos. 2, 3 and 4 are satisfied at all times. ²If a condition is not satisfied, the parent undertaking must notify without delay the group supervisory authority and the supervisory authority responsible for the supervision of the subsidiary concerned. ³The parent undertaking must submit a plan to ensure it satisfies the conditions once again within a reasonable period. ⁴The group supervisory authority must carry out a review at least once a year to verify that the conditions continue to be satisfied. ⁵It must also carry out such a review at the request of the supervisory authority concerned if the latter has significant doubts whether these conditions continue to be satisfied. ⁶If this review reveals weaknesses or deficiencies, the group supervisory authority must request the parent undertaking to present a plan for the elimination of these weaknesses or deficiencies within a reasonable period of time. ⁷If, after consulting the college of supervisors, the group supervisory authority establishes that the plan referred to in sentences 3 and 6 is inadequate or is not being implemented within the agreed timeframe, the conditions specified in section 267 nos. 2 to 4 will be deemed to be no longer satisfied. ⁸The group supervisory authority must inform the supervisory authority concerned accordingly without delay.

(3) If the parent undertaking submits a new application and this is approved, the regime provided for in sections 269 and 270 applies once again.

Section 272 Subsidiaries of an insurance holding company or a mixed financial holding company

Sections 267 to 271 apply, with the necessary modifications, to insurance undertakings that are subsidiaries of an insurance holding company or a mixed financial holding company.

Segment 2 Risk concentration and intra-group transactions

Section 273 Supervision of risk concentration

(1) All significant risk concentrations at group level must be reported to the group supervisory authority at least once a year.

(2) ¹If the ultimate participating undertaking is an insurance undertaking, this undertaking must report the information to the group supervisory authority. ²If the ultimate participating undertaking is an insurance holding company or a mixed financial holding company, this company must report the information unless the supervisory authority has, after consulting the other supervisory authorities involved and the group, specified an insurance undertaking as the undertaking with responsibility for submitting the reports.

(3) ¹After consulting the other supervisory authorities involved and the group, the group supervisory authority determines:

1. the types of risk to be reported in all circumstances by insurance undertakings in a particular group; and
2. appropriate threshold values for the reporting obligations related to significant risk concentrations.

²The specific structure of the group concerned and the structure of the group's risk management system must be taken into account when determining the risks. ³The threshold values must be based on the solvency capital requirement, the technical provisions or both.

(4) When supervising risk concentrations, the group supervisory authority must monitor the level and probability of losses occurring in respect of the risks, in particular the possible contamination risk within the group and the risk of a conflict of interests.

Section 274 Supervision of intra-group transactions

(1) ¹All significant intra-group transactions by insurance undertakings within a group, including transactions with natural persons with close links to an undertaking in the group, must be reported to the group supervisory authority at least annually. ²The group supervisory authority may specify a more frequent reporting cycle in order to facilitate the monitoring of intra-group transactions.

(2) ¹If the ultimate participating undertaking is an insurance undertaking, this undertaking must report the significant intra-group transactions to the group supervisory authority. ²If the ultimate participating undertaking is an insurance holding company or a mixed financial holding company, this company must report the information unless the group supervisory authority has, after consulting the other supervisory authorities involved and the group, specified an insurance undertaking as the undertaking with responsibility for submitting the reports.

(3) In the case of particularly significant transactions in accordance with subsection (1), the undertaking responsible for submitting the reports must submit a report without delay.

(4) ¹After consulting the group and the other supervisory authorities involved, the group supervisory authority must determine the types of intra-group transaction to be reported by the insurance undertakings in the group in all circumstances. ²In the case of groups with cross-border activities, the group supervisory authority must determine the reportable types of intra-group transaction after consulting the other supervisory authorities involved. ³Section 273 (3) sentences 2 and 3, and (4) applies, with the necessary modifications.

Segment 3 Governance, reporting requirements

Section 275 Supervision of the system of governance

(1) ¹Part 2 chapter 1 segment 3 and section 47 numbers 1, 2, 8 and 9 apply at group level, with the necessary modifications. ²Without prejudice to the provisions referred to in sentence 1, the risk management system, internal control system and the reporting system of all the undertakings included in the group-wide supervision in accordance with section 245 (2) nos. 1 and 2 must be implemented such that these systems can be managed and controlled at group level.

(2) Without prejudice to subsection (1), the internal control mechanisms must include at least the following:

1. adequate mechanisms as regards group solvency to facilitate identification and measurement of all material risks and ensure these risks are covered by eligible own funds; and
2. proper reporting and accounting procedures to monitor and manage the intra-group transactions and risk concentrations.

(3) ¹The participating insurance undertaking or the insurance holding company or the mixed financial holding company must carry out an own risk and solvency assessment at group level in accordance with section 27. ²Where the calculation of group solvency is carried out using the accounting consolidation method, the participating insurance undertaking or the insurance holding company or the mixed financial holding company must transparently present to the group supervisory authority the difference between the sum of the solvency capital requirement for all the affiliated insurance undertakings in the group and the consolidated solvency capital requirement for the group.

(4) ¹Subject to the consent of the group supervisory authority, the participating insurance undertaking or the insurance holding company or the mixed financial holding company may carry out the own risk and solvency assessments at group level and at the level of the subsidiaries at the same time and, for the purposes of reporting to the supervisory authorities, present the results in one report. ²In this case, the participating insurance undertaking or the insurance holding company or the mixed financial holding company must send the report to all the supervisory authorities involved at the same time. ³This is without prejudice to the obligation of the subsidiaries to comply with the requirements specified in section 27. ⁴Before giving consent in accordance with sentence 1, the supervisory authority concerned must consult the members of the college of supervisors and take due account of their views.

Section 276 Exchange of information

(1) The natural and legal persons included within the scope of group-wide supervision, including the affiliated and participating undertakings, are authorised to exchange all information necessary under the application of the provisions in this part of the Act.

(2) The ultimate participating undertaking may require any other undertaking in the group to provide any clarification or documentation that may be needed to enable it to fulfil its obligations under this chapter.

(3) This is without prejudice to the provisions of the German Federal Data Protection Act.

Section 277 Report on group solvency and financial position

(1) ¹The ultimate parent undertaking at the level of the member state or EEA signatory state within the meaning of section 247 must publish a report on the solvency and financial position at the level of the group on an annual basis. ²Section 29 (3) and sections 40 to 42 apply, with the necessary modifications.

(2) ¹Subject to the consent of the group supervisory authority, this undertaking has the right to publish just a single solvency and financial position report for the whole of the group that includes the information at group level to be disclosed in accordance with subsection (1) and the information to be disclosed for each subsidiary in the group in accordance with sections 40 to 42, each subsidiary to be individually identifiable. ²In such cases, the obligations under the aforementioned provisions for the individual subsidiaries no longer apply.

(3) Before giving consent in accordance with sentence 2, the group supervisory authority concerned must consult the supervisory authorities in the college of supervisors and take due account of their views.

(4) If a supervisory authority is responsible for a subsidiary in a group and the solvency and financial position report prepared in accordance with subsection (2) fails to provide material information relating to this subsidiary, the supervisory authority concerned may impose an obligation on the subsidiary to disclose the necessary additional information.

Section 278 Group structure

Insurance undertakings, insurance holding companies and mixed financial holding companies must publish on an annual basis their legal structure and their governance and organisational structure at group level, including a description of the subsidiaries, important affiliated undertakings and significant branch offices that form part of the group.

Chapter 3 Measures to facilitate group-wide supervision

Section 279 Responsibility for group-wide supervision

(1) ¹The group supervisory authority is responsible for coordinating and carrying out group-wide supervision. ²The group supervisory authority is the supervisory authority in the member state or EEA signatory state concerned that satisfies the criteria in subsection 2 unless otherwise provided for in section 280.

(2) ¹Where the same supervisory authority is the competent authority for all the insurance undertakings in a group, this supervisory authority takes on the role of group supervisory authority. ²In all other cases, the role of group supervisory authority is assumed as follows:

1. if the group is headed by an insurance undertaking, by the supervisory authority responsible for this undertaking;
2. if the group is not headed by an insurance undertaking,
 - a) if the parent undertaking of an insurance undertaking is an insurance holding company or a mixed financial holding company, by the supervisory authority responsible for this insurance undertaking,
 - b) if at least two insurance undertakings domiciled in a member state or EEA signatory state have, as their parent undertaking, one and the same insurance holding company or mixed financial holding company and one of these undertakings has been authorised in the member state or EEA signatory state in which the insurance holding company or mixed financial holding company is domiciled, by the supervisory authority responsible for the insurance undertaking authorised in this member state or EEA signatory state,
 - c) if the group is headed by at least two insurance holding companies or mixed financial holding companies domiciled in different member states or EEA signatory states and there is an insurance undertaking domiciled in

each of these member states or EEA signatory states, by the supervisory authority responsible for the insurance undertaking with the highest level of total assets,

- d) if at least two insurance undertakings domiciled in a member state or EEA signatory state have, as their parent undertaking, one and the same insurance holding company or mixed financial holding company and none of these undertakings has been authorised in the member state or EEA signatory state in which the insurance holding company or mixed financial holding company is domiciled, by the supervisory authority responsible for the insurance undertaking with the highest level of total assets,
- e) if the group does not have a parent undertaking, or if the structure is other than one of the structures described under a to d, by the supervisory authority that has authorised the insurance undertaking with the highest level of total assets.

Section 280 Determining the group supervisory authority

(1) ¹If the application of the criteria specified in section 279 (2) would be inappropriate because of the structure of the group or the relative significance of the insurance undertaking's transactions in the different member states or EEA signatory states, the supervisory authorities involved may, in exceptional circumstances, jointly designate another supervisory authority as the group supervisory authority. ²The group supervisory authority should not be determined more frequently than once a year.

(2) ¹The determination of the group supervisory authority in accordance with subsection (1) must be carried out on application by one of the supervisory authorities involved within three months of the application date following consultation with the group concerned and all the other supervisory authorities involved. ²The supervisory authorities involved must do everything within their power to come to a joint decision on the choice of group supervisory authority within three months of the application date. ³Before coming to a decision, the supervisory authorities involved must give the group an opportunity to state its opinion. ⁴The designated group supervisory authority is responsible for sending notice of the final joint decision to the group.

(3) ¹If, before the three-month period referred to in subsection (2) expires, one of the supervisory authorities involved refers the matter to the European Insurance and Occupational Pensions Authority in accordance with Article 19 of Regulation (EU) no. 1094/2010, the procedure is suspended until the European Insurance and Occupational Pensions Authority comes to a decision in accordance with Article 19 (3) of the Regulation. ²The joint decision of the supervisory authorities concerned must be consistent with the decision of the European Insurance and Occupational Pensions Authority. ³The joint decision must be accepted by the supervisory authorities involved as binding and implemented accordingly. ⁴The designated group supervisory authority is responsible for sending notice of the joint decision to the group and informing the college of supervisors accordingly.

(4) If the three-month period expires or a joint decision is reached, the matter is not referred to the European Insurance and Occupational Pensions Authority.

(5) If no joint decision is reached in accordance with subsection (2) or (3), the duties of group supervisory authority are taken on by the supervisory authority determined as specified in section 279 (2).

Section 281 Duties and powers of the group supervisory authority

(1) The duties and powers of the group supervisory authority include:

1. reviewing and assessing the financial position of the group;
2. assessing compliance with the provisions on group solvency, risk concentration and intra-group transactions;

3. reviewing from a supervisory perspective the risk management, internal control and reporting systems specified in section 275;
4. assessing the system of governance and eligibility of the members of the senior management in participating undertakings under sections 275, 24 and 293;
5. reviewing from a supervisory perspective the own risk and solvency assessment at group level in accordance with section 27;
6. coordinating the exchange of information between the supervisory authorities involved as part of ongoing supervision and in critical situations in relation to pertinent, necessary information and other key details required to enable the supervisory authorities to fulfil their duties;
7. planning and coordinating activities as part of ongoing supervision and in critical situations in cooperation with the other supervisory authorities involved, such work to be carried out in meetings to be held at least annually or in some other appropriate form;
8. leading the validation of internal models or partial internal models at group level;
9. leading the decision-making process for applications to use the provisions relating to centralised risk management; and
10. chairing the college of supervisors.

(2) ¹Sections 43, 44 and 305 apply, with the necessary modifications, to information required by the group supervisory authority to enable it to carry out its duties. ²If the group supervisory authority needs the information specified in section 305 (1) no. 1 and this information has already been provided to another supervisory authority, the group supervisory authority must, as far as possible, contact the other supervisory authority for the information to avoid a situation in which the undertaking has to send the information more than once.

(3) If the group supervisory authority does not assume responsibility for the tasks as specified in subsection (1) or the members of the college of supervisors do not cooperate to the extent required in accordance with subsection (1), the supervisory authority may refer the matter to the European Insurance and Occupational Pensions Authority for consultation in accordance with Article 19 of Regulation (EU) no. 1094/2010.

Section 282 Exemption from the reporting requirement at group level

(1) If the intervals for regular supervisory reporting are shorter than one year, the group supervisory authority may limit the frequency of reporting at group level, provided that all the insurance undertakings in the group benefit from this limitation in accordance with section 45 (1) and where by the nature, scope and complexity of the risks associated with the business activities of the group must be taken into account.

(2) The group supervisory authority may allow an exemption from the reporting of individual items at group level, provided that all the insurance undertakings in the group benefit from this exemption in accordance with section 45 (2) and where by the nature, scope and complexity of the risks associated with the business activities of the group and the objective of financial stability must be taken into account

Section 283 College of supervisors

(1) ¹In respect of groups that do not operate exclusively in Germany, the supervisory authority is a member of a college of supervisors chaired by the group supervisory authority. ²The members of the college of supervisors are the group supervisory authority, the supervisory authorities of all member states in which subsidiaries are domiciled and, in accordance with Article 21 of Regulation (EU) no. 1094/2010, the European Insurance and Occupational Pensions Authority. ³The supervisory authorities responsible for significant branch offices and affiliated undertakings may

participate in the work of the college of supervisors.⁴ However, their involvement is limited to ensuring an efficient exchange of information.

(2) The task of the college of supervisors is to ensure that the processes for cooperation, exchange of information and consultation between the supervisory authorities belonging to the college of supervisors are effectively applied with the aim of promoting convergence between their activities and decisions.

(3) The college of supervisors may specify that certain of its activities be carried out by a smaller number of members within the college of supervisors as a whole to ensure that it functions effectively.

(4) The establishment and working arrangements of the college of supervisors must be governed by coordination arrangements between the group supervisory authority and the other supervisory authorities involved.

(5)¹Should differences of opinion arise regarding coordination arrangements, the final decision rests with the group supervisory authority.² Any member of the college of supervisors may refer the matter to the European Insurance and Occupational Pensions Authority for consultation in accordance with Article 19 of Regulation (EU) no. 1094/2010.³ The decision of the group supervisory authority must be consistent with the decision of the European Insurance and Occupational Pensions Authority.⁴ The group supervisory authority must send its decision to the other competent supervisory authorities.

(6) The coordination arrangements specified in subsection (4) must include procedures for the following:

1. the decision-making process among the supervisory authorities concerned in accordance with sections 262 to 264, 279 and 280; and
2. consultation in accordance with subsection (5) and section 284 (4).

(7) The coordination arrangements may also specify procedures for consulting the supervisory authorities concerned, in particular in accordance with sections 245 to 249, 251 to 253, 258, 273 to 275, 277, 285, 288 and 290 and for cooperating with other supervisory authorities.

(8) The coordination arrangements may transfer additional tasks to the group supervisory authority, the other supervisory authorities involved or to the European Insurance and Occupational Pensions Authority if this would lead to more efficient supervision of a group and would not impair the supervisory activities of the members of the college of supervisors in respect of the individual responsibilities.

Section 284 Cooperation in group-wide supervision

(1)¹The supervisory authorities responsible for the supervision of the insurance undertakings in a group and the group supervisory authority must work in close cooperation, particularly in cases where an insurance undertaking encounters financial difficulties.² If an insurance undertaking is directly or indirectly affiliated with a credit institution or an investment firm or if these undertakings share a common participating undertaking, the supervisory authorities within the meaning of sentence 1 must work closely together with the competent authorities involved in the supervision of these other undertakings.

(2)¹The supervisory authorities must provide each other without delay with all the information that enables them to fulfil their supervisory duties under Directive 2009/138/EC.² The group supervisory authority must send the supervisory authorities concerned and the European Insurance and Occupational Pensions Authority all information in accordance with sections 11 (2), 40, 47 no. 6 and section 282 (2) in relation to the group, in particular information relating to the legal, governance and organisational structure of the group.

(3) If a supervisory authority has not provided relevant information, has refused a request for cooperation or not responded within two weeks, the supervisory authorities concerned may refer the matter to the European Insurance and Occupational Pensions Authority.

(4) If a participating undertaking has informed the group supervisory authority in accordance with section 250 (4) that the group is no longer complying with the solvency capital requirement for the group or there is a risk that this situation

could occur within the subsequent three months, the group supervisory authority must inform the other supervisory authorities in the college of supervisors.

(5) If exceptional circumstances arise or have already arisen, a supervisory authority in the role of supervisory authority responsible for the supervision of an individual insurance undertaking in a group or in the role of group supervisory authority must, without delay, convene a meeting of all supervisory authorities as specified in subsection (1) sentence 1, especially if:

1. it has become aware of a material breach of the solvency capital requirement or a breach of the minimum capital requirement for an insurance undertaking; or
2. it has become aware of a material breach of the solvency capital requirement for the group.

Section 285 Consultation between supervisory authorities

(1) ¹Before any decision that is of significance for the supervisory activities of other supervisory authorities, the supervisory authority concerned must consult the other supervisory authorities involved within the framework of the college of supervisors regarding the following:

1. approval of changes to the shareholder, organisational or management structure of an insurance undertaking in the group;
2. any decision on an extension of the period allowed for a recovery in accordance with section 134 (3) to (6);
3. major sanctions or exceptional supervisory measures regarding an insurance undertaking in the group.

²Measures that are deemed to be exceptional measures within the meaning of sentence 1 no. 3 include but are not limited to the imposition of a capital add-on to the solvency capital requirement and a restriction on the use of the internal model.

(2) ¹For the purposes of subsection 1 sentence 1 nos. 2 and 3, the group supervisory authority must always be consulted. ²If a decision is based on information provided by other supervisory authorities, the supervisory authorities involved must also consult each other before this decision is made.

(3) ¹The supervisory authority may decide not to consult other supervisory authorities in cases of urgency or if such consultation could impair the effectiveness of the decision. ²If such cases arise, the supervisory authority involved must notify the other supervisory authorities concerned of its decision without delay.

Section 286 Cooperation in the case of affiliated undertakings

(1) ¹If an insurance undertaking domiciled in Germany is directly or indirectly affiliated with an insurance undertaking, credit institution within the meaning of Directive 2006/48/EC or an investment firm within the meaning of Directive 2004/39/EC in another member state or EEA signatory state, or if it shares a common participating undertaking with such an undertaking, the supervisory authority must, without delay, send the supervisory authority in the other member state or EEA signatory state the information that the latter needs to enable or help it to fulfil its supervisory duties under Directive 2009/138/EC. ²The information under sentence 1 includes, in particular, information on measures taken by the group and by the supervisory authorities, together with information provided by the group. ³Upon request by the supervisory authority in the other member state or EEA signatory state, the supervisory authority must also send any information that is appropriate for enabling or facilitating supervision in accordance with Directives 2009/138/EC and 2002/87/EC. ⁴In addition, the supervisory authority must provide information that is required in delegated legislative acts of the European Commission under Article 249(3) of Directive 2009/138/EC.

(2) If the parent undertaking of a group is domiciled in Germany and the supervisory authority is not the group supervisory authority, the supervisory authority is authorised at the request of the group supervisory authority first to require that the parent undertaking provide information about all the business affairs of the group and submit or send all business documentation concerning the group that is relevant to enable the group supervisory authority to carry out its duties and exercise its powers as specified in section 281 and secondly to forward such information and business documentation to the group supervisory authority.

(3) The supervisory authority must accept decisions in accordance with Article 231 (3) or (6) and in accordance with Article 237 (3) of Directive 2009/138/EC by a supervisory authority in another member state or EEA signatory state acting in the role of group supervisory authority and must apply such decisions.

Section 287 Effective enforcement of regulatory measures

(1) ¹If an insurance undertaking in a group does not comply with the requirements in sections 250 to 272 regarding the solvency of the group or if the requirements are met but the solvency of the group is nevertheless jeopardised, or if intra-group transactions or risk concentrations represent a risk to the financial position of the insurance undertaking, the supervisory authority must require the insurance undertaking to initiate corrective measures to rectify the situation without delay. ²At the same time, the group supervisory authority must require corresponding corrective measures from the insurance holding company or mixed financial holding company.

(2) If the supervisory authority is the group supervisory authority and the insurance holding company, mixed financial holding company or insurance undertaking is domiciled in another member state or EEA signatory state, the supervisory authority must notify the supervisory authority of the other member state or EEA signatory state of the information of which it is aware so that the latter authority can instigate the necessary measures.

(3) ¹The supervisory authority must coordinate its enforcement measures with the other supervisory authorities involved and the group supervisory authority, in particular in those cases in which the central administration or head office of an insurance holding company or mixed financial holding company is not located in the same place as the registered office. ²This also applies if the supervisory authority is the group supervisory authority.

Chapter 4 Third countries

Section 288 Parent undertakings domiciled in a third country

(1) ¹In the case of an insurance undertaking in a group whose parent undertaking is an insurance holding company, a mixed financial holding company or an insurance undertaking domiciled in a third country, a verification process must be carried out to establish whether the supervisory authority in the third country concerned supervises the insurance undertaking in question in a manner that is equivalent to group-wide supervision in the member states or EEA signatory states. ²The verification of equivalence must be carried out officially or upon application by one of the undertakings involved. ³If the European Commission has issued a delegated legislative act in accordance with Article 260(3) of Directive 2009/138/EC in relation to a third country, this must be accepted as binding.

(2) ¹If the European Commission has not issued any delegated legislative act covering the equivalence of the supervisory system of the third country concerned, the supervisory authority that would be responsible for the group-wide supervision under the application of the criteria specified in section 279 (2) carries out the verification process within the meaning of subsection 1. ²Before coming to a decision, the supervisory authority involved must consult the other supervisory authorities concerned and the European Insurance and Occupational Pensions Authority.

(3) ¹The verification finding must be made on the basis of the criteria specified by the European Commission in accordance with Article 260 (2) of Directive 2009/138/EC. ²The group supervisory authority is bound by any previous verification finding made in respect of a third country. ³This does not apply if a new review is required because the

supervisory system described in Title I Chapter VI of Directive 2009/138/EC or the supervisory system in the third country has changed significantly.

(4) If the supervisory authority is an affected supervisory authority and it does not agree with the verification finding, it may, within three months of the notification of the decision by the authority acting as group supervisory authority, refer the matter for consultation to the European Insurance and Occupational Pensions Authority in accordance with Article 19 of Regulation (EU) no. 1094/2010.

(5) ¹If the European Commission has declared in a delegated legislative act in accordance with Article 260 (5) of Directive 2009/138/EC that the supervisory regime in a third country is provisionally deemed to be equivalent, section 289 applies during the periods specified in the delegated legislative act. ²This does not apply if an insurance undertaking domiciled in Germany reports total assets higher than the total assets of the parent undertaking domiciled in a third country. ³In this case, the authority acting as group supervisory authority takes on the tasks of the group supervisory authority.

Section 289 Equivalence

(1) If the verification procedure in accordance with section 288 finds the supervisory regime to be equivalent, the supervisory authority must recognise the group-wide supervision carried out in the third country as binding.

(2) Sections 279 to 287, 293 (1), 298 (1), 305 (1) no. 1, 306 (1) no. 1 and 309 apply, with the necessary modifications, to cooperation with the supervisory authorities in the third country.

Section 290 Absence of equivalence

(1) ¹Sections 250 to 265, 271 to 285 and 309 apply, with the necessary modifications, in the absence of equivalent supervision within the meaning of section 288; this is without prejudice to subsection (4). ²The general principles and calculation methods specified in sections 250 to 265 and 271 to 285 must be applied at the level of the insurance holding company, mixed financial holding company or third country insurance undertaking.

(2) ¹If the parent undertaking is an insurance holding company or mixed financial holding company, this undertaking must be treated, solely for the purposes of calculating the solvency of the group, as if it were an insurance undertaking. ²The solvency capital requirement must be calculated in accordance with section 257; the own funds eligible for the solvency capital requirement must be determined in accordance with part 2 chapter 2 segment 2 subsection 1.

(3) ¹If the parent undertaking is a third country insurance undertaking, this undertaking must be treated, solely for the purposes of calculating the solvency of the group, as if it were an insurance undertaking. ²The solvency capital requirement must be calculated in accordance with section 258; the own funds eligible for the solvency capital requirement must be determined in accordance with part 2 chapter 2 segment 2 subsection 1.

(4) ¹The supervisory authority may, after consulting the other supervisory authorities concerned and subject to the consent of the group supervisory authority, use other methods than those governed by sections 250 to 265 and sections 271 to 285 if these methods ensure appropriate supervision of the insurance undertakings in the group. ²In particular, the supervisory authority may require the establishment of an insurance holding company or mixed financial holding company domiciled in the European Community and apply the regulations concerning the supervision of groups to the insurance undertakings in the group headed by this insurance holding company or mixed financial holding company. ³The supervisory authority may only select methods that help the objectives of group-wide supervision to be achieved. ⁴The supervisory authority must inform the other supervisory authorities involved and the European Commission of the selected methods.

(5) Section 289 (2) applies to the cooperation with the supervisory authorities in the third country.

Section 291 Level of supervision

(1) If a parent undertaking domiciled in a third country is itself a subsidiary of an insurance holding company or mixed financial holding company domiciled outside the European Economic Area or of a third country insurance undertaking, the verification of equivalence referred to in section 288 is carried out only at the level of the ultimate parent undertaking that is a third country insurance holding company, a third country mixed financial holding company or a third country insurance undertaking.

(2) ¹In the absence of equivalent supervision, the supervisory authority may carry out a new verification of equivalence at a lower level in a parent undertaking of insurance undertakings regardless of whether the parent undertaking is a third country insurance holding company, a third country mixed financial holding company or a third country insurance undertaking. ²In this case, the supervisory authority specified in section 288 (2) must explain the decision to the group.

³Section 290 applies, with the necessary modifications.

Chapter 5 Insurance holding companies and mixed financial holding companies

Section 292 Intra-group transactions

¹If one or more insurance undertakings have a mixed-activity insurance holding company as the parent undertaking, the intra-group transactions between these insurance undertakings and the mixed-activity insurance holding company are subject to general supervision. ²Sections 274, 284 to 287, 298 (1), 305 (1) no. 1 and section 328 apply, with the necessary modifications.

Section 293 Supervision

(1) ¹Sections 4, 16 to 26, 29, 30, 32, 47 nos. 1, 2 and 5 to 7, sections 303, 305, 306, 310 and section 333 apply, with the necessary modifications, in addition to subsection (3) to insurance holding companies and mixed financial holding companies; this is without prejudice to section 299. ²In addition to the provisions in subsection (2), only those provisions relating to the supervision of primary insurance or reinsurance undertakings apply to such companies that also conduct primary insurance or reinsurance business.

(2) In the cases specified in section 287, the supervisory authority may also order the required measures in respect of the relevant insurance holding company or mixed financial holding company.

(3) ¹The supervisory authority may fully or partially transfer the powers held by the governing bodies of an insurance holding company or mixed financial holding company by virtue of law, articles of association or rules of procedure to a special commissioner if

1. there is evidence to suggest that one or more members of the senior management or one or more members of the supervisory board do not fulfil the requirements of section 24; or
2. the insurance holding company or mixed financial holding company has persistently breached the provisions of this Act, the German Insurance Contract Act, the German Money Laundering German Stock Corporation Act (EU) no. 648/2012, the implementing statutory orders for this Act, the legislative acts implementing Regulation (EU) no. 648/2012 or Directive 2009/138/EC or orders issued by the supervisory authority.

²Section 307 (1) sentences 2 and 3, and (2) to (4) applies, with the necessary modifications.

(4) Subsections (1) to (3) apply, with the necessary modifications, to undertakings domiciled in Germany whose primary activity is the acquisition and maintenance of direct or indirect holdings in primary insurance undertakings, reinsurance

undertakings or pension funds and that are not already subject to supervision under this Act.

Part 6 Supervision: duties and general powers, organisation

Chapter 1 Duties and general provisions

Section 294 Duties

(1) The primary objective of supervision is to protect policyholders and the beneficiaries of insurance services.

(2) ¹The supervisory authority must monitor all business operations of insurance undertakings within the framework of legal supervision in general and financial supervision in particular. ²It must monitor compliance with the laws applicable to the pursuit of insurance business and, in the case of primary insurance undertakings, also ensure that the interests of the insured are sufficiently safeguarded. ³It must appropriately take into account the potential impact of its decisions on the stability of the financial system in the relevant countries concerned in the European Economic Area. ⁴In times of exceptional movement in financial markets, it must take into account the potential pro-cyclical effects of its actions.

(3) ¹The objective of legal supervision is the proper operation of insurance business, including compliance with supervisory provisions, regulations governing insurance contracts, any other provisions concerning the insured and the legal principles in the business plan. ²Legal supervision also extends to compliance with the labour and social law requirements to be observed by *Pensionskassen* in the field of occupational retirement provision.

(4) In the context of financial supervision, the supervisory authority must ensure, in respect of the overall business activities, that insurance undertakings are able to meet their obligations under insurance contracts at all times and in particular that they are solvent and maintain their long-term risk-bearing capacity, that they have recognised adequate technical provisions, invest in appropriate assets, comply with the principles of good business practice, including those in respect of a proper system of governance, and that they also comply with the other financial principles established for their business operations.

(5) ¹The supervisory authority must regularly review and assess the strategies, processes and reporting systems established by an insurance undertaking in order to comply with the legal and administrative rules enacted in accordance with Directive 2009/138/EC or Directive (EU) 2016/2341 (supervisory review process). ²The supervisory review process comprises the assessment

1. of the qualitative requirements relating to the system of governance,
2. of the risks to which the undertaking is or could be exposed and
3. of the ability of the undertaking to assess and bear these risks, taking into account the environment in which the undertaking is operating.

³The supervisory authority must specify the minimum frequency and the scope of these reviews, evaluations and assessments having regard to the nature, scope and complexity of the activities conducted by the insurance undertaking concerned. ⁴In the case of *Pensionskassen*, it must also take into account the size of the activities.

(6) ¹Supervision is not limited to business activities in Germany, but also covers business conducted in other member states or EEA signatory states via branches or cross-border provision of services. ²While financial supervision is the sole responsibility of the supervisory authority, any supervisory function other than financial supervision is performed in cooperation with the supervisory authority of the other member state or EEA signatory state.

(7) Supervision must also extend to the liquidation of an undertaking and the run-off of existing insurance contracts if business operations are prohibited or voluntarily discontinued or if the authorisation to carry on business is revoked.

(8) The supervisory authority must carry out its duties and exercise its powers only in the public interest.

Section 295 Competent authority in relation to EU Regulations

(1) ¹For the undertakings subject to supervision under this Act, the competent supervisory authority under this Act is also the

1. sectoral competent authority within the meaning of Regulation (EC) No. 1060/2009, as amended, for the undertakings included within the scope of Regulation (EC) No. 1060/2009,
2. competent authority within the meaning of Regulation (EC) No. 1286/2014, as amended, for the undertakings included within the scope of Regulation (EC) No. 1286/2014,
3. competent authority within the meaning of Regulation (EC) No. 2016/1011, as amended, for the undertakings included within the scope of Regulation (EC) No. 2016/1011,
4. competent authority within the meaning of Article 29(4) and (5) of Regulation (EU) 2017/2402 for the undertakings included within the scope of Regulation (EU) 2017/2402.

²(2) The supervisory authority is the competent authority under Article 5(1) of Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60 of 28 February 2014, page 34; L 47 of 20 February 2015, page 34; L 246 of 23 September 2015, page 11) for the undertakings it supervises.

Section 296 Principle of proportionality

(1) ¹The supervisory authority must apply the requirements of this Act to insurance undertakings that are not *Pensionskassen* in a manner that is proportionate to the nature, scale and complexity of the risks inherent in the business of the insurance undertaking concerned. ²The supervisory authority must apply the requirements of this Act to *Pensionskassen* in a manner that is proportionate to the nature, scale and complexity of the activities of the *Pensionskasse* concerned.

(2) Subsection (1) applies, with the necessary modifications, to the issuer of statutory orders where this Act confers powers to enact statutory orders.

Section 297 Discretion

(1) The supervisory authority must decide on the measures it imposes at its own discretion, exercising due care and diligence.

(2) ¹If a number of options are possible to provide protection against a risk, it is sufficient if one option is chosen. ²At the request of the party concerned, authorisation to apply a nequally effective alternative option must be given, provided that this does not result in a greater adverse impact on the interests of the insured.

Section 298 General supervisory powers

(1) ¹The supervisory authority may take any action in respect of a primary insurance undertaking, the members of such an undertaking's management board or other members of the senior management or in respect of persons controlling the primary insurance undertaking that is appropriate and necessary to prevent or remedy irregularities. ²An irregularity is any conduct by an insurance undertaking that conflicts with the supervisory objectives under section 294 (2) above. ³Irregularities are also weaknesses or deficiencies that the supervisory authority has identified during the supervisory

review process.

(2) The supervisory authority may take any action in respect of a reinsurance undertaking, the members of such an undertaking's management board or other members of the senior management or in respect of persons controlling the reinsurance undertaking that is appropriate and necessary to ensure that

1. the reinsurance undertaking complies with the laws applicable to the operation of reinsurance business and with orders issued by supervisory authorities,
2. in particular, the reinsurance undertaking is in a position at all times to satisfy its obligations under its reinsurance contracts, and
3. the reinsurance undertaking eliminates weaknesses or deficiencies that the supervisory authority has identified during the supervisory review process.

(3) The supervisory authority may reject a reinsurance or retrocession agreement that an insurance undertaking has entered into with a reinsurance undertaking or a primary insurance undertaking authorised in accordance with Article 14 of Directive 2009/138/EC only for reasons that do not directly relate to the financial soundness of the other undertaking.

(4) (Repealed)

Section 299 Extension of supervisory powers

The supervisory authority may also take measures under section 298 (1) or (2) directly against

1. other undertakings to which an insurance undertaking has outsourced activities, and
2. insurance holding companies as defined in section 7 no. 31, mixed insurance undertakings as defined in section 7 no. 11, mixed financial holding companies as defined in section 7 no. 10, and the persons who effectively direct the business of such holding companies.

Section 300 Amendment of the business plan

¹The supervisory authority may require amendment of the business plan before the conclusion of new insurance contracts. ²The supervisory authority may amend or rescind a business plan with effect on existing insurance contracts or terminated contracts with outstanding claims, if this is deemed necessary to safeguard the interests of the insured.

³Sentences 1 and 2 do not apply to reinsurance undertakings.

Section 301 Capital add-on

(1) The supervisory authority may only stipulate a capital add-on to the solvency capital requirement for an insurance undertaking if

1. the insurance undertaking's risk profile deviates considerably from the assumptions underlying the solvency capital requirement which has been calculated using the standard formula, and if the requirement to use an internal model

- under section 96 (2) is unreasonable or was unsuccessful or a full or partial internal model required under section 96 (2) is still in development,
2. the insurance undertaking's risk profile deviates considerably from the assumptions underlying the solvency capital requirement which has been calculated in accordance with an internal model used as a full or partial internal model, because certain quantifiable risks were recorded inadequately and the adjustment to the model for the purposes of an improved depiction of the actual risk profile failed within a reasonable time frame,
 3. an insurance undertaking's system of governance deviates considerably from the standards set out in Part 2 Chapter 1 Segment 3 and if
 - a) these deviations prevent the undertaking from adequately identifying, measuring, monitoring, controlling or reporting on the risks to which it is or could be exposed; and
 - b) the application of other measures is not expected to rectify the defects within a reasonable time frame; or
 or
 4. the insurance undertaking applies the matching adjustment under section 80, the volatility adjustment under section 82 or the transitional measures under section 351 or section 352, and the supervisory authority reaches the conclusion that this undertaking's risk profile deviates considerably from the assumptions underlying this adjustment or transitional measure.

(2) ¹In the cases stated in subsection (1) nos. 1 and 2 the capital add-on must be calculated in such a way that fulfilment of the requirements under section 97 (2) is guaranteed by the undertaking. ²In the cases stated in subsection (1) no. 3 the capital add-on must be proportional to the essential risks that are associated with the defects and have led to the decision by the supervisory authority to stipulate the capital add-on. ³In the cases stated in subsection (1) no. 4 the capital add-on must be proportional to the essential risks that arise from the deviations designated there.

(3) Stipulation of a capital add-on does not release the insurance undertaking from rectifying the defects determined in the cases stated in subsection (1) nos. 2 and 3; the supervisory authority will implement additional measures to rectify the irregularity as necessary.

(4) The capital add-on will be reviewed by the supervisory authority at least once per year; it will be cancelled once the undertaking has rectified the defects underlying it.

(5) ¹The solvency capital requirement including the prescribed capital add-on will replace the inadequate solvency capital requirement. ²Any capital add-on stipulated under subsection (1) no. 3 will not be considered in the calculation of the risk margin under section 78.

Section 302 Prohibition of participating interests

(1) ¹If a primary insurance undertaking holds a participating interest in another undertaking that is not subject to supervision, and if the nature or size of the participating interest has the potential to imperil the insurance undertaking, the supervisory authority may prohibit the insurance undertaking from maintaining its participating interest or permit it to be maintained only on condition that the undertaking consents to an audit at its own expense or at the expense of the insurance undertaking in accordance with section 341k of the Commercial Code and sections 35 and 36 of this Act. ²If the undertaking refuses to be audited or if the audit gives rise to any objections against the participating interest, the supervisory authority must prohibit the insurance undertaking from maintaining its participating interest.

(2) A participating interest within the meaning of subsection (1) is also deemed to exist if a member of the management board or supervisory board of the insurance undertaking exercises, or is in a position to exercise, a significant influence on the management of another undertaking.

Section 303 Dismissal of persons with key tasks, warnings

(1) ¹The supervisory authority may give a warning to a person who effectively leads an insurance undertaking or is responsible for key tasks in an insurance undertaking if the insurance undertaking breaches provisions of this Act, the Insurance Contract Act, the Money Laundering Act, Regulation (EU) No. 648/2012, Article 4(1) to (5) or Article 15 of Regulation (EU) 2015/2365, Article 16(1) to (4), Article 23(3) sentence 1, paragraphs (5), (6) or (10), Article 28(2) or Article 29 of Regulation (EU) 2016/1011, Articles 6, 7, 9, 18 to 26 or 27(1) or (4) of Regulation (EU) 2017/2402, statutory orders enacted to implement this Act, the legislative acts enacted to implement Regulation (EU) No. 648/2012, Article 4(1) to (5) or Regulations (EU) 2015/2365, (EU) 2016/1011, (EU) 2017/2402 or Directive 2009/138/EG, or orders issued by the supervisory authority. ²The subject matter of the warning will be a determination of the circumstances related to the decision and the breach established as a result of this.

(2) The supervisory authority may require the dismissal of any person who actually leads an insurance undertaking or is responsible for other key tasks in an insurance undertaking and prohibit this person from exercising their activity if

1. there is evidence indicating that the person does not meet the requirements under section 24;
2. the person has, as a manager, wilfully or recklessly breached the provisions of this Act, with the exception of the requirements of part 2 chapter 1 segment 6, the Insurance Contract Act, Regulation (EU) No. 648/2012, Article 4(1) to (5) or Article 15 of Regulation (EU) 2015/2365, Article 16(1) to (4), Article 23(3) sentence 1, paragraphs (5), (6) or (10), Article 28(2) or Article 29 of Regulation (EU) 2016/1011, Articles 6, 7, 9, 18 to 26 or 27(1) or (4) of Regulation (EU) 2017/2402, the statutory orders enacted to implement this Act, the legislative acts enacted to implement Regulation (EU) No. 648/2012, Article 4(1) to (5) of Regulations (EU) 2015/2365, (EU) 2016/1011, (EU) 2017/2402 or Directive 2009/138/EC, or orders issued by the supervisory authority, and continues this behaviour despite a warning by the supervisory authority,
3. material breaches by the undertaking of the principles of proper business management remain concealed from the person in their capacity as a member of the supervisory board in breach of the duty of care in relation to their monitoring and control functions, or they have not done everything required to rectify determined breaches and they continue with this behaviour despite a warning from the supervisory authority, or
4. the person wilfully or recklessly breaches the requirements of part 2 chapter 1 segment 6 of this Act, the Money Laundering Act or regulations or enforceable orders enacted to implement those requirements, to the extent that the breaches are serious, repeated or systematic.

(3) If the court is required to dismiss a member of the supervisory board following a request from the supervisory board, this request may also be made by the supervisory authority if the requirements under subsection (2) nos. 1 or 2 are met and the supervisory board has not fulfilled the dismissal demanded by the supervisory authority.

Section 303a Disqualification of natural persons

In the cases of section 304 (3) number 3 or section 308 c (1), the supervisory authority may also temporarily prohibit a natural person who is responsible for the breach and is not a manager at the time of the breach from any future activity as a manager of insurance undertakings and *Pensionsfonds* for a period of up to two years

Section 304 Revocation of authorisation

(1) ¹The authorisation to operate a business must be withdrawn if

1. the insurance undertaking expressly refrains from accepting the authorisation;
2. the insurance undertaking does not meet the minimum capital requirement and the supervisory authority believes that the financing plan submitted is obviously inadequate or the undertaking will not be able to fulfil the approved

financing plan within three months following determination of the non-compliance with the minimum capital requirement;

3. the insurance undertaking is excluded from the guarantee scheme in accordance with section 229; or
4. insolvency proceedings are opened.

²Revocation of the authorisation must not bear upon actions of the insurance undertaking legally required as part of the insolvency proceedings.

(2) The authorisation should be withdrawn if the insurance undertaking has not made use of the authorisation within twelve months of this being granted or has suspended business operations for more than six months.

(3) The supervisory authority may revoke the authorisation in whole or in part if

1. the undertaking no longer satisfies the requirements for authorisation or
2. the undertaking seriously breaches its obligations under this Act, with the exception of the requirements of part 2 chapter 1 segment 6, or the business plan.
3. the undertaking persistently breaches Article 4 or Article 15 of Regulation (EU) 2015/2365 or orders issued by the supervisory authority in relation to those requirements, or
4. the undertaking seriously, repeatedly or systematically breaches the requirements of part 2 chapter 1 segment 6 of this Act or the Money Laundering Act or regulations or enforceable orders of the supervisory authority enacted to implement those requirements.

(4) ¹The supervisory authority will notify the supervisory authorities in all other member states or EEA signatory states in which the undertaking exercises its business activity and the European Insurance and Occupational Pensions Authority of the revocation of the authorisation. ²It will implement all measures alone or together with these authorities that are appropriate in terms of safeguarding the interests of the insured parties of a primary insurance undertaking or the interests of the ceding insurer of a reinsurance undertaking. ³It may, in particular, restrict or prohibit free disposal of the assets of the undertaking and appoint qualified persons to manage the assets.

(5) After revocation of the authorisation, the undertaking is prohibited from writing new insurance business and from increasing or renewing existing policies.

(6) ¹For mutual societies, a revocation of authorisation for the whole of business operations has the same effect as a dissolution resolution. ²The revocation of authorisation is to be entered in the commercial register upon notification by the supervisory authority.

(7) Section 48 (4) sentence 1 and section 49 (2) sentence 2 of the German Administrative Procedure Act (*Verwaltungsverfahrensgesetz - VwVfG*) regarding the period of one year are not applicable.

Section 305 Survey, duty of disclosure

(1) The Supervisory Authority is authorised

1. to require the insurance undertakings, the members of their governing bodies, employees and persons controlling the undertakings to provide information about all business matters and submit or forward all business documents, in particular in individual cases the general policy conditions, premium rate terms, forms and other printed documents, which an insurance undertaking uses in its dealings with policyholders or the ceding insurance undertaking (ceding insurer), as well as enterprise agreements and outsourcing contracts and
2. to require that insurance undertakings that are subject to group-wide supervision under Part 5 and the persons stated in no. 1 provide information and submit documents regarding business matters that are useful to group-wide supervision; if an insurance undertaking does not transmit this information within a reasonable period despite a demand, then the supervisory authority may also demand the information and transmission or submission of the

documents from all other undertakings that belong to the group.

(2) The supervisory authority also has the rights under subsection (1) no. 1 in respect of

1. persons and undertakings who mediate or have mediated insurance contracts for an insurance undertaking as an insurance agent or insurance broker, provided that this is important for the assessment of the business operations and financial position of the insurance undertaking, or for fulfilment of the duties under sections 53 to 56 of the regulations under the German Money Laundering Act by an insurance undertaking within the meaning of section 52;
2. persons and undertakings to which an insurance undertaking has outsourced functions or activities as well as its official auditors and independent trustees within the meaning of this Act or of the Insurance Contract Act; the duty of disclosure by the official auditor is restricted to facts of which they have become aware within the scope of the annual audit;
3. persons and undertakings who have communicated the intention to acquire participating interests under section 17 (1) no. 1 or who are specified in an application for authorisation under section 9 as holders of qualified participating interests;
4. the holders of qualified participating interests in an insurance undertaking and in undertakings controlled by the insurance undertaking;
5. persons and undertakings in relation to whom there is evidence to suggest that these are persons or undertakings within the meaning of no. 4 above; and
6. persons and undertakings who are affiliated with a person or an undertaking within the meaning of numbers 3 to 5 under section 15 of the German Stock Corporation Act.

(3) ¹If it is determined or there are facts which justify an assumption that an undertaking is operating unauthorised insurance transactions (section 308 (1) sentence 1), or is or has been involved in initiating, underwriting or handling unauthorised insurance transactions, the members of the governing bodies and the partners and employees of such an undertaking must provide information on all business matters to the supervisory authority upon request and submit the relevant documentation. ²Members of a governing body, partners or employees must also provide information and submit documentation upon request after they have left the governing body or the undertaking.

(4) Subsection (3) applies, with the necessary modifications, provided that

1. it is determined or there are facts which justify an assumption that undertakings or individuals are involved in initiating, underwriting or handling insurance transactions which are being provided in another member state or EEA state or a third country contrary to a corresponding prohibition in this country; and
2. the competent authority in the other country makes a corresponding request to the supervisory authority.

(5) Any persons required to provide information in accordance with subsections (1) to (3) may refuse to answer any questions which would subject them or any of their relatives in accordance with section 383 (1) nos. 1 to 3 of the Code of Civil Procedure to the risk of criminal prosecution or of proceedings under the German Act on Breaches of Administrative Regulations.

(6) ¹The supervisory authority may access individual pieces of information from the file in accordance with section 24c (1) sentence 1 of the German Banking Act, provided that this is required for the purposes of fulfilling its supervisory tasks under this Act, particularly in relation to unauthorised insurance transactions and there is a particular need for urgency in the individual case. ²Section 24c (4) of the German Banking Act applies, with the necessary modifications.

Section 305a Powers and measures against supervised contributors and users of indices within the meaning of Regulation (EU) 2016/1011

(1) ¹The supervisory authority can summon and question persons who are involved in or contribute to the provision of a benchmark within the meaning of Regulation (EU) 2016/1011, where this is necessary due to indications relating to monitoring compliance with any prohibition or requirement of Regulation (EU) 2016/1011. ²Statutory rights to provide

or refuse to provide information as well as statutory obligations of confidentiality remain unaffected.

(2) ¹The supervisory authority can require supervised entities as defined in Article 3(1) number 17 of Regulation (EU) 2016/1011 to surrender the following records existing records that they hold:

1. recordings of telephone conversations,
2. electronic communications or
3. other data traffic records within the meaning of section 3 (30) of the Telecommunication Act,

to the extent that this is necessary due to indications relating to monitoring compliance with a ny prohibition or requirement under Article 16(1) to (4), Article 23(3) sentence 1, paragraph (5), (6) and (10), Article 28(2) and Article 29 of Regulation (EU) 2016/1011. ²The privacy of correspondence, posts and telecommunications under Article 10 of the Basic Law is restricted in this respect.

(3) In the event of an infringement of requirements of Regulation (EU) 2016/1011 and Commission delegated and implementing acts adopted on the basis of that Regulation, the supervisory authority can require the cessation of the acts or behaviour underlying the infringement for a period of up to two years in order to prevent further infringements.

(4) ¹The supervisory authority can apply for the seizure of assets to the extent necessary for enforcing prohibitions and requirements of Regulation (EU) No. 2016/1011. ²Measures under sentence 1 must be ordered by the judge. ³The Local Court in Frankfurt am Main is the competent court. ⁴The judicial order can be appealed; sections 306 to 310 and 311a of the Code of Criminal Procedure apply, with the necessary modifications.

(5) ¹The supervisory authority can issue orders that are appropriate and necessary for implementing the prohibitions and requirements of Regulation (EU) No. 2016/1011 and the Commission delegated and implementing acts adopted on the basis of that Regulation. ²In particular, it can

1. require contributors who are active on spot markets and contribute data to produce a commodity benchmark to provide information and report transactions, to the extent that this is necessary to monitor compliance with the requirements and prohibitions of Regulation (EU) 2016/1011 with regard to those commodity benchmarks,
2. in the event of an infringement of Articles 16, 23(3) sentence 1, paragraphs (5), (6) and (10), Article 28(2) and Article 29 of Regulation (EU) 2016/1011 or of an enforceable order of the supervisory authority in conjunction with an investigation of compliance with obligations under that Regulation that has been issued and is enforceable under subsections (1) or (2),
 - a) require a supervised entity as defined in Article 3(1) number 17 of that Regulation to permanently cease the acts or behaviour underlying the infringement and to prevent their recurrence,
 - b) publish a warning with regard to a supervised entity as defined in Article 3(1) number 17 of that Regulation, naming the natural or legal person or association of persons that is responsible for the infringement, as well as the nature of the infringement; section 319a (3) and 5 applies, with the necessary modifications;
 - c) ban a person from exercising management functions in an administrator or supervised contributor for a period of up to two years if that person intentionally caused the infringement and continues the behaviour despite being cautioned by the supervisory authority.

Section 306 Entry and examination of premises; asset seizure

(1) ¹The Supervisory Authority is authorised

1. to carry out audits of business operations at the insurance undertaking's business premises, including with no special cause; within the framework of group-wide supervision under Part 5 it may also examine the information under section 305 (1) no. 2 and section 284 at undertakings subject to group-wide supervision, affiliated undertakings of this insurance undertaking, a parent undertakings of this insurance undertaking and at affiliated undertakings of a

parent undertaking of this insurance undertaking;

2. to conduct audits, including by way of taking part in an audit of the insurance undertaking in accordance with section 341k of the Commercial Code and itself make the determinations it deems necessary; this does not apply to insurance undertakings recognised as small mutual associations;
3. to have persons take part in the audits performed by itself in accordance with nos. 1 and 2 above, who may be appointed as official auditors under section 341k in conjunction with section 319 of the Commercial Code, or to commission such persons to perform audits in accordance with nos. 2 and 3; the provisions of section 323 of the Commercial Code regarding auditors apply analogously to these persons;
4. to dispatch to meetings of the supervisory board and annual general meetings or meetings of the senior representative body representatives who must be granted the right to speak on request; and
5. to require that the meetings under no. 4 above are convened and certain subjects are included in the agenda for resolution.

²In the event of a harmonisation of the established supervisory practices the members of the European Supervisory Authority have the right for insurance business and occupational pension schemes, in accordance with Article 21 (1) of Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331 of 15/12/2010, page 48), to take part in audits of the colleges of supervisors referred to in Directive 2009/138/EC at the business premises of the insurance undertaking which are carried out jointly by the Supervisory Authority and by at least one competent authority from another member state or EEA signatory state.

(2) ¹The supervisory authority also has the rights under subsection (1) sentence 1 nos. 1 and 3 in respect of

1. persons and undertakings who mediate or have mediated insurance contracts for an insurance undertaking in a capacity as insurance agent or insurance broker; or
2. persons and undertakings to which an insurance undertaking has outsourced functions or activities;
3. persons and undertakings who have communicated the intention to acquire participating interests under section 17 (1) no. 1 or who are specified in an application for a authorisation under section 9 as holders of qualified participating interests;
4. the holders of qualified participating interests in an insurance undertaking and in undertakings controlled by the insurance undertaking;
5. persons and undertakings in relation to whom there is evidence to suggest that these are persons or undertakings within the meaning of no. 4 above; and
6. persons and undertakings who are affiliated with a person or an undertaking within the meaning of numbers 3 to 5 under section 15 of the German Stock Corporation Act.

²As regards the cases under sentence 1 no. 1, this applies only insofar as it is important for the assessment of the business operations and financial position of the insurance undertaking, or compliance with the duties under sections 53 to 56 or the regulations under the German Money Laundering Act by an insurance undertaking within the meaning of section 52. ³The supervisory authority may take measures in accordance with subsection (1) sentence 1 nos. 4 and 5 in relation to the persons and undertakings specified in sentence 1 nos. 3 to 6 if there are indications of grounds for a prohibition under section 18 (1) nos. 1 to 6 and (2).

(3) ¹If within the framework of financial supervision the supervisory authority intends to perform audits at the premises of a branch under section 58, a branch of a reinsurance undertaking or the business premises of a service provider to which an insurance undertaking has outsourced activities, using its own personnel or other parties it has engaged, it must inform the supervisory authority of the other member state or EEA signatory state accordingly. ²If the supervisory authority is prohibited from exercising its right to carry out these audits on site or if this is not in fact possible for it to take part in the audit, it may also address the matter to the European Insurance and Occupational Pensions Authority under Article 19 of Regulation (EU) No. 1094/2010 and ask this body for support. ³The supervisory authority may delegate the auditing of a service provider to the supervisory authority of the member state or EEA signatory state in which the service provider is located.

(4) The supervisory authority may carry out audits at the undertaking's business premises and at the premises of the

individuals required to provide information and submit documentation under section 305 (3) and (4) if this is required in order to determine the type and scope of the transactions or activities.

(5) ¹The staff of the supervisory authority and any persons in accordance with subsection (1) sentence 1 no. 3 must be permitted to access and inspect the business premises of the audited undertaking within normal operating and business hours to perform the audits under subsection (1) sentence 1 nos. 1 and 2, and also to search these in the cases mentioned in subsection (4). ²In order to prevent urgent risks to public safety or order they may also enter and inspect these premises outside of normal operating and business hours; under this condition they may also enter and inspect other premises which are also residential.

(6) ¹Searches

1. of business premises, except for cases of imminent danger; and
2. premises which are also residential at the same time;

must be ordered by a judge based on a warrant. ²This will be issued by the Local Court in whose district the premises are located. ³An appeal may be made against the judge's decision; sections 306 to 310 and 311a of the Code of Criminal Procedure apply, with the necessary modifications. ⁴A report must be compiled on the search. ⁵This must include the office responsible, reason, time and place of the search and its result, along with the facts which justified an assumption of imminent danger if no judicial warrant was issued.

(7) The officials from the supervisory authority may seize items that may be significant as evidence in investigating the facts of the case.

(8) ¹Those concerned must tolerate measures taken in accordance with subsection (1) sentence 1 nos. 1 to 3, sentence 2 as well as subsections (2), (4), (5) and (7). ²The fundamental right of inviolability of the home (Article 13 (1) of the German Basic Law) is restricted to this extent.

Section 307 Special commissioner

(1) ¹The supervisory authority may assign authorisations of a governing body to a special commissioner in whole or in part. ²It will determine the extent to which the special commissioner may act in place of the governing bodies of the supervised undertaking. ³The special commissioner must be an independent, fit and proper person for the position.

(2) ¹Within the framework of their responsibilities the special commissioner is entitled to demand information and the submission of documents from the members of the governing bodies and the employees of the undertaking, to take part in the meetings and assemblies of the governing bodies and other committees of the undertaking in an advisory role, to enter the business premises of the undertaking, to inspect its business documentation and accounts and to pursue further enquiries. ²The governing bodies and members of the governing bodies must support the special commissioner as the latter carries out their tasks. ³The special commissioner is obliged to provide information to the supervisory authority regarding all findings within the scope of their activities.

(3) ¹The insurance undertaking is responsible for any costs arising from the appointment of the special commissioner, including any reasonable expenses to be granted and the relevant remuneration. ²The amount of this remuneration is set by the supervisory authority. ³The supervisory authority must advance the expenses and the remuneration following a request from the special commissioner.

(4) ¹In the event of negligent actions the duty to pay compensation by the special commissioner is limited to 1 million euros for an activity at an insurance undertaking. ²If this relates to a public limited company whose shares are listed for trade on the regulated market then the duty to pay compensation within the meaning of sentence 1 is restricted to 4 million euros. ³The limitations under sentences 1 and 2 also apply if the powers of multiple governing bodies are transferred to the special commissioner or if they have committed multiple actions liable for compensation.

Section 308 Unauthorised insurance transactions

(1) ¹If insurance business is operated without the authorisation required in section 8 (1), business activities are started contrary to section 61 (1) or section 67 (1) or continued contrary to section 62 (3) sentence 2 or 3 or section 169 (3) sentence 2 (unauthorised insurance transactions), the supervisory authority may order the undertaking to discontinue these business operations with immediate effect and order an immediate run-off of these business transactions. ²It may issue instructions for the run-off and appoint a suitable person as run-off administrator.

(2) The supervisory authority may publish its measures in accordance with sentence 1 if these are irrevocable or enforceable with immediate effect; personal data may only be published if this is required in order to avert risk.

(2a) ¹If BaFin orders the business operations to be discontinued or the run-off of the unauthorised transactions, it is entitled to exercise the rights referred to in section 38 (1) and (2) of the Banking Act in respect of legal persons and commercial partnerships. ²Subsection (2) applies, with the necessary modifications.

(3) Subsections (1) and (2) apply, with the necessary modifications, to measures in relation to the members of the undertaking's governing bodies and partners.

(4) The regulatory powers in accordance with subsections (1) to (3) also apply in relation to the undertaking and the individuals stated in subsection (3), if it is determined or if facts justify an assumption that they are involved in initiating, underwriting or handling these transactions; this applies in particular in relation to

1. undertakings which enter into or mediate contracts for an undertaking within the meaning of subsection (1), and
2. undertakings which carry out functions or activities for an undertaking of this type.

(5) The liquidator is entitled to open insolvency proceedings in relation to the undertaking's assets.

(6) ¹The liquidator appointed by BaFin must receive appropriate remuneration from the latter along with reimbursement of expenses. ²The undertaking must reimburse BaFin separately for the amounts paid and, if so requested, must be paid to BaFin in advance. ³BaFin may instruct the relevant undertaking to pay the amount stipulated by BaFin directly to the liquidator on behalf of BaFin provided that there are no concerns related to influencing the liquidator's independence as a result of this.

(7) ¹Provided that there are facts which justify an assumption that an undertaking is involved in unauthorised insurance transactions, the Supervisory Authority may inform the public of its suspicion with a name or company name. ²Sentence 1 applies, with the necessary modifications, if an undertaking is not actually involved in unauthorised insurance transactions but appears to be in public. ³The undertaking must be consulted prior to the decision on publishing the information. ⁴If the information published by the Supervisory Authority transpires to be incorrect or the underlying circumstances as having being reproduced incorrectly, then the Supervisory Authority must inform the public of this in the same manner in which it had previously announced the relevant information.

Section 308a Measures relating to PRIIP manufacturers and sellers

¹In respect of any insurance undertaking that advises on or sells a PRIIP as defined in Article 4 number 3 of Regulation (EU) No. 1286/2014 or the manufacturer of PRIIPs as defined in Article 4 number 4 of Regulation (EU) No. 1286/2014, the supervisory authority can take all measures that are appropriate and necessary to monitoring compliance with the requirements of Regulation (EU) No. 1286/2014 and of Commission delegated acts and regulatory technical standards adopted on the basis of that Regulation. ²In particular, it can

1. temporarily or permanently prohibit the marketing, distribution or sale of the PRIIP in the event of an infringement of Article 5(1), Articles 6, 7 and 8(1) to (3), Articles 9, 10(1), Article 13(1), (3) and (4) or Articles 14 or 19 of Regulation (EU) No. 1286/2014,
2. prohibit the provision of a key information document that does not satisfy the requirements of Articles 6 to 8 or 10

of Regulation (EU) No. 1286/2014, and

3. require the PRIIP manufacturer to publish a new version of the key information document where the published version does not satisfy the requirements of Articles 6 to 8 or 10 of Regulation (EU) No. 1286/2014, and
4. in the event of an infringement of one of the requirements specified in number 1, publish on its website a warning naming the responsible insurance undertaking and the nature of the infringement.

Section 308b Measures relating to mortgage lending; power to issue statutory orders

¹After hearing the leading associations of the undertakings, the supervisory authority may define limits on the extension of loans to build or acquire residential property situated in Germany by way of a general administrative act, if and to the extent that this is necessary to counter any disruption of the proper functioning of the German financial system or any risk to financial stability in Germany. ²Section 48u (1) sentences 2 to 5 and (2) and (4) of the Banking Act apply, with the necessary modifications. ³In the case of undertakings that are not subject to supervision by the supervisory authorities of the federal states, the Federal Ministry of Finance is authorised, after hearing the leading associations of the undertakings, by way of a statutory order that does not require the consent of the Bundesrat, to adopt more detailed requirements in accordance with section 48u (5) numbers 1 to 5 of the Banking Act, which is applicable with the necessary modifications.

Section 308c Measures in the case of infringements of Regulation (EU) 2017/2402

(1) If an undertaking supervised under this Act infringes, as an originator or original lender, the requirements of Articles 6, 7, 9, 18 to 26 or 27(1) or (4) of Regulation (EU) 2017/2402, the supervisory authority can order the acts or behaviour underlying the infringement to cease permanently and require their recurrence to be prevented.

(2) If a securitisation is designated as a STS securitisation within the meaning of Article (EU) 2017/2402 and if an originator, sponsor or securitisation special purpose entity has infringed one of the requirements of Articles 19 to 26 of Regulation (EU) 2017/2402 or if an originator makes a misleading notification under Article 27(1) of that Regulation, the supervisory authority may temporarily prohibit a supervised undertaking, as an originator under Article 27(1) of that Regulation from notifying that its securitisations meet the requirements of Articles 19 to 22 or Articles 23 to 26 of that Regulation.

Section 309 Duty of confidentiality

(1) ¹Persons employed or commissioned by the insurance supervisors and the members of the Insurance Advisory Council may not pass on any confidential information obtained in connection with their activities to any other person or authority. ²This also applies to any other persons who gain access to the information mentioned in sentence 1 by way of official reporting. ³Sentences 1 and 2 do not apply to the communication of information in summary or aggregate form, by which it is impossible to identify the individual insurance undertakings.

(2) ¹The duty of confidentiality in accordance with subsection (1) sentence 1 does not prohibit the exchange of information with the competent authorities of other member states and EEA countries. ²The duty of confidentiality under subsection (1) sentence 1 applies to the information obtained.

(3) ¹An exchange of information with competent authorities in third is only permissible if protection of the information to be communicated is guaranteed by professional secrecy to the same extent as is required under this regulation. ²This

exchange of information must be for the purposes of fulfilling the tasks of these authorities under supervisory law.³ If the information that a Member State has to communicate to a third country originates from another Member State, it may only be communicated with the express consent of the supervisory authority of this Member State, and then only for the purposes for which consent has been provided by this authority.

(4) The supervisory authorities may only use information obtained by reason of subsections (1) and (2)

1. for the examination of an application by an insurance undertaking for the granting of a authorisation;
2. for the monitoring of the activities of an insurance undertaking, a group or a financial conglomerate;
3. for orders by the supervisory authority and for prosecution and punishment by the supervisory authority of administrative offences;
4. within the framework of an administrative procedure concerning remedies against a decision by the supervisory authority; and
5. within the framework of proceedings in administrative courts, insolvency courts, criminal prosecuting authorities or courts having competent jurisdiction for administrative fines and criminal matters.

(5) The duty of confidentiality in accordance with subsection (1) sentence 1 does not prohibit, in particular, the communication of information to

1. criminal prosecuting authorities or courts having competent jurisdiction for administrative fines and criminal matters or;
2. bodies and persons commissioned by such bodies entrusted by law or by order of public authorities with the supervision of insurance undertakings, insurance intermediaries, credit institutions, German management companies, investment companies managed externally, EU management companies or foreign AIF management companies, financial enterprises, the financial markets or payment transactions or bodies established for the prevention of money laundering;
3. agencies handling the liquidation or insolvency of an insurance undertaking, credit institution, a financial services institution, an investment company or other financial institution;
4. persons responsible for the statutory auditing of the accounts of insurance undertakings, credit institutions, German management companies, investment companies managed externally, EU management companies or foreign AIF management companies or financial enterprises, as well as bodies which supervise the aforementioned persons;
5. Central Banks;
6. the European Central Bank, the Central Banks of the European System of Central Banks and other bodies with a similar function in their capacities as monetary institutions, the European Insurance and Occupational Pensions Authority, the European Banking Authority, the European Securities and Markets Authority, the Joint Committee of European Supervisory Authorities, the European Systemic Risk Board or the European Commission;
7. authorities that are responsible for supervision of payment and settlement systems;
8. institutions for the management of guarantees schemes;
9. parliamentary review committees under section 1 of the German Review Committees Act (*Untersuchungsausschussgesetz – PUAG*) based on a decision regarding a request under section 18 (2) of the German Review Committees Act;
10. the Federal Constitutional Court;
11. the Federal Court of Audit, provided that an audit request relates to the decisions and other activities of BaFin in accordance with this Act or delegated legislative acts based on Directive 2009/138/EC;
12. Administrative Courts in administrative law disputes in which BaFin is the defendant, with the exception of actions under the German Freedom of Information Act (*Informationsfreiheitsgesetz – IFG*);

provided these bodies require the information for the performance of their functions.

(6) In the event of a crisis, in particular a crisis as described in Article 18 of Regulations (EU) No. 1094/2010, information

may be forwarded to the European Central Bank, to the central banks of the European System of Central banks, and to the European Systemic Risk Board, provided that these bodies require the information in order to fulfil their responsibilities.

(7) The duty of confidentiality in accordance with subsection (1) sentence 1 does not prohibit the exchange of information with all undertakings that belong to a group as defined in section 7 no. 13, including when this involves information from other undertakings belonging to the group.

¹The duty of confidentiality as specified in subsection (1) sentence 1 applies, with the necessary modifications, to the persons employed by the bodies stated in subsection (5) nos. 1 to 8 and 10 to 12, the persons appointed by these bodies and the members of the committees stated in subsection (5) no. 9. ²If the body stated in subsection (5) nos. 1 to 8 and 12 is situated in another country, the information may only be communicated if the persons employed or appointed by this body are subject to a duty of confidentiality in accordance with subsection (5) sentence 1. ³Bodies situated in a third country must be informed that the information forwarded may be used solely for the purpose for which it was communicated. ⁴Information obtained from other countries may only be passed on with the express permission of the competent agencies that have forwarded the information, and only for purposes approved by these agencies.

(9) ¹Sections 93, 97 and 105 (1), 111 (5) in conjunction with section 105 (1) and section 116 (1) of the German Fiscal Code do not apply to the persons referred to in subsection (1), to the extent that they are acting in a capacity to implement this Act. ²This does not apply if the fiscal authorities require the information for criminal proceedings or any associated tax assessment proceedings.

(10) ¹Confidential information received by the supervisory authority from the bodies mentioned in subsection (2) sentence 1, and subsection (5) nos. 2 to 7 may not be communicated by way of official reporting under subsection (1) sentence 2 without a approval of the competent authority that has given the information. ²The same applies to information obtained during an on-site inspection of a branch in another Member State or EEA signatory state; in this case, a approval by the competent authority of the Member State or EEA signatory state where the on-site inspection was carried out is required.

(11) This is without prejudice to the provisions of the German Federal Data Protection Act.

Section 310 Ancillary provisions; exclusion of suspensory effect

(1) Administrative acts under this Act or a statutory instrument enacted based on this Act may include ancillary provisions.

(2) Objections to and actions to annul measures and decisions by the supervisory authority including the threat and the imposition of enforcement measures in accordance with section 18 (1) and (2), sections 20, 36, 134 (7), section 135 (3) as well as sections 264 and 298 in conjunction with sections 15, 294 (6) and section 295 as well as sections 301, 305 (3) and (6), section 306 (4), (5) and (7), and sections 308, 312 and 314 do not have any suspensory effect.

Chapter 2 Security measures

Section 311 Notification of insolvency

(1) ¹As soon as the insurance undertaking becomes insolvent its management board must notify the supervisory authority of this fact. ²This applies, with the necessary modifications, if the assets of the insurance undertaking are no longer sufficient to cover its liabilities. ³This notification requirement replaces the duty of the management board in

accordance with other statutory requirements to file a petition to open insolvency proceedings in the case of insolvency or over-indebtedness.

(2) ¹If in the case of mutual societies and insurance undertakings under public law operating on the principle of mutuality which impose supplementary contributions or cost allocations, any called-for payments of supplementary contributions or cost allocations have been outstanding for five months after their due date, the management board must determine whether the undertaking would be over-indebted if the supplementary contributions or cost allocations not paid in cash are disregarded; if this is the case, the board must inform the supervisory authority within one month after expiry of the specified period. ²Liquidators are subject to the same duties.

Section 312 Opening of insolvency proceedings

(1) ¹A petition to open insolvency proceedings against the insurance undertaking may only be filed by the supervisory authority. ²The supervisory authority has the sole rights of petition under section 3a (1), section 3d (2) and section 269d (2) of the Insolvency Code (*Insolvenzordnung*). ³The introduction of a coordination procedure (sections 269d to 269i of the Insolvency Code) only affects insurance undertakings belonging to the group if the supervisory authority applied for it or consented to it.

(2) ¹Only the authorities of the home country may open insolvency proceedings against an insurance undertaking from the European Economic Area. ²If insolvency proceedings are opened against an insurance undertaking in a member state or EEA signatory state, the proceedings must be recognised notwithstanding the requirements under section 343 (1) of the Insolvency Code.

(3) ¹Secondary insolvency proceedings or other territorial proceedings relating to the insurance undertaking with a registered office in another member state or EEA signatory state are not permissible. ²This does not apply to cases under section 65 or in relation to branches of insurance undertakings from third countries under section 68.

(4) ¹The insolvency court must immediately forward the order to open insolvency proceedings to the supervisory authority, which must in turn immediately inform the supervisory authorities of the other member states and EEA countries. ²If the supervisory authority receives a communication of this nature from the supervisory authorities of another member state or EEA signatory state, it is entitled to promulgate this decision. ³Without prejudice to the publication provided for in section 30 of the Insolvency Code, the insolvency court must publish excerpts from the order to open insolvency proceedings in the Official Journal of the European Union. ⁴The publication under section 30 of the Insolvency Code and the publication in the Official Journal of the European Union must include information of the court having competent jurisdiction, the governing law and the appointed insolvency administrator.

(5) ¹The supervisory authority may demand information on the status of proceedings from the insolvency court and the insolvency administrator at any time. ²The supervisory authority is obliged to inform the supervisory authority of another member state or EEA signatory state upon request concerning the status of the insolvency proceedings.

(6) ¹If the supervisory authority petitions for the opening of insolvency proceedings against a branch of an insurance undertaking in a third country, it must immediately inform the supervisory authorities of the other member states or EEA signatory states in which the insurance undertaking also has a branch. ²The individuals and authorities involved must endeavour to coordinate with each other.

Section 313 Provision of information to creditors

(1) ¹When the court has entered the order opening insolvency proceedings, the creditors must be sent a form bearing the title "Invitation to lodge a claim and submit observations relating to a claim. ²Time limits to be observed!" with the corresponding translations into all official languages of the Member States and EEA countries. ³This form must be published in the Federal Gazette by the Federal Ministry of Justice and for Consumer Protection and must contain, in particular, the following information:

1. the time limits to be observed and the penalties laid down with regard to those time limits;
2. who is empowered to accept the notification of claims or observations relating to claims;
3. any other steps to be taken;
4. what relevance the notification of claims has for creditors whose claims are preferential or those whose claims are secured by a property lien and the extent to which these creditors must lodge their claims;
5. the general effects of the insolvency proceedings on the insurance contracts;
6. the date on which the insurance contracts or operations are no longer legally valid; and
7. the rights and duties of the insured with regard to the contract or corresponding business transaction.

(2) If known creditors who have their habitual residence, domicile or registered office in another member state or EEA signatory state are the owner of a claim as a policyholder, insured, beneficiary or injured third party with a direct right of action against the insurer, they must be informed in the official language of the member state or EEA signatory state where they have their habitual residence, domicile or registered office.

(3) ¹Creditors who have their habitual residence, domicile or registered office in another member state or EEA signatory state can assert their claims in an official language of the country in question. ²In such cases, the claim must bear the German title “*Anmeldung und Erläuterung einer Forderung*” (Notification and explanation of a claim).

(4) The insolvency administrator must inform the creditors concerning the progress of the insolvency proceedings on a regular basis and in an appropriate form.

Section 314 Prohibition of payments; reduction of benefits

(1) ¹If an audit of the management and financial position of an undertaking finds that the undertaking will no longer be able to permanently meet its liabilities, but that it seems to be in the best interest of the insured to avoid insolvency proceedings, the supervisory authority may issue the necessary orders and require the representatives of the undertaking to change the bases for the operating principles within certain periods, or to otherwise remedy the deficiencies. ²All kinds of payments, in particular the payment of insurance benefits, profit distributions and, for life insurance, redemptions or policy loans or advances may be temporarily prohibited. ³The provisions of the Insolvency Code relating to the protection of systems for payment settlement, delivery and settlement of securities, collateral security held by central banks and financial collateral arrangements apply, with the necessary modifications.

(2) ¹Subject to subsection (1) sentence 1, the supervisory authority may if necessary reduce the liabilities of a life insurance undertaking under its insurance contracts in accordance with its financial situation. ²The reductions required by the supervisory authority may be differentiated if this is justified by the circumstances, in particular if in the case of several insurance lines the individual lines have contributed differently to the emergency situation of the undertaking. ³For the purpose of the reductions, in cases where the premium reserve is established for the individual insurance contracts, these must be initially reduced, after which the sums insured will be re-determined; if this is not possible then the sums insured must be reduced directly. ⁴The obligation of the policyholders to continue payment of the agreed premiums is not affected by the reduction.

(3) The measures in accordance with subsections (1) and (2) may be restricted to a separate account within the guarantee assets (section 125 (6)).

Section 315 Treatment of insurance-related claims

(1) ¹In the case of satisfaction out of the guarantee assets in accordance with section 126 (1) and (3),

1. the claims of the insured, beneficiaries or injured third parties with a direct right of action against the insurance undertaking; and

2. premium refund claims, provided the insurance contract was cancelled or rescinded before the opening of insolvency proceedings

must rank prior to the claims of the remaining insolvency creditors in the amount of the share of guarantee assets under section 125 (2). ²The guarantee assets must be drawn on only to the extent that allocations to the guarantee assets are prescribed in accordance with section 125 (1) and (2), section 126 (3) and section 127.

(2) All claims privileged in accordance with subsection (1) rank pari passu.

Section 316 Lapse of certain insurance contracts

¹The following cease to exist upon opening of insolvency proceedings

1. life insurance;
2. health insurance of the type stated in section 146;
3. private compulsory long-term care insurance in accordance with section 148;
4. accident insurance of the type stated in section 161; and
5. pensions from the insurance stated in section 162.

²The insurance creditors can claim the proportion of the minimum guarantee assets in accordance with section 125 (2) to which they are entitled as at the date on which insolvency proceedings are opened. ³Section 315 (1) sentence 2 and (2) applies, with the necessary modifications.

Section 317 Guardian in insolvency

(1) ¹The insolvency court must appoint a guardian for the insured to protect their rights in accordance with sections 315 and 316. ²For the purpose of guardianship, the insolvency court takes the place of the guardianship court.

(2) The guardian must determine the amount of the existing guarantee assets and determine and register the claims on behalf of the insured.

(3) ¹Wherever possible, the guardian must consult the insured before, and notify them after, notification of the claim and otherwise inform them of any facts relevant to their claims upon request. ²The right of individual insured persons to register claims on their own behalf is not affected. ³If there is a difference between the notification filed by the insured and the notification filed by the guardian, the filing which is more favourable to the insured prevails until the difference has been eliminated.

(4) The insolvency administrator must permit the guardian to inspect all books and records of the debtor, and on request document all the assets included in the guarantee assets.

(5) ¹The guardian may demand reasonable remuneration for the discharge of these duties. ²The recoverable expenses and remuneration of the guardian are charged to the guarantee assets.

(6) The supervisory authority must be consulted prior to the appointment of the guardian and the setting of their remuneration.

Chapter 3 Published information

Section 318 Published information

(1) BaFin publishes information annually regarding the status of the insurance undertakings subject to its supervision and its observations with respect to the insurance sector.

(2) ¹It will also publish

1. the texts of the legal and administrative regulations related to insurance supervision;
2. its legal and administrative principles, in particular the criteria and methods related to its supervisory review process in accordance with section 294 (5) and projections in accordance with section 44;
3. the type of and manner of exercising the options provided in Directive 2009/138/EC as well as
4. the objectives of the supervision and its main functions and activities.

²The information must be sufficient in order to enable a comparison of the supervisory approaches by the supervisory authorities in the different Member States or EEA signatory states.

(3) The published information under subsections (1) and (2) must be accessible via a single electronic address.

Section 319 Publication of measures

(1) ¹BaFin should publish every definitive measure imposed against an undertaking subject to its supervision or against an executive director of an undertaking as a result of a breach of this Act or the statutory instruments enacted based upon it, and every irrevocable decision to impose a fine under subsections (2) and (3) without delay upon its website, and thereby also provide notification of the type and nature of the breach, provided that this is required considering the relevant interests in order to rectify or prevent irregularities. ²This is without prejudice to BaFin's rights under section 308 (2).

(2) ¹BaFin must publish a definitive measure or an irrevocable decision to impose a fine on an anonymous basis if publication under subsection (1)

1. infringes the personal rights of natural persons or publication of personal data would be disproportionate on other grounds;
2. would put the stability of the financial markets of the Federal Republic of Germany or of one or more of the Member States of the European Economic Area or the continuation of a criminal investigation at significant risk; or
3. would cause a disproportionately large amount of damage to the undertakings or natural persons concerned.

²By way of derogation from sentence 1 BaFin may refrain from publication under subsection (1) in the cases under sentence 1 nos. 2 and 3 until the grounds for publication on an anonymous basis no longer exist. ³A publication may not be made if the measures under sentence 1 are not sufficient to rule out a threat to financial stability or to ensure the proportionality of the publication.

(3) ¹A publication should be published on BaFin's website for five years. ²By way of derogation from sentence 1, personal data must be deleted as soon as its publication is no longer necessary.

Section 319a Publication of measures and penalties due to infringements of Regulation (EU) No. 2015/2365, Regulation (EU) 2016/1011 and Regulation (EU) 2017/2402

(1) The supervisory authority must publish decisions on measures and penalties imposed due to infringements of Regulation (EU) 2015/2365 or Regulation (EU) 2016/1011 or delegated acts issued on the basis of those Regulations on its website without undue delay after notifying the natural or legal person on whom the measure or penalty was imposed.

(2) In the publication, the supervisory authority must state the provision that was infringed and the natural or legal person or a association of persons that is responsible for the infringement.

(3) Where the publication of the identity of the legal person affected by the decision or the personal data of a natural person is disproportionate, or if publication would jeopardise an ongoing investigation or the stability of the financial markets,

1. the supervisory authority must defer publication of the decision until the reasons for deferral cease to exist,
2. the supervisory authority must publish the decision without stating the identity or personal data if this ensures effective protection of the identity or the relevant personal data, or
3. the supervisory authority does not publish the decision if publication under numbers 1 and 2 would not be sufficient to ensure that
 - a) the stability of financial markets would not be put in jeopardy or
 - b) the proportionality of the publication is ensured.

(4) ¹In the case of decisions that are not definitive under administrative law or unappealable, the supervisory authority must add a corresponding note. ²If an appeal is lodged against a decision to be published, the supervisory authority must supplement the publication without undue delay with a reference to the appeal and any subsequent information about the outcome of the appeal.

(5) ¹Any publication under subsection (1) must be deleted five years after being published. ²By way of derogation from sentence 1, personal data must be deleted as soon as its publication is no longer necessary.

(6) In the case of final and absolute measures and unappealable decisions to impose an administrative fine that were issued due to an infringement of Articles 6, 7, 9 or 27(1) of Regulation (EU) 2017/2402, subsections (1) to (3) and (5) apply, with the necessary modifications, subject to the condition that the publication also covers the imposed measures and administrative fine decisions and that the review of proportionality under subsection (3) examines whether the publication would cause disproportionate damage to the persons involved.

Chapter 4 Remit

Segment 1 Federal Supervision

Section 320 Federal Financial Supervisory Authority (BaFin)

(1) BaFin supervises

1. private insurance undertakings and pension funds that have their registered office or a branch or otherwise carry on insurance or pension funds business in Germany;
2. insurance holding companies as defined in section 7 no. 31, special purpose insurance companies within the meaning of section 168 and guarantee schemes within the meaning of section 223 as well as
3. public law insurance undertakings subject to competition (*öffentlich-rechtliche Wettbewerbs-Versicherungsunternehmen*) which operate on a national basis.

(2) ¹If a primary insurance undertaking that is supervised at the federal state level belongs to a financial conglomerate within the meaning of section 1 (2) of the German Supervision of Financial Conglomerates Act, then supervision of this undertaking must be transferred to BaFin as soon as the group to which the primary insurance undertaking in question belongs has been finally classified as a financial conglomerate in accordance with section 11 (1) sentence 1 of the German Supervision of Financial Conglomerates Act; the competent authority in the relevant federal state must be informed of the classification in a timely manner. ²Upon revocation of the classification by BaFin, or if the primary insurance undertaking in question no longer belongs to the financial conglomerate, BaFin may transfer supervision of the primary insurance undertaking back to the competent authority in the relevant federal state with its approval.

(3) BaFin is responsible for the technical supervision of the type of institutions named in section 140 (1) of Book Seven of the Social Security Code if these institutions operate on a national basis.

Section 321 Transfer of supervision to a state supervisory authority

(1) At the request of BaFin, the Federal Ministry of Finance can transfer supervision of private insurance undertakings of minor economic importance, pension funds and public law insurance undertakings subject to competition to the competent state supervisory authority with its approval.

(2) Even after responsibility for supervision has been transferred, the Federal Ministry of Finance may transfer supervision of undertakings within the meaning of subsection (1) back to BaFin, particularly if the undertakings have gained greater economic importance.

Section 322 Transfer of supervision to BaFin

(1) The competent state supervisory authority may request that technical supervision of the activities of public law insurance undertakings subject to competition, with operations limited to a single federal state be transferred to BaFin.

(2) In the case of other insurance undertakings under public law that are not insurance undertakings subject to competition, BaFin may assume responsibility for supervision at the request of the governments of the relevant federal states.

Section 323 Procedure

(1) Any application filed under section 322 (1) may be withdrawn by the state authority previously responsible for supervision on 1 January at any time effective as of 1 January of the following year.

(2) If BaFin has assumed responsibility for supervision in accordance with section 322 (2), the application can only be withdrawn jointly by all of the federal state governments involved with effect from 1 January of the following year.

(3) In the event of a transfer of supervisory powers in accordance with sections 321 and 322, BaFin must announce the date of the assumption or transferral of responsibility for supervision in the Federal Gazette at least two weeks in advance.

Section 324 Cooperation between supervisory authorities

¹BaFin and the supervisory authorities of the individual federal states are required to exchange information about their legal and administrative principles. ²This also applies to principles established by the authorities of the individual federal states for the supervision of insurance undertakings under public law as well as the drafts of statutory instruments, general administrative acts and directives if the interests of the other supervisory authorities could be affected.

(2) The supervisory authorities of the federal states must cooperate with BaFin whenever this is necessary for them to discharge their duties under Directive 2014/17/EU, including for the purposes of cooperation with the European Banking Authority in accordance with that Directive.

Section 325 Insurance Advisory Council

(1) An Insurance Advisory Council within BaFin composed of insurance experts assists in the exercise of supervision.

(2) ¹The Insurance Advisory Council comprises eight members equally representing the different insurance classes of the insurance industry, of which two represent insurance sales, as well as eight policyholder representatives and eight representatives from actuarial sciences and actuarial associations. ²The policyholder representatives include four representatives of consumer protection organisations, as well as one representative each for insurance brokers, industry, mid-range societies and labour unions.

(3) ¹The members of the Insurance Advisory Council are appointed for a period of five years. ²They may be reappointed once.

(4) The members serve in an honorary capacity without remuneration; for attendance of the meetings, they will receive daily allowances and reimbursement of their travel expenses.

Segment 2 Supervision in the European Economic Area

Section 326 General principles for cooperation between the supervisory authorities

(1) The supervisory authority cooperates closely with the European Commission and the supervisory authorities in the Member States and EEA countries in order to facilitate supervision at Community level.

(2) If the supervisory authority of another Member State or EEA signatory state seeks cooperation for the purpose of supervision, BaFin must impose the appropriate measures under sections 298, 305, 306 and 309 and inform the authority seeking such cooperation accordingly.

(3) If the supervisory authority in the home country enacts statutory restrictions against an undertaking in accordance with Article 137 or 138 (5), Article 139 (3) or Article 144 (2) subsection (2) of Directive 2009/138/EC, BaFin must at the request of this authority impose the same measures with respect to the assets of the undertaking located in Germany, and referred to in the request, to the same extent as referred to in the request.

(4) ¹BaFin must cooperate with the supervisory authorities of the home member state whenever this is necessary to perform its functions under Directive 2014/17/EU. ²For this purpose, BaFin can transfer functions and responsibilities to the supervisory authority of the home member state and take over functions and responsibilities from the supervisory authority of the home member state relating to services within the meaning of that Directive in Germany. ³In the case of disagreements between the supervisory authorities relating to cooperation, Article 19 of Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331 of 15 December 2010, page 12), as most recently amended by Directive 2014/17/EU (OJ L 60 of 28 February 2014, page 34) applies, with the necessary modifications.

Section 327 Cooperation in local audits

(1) ¹Provided that this is required in order to exercise financial supervision under section 62 (1) or section 169 (1) or for the purposes of auditing a service provider located in Germany, the supervisory agency of the home country is authorised to carry out audits of the business operations on the business premises of the branch by its own staff or by appointed representatives; section 305 (5) and section 306 (5) apply, with the necessary modifications. ²BaFin must

provide administrative assistance upon request. ³The employees of the supervisory authority and individuals appointed for the audit under section 306 (1) no. 3 may enter the business premises of the insurance undertaking. ⁴The fundamental right of inviolability of the home (Article 13 (1) of the German Basic Law) is restricted to this extent.

(2) The supervisory authority may ask the supervisory authority in another Member State of the European Union to review information regarding a group company subject to supervision or an undertaking not subject to supervision from the other Member State.

(3) ¹If within the framework of cooperation in group-wide supervision (section 284) the competent authority makes an audit request to another Member State or EEA signatory state (requesting authority) within the meaning of subsection (2) related to a corresponding undertaking with registered office in Germany then the supervisory authority must provide administrative assistance. ²If the supervisory authority carries out the audit itself then the requesting authority may take part in or be present at the audit. ³Section 305 (5) and section 306 (5) apply, with the necessary modifications. ⁴The supervisory authority will notify the group supervisory authority regarding the measures taken.

Section 328 Notifications

¹If the supervisory authority of another Member State or EEA signatory state intends to send an undertaking that carries on business in that state and is domiciled in Germany, a document for the purpose of proceedings in accordance with the insurance supervisory provisions applicable in such other member state or EEA signatory state, it is permitted to send the document directly by post in compliance with the rules applicable to postal communication with the other member state or EEA signatory state. ²Sending the document by registered mail, delivered "to addressee only" (*eigenhändig*) and with "confirmation of receipt" (*Rückschein*), is sufficient to prove that the document has been delivered. ³If the document cannot be directly delivered by post or if it is not appropriate due to the nature and content of the document, BaFin will arrange delivery of the document.

Section 329 Cooperation with the European Insurance and Occupational Pensions Authority

(1) ¹Under regulation (EU) No. 1094/2010, the supervisory authority must work in cooperation with the European Insurance and Occupational Pensions Authority for the purposes of Directives 2009/138/EC and 2003/41/EC. ²It will take its policies and recommendations into account as far as possible and provide justification for any deviations.

(2) The supervisory authority must provide the following statements to the European Insurance and Occupational Pensions Authority annually:

1. the average capital add-on for each undertaking and the distribution of the capital add-ons determined by the supervisory authority during the previous year, measured as a percentage of the solvency capital requirement and stated separately as follows:
 - a) for all insurance undertakings;
 - b) for life insurance undertakings;
 - c) for non-life insurance undertakings;
 - d) for insurance undertakings active both in life insurance and well as non-life insurance; and
 - e) for reinsurance undertakings;
2. for every communication within the meaning of no. 1 the proportion of capital add-ons that have been determined as relevant in accordance with section 301 (1) nos. 1, 2 and 3;
3. the number of insurance undertakings that are exempt in part from regular supervisory reporting, and the number of insurance undertakings that are exempt in whole or in part from individual item reporting, together with the value of their capital requirement, premiums, technical provisions and assets, measured in each case as a percentage of the total value of the insurance undertakings' capital requirement, premiums, technical provisions and assets, and

4. the number of groups that are exempt in part from regular reporting, and the number of groups that are exempt in whole or in part from individual item reporting, together with the value of their capital requirement, premiums, technical provisions and assets, measured in each case as a percentage of the total value of the capital requirement, premiums, technical provisions and assets of all groups.

(3) ¹The supervisory authority must inform the European Insurance and Occupational Pensions Authority of national supervisory provisions that are relevant to occupational pension schemes unless such provisions are under national social or labour law. ²Any changes to the information submitted in accordance with sentence 1 must be notified by the supervisory authority to the European Insurance and Occupational Pensions Authority on a regular basis, and at least every two years.

(4) In accordance with Article 35 of Regulation (EU) No. 1094/2010, the supervisory authority must make available to the European Insurance and Occupational Pensions Authority, on request and without delay, all the information it needs to carry out its responsibilities on the basis of Directive 2003/41/EC and Regulation (EU) No. 1094/2010.

(5) The supervisory authority must notify the European Insurance and Occupational Pensions Authority of all administrative sanctions and other measures imposed in accordance with Article 32(3) and Article 36 of Directive (EU) 2016/97.

Section 330 Notifications to the European Commission

(1) The supervisory authority must notify the European Commission of the following:

1. the issue of an authorisation under section 8 (1) to an undertaking that is the subsidiary of a parent undertaking domiciled in a third country; the structure of the group must be included in the notification;
2. the acquisition of a holding in an insurance undertaking as a consequence of which the insurance undertaking becomes a subsidiary of a parent undertaking domiciled in a third country;
3. the number and nature of the cases in which the establishment of a branch or operation of primary insurance business via cross-border provision of services in another member state or EEA signatory state could not be implemented because the supervisory authority did not forward the documents under section 58 (1) sentence 2 or section 59 (1) sentences 2 and 3 to the supervisory authority of the other member state or EEA signatory state;
4. the number and nature of the cases in which measures in accordance with section 62 (3) sentences 2 and 3 have been imposed;
5. general difficulties that insurance undertakings encounter when establishing branches, setting up subsidiaries or related in any other way with the operation of insurance business in a third country;
6. at the request of the Commission, the application for authorisation from an undertaking that is a subsidiary of a parent undertaking domiciled in a third country;
7. at the request of the Commission, any intention disclosed in accordance with section 17 to acquire a holding in an insurance undertaking by which the insurance undertaking would become a subsidiary of an undertaking domiciled in a third country;
8. the selected procedure in the cases set forth in section 288;
9. the persons and agencies specified in section 309 (5) nos. 3 and 4;
10. the provisions issued under section 170 (1);
11. the provisions applicable to special purpose insurance companies within the meaning of section 168;
12. a list of all reinsurance undertakings that had ceased writing new reinsurance business up to 10 December 2007 and that manage their portfolios solely with the objective of discontinuing their activities.

(2) ¹The notification obligations under subsection (1) nos. 6 and 7 above only apply if the European Commission finds that insurance undertakings domiciled in a member state or EEA signatory state are not permitted effective access to the

market of the third country that is comparable to the access the European Union grants to undertakings of this third country, or if the Commission finds that the insurance undertakings domiciled in a member state or EEA signatory state are not granted national treatment in this third country. ²The notification obligations under subsection (1) nos. 6 and 7 in conjunction with sentence 1 no longer apply if an agreement has been entered into with the country concerned regarding effective market access and national treatment for insurance undertakings domiciled in a member state or EEA signatory state.

(3) The notification obligations under subsection (1) nos. 1, 2 and 10 also apply to notifications to be submitted to the competent authorities in the other member states or EEA signatory states.

(4) The notification obligations under subsection (1) nos. 1, 2, 3 and 5 also apply in respect of notifications to be submitted to the European Insurance and Occupational Pensions Authority.

Part 7 Regulations regarding criminal penalties and administrative fines

Section 331 Criminal penalties

(1) Persons committing the following offences will be liable to imprisonment for a term of up to five years or a fine:

1. the operation of primary insurance business, reinsurance business or a pension fund without authorisation under section 8 (1), section 65 (1) sentence 1, section 67 (1) sentence 1, section 168 (1) sentence 3 or section 236 (4) or commencement of any business activity referred to in those provisions without authorisation; or
2. the commencement, extension or modification of a business activity specified in, and in breach of the provisions in, section 61 (2) sentence 2 or sentence 5, (3) or (4) or the operation of health insurance or compulsory insurance in breach of these provisions.

(2) Persons committing the following offences will be liable to imprisonment for a term of up to three years or a fine:

1. acts in contravention of an enforceable order under section 62 (3) sentence 2;
2. does not correctly issue a confirmation as set out in
 - a) section 128 (5); or
 - b) section 141 (5) sentence 1 no. 2 first half-sentence, also in conjunction with section 161 (1) or section 162,or
3. fails to submit a notification or fails to submit a notification correctly or in a timely manner in breach of the provisions in section 311 (1) sentence 1, also in conjunction with sentence 2, or in subsection (2) sentence 1 second-half-sentence, also in conjunction with sentence 2.

(2a) Persons will be liable to imprisonment for a term of up to one year or a fine if, as a member of the supervisory board within the meaning of section 189 or as a member of an audit committee of a mutual society appointed under section 189 (3) sentence 1 in conjunction with section 107 (3) sentence 2 of the Stock Corporation Act that is an insurance undertaking as defined in Article 2(1) of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (OJ L 374 of 31 December 1991, page 7), as most recently amended by Directive 2006/46/EC (OJ L 224 of 16 August 2006, page 1),

1. they commit an act referred to in section 332 (4a) and receive or obtain the promise of a pecuniary advantage in return or
2. they persistently repeat an act referred to in section 332 (4a).

(3) If the offender has acted negligently, he or she will be liable in the cases under subsection (1) to imprisonment for a term of up to three years or a fine and in the cases under subsection (2) to imprisonment for a term of up to one year or a fine.

Section 332 Administrative fines

(1) An administrative offence is deemed to be committed by any person who

1. without authorisation under section 12 (1) sentence 1, also in conjunction with sentence 2, and in each case also in conjunction with section 212 (3) no. 4, section 237 (1) sentence 1, brings into force a change, extension or enterprise agreement as referred to in those provisions or expands the business operations of a reinsurance undertaking,
2. contravenes an enforceable order under
 - a) section 43a (1), section 44 sentence 1, section 293 (2) or section 306 (1) sentence 1 no. 4 or no. 5, or
 - b) section 303 (2) no. 2 or no. 3,
- 2a. grants or promises a special allowance in contravention of section 48b (1) sentences 1 or 2,
- 2b. does not ensure the disbursement of an inducement in contravention of section 48c (1) sentence 1, or does not do so correctly or promptly,
3. does not add an asset to the guarantee assets or does not do so correctly or promptly in breach of the provisions in section 125 (1) sentence 2;
4. does not ensure that the guarantee assets are individually entered in a register of assets in breach of the provisions in section 126 (1) sentence 1;
5. withdraws an amount from the guarantee assets in breach of the provisions in section 130 (1) ;
6. fails to provide the required information or does not provide the required information correctly, in full or in a timely manner in breach of the provisions in section 134 (1) ;
7. works for an insurance undertaking at the same time in breach of the provisions in section 164 (3) sentence 2;
8. carries out comparable activities for an insurance undertaking in breach of the provisions in section 164 (3) sentence 3;
9. invests guarantee assets in breach of the provisions in
 - a) section 215 (2) sentence 1, including in conjunction with a statutory order under section 217 (1) number 6, or
 - b) section 234j (1) sentence 1 in conjunction with a statutory order under section 235 (1) number 10,
10. does not ensure that the guarantee assets are invested in the specified manner in breach of the provisions in section 239 (1) sentence 2, or
11. contravenes a statutory order under section 240 sentence 1 number 8 first half-sentence or an enforceable order based on such a statutory order where the statutory order refers to this fines provision for specific circumstances.

(2) An administrative offence is deemed to be committed by any person who wilfully or recklessly

1. fails to submit a specified document or fails to submit such document in a timely manner in breach of the provisions in section 37 (1) or section 227 (2) sentence 1;
2. contravenes a statutory order under section 39 (1) sentence 1, also in conjunction with section 68 (1) sentence 4, or an enforceable order based on such a statutory order, where the statutory order refers to this fines provision for specific circumstances;
3. fails to disclose information or fails to disclose the required information correctly, in full or in a timely manner in breach of the provisions in section 40 (1) sentence 1, or
4. contravenes a statutory order under section 43a (2) sentences 1 or 2 an enforceable order based on such a statutory order where the statutory order refers to this fines provision for specific circumstances.

(3) An administrative offence is deemed to be committed by any person who wilfully or negligently

1. fails to submit a notification or fails to submit a notification correctly, in full, in the prescribed way or in a timely manner in breach of the provisions in section 17 (1) or (2), section 36 (1) sentence 1 or section 59 (1), also in conjunction with (4);
2. contravenes an enforceable order in accordance with
 - a) section 18 (1), (2) first half-sentence or (3) sentence 4, section 19 (1), section 133 (1), section 134 (7) first half-sentence, section 135 (3) first half-sentence or section 305 (3), also in conjunction with (4); or
 - b) section 305 (1), also in conjunction with (2), section 308 (4) no. 1, also in conjunction with section 62 (1) no. 6 or section 314 (1) sentence 1 or sentence 2;
3. works together with an insurance intermediary in breach of the provisions in section 48 (1) or (2) sentence 2;
- 3a. communicates information to policyholders or potential policyholders in breach of section 1a (3) of the Insurance Contract Act,
- 3b. in the case of the mediation of an insurance-based investment products as defined in Article 2 (1) number 17 of Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (OJ L 26 of 2 February 2016, page 19; L 222 of 17 August 2016, page 114)
 - a) does not provide appropriate information in good time before conclusion of the contract in breach of section 7b (1) sentence 1 of the Insurance Contract Act,
 - b) does not inquire about information in breach of section 7c (1) sentence 1 of the Insurance Contract Act, or does not do so correctly, completely or promptly,
 - c) recommends an insurance-based investment product in breach of section 7c (1) sentence 2 of the Insurance Contract Act, or
 - d) does not provide a declaration before conclusion of the contract in breach of section 7c (5) sentence 3 of the Insurance Contract Act,
- 3c. does not make a record in breach of section 7c (4) sentence 1 of the Insurance Contract Act,
4. fails to provide the required information or does not provide the required information correctly, in full or in a timely manner in breach of the provisions in section 135 (1);
5. contravenes a statutory order under section 160 sentence 1 or an enforceable order based on such a statutory order where the statutory order refers to this fines provision for specific circumstances; or
6. does not accept a measure in breach of the provisions in section 306 (8) sentence 1, or
7. contravenes an enforceable order under section 308b (1).

(4) An administrative offence is deemed to be committed by any person who, acting on behalf of an undertaking subject to supervision under this Act, infringes the provisions of Regulation (EC) No. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302 of 17 November 2009, page 1), most recently amended by Directive 2014/51/EU (OJ L 153 of 22 May 2014, page 1), in which the person concerned wilfully or recklessly

1. uses a credit rating in breach of the provisions in Article 4 (1) subparagraph 1;
2. fails to ensure that an undertaking subject to supervision in accordance with this Act carries out its own credit risk assessments in breach of the provisions in Article 5a (1);
3. places an order incorrectly in breach of the provisions in Article 8c (1);
4. fails to ensure, in breach of the provisions in Article 8c (2), that an appointed credit rating agency fulfils a requirement specified in that Article; or
5. in breach of the provisions in Article 8d (1) sentence 2, fails to deal correctly with the documentation referred to in that Article.

(4a) An administrative offence is deemed to be committed by any person who, as a member of the supervisory board within the meaning of section 189 or as a member of an audit committee of a mutual society appointed under section 189 (3) sentence 1 in conjunction with section 107 (3) sentence 2 of the Stock Corporation Act that is an insurance undertaking as defined in Article 2(1) of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (OJ L 374 of 31 December 1991, page 7), as most recently amended by Directive 2006/46/EC (OJ L 224 of 16 August 2006, page 1),

1. does not monitor the independence of the auditor or audit firm in accordance with Article 4(3) subparagraph 2, Article 5(4) subparagraph 1 sentence 1 or Article 6(2) of Regulation (EU) No. 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJ L 158 of 27 May 2014, page 77, L 170 of 11 June 2014, page 66), or
2. submits a recommendation for the appointment of an auditor or an audit firm that is not based on a requirement by the supervisory authority under section 36 (1) sentence 2, and
 - a) that does not comply with the requirements of Article 16(2) subparagraphs 2 or 3 of Regulation (EU) No. 537/2014 or
 - b) is not preceded by a selection procedure under Article 16(3) subparagraph 1 of Regulation (EU) No. 537/2014.

(4b) (Repealed)

(4c) (Repealed)

(4d) An administrative offence is deemed to be committed by any person who contravenes Regulation (EU) No. 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352 of 9 December 2014, page 1; L 358 of 13 December 2014, page 50) and who wilfully or negligently,

1. in breach of the provisions of
 - a) Article 5(1),
 - b) Article 5(1) in conjunction with Article 6,
 - c) Article 5(1) in conjunction with Article 7(2),
 - d) Article 5(1) in conjunction with Article 8(1) to (3),does not draw up or publish a key information document, does not do so correctly, or completely, or promptly, or in the prescribed form,
2. does not write or translate a key information document in the prescribed manner in contravention of Article 5(1) in conjunction with Article 7(1),
3. does not review a key information document or does not review it promptly in contravention of section 10(1) sentence 1,
4. does not revise a key information document or does not revise it promptly in contravention of section 10(1) sentence 1,
5. does not make available a key information document or does not make it available promptly in contravention of section 10(1) sentence 2,
6. makes statements in marketing communications that contradict the information in the key information document or diminish its significance in contravention of Article 9 sentence 1,
7. does not include the necessary indications in marketing communications, or does not do so correctly or completely, in contravention of Article 9(2),
8. does not make available a key information document or does not make it available promptly or in the prescribed form in contravention of Article 13(1), (3) and (4) or Article 14,
9. does not establish appropriate procedures and arrangements for submitting and replying to complaints or does not do so correctly or in the prescribed manner in contravention of Article 19(a) and (b), or

10. does not establish appropriate procedures and arrangements, or does not do so correctly, that ensure that effective redress procedures are available to retail investors in the event of cross-border disputes in contravention of Article 19(c).

(4e) An administrative offence is deemed to be committed by any person who contravenes the requirements of Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No. 648/2012 (OJ L 337 of 23 December 2015, page 1) and who wilfully or negligently

1. does not make a report, or does not make it correctly, or completely, or in the prescribed manner or promptly in contravention of Article 4(1),
2. does not keep records, or does not keep them correctly, or at least for the required period in contravention of Article 4(4),
3. reuses financial instruments although the conditions referred to in Article 15(1) have not been met, in contravention of Article 15(1), or
4. exercises the right of reuse although the conditions referred to in Article 15(2) have not been met, in contravention of Article 15(2).

(4f) An administrative offence is deemed to be committed by any person who wilfully or negligently

1. does not correctly establish the identity of a beneficiary who differs from the policyholder in breach of section 54 (1) sentence 1,
2. does not obtain sufficient information about a beneficiary who differs from the policyholder in breach of section 54 (1) sentence 2,
3. does not identify the beneficial owner in breach of section 54 (1) sentence 3,
4. in breach of section 54 (2) sentence 1 in conjunction with section 10 (1) number 4 of the Money Laundering Act, does not clarify whether a beneficiary who differs from the policyholder and its beneficial owner, if applicable, is a politically exposed person, its family members or a person known to be a close associate,
5. does not establish the identity of the third party and its beneficial owner in breach of section 54 (2) sentence 2,
6. does not review the identity or does not review it promptly in breach of section 54 (2) sentence 3,
7. does not inform a member of the management level before a payout in breach of section 55 number 1.

(4g) An administrative offence is deemed to be committed by any person who contravenes the requirements of Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No. 596/2014 (OJ L 171 of 29 June 2016, page 1; L 306 of 15 November 2016, page 43), and who wilfully or negligently

1. as a supervised contributor does not meet the governance and control requirements in breach of Article 16(1),
2. as a supervised contributor does not have effective systems, controls and strategies to ensure the integrity and reliability of all contributions of input data or expert judgement under paragraph (3) to the administrator in breach of Article 16(2) or paragraph (3),
3. as a supervised contributor does not make a report, or does not make it correctly, or completely or for the prescribed period in breach of Article 16(3) sentence 1,
4. as a supervised contributor does not fully cooperate, or does not do so correctly, or completely or fully with the administrator and the supervisory authority in the auditing and supervision of the provision of a benchmark and make available the information and records, in breach of Article 16(4),
5. as a supervised contributor does not notify the administrator, or does not do so correctly, or completely, or in the prescribed manner or promptly in breach of Article 23(3) sentence 1,
6. contravenes an enforceable order issued by the supervisory authority as a contributor under Article 23(5), as a supervised entity under Article 23(6) or as a supervised contributor under Article 23(10),

7. as a supervised entity does not produce a plan meeting the requirements set out in Article 28(2), or does not produce a plan correctly, or completely or in the prescribed manner, does not update it, does not provide it to the supervisory authority, or does not provide it completely or promptly, or does not reference it, in contravention of Article 28(2),
8. as a supervised entity uses a benchmark that does not meet the requirements set out in Article 29(1), in contravention of Article 29(1), or
9. does not ensure that a prospectus contains the information referred to in Article 29(2) in contravention of Article 15(1).

(4h) An administrative offence is deemed to be committed by any person who selects assets in contravention of Article 6(2) sentence 1 of Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No. 1060/2009 and (EU) No. 648/2012 (OJ L 347 of 28 December 2017, page 35).

(4i) An administrative offence is deemed to be committed by any person who contravenes Regulation (EU) No. 2017/2402 within the scope of this Act and wilfully or negligently

1. does not hold an interest referred to in Article 6(1) sentence 1 in contravention of Article 6(1) sentence 1,
2. does not make available information, or does not make it available correctly, or completely, or in the prescribed manner or promptly in contravention of Article 7(1) subparagraphs 1 to 4 or 5,
3. uses other criteria or processes in contravention of Article 9(1) sentences 1 or 2,
4. uses a designation referred to in Article 18 sentence 1 in contravention of Article 18 sentence 1, or
5. in contravention of Article 27(4), does not notify the European Securities and Markets Authority, or does not do so correctly, or completely or promptly, or does not inform the supervisory authority, or does not do so correctly, or completely or promptly.

(4j) An administrative offence is deemed to be committed by any persons who, with this scope of this Act, wilfully or negligently

1. do not ensure that they have an effective system in place in accordance with Article 9(1) sentence 3 of Regulation (EU) 2017/2402,
2. securitise an exposure referred to in Article 9(3) of Regulation (EU) 2017/2402 without having made the verification referred to there, or
3. make a notification in accordance with Article 27(1) subparagraphs 1, 2 or 3 sentence 2 of Regulation (EU) 2017/2402 containing misleading information.

(5) ¹The administrative offence is punishable by a fine not exceeding EUR five million in the cases referred to in subsections (4e), (4h), (4i) and (4j), a fine not exceeding EUR seven hundred thousand in the cases referred to in subsection (4d), a fine not exceeding EUR five hundred thousand in the cases referred to in subsection (1) number 2 (b), subsection (2) number 3 and subsection (3) numbers 3, 3a, 3b and 3c, and subsection (4g), a fine not exceeding EUR two hundred thousand in the cases referred to in subsection (2) number 2, subsection (3) number 2 (a), subsections (4) and (4f), a fine not exceeding EUR one hundred thousand in the cases referred to in subsection (3) number 7, and a fine not exceeding EUR fifty thousand in all other cases. ²In the cases referred to in subsection (3) number 3, a higher fine than stipulated in sentence 1 of up to EUR five million can be imposed on a legal person or an association of persons.

(6) A higher fine than stipulated in subsection (5) can be imposed on a legal person or an association of persons in the cases referred to in subsection (4d); this fine may not exceed the higher of EUR five million or 3 per cent of the total revenue generated by the legal person or an association of persons in the financial year preceding the administrative decision.

(6a) A higher fine than stipulated in subsection (5) can be imposed on a legal person or an association of persons in the cases referred to in subsections (4e), (4h), (4i) and (4j);

1. in the cases referred to in subsection (4e) numbers 1 and 2 and subsections (4h), (4i) and (4j), this fine may not

exceed the higher of EUR five million and 10 per cent of the total revenue generated by the legal person or association of persons in the financial year preceding the administrative decision,

2. in the cases referred to in subsection (4e) number 3, this fine may not exceed the higher of EUR fifteen million and 10 per cent of the total revenue generated by the legal person or association of persons in the financial year preceding the administrative decision.

(6b) A higher fine than stipulated in subsection (5) can be imposed on a legal person or an association of persons in the event of serious, recurring or systematic violations in the cases referred to in subsection (4f); this fine may not exceed the higher of EUR five million and 10 per cent of the total revenue generated by the legal person or association of persons in the financial year preceding the administrative decision.

(6c) A higher fine than stipulated in subsection (5) can be imposed on a legal person or an association of persons in the cases referred to in subsection (4g); this fine may not exceed the higher of EUR one million or 10 per cent of the total revenue generated by the legal person or association of persons in the financial year preceding the administrative decision.

(6d) A higher fine than stipulated in subsection (5) can be imposed on a legal person or an association of persons in the cases referred to in subsection (3) numbers 3, 3a, 3b and 3c; this fine may not exceed the higher of EUR five million or 5 per cent of the total revenue generated by the legal person or association of persons in the financial year preceding the administrative decision.

(7) ¹Over and above the amounts referred to in subsections (5), (6), (6a), (6b), (6c) and (6d), in the cases referred to in subsection (3) numbers 3, 3a, 3b, 3c, 4d, 4f, 4h, 4i and 4j the administrative offence is punishable by a fine of up to twice, and in the cases referred to in subsections (4e) and (4g) by a fine of up to three times, the economic benefit derived from the violation. ²The economic benefit comprises profits gained and losses avoided and can be estimated.

(8) ¹Total revenue within the meaning of *subsections (6), (6a), (6b), (6c) and (6d)* means

1. in the case of insurance undertakings, the total amount resulting from the national law applicable to the insurance undertaking in accordance with Article 63 of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (OJ L 374 of 31 December 1991, page 7), as most recently amended by Directive 2006/46/EC (OJ L 224 of 16 August 2006, page 1), less value added tax and other taxes levied directly on that revenue,
- (2) in other cases the amount of net revenue as defined by the national law applicable to the undertaking in accordance with Article 2(5) of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29 June 2013, page 19; L 369 of 24 December 2014, page 79), as most recently amended by Directive 2014/102/EU (OJ L 334 of 21 November 2014, page 86).

²If the legal person or association of persons is the parent undertaking or a subsidiary, the total revenue of the legal person or association of persons is replaced by the relevant total amount reported in the consolidated financial statements of the parent undertaking that is prepared for the largest number of undertakings. ³If the consolidated financial statements for the largest number of undertakings is not prepared in accordance with the provisions referred to in sentence 1, total revenue is calculated on the basis of the items of the consolidated financial statements that are equivalent to the items referred to in sentence 1 numbers 1 and 2. ⁴If annual financial statements or consolidated financial statements are not available for the relevant financial year, the annual or consolidated financial statements for the immediately preceding financial year must be used; if these are also not available, total revenue can be estimated.

(9) ¹Section 17 (2) of the Act on Breaches of Administrative Regulations is not applicable to infringements of requirements and prohibitions referred to in subsection (3) numbers 3, 3a, 3b, 3c and subsections (4d), (4e), (4f), (4g), (4h), (4i) and (4j). ²Section 30 of the Act on Breaches of Administrative Regulations also applies to legal persons and associations of persons that operate through a branch or by providing cross-border services in Germany. ³Administrative offices under subsection (3) numbers 3, 3a, 3b, 3c and subsections (4d), (4e), (4f), (4g), (4h), (4i) and (4j) become statute-barred after three years.

Section 333 Competent administrative authority

The administrative authority within the meaning of section 36 (1) no. 1 of the German Act on Breaches of Administrative Regulations is BaFin, provided that BaFin is the authority with responsibility for supervising insurance undertakings.

Section 334 Involvement of the supervisory authority and notifications in criminal matters

(1) ¹In criminal proceedings against members of the senior management of insurance undertakings or pension funds, against members of the administrative or supervisory bodies of insurance undertakings or pension funds or against holders of qualifying holdings in insurance undertakings or pension funds or their legal representatives or personally liable partners as a consequence of a breach of their professional obligations or other criminal offences during or in connection with the performance of a trade or profession or any other commercial operation, as well as in criminal proceedings relating to criminal offences described in section 131, the court, prosecuting authority or enforcement authority must, in the case of a public action, send BaFin the following:

1. the indictment or the petition in lieu of a written application;
2. the application for the issuing of a summary penalty order if the application is not immediately accepted; and
3. the decision concluding the proceedings together with the grounds for the decision.

²If an appeal has been lodged against the decision, the decision must be communicated together with a reference to the appeal that has been lodged. ³In the case of proceedings in respect of criminal offences that have been committed by negligence, the information specified in sentence 1 nos. 1 and 2 only needs to be communicated if, in the view of the agency sending the communication, decisions or other measures from BaFin are deemed necessary without delay.

(2) ¹In the case of criminal proceedings relating to criminal offences described in section 331 (1) and (2) no. 1, the public prosecutor's office must inform the supervisory authority as early as the point at which it initiates its preliminary investigation unless this could jeopardise the purpose of the investigation. ²If the public prosecutor's office is contemplating a discontinuation of the proceedings, it must consult the supervisory authority.

(2a) ¹If public action is brought in criminal proceedings relating to a criminal offence under section 331 (2a), the public prosecutor's office must communicate the decision concluding the proceedings to the Auditor Oversight Commission (*Abschlussprüferaufsichtsstelle*) at the Federal Office of Economics and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle*). ²If an appeal has been lodged against the decision, the decision must be communicated together with a reference to the appeal that has been lodged.

(3) ¹If, in criminal proceedings, other facts come to light indicating irregularities in the business operations of an insurance undertaking or pension fund, including its sales network, and if, in the view of the agency communicating the information, the knowledge thereof is necessary for the insurance supervisory authority to take action, the court or the prosecuting or enforcement authority must also pass on this information unless it is clear to the authority communicating the information that the parties affected have interests that require protection and these interests should therefore take precedence. ²The extent to which the information to be forwarded is reliable must be taken into account. ³Facts that imply a member of the supervisory board, a member of the senior management, an appointed actuary or a holder of a qualifying holding is not a fit and proper person are generally indicative of irregularities in the business operations.

(3a) The competent administrative authority under section 333 must communicate all administrative fine decisions under section 332 (4a) to Auditor Oversight Commission at the Federal Office of Economics and Export Control.

(4) If a notification under subsection (1) or (2) above relates to an insurance undertaking or *Pensionsfonds* that, under this Act, is supervised by the competent authority of a federal state, BaFin must forward such notification to this authority immediately.

Part 8 Transitional and concluding provisions

Section 335 Continuation of business operations

Insurance undertakings that, on 1 January 1902, were authorised to conduct business in one or more German states under the laws of the respective state(s) require no authorisation under this Act to continue business operations within the limits to which they had restricted operations up to 1 January 1902 or within the limits set by their authorisation if their permission to conduct business was based on a special authorisation.

Section 336 Continued application of approved business plans in life insurance

¹For life insurance contracts entered into before 29 July 1994 (existing portfolio), the business plan approved by the supervisory authority before that date remains fully applicable. ²Section 12 (1) applies to changes to this business plan. ³Section 141 (1), (2), (3) and (6) applies, with the necessary modifications; section 141 (5) applies subject to the proviso that the premium reserve must be calculated in accordance with the applicable business plan.

Section 337 Trustees in health insurance

If the premiums for insurance contracts entered into before 29 July 1994 in SLT health insurance may be adjusted under an adjustment clause subject to the approval of the supervisory authority, such approval by the supervisory authority is replaced by the consent of the trustee (section 155 (1) and (2)).

Section 338 Loading in health insurance

If a contract for substitutive health insurance was entered into before 1 January 2000, section 149 applies subject to the proviso that:

1. the loading is to be charged for the first time on 1 January of the calendar year that follows 1 January 2000;
2. the loading in the first year totals 2 per cent of the gross premium and increases by 2 per cent on 1 January of each of the following years up to a maximum of 10 per cent of the gross premium, unless it is terminated because the insured attains the age of 60;
3. the insurance undertaking must inform the policyholder in a timely manner of the amount and annual increases of the loading before it is charged for the first time;
4. the loading must only be charged if the policyholder does not object in writing or electronically within three months of receiving the information under no. 3 above.

Section 339 Provisions relating to accident insurance sub-portfolios

¹Undertakings that, under a comprehensive contract, cover risks attributable to the classes of insurance listed under nos. 1 and 19 of Annex I may transfer the accident insurance portion of such contracts to another undertaking. ²Section 13 applies, with the necessary modifications.

Section 340 Grandfathering provision for reinsurance undertakings

(1) ¹For undertakings that exclusively conduct reinsurance business, operated this business before 21 December 2004

and are registered with the supervisory authority as reinsurance undertakings, a authorisation under section 8 (1) is deemed to have been granted for the existing scope of its business operations. ²However, such undertakings are subject to ongoing supervision without limitation.

(2) ¹In the case of reinsurance undertakings that are domiciled in a third country, that continue to maintain existing branches and that notified these arrangements to BaFin before 31 December 2007, the necessary authorisation is deemed to have been granted for the scope of the notified business operations, provided that the undertakings concerned are authorised to operate reinsurance business in their home country, have their central administration in that country, are supervised in that country in accordance with internationally recognised principles, and mechanisms are in place to guarantee a satisfactory level of cooperation between the competent authorities in the home country concerned and BaFin. ²Such undertakings are subject to on-going supervision without limitation, however.

Section 341 Report on solvency and financial position

¹Until 31 December 2020, insurance undertakings that have been made subject to a capital add-on or that have to use undertaking-specific parameters in the calculation of the solvency capital requirement only have to disclose the total amount of the solvency capital requirement without separately specifying the amount of the capital add-on or the quantitative impact of the undertaking-specific parameters. ²This is without prejudice to the obligation to disclose the reasons for the supervisory measures and the background.

Section 342 Compliance with the minimum capital requirement

(1) Insurance undertakings that satisfy the solvency requirements applicable on 31 December 2015 but whose eligible basic own funds are insufficient to cover the minimum capital requirement must have eligible basic own funds in the amount of the minimum capital requirement by 31 December 2016 at the latest.

(2) If an insurance undertaking falling within the scope of subsection (1) does not have eligible own funds on 31 December 2016 equivalent to the amount of the minimum capital requirement, the insurance undertaking's authorisation to conduct business will be withdrawn.

(3) Until 31 December 2017, the supervisory authority may require an insurance undertaking for which a capital add-on has been imposed to apply the percentages specified in Article 129 (3) sentence 1 of Directive 2009/138/EC exclusively to the solvency capital requirement calculated without the capital add-on.

Section 343 Discontinuation of business operations

(1) Without prejudice to section 165 (1), the provisions of this Act applicable to small insurance undertakings within the meaning of section 211 apply, upon application, until the dates specified in subsection (2) for insurance undertakings that cease to write new insurance contracts before 1 January 2016 and administer their insurance portfolios solely with the objective of discontinuing their activities if

1. the undertaking concerned can demonstrate to the supervisory authority that it will discontinue its activities before 1 January 2019; or
2. the undertaking is undergoing restructuring measures in accordance with sections 312 and 313 and an administrator has been appointed.

(2) ¹For insurance undertakings that fall within the scope of

1. subsection (1) no. 1, subsection (1) no longer applies from 1 January 2019;
2. subsection (1) no. 2, subsection (1) no longer applies from 1 January 2021.

²The supervisory authority may set an earlier date in the cases specified in sentence 1 above if the activities of the insurance undertaking are unlikely to be discontinued by the dates specified in sentence 1.

(3) Subsections (1) and (2) above can be applied to insurance undertakings only if the following conditions are satisfied:

1. the undertaking does not form part of a group or it belongs to a group in which all the undertakings are ceasing to write new insurance contracts; and
2. the undertaking submits an annual report to the competent supervisory authority setting out the progress made in the discontinuation of its activities.

(4) The supervisory authority must send a list of the insurance undertakings involved to the supervisory authorities of all member states or EEA signatory states.

Sections 344 Time limits for satisfying reporting and disclosure requirements

(1) ¹The time limit for insurance undertakings to submit the annual information under Article 304(1) of Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12 of 17 January 2015, page 1), as amended by Delegated Regulation (EU) 2016/467 (OJ L 85 of 1 April 2016, page 6), is

1. for the financial year ending on or after 30 June 2016 but before 1 January 2017, 20 weeks after the end of the undertaking's financial year;
2. for the financial year ending on or after 30 June 2017 but before 01 January 2018, 18 weeks after the end of the undertaking's financial year;
3. for the financial year ending on or after 30 June 2018 but before 1 January 2019, 16 weeks after the end of the undertaking's financial year; and
4. for the financial year ending on or after 30 June 2019 but before 1 January 2020, 14 weeks after the end of the undertaking's financial year.

²For insurance undertakings whose financial year ends on or after 1 January 2016 but before 1 July 2017, the time limit is 20 weeks after the end of the financial year. ³In this case, the time limit is reduced in each of the three subsequent financial years by two weeks. ⁴Sentences 1 to 3 apply, with the necessary modifications, to information that has to be submitted half-yearly.

(2) ¹The time limit for insurance undertakings to submit the quarterly information under Article 304(1) of Commission Delegated Regulation (EU) 2015/35 is

1. for the financial year ending on or after 30 June 2016 but before 1 January 2017, 8 weeks after the end of a quarter in the financial year;
2. for the financial year ending on or after 30 June 2017 but before 01 January 2018, 7 weeks after the end of a quarter in the financial year;
3. for the financial year ending on or after 30 June 2018 but before 1 January 2019, 6 weeks after the end of a quarter in the financial year; and
4. for the financial year ending on or after 30 June 2019 but before 1 January 2020, 5 weeks after the end of a quarter in the financial year.

²For insurance undertakings whose financial year ends on or after 1 January 2016 but before 1 July 2017, the time limit is 8 weeks after the end of a quarter in the financial year. ³The time limit is reduced in each of the three subsequent financial years by one week.

(3) ¹The time limits for insurance undertakings to publish the solvency and financial position report in accordance with section 40 are as follows:

1. for the financial year ending on or after 30 June 2016 but before 1 January 2017, 20 weeks after the end of the undertaking's financial year;
2. for the financial year ending on or after 30 June 2017 but before 01 January 2018, 18 weeks after the end of the undertaking's financial year;
3. for the financial year ending on or after 30 June 2018 but before 1 January 2019, 16 weeks after the end of the

undertaking's financial year; and

4. for the financial year ending on or after 30 June 2019 but before 1 January 2020, 14 weeks after the end of the undertaking's financial year.

²For insurance undertakings whose financial year ends on or after 1 January 2016 but before 1 July 2017, the time limit is 20 weeks after the end of the financial year. ³The time limit is reduced in each of the three subsequent financial years by two weeks.

(4) Subsections (1) to (3) apply in conjunction with sections 276 and 277 at group level, with the necessary modifications, to participating insurance undertakings, insurance holding companies, mixed-activity insurance holding companies and mixed financial holding companies, whereby the specified time limits are extended by six weeks in each case.

Section 345 Own funds

(1) ¹Without prejudice to section 92, basic own-fund items may be recognised as Tier 1 own funds for up to ten years after 1 January 2016. ²To be recognised as Tier 2 own funds in this way, the items must satisfy the following criteria:

1. they must have entered into force before 1 January 2016 and before the delegated legislative act under Article 97 of Directive 2009/138/EC comes into force;
2. they must have been eligible on 31 December 2015, up to a maximum of 50 per cent, for the required solvency margin in accordance with section 53c of the German Insurance Supervision Act as amended 31 December 2015 also in conjunction with section 121a (1) sentence 2 of the German Insurance Supervision Act as amended 31 December 2015; and
3. they would not otherwise be classified as Tier 1 or Tier 2 own funds in accordance with section 92.

(2) ¹Without prejudice to section 92, basic own-fund items may be recognised as Tier 2 basic own funds for up to ten years after 1 January 2016. ²To be recognised as Tier 2 own funds in this way, the items must satisfy the following criteria:

1. they must have entered into force before 1 January 2016 and before the delegated legislative act under Article 97 of Directive 2009/138/EC comes into force;
2. they must have been eligible on 31 December 2015, up to a maximum of 25 per cent, for the required solvency margin in accordance with section 53c of the German Insurance Supervision Act as amended 31 December 2015 also in conjunction with section 121a (1) sentence 2 of the German Insurance Supervision Act as amended 31 December 2015; and

Section 346 Investments in credit securitisations

The requirements specified in delegated legislative acts of the European Commission under Article 135(2) of Directive 2009/138/EC apply to insurance undertakings that invest in negotiable securities or other financial instruments on the basis of rebundled, securitised loans that were issued before 1 January 2011 only if underlying loans are newly added or replaced after 31 December 2014.

Section 347 Standard parameters

(1) Without prejudice to section 89 (1) sentence 1, section 96 (1), section 97 (3), section 100 and section 109 (2), the following provisions apply in respect of the standard parameters to be used:

1. up to 31 December 2017, the standard formula calculation of the concentration risk and spread risk sub-modules will use the same standard parameters for loans and receivables due to member states or EEA signatory states or their central banks that are denominated in the currency of another member state or EEA signatory state and that are funded in this currency as those standard parameters used for loans and receivables that are denominated in the home currency and funded in this currency;
2. in 2018, the standard parameters that are used in the standard formula calculation of the concentration risk and spread risk sub-modules will be reduced by 80 per cent for loans and receivables due to the member states or EEA signatory states or their central banks that are denominated in the currency of another member state or EEA signatory state and are funded in this currency;
3. in 2019, the standard parameters that are used in the standard formula calculation of the concentration risk and spread risk sub-modules will be reduced by 50 per cent for loans and receivables due to the member states or EEA signatory states or their central banks that are denominated in the currency of another member state or EEA signatory state and are funded in this currency;
4. from 1 January 2020, the standard parameters that are used in the standard formula calculation of the concentration risk and spread risk sub-modules will no longer be reduced for loans and receivables due to the member states or EEA signatory states or their central banks that are denominated in the currency of another member state or EEA signatory state and are funded in this currency.

(2) ¹Without prejudice to section 89 (1) sentence 1, section 97 (3), section 98 (1), section 100 and section 109 (2), the standard parameters that are to be used in the standard formula calculation of the equity risk sub-module in respect of equities that the undertaking acquired on or before 1 January 2016 are to be calculated as weighted mean values based on the following:

1. the standard parameter that is to be used in the calculation of the equity risk sub-module in accordance with Article 304 of Directive 2009/138/EC and
2. the standard parameter that is to be used in the calculation of the equity risk sub-module in accordance with section 106.

²The weighting of the parameter specified in sentence 1 no. 2 must rise at least on a straight-line basis at the end of each year from 0 per cent during the year beginning 1 January 2016 to 100 per cent on 1 January 2023.

Section 348 Solvency capital requirement

(1) If an insurance undertaking does not comply with the *solvency capital requirement* in 2016 in derogation of section 134, but would have complied with the required solvency margin in accordance with the law applicable up to 31 December 2015, the supervisory authority will, upon application, grant an extension of the deadline for compliance with the solvency capital requirement up to 31 December 2017 if the insurance undertaking agrees to carry out the following:

1. take the action necessary to increase eligible own funds or reduce the risk profile such that the undertaking complies with the solvency capital requirement by 31 December 2017; and
2. submit a progress report to the supervisory authority every three months, such report to include a description of the action taken and the progress achieved in establishing compliance with the solvency capital requirement.

(2) The extension granted in accordance with subsection (1) must be withdrawn if the progress report shows that there was no significant progress in achieving the establishment of compliance with the solvency capital requirement between

the date on which non-compliance with the solvency capital requirement was identified and the date on which the progress report was submitted.

Section 349 Partial internal model for a subgroup

¹Upon application, the supervisory authority may authorise the ultimate participating insurance undertaking to use an internal group model that only applies to part of the group. ²The preconditions are that both the ultimate participating insurance undertaking and also the ultimate participating insurance undertaking in the subgroup must be domiciled in Germany and the subgroup must form a definable part of the business for which the risk profile is significantly different from that of the rest of the group. ³The authorisation may only be issued for a fixed period; the period must end no later than 31 March 2022.

Section 350 Group provisions

¹Without prejudice to section 250, the following sections apply, with the necessary modifications, at group level: sections 345 to 347, section 351 and section 352. ²If the ultimate participating insurance undertaking satisfies the applicable provisions for the adjusted solvency requirement in accordance with Article 9 of Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance and reinsurance undertakings in an insurance or reinsurance group (OJ L 330 of 5 December 1998, page 1), most recently amended by Directive 2011/89/EU (OJ L 326 of 8 December 2011, page 113), but the participating insurance undertaking, the participating insurance holding company, the participating mixed-activity insurance holding company or the participating mixed financial holding company does not satisfy the solvency capital requirement for the group, section 348 applies, with the necessary modifications, without prejudice to section 250.

Section 351 Risk-free interest rates

(1) Subject to the authorisation of the supervisory authority and with due regard to the permissible insurance obligations, insurance undertakings may temporarily adjust the relevant risk-free interest rate terms structure.

(2) ¹The adjustment is calculated for each currency as a proportion of the difference between

1. the interest rate that has been set by the insurance undertaking in accordance with section 65 of the German Insurance Supervision Act and the associated issued statutory order, in each case in the versions applicable up to 31 December 2015; and
2. the effective annual interest rate, determined as that constant discount rate that, when applied to the financial position from the portfolio of permissible insurance obligations, leads to a value that reflects the best estimate for the portfolio of permissible insurance or reinsurance obligations if the time value of money is taken into account using the relevant risk-free interest rate terms structure in accordance with section 77 (1).

²The proportion referred to in sentence 1 must be reduced at the end of each calendar year on a straight-line basis from 100 per cent in 2016 to 0 per cent on 1 January 2032. ³If insurance undertakings apply the volatility adjustment in accordance with section 82, the relevant risk-free reference rate under sentence 1 no. 2 must include the volatility adjustment in accordance with section 82.

(3) Only insurance obligations that meet the following criteria are deemed to be permissible insurance obligations within the meaning of subsection (1):

1. the contracts from which the insurance obligations arise were entered into before 1 January 2016; extensions to these contracts on or after this date to do not lead to permissible insurance obligations;
2. the technical provisions for the insurance obligations have been recognised in accordance with section 65 of the German Insurance Supervision Act and the associated issued statutory order, in each case in the relevant versions

- applicable up to 31 December 2015; and
3. no matching adjustment in accordance with section 80 is applied for the insurance obligations.
- (4) If insurance undertakings apply subsection (1) above, the following requirements also apply:
1. the insurance undertakings concerned must not allow the permissible insurance obligations to be included in the calculation of the volatility adjustment in accordance with section 82;
 2. the insurance undertakings must not apply section 352;
 3. in their solvency and financial position report in accordance with section 40, the insurance undertakings must disclose that they are carrying out a temporary adjustment of the relevant risk-free interest rate term structure and quantify the impact on their financial position of not applying this transitional measure.

Section 352 Technical provisions

(1) ¹Subject to the approval of the supervisory authority, insurance undertakings may temporarily apply a deduction within the meaning of subsection (2) to technical provisions. ²The deduction may be applied at the level of the homogeneous risk groups as described in section 75 (3).

(2) ¹The temporary deduction must correspond to a proportion of the difference between the following two amounts:

1. technical provisions net of the amounts recoverable from reinsurance contracts and special purpose entities calculated at 1 January 2016 in accordance with section 75;
2. technical provisions net of the amounts recoverable from reinsurance contracts calculated in accordance with the legal and administrative requirements that have been recognised in accordance with sections 341e to 341h of the German Commercial Code and section 65 of the German Insurance Supervision Act each as amended up to 31 December 2015 and in accordance with the statutory orders issued under section 330 of the German Commercial Code and section 65 of the German Insurance Supervision Act in each case as amended up to 31 December 2015.

²The maximum deductible proportion must be reduced at the end of each calendar year on a straight-line basis from 100 per cent during the year from 2016 to 0 per cent on 1 January 2032. ³If insurance undertakings apply the volatility adjustment in accordance with section 82 on 1 January 2016, the amount specified in no. 1 must be calculated with the volatility adjustment applicable on this date.

(3) Insurance undertakings are permitted with the approval of the supervisory authority, or are under an obligation in response to a requirement from the supervisory authority, to recalculate the amounts of the technical provisions and, if appropriate, the amount of the volatility adjustment used to calculate the temporary deduction in accordance with subsection (2) sentence 1 nos. 1 and 2, such recalculations to be carried out every 24 months, or more frequently if the risk profile of the undertaking changes significantly.

(4) The deduction in accordance with subsection (2) may be limited by the supervisory authority if the application of the deduction could lead to a situation in which the financial resources requirements applicable to the undertaking decrease compared with the requirements that were calculated in accordance with the German Commercial Code, the German Insurance Supervision Act and the associated issued statutory orders each as amended up to 31 December 2015.

(5) If insurance undertakings apply subsection (1) above, they are not permitted to apply section 351 and must carry out the following:

1. if they are only able to satisfy the solvency capital requirement by applying the temporary deduction, submit an annual report to the competent supervisory authority describing the measures necessary to increase eligible own funds or reduce the risk profile such that compliance with the solvency capital requirement is established and describing the progress attained in this regard; and
2. in the solvency and financial position report, disclose that they are applying the temporary deduction within the meaning of subsection (2) to the technical provisions and quantify the impact on their financial position if this temporary deduction were not applied.

Section 353 Plan concerning the gradual introduction of transitional measures for risk-free interest rates and technical provisions

(1) ¹Insurance undertakings that apply the transitional measures in accordance with section 351 or section 352 must notify the supervisory authority without delay if they identify that there is a risk the solvency capital requirement will no longer be covered at the end of the transitional period once these transitional measures come to an end. ²In such cases, the supervisory authority must impose on the insurance undertaking concerned a requirement to instigate the measures that are necessary and appropriate to ensure compliance with the solvency capital requirement at the end of the transitional period.

(2) ¹If an insurance undertaking identifies that it would not comply with the solvency capital requirement without the transitional measures in accordance with section 351 or section 352, it must submit to the supervisory authority, within two months of the date on which this situation is identified, a plan describing the gradual introduction of the measures intended to increase eligible own funds or reduce the risk profile such that compliance with the solvency capital requirement is re-established at the end of the transitional period. ²The insurance undertaking concerned may update this plan during the transitional period.

(3) ¹Every 12 months, the insurance undertaking concerned must submit to the supervisory authority a report describing the measures intended to ensure compliance with the solvency capital requirement at the end of the transitional period and presenting the details of the progress achieved in this regard. ²If it becomes clear from the progress report that it is unrealistic to expect compliance with the solvency capital requirement to be re-established at the end of the transitional period, the supervisory authority must revoke its authorisation for the application of the transitional measures in accordance with section 351 or section 352.

Section 354 Review of long-term guarantees and measures against equity risk

Until 1 January 2021, Ba Fin must each year inform the European Insurance and Occupational Pensions Authority of the following:

1. the availability of long-term guarantees for insurance contracts in its internal market and the conduct of insurance undertakings as long-term investors;
2. the number of insurance undertakings that apply the matching adjustment, the volatility adjustment, the extension of the time limit for re-establishing sound financial circumstances in accordance with section 134 (4), the duration-based equity risk sub-module and the transitional measures in accordance with sections 351 and 352;
3. the impact of the matching adjustment, the volatility adjustment, the symmetric adjustment of the capital requirement for equity investments in accordance with section 106 (1), the duration-based equity risk sub-module and the transitional measures in accordance with sections 351 and 352 on the financial position of insurance undertakings at national level and, on an anonymised basis, for each undertaking;
4. the impact of the matching adjustment, the volatility adjustment, the symmetric adjustment of the capital requirement for equity investments in accordance with section 106 (1) and the duration-based equity risk sub-module on the investment behaviour of insurance undertakings and whether this leads to inappropriate capital relief;
5. the impact of an extension of the time limit for re-establishing sound financial circumstances in accordance with section 134 (4) on the efforts of insurance undertakings to increase eligible own funds or reduce their risk profile so that they comply with the solvency capital requirement;
6. details on whether the plans concerning transitional measures in accordance with section 353 are successfully implemented or not by insurance undertakings that apply these transitional measures in accordance with sections 351 and 352 and the probability of lower dependency on these transitional measures, including measures that have

been taken, or are expected to be taken, by the undertakings and the supervisory authorities, whereby the applicable regulatory environment must be taken into account.

Section 355 Decisions by the supervisory authority resulting from the entry into force of this Act

(1) From 11 April 2015, the supervisory authority has the power to decide on the authorisation of the following:

1. ancillary own funds under section 90;
2. the classification of items of own funds under section 91 (5);
3. undertaking-specific parameters under section 109 (2);
4. full or partial internal models under sections 111 and 112;
5. ancillary own funds of an intermediate insurance holding company or an intermediate mixed financial holding company under section 257 (2);
6. an internal model for the group under sections 261, 262 and 265 (5);
7. the use of the matching adjustment for the relevant risk-free reference rate under sections 80 and 81;
8. the use of the volatility adjustment for the relevant risk-free reference rate under section 82;
9. the use of the transitional measure for risk-free interest rates under section 351;
10. the use of the transitional measure for technical provisions under section 352.

(2) From 1 April 2015, the supervisory authority has the power to carry out the following:

1. specify the level and scope of group-wide supervision under sections 245 to 249;
2. the Group Supervisor under sections 279 and 280;
3. constitute a college of supervisors under section 283.

(3) From 1 July 2015, the supervisory authority has the power to carry out the following:

1. decide on the deduction of a holding under section 259 (2);
2. select the method for calculating the solvency of the group under section 252;
3. decide on equivalence in accordance with sections 258 and 288;
4. permit, in accordance with section 268, insurance undertakings to be treated within the scope of sections 269 and 270;
5. make the stipulations under sections 289 and 290;
6. decide that transitional measures under sections 343 to 350 apply.

(4) Decisions in accordance with subsections (1) to (3) come into effect on 1 January 2016 unless a later date is specified in the decision.

Section 356 Transitional provision on section 35 (1) sentence 1 numbers 5 to 8

¹Section 35 (1) sentence 1 numbers 5, 6 and 7 applies for the first time to audits of annual financial statements for the financial year beginning after 31 December 2017. ²Section 35 (1) sentence 1 number 8 applies for the first time to audits of annual financial statements for the financial year beginning after 31 December 2018.

Annex 1 Classification of risks by class of insurance

(Source of the original text: Federal Law Gazette I 2015, 555 - 556)

1. Accident
 - a) fixed benefit insurance
 - b) indemnity insurance
 - c) combined benefits
 - d) injury to passengers
2. Health
 - a) daily allowance
 - b) indemnity insurance
 - c) combined benefits
3. Land vehicles (other than railway rolling stock)
All damage to or loss of:
 - a) land motor vehicles
 - b) land vehicles other than motor vehicles
4. Railway rolling stock
All damage to or loss of railway rolling stock
5. Aircraft
All damage to or loss of aircraft
6. Ships (sea, lake, and river and canal vessels)
All damage to or loss of:
 - a) river and canal vessels
 - b) lake vessels
 - c) vessels
7. Goods in transit
All damage to or loss of goods in transit, irrespective of the form of transport
8. Fire and natural forces
All damage to or loss of property (other than property damage or loss included in classes 3 to 7) due to:
 - a) fire
 - b) explosion
 - c) storm
 - d) natural forces other than storm

- e) nuclear energy
 - f) land subsidence
9. Hail, frost and other damage to property
All damage to or loss of property (other than property damage or loss included in classes 3 to 7) due to hail or frost, and any event such as theft, other than those included under 8
10. Motor vehicle liability
- a) motor vehicle liability
 - b) third-party liability arising out of the use of motor vehicles operating on the land
 - c) other
11. Liability
All third-party liability arising out of the use of aircraft (including carrier's liability)
12. Liability related to ships (sea, lake, and river and canal vessels)
All third-party liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability)
13. General liability
All third-party liability other than the types of liabilities specified in classes 10 to 12
14. Credit
- a) (general)
 - b) export credit
 - c) instalment credit
 - d) mortgages
 - e) agricultural credit
15. Suretyship
16. Miscellaneous financial loss
- a) employment risks
 - b) insufficiency of income (general)
 - c) bad weather
 - d) loss of benefits
 - e) continuing general expenses
 - f) unforeseen trading expenses
 - g) loss of market value
 - h) loss of rent or revenue
 - i) other indirect trading loss
 - j) other non-trading financial loss
 - k) other forms of financial loss
17. Legal expenses
18. Assistance for persons who get into difficulties
- a) while travelling or while away from their home or their habitual residence

- b) in other circumstances unless such risks are covered by other classes of insurance
19. Life
(unless listed under classes 20 to 24)
 20. Marriage insurance, birth insurance
 21. Unit-linked life insurance
 22. Tontines
 23. Capital redemption operations
 24. Operations relating to the administration of retirement provision schemes
 25. Pension fund operations

Annex 2 Designations for authorisations granted for more than one class of insurance

Source of the original text: Federal Law Gazette I 2015, 557

Where the authorisation simultaneously covers:

1. nos. 1 (d), 3, 7 and 10 (a), it is issued under the title 'motor vehicle insurance';
2. nos. 1 (d), 4, 6, 7 and 12, it is issued under the designation 'marine and transport insurance';
3. nos. 1 (d), 5, 7 and 11, it is issued under the designation 'aviation insurance';
4. nos. 8 and 9, it is issued under the designation 'insurance against fire and other damage to property';
5. nos. 10 to 13, it is issued under the designation 'third-party liability insurance';
6. nos. 14 and 15, it is issued under the designation 'credit and suretyship insurance';
7. nos. 1, 3 to 13, and 16, it is issued under the designation 'property and casualty insurance'.

Annex 3 Standard formula for calculating the solvency capital requirement (SCR)

(Source of the original text: Federal Law Gazette I 2015, 558 - 559)

1. Calculation of the basic solvency capital requirement (BSCR)

The basic solvency capital requirement described in section 100 is determined as follows:

$$\text{Basis SCR} = \sqrt{\sum_{i,j} \text{Corr}_{i,j} \times \text{SCR}_i \times \text{SCR}_j}$$

where by SCR_i denotes risk module i and SCR_j risk module j ; "i, j" means that all possible combinations of i and j should be covered in the total. In the calculation, the following replace SCR_i and SCR_j :

$\text{SCR}_{\text{non-life}}$: non-life underwriting risk module;

SCR_{life} : life insurance underwriting risk module;

$\text{SCR}_{\text{health}}$: health insurance underwriting risk module;

$\text{SCR}_{\text{market}}$: market risk module;

$\text{SCR}_{\text{default}}$: counterparty default risk module.

The "Corr_{i, j}" factor denotes the figure set out in row i and column j of the following correlation matrix:

j i	Market	Counterparty default	Life insurance	Health insurance	Non-life insurance
Market	1	0.25	0.25	0.25	0.25
Counterparty default	0.25	1	0.25	0.25	0.5
Life insurance	0.25	0.25	1	0.25	0
Health insurance	0.25	0.25	0.25	1	0
Non-life insurance	0.25	0.5	0	0	1

2. Calculation of the non-life underwriting risk module

The non-life underwriting risk module specified in section 101 is calculated as follows:

$$SCR_{\text{Nichtleben}} = \sqrt{\sum_{i,j} \text{Corr}_{i,j} \times SCR_i \times SCR_j}$$

where by SCR_i denotes sub-module i and SCR_j sub-module j ; "i, j" means that all possible combinations of i and j should be covered in the total. In the calculation, the following replace SCR_i and SCR_j :

$SCR_{\text{nlpremium/reserve}}$: non-life insurance premium and reserve risk sub-module;

$SCR_{\text{nlcatastrophe}}$: non-life catastrophe risk sub-module.

3. Calculation of the life underwriting risk module

The life underwriting risk module specified in section 102 is calculated as follows:

$$SCR_{\text{Leben}} = \sqrt{\sum_{i,j} \text{Corr}_{i,j} \times SCR_i \times SCR_j}$$

where by SCR_i denotes the sub-module i and SCR_j the sub-module j ; "i, j" means that all possible combinations of i and j should be covered in the total. In the calculation, the following replace SCR_i and SCR_j :

$SCR_{\text{mortality}}$: mortality risk sub-module;

$SCR_{\text{longevity}}$: longevity risk sub-module;

$SCR_{\text{disability}}$: disability/morbidity risk sub-module;

$SCR_{\text{life expense}}$: Life insurance expense risk sub-module;

SCR_{revision} : revision risk sub-module;

SCR_{lapse} : lapse risk sub-module;

$SCR_{\text{lifecatastrophe}}$: life catastrophe risk sub-module;

4. Calculation of the market risk module

Structure of the market risk module

The market risk module specified in section 104 is calculated as follows:

$$SCR_{\text{Markt}} = \sqrt{\sum_{i,j} \text{Corr}_{i,j} \times SCR_i \times SCR_j}$$

where by SCR_i denotes sub-module i and SCR_j sub-module j ; "i, j" means that all possible combinations of i and j should be covered in the total. In the calculation, the following replace SCR_i and SCR_j :

$SCR_{\text{interest rate}}$: interest rate risk sub-module;

SCR_{equity} : equity risk sub-module;

SCR_{property} : property risk sub-module;

SCR_{spread} : spread risk sub-module;

$SCR_{\text{concentration}}$: market risk concentrations sub-module;

SCR_{currency} : currency risk sub-module.