Annex to section 29

Regulations on the establishment of equalisation provisions

Part I
Establishment, amount, additions, withdrawals, dissolution

1. In every class of direct property and casualty insurance and accepted property and casualty reinsurance (excluding accepted life and health reinsurance), an equalisation provision shall be established in accordance with the provisions set out in this Annex for the purpose of smoothing out fluctuations in claims over future years if average premiums earned over the last three financial years including the financial year under review exceed €125,000, the standard deviation of the loss ratio over the reference period is at least 5 per cent of the average loss ratio, and if the combined ratio exceeded 100 per cent of earned premiums at least once during the reference period.

2. (1) The equalisation provision shall be four and a half times, and in hail, credit and suretyship and fidelity guarantee insurance six times the standard deviation of the loss ratios from the average loss ratio over the reference period multiplied by earned premiums in the financial year under review.

   (2) If the average loss ratio is below the threshold loss ratio, then three times the difference between the threshold loss ratio and the average loss ratio multiplied by earned premiums in the financial year under review shall be deducted from the amount established pursuant to subsection 1. Sentence 1 shall not apply to hail insurance.

3. Irrespective of the occurrence of a loss shortfall or of excess losses, 3.5 per cent of the required provision shall first be added to the equalisation provision in each financial year until the required amount is reached or restored.

4. Where there is a loss shortfall for any financial year, the amount to be calculated pursuant to Part II no. 7 sentence 2 shall also be added to the equalisation provision until the required amount for the provision is reached or restored.

5. Where losses for any financial year are in excess, the amount to be calculated pursuant to Part II no. 8 sentence 2 shall be withdrawn from the equalisation provision. If the average loss ratio is below the threshold loss ratio, the amount to be withdrawn shall be reduced by 60 per cent of the difference between the threshold loss ratio and the average loss ratio after multiplication by earned premiums in that financial year.

6. If, after withdrawal of excess losses pursuant to no. 5, the equalisation provision exceeds its required amount, it shall be dissolved to the extent of the amount exceeding the required amount.

7. (1) If the requirements for the establishment of an equalisation provision pursuant to no. 1 are no longer met, then the equalisation provision shall be dissolved. Dissolution may be spread evenly over the financial year under review and the four subsequent financial years.

   (2) Dissolution pursuant to subsection 1 shall not be permitted if the insurance undertaking will be obliged, when the accounts for the financial year under review are

included in the reference period, to establish another equalisation provision pursuant to no. 1 in the following financial year. In this case, the equalisation provision shall be maintained in the amount required for the following financial year pursuant to nos. 2 to 6 after inclusion of the accounts for the financial year under review. The amounts for earned premiums and the loss and expense ratios for the financial year under review shall be used for the following financial year.

Part II
Definitions

1. (1) A class of insurance according to the provisions of this Annex shall be deemed to exist if, pursuant to section 4 (1) sentence 1 no. 1, section 5 (1) and section 6 sentence 1 no. 3 of the Insurance Reporting Regulation (*Versicherungsberichterstattungs-Verordnung* – BerVersV) in in the version in force at the material time, a separate technical profit and loss account has to be drawn up and submitted to the Federal Financial Supervisory Authority.

   (2) In all cases, the following shall be deemed to be classes of insurance within the meaning of the provisions of this Annex irrespective of any further subdivision:
   1. industrial fire insurance including business interruption fire insurance
   2. agricultural fire insurance
   3. suretyship insurance
   4. del credere insurance
   5. fidelity guarantee insurance

   but suretyship and del credere insurance only where the policyholder is engaged in a commercial, mining or self-employed activity (insurance class 20 in Annex 1 Part C of the Insurance Reporting Regulation).

   (3) If separate technical profit and loss accounts are drawn up voluntarily for the purposes of the equalisation provision for other classes, types and sub-types of insurance within the meaning of the Insurance Reporting Regulation, then these too shall be deemed to be classes of insurance within the meaning of the provisions of this Annex. Part III no. 2 shall be noted in this regard.

   (4) The following shall not be deemed to constitute classes of insurance within the meaning of the provisions of this Annex:
      1. direct and reinsured
         a) fire insurance as a whole
         b) credit and suretyship insurance as a whole
         c) other indemnity insurance including classes of insurance included with it in a separate technical profit and loss account pursuant to section 4 (2) sentence 2 of the Insurance Reporting Regulation
         d) other property damage insurance
      2. direct motor insurance
      3. direct insurance as a whole
      4. reinsurance as a whole

2. The standard deviation of the loss ratios over the reference period within the meaning of the provisions of this Annex shall be the square root of the sum of the squared deviations over the reference period divided by the number of financial years in the reference period minus 1. The deviation shall be the difference between the loss ratio in a financial year included in the reference period and the average loss ratio over the reference period.

3. (1) The reference period within the meaning of the provisions of this Annex shall be the fifteen years preceding the financial year under review, and in hail, credit and suretyship and fidelity guarantee insurance the thirty years preceding the financial year under review. Financial years in which earned premiums totalled €125,000 or less shall not be included. For these financial years, the steps pursuant to Part III no. 1 (1) sentences 1 and 2 shall be followed. In credit and suretyship and fidelity guarantee insurance, financial years beginning before 1 January 1966 shall also be left out of the reference period. Where Part I no. 7 (2) applies, the financial year under review shall count as part of the fifteen-year or thirty-year reference period.

   (2) If an insurance undertaking has not yet operated in a class of insurance for the whole of the reference period pursuant to subsection 1, but has operated in it for at least ten financial years before the financial year under review, then all financial years shall be deemed to constitute the reference period.

4. (1) The loss ratio for a financial year or financial year under review within the meaning of the provisions of this Annex shall be the ratio of claims expenses including claims settlement expenses, expenses for bonuses insofar as legally stipulated and for rebates, expenses for surrenders and refunds and changes to the premium reserve, minus the allocated investment return transferred from the non-technical account, all net of reinsurance, to premiums earned in the financial year or financial year under review.

   (2) The average loss ratio shall be the arithmetic mean of the loss ratios over the reference period.

5. The threshold loss ratio within the meaning of the provisions of this Annex shall be a loss ratio of 95 percent minus the average expense ratio in the case of direct insurance operations, a loss ratio of 98 per cent minus the average expense ratio in the case of direct legal expenses insurance, and a loss ratio of 99 per cent minus the average expense ratio in the case of reinsurance.

6. (1) The expense ratio within the meaning of the provisions of this Annex shall be the ratio of operating expenses plus Fire Protection Tax, plus any other expenses for damage prevention comparable in purpose, to earned premiums, all before deduction of reinsurers' share.

   (2) The average expense ratio shall be the arithmetic mean of the expense ratios for the financial year under review and the two preceding financial years.

7. There shall be deemed to be a loss shortfall if the loss ratio for a financial year is lower than the average loss ratio. The amount of the loss shortfall shall be arrived at by multiplying the difference between the two ratios by the earned premiums for the financial year.

8. There shall be deemed to be an excess loss if the loss ratio for a financial year is higher than the average loss ratio. The amount of the excess loss shall be arrived at by multiplying the difference between the two ratios by the earned premiums for the financial year.

9. (1) Earned premiums for a financial year or financial year under review within the meaning of the provisions of this Annex shall be written premiums (including additional payments from policyholders and reinsurance acceptances together with portfolio entry and withdrawal payments) taking into account the change in unearned premiums, all net of reinsurance.

   (2) In the case of mutual insurance associations in which the levying of supplementary contributions is not excluded from the business plan, premiums earned in the financial year under review shall be deemed to be the advance premiums levied in that financial year plus 10 per cent of the sum of the supplementary contribution rates for the ten financial years preceding the financial year under review multiplied by the advance premiums levied in that financial year.
   (3) The supplementary contribution rate for a financial year shall be the ratio between the supplementary contributions levied and the advance premiums levied in that financial year.

Part III [1]
First-time inclusion and subdivision of classes of insurance

1. (1) If, pursuant to the provisions of the Insurance Reporting Regulation or of Part II no 1 (2) of this Annex, a separate technical profit and loss account has to be drawn up for the first time in a class of insurance within the meaning of the provisions of this Annex for which the required loss ratios are not available for a reference period of at least ten years from the undertaking's own financial records, then the loss ratios from the tables published in the annual reports of the Federal Financial Supervisory Authority (BaFin) or of the former Federal Insurance Supervisory Office shall be used for the missing financial years. If such loss ratios are not available, then other suitable statistical sources are to be drawn upon with approval from BaFin. As soon as a minimum ten-year reference period is available, the definitions set out in Part II no. 4 apply.

   (2) If, upon application of subsection 1, the expense ratios for previous financial years required to calculate the average expense ratio cannot be ascertained from the undertaking's own financial records, then the expense ratio for the financial year under review shall be taken to be the average expense ratio. As soon as at least three financial years including the financial year under review are available, Part II no. 6 (2) applies.

2. (1) For classes, types and sub-types of insurance pursuant to Part II no. 1 (3), a separate equalisation provision may be established only if the calculations required by the provisions of this Annex for establishment of an equalisation provision can be undertaken for a reference period of at least ten years from the available financial records. The equalisation provision for the class of insurance to which the type and sub-type of insurance pursuant to sentence 1 belongs is to be subdivided in proportion to the ratio of the required provision for the insurance type and sub-type that have been taken out to that for the rest of the insurance class.

   (2) Upon application of subsection 1, the subdivision of the classes of insurance is to be maintained for the purposes of the equalisation provision. Further subdivision of the new classes of insurance is permitted.

Part IV

[1] Part III no. 1 amended by the Regulation of 27 May 2003 (Federal Law Gazette I p. 736).

Transitional provisions

Part III no. 1 (1) and (2) shall also apply, notwithstanding no. 2 (1), to a class of insurance within the meaning of the Insurance Reporting Regulation of 29 March 2006 (Federal Law Gazette I p. 622) for which separate technical profit and loss accounts for the purposes of the equalisation provision are voluntarily drawn up pursuant to Part II no 1 (3) sentence 1.