The following text has been elaborated by the CAA for information purposes.

The texts published in the "Mémorial" are the only authentic versions.

Law of 7 December 2015 on the insurance sector

(consolidated version as of 14 février 2025)

Chronological summary

The present consolidated text comprises the law of 7 December 2015 on the insurance sector[1] such as amended by:

(1) the law of 27 May 2016 amending, with the view of reforming the legal publication regime regarding companies and associations,
- the law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended;
- the law of 10 August 1915 on commercial companies, as amended;
- the law of 21 April 1928 on non-profit organisations, as amended;
- the Grand-ducal decree of 24 May 1935 supplementing the legislation on suspension of payments, on composition with creditors to prevent bankruptcy by establishing a controlled management regime, as amended;
- the Grand-ducal decree of 17 September 1945 revising the law of 27 March 1900 on the organisation of agricultural associations, as amended;
- the law of 24 March 1989 relating to Banque et Caisse d'Epargne de l'Etat, Luxembourg, as amended;
- the law of 25 March 1991 on economic interest groupings, as amended;
- the law of 25 March 1991 on diverse implementing measures of Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG), as amended;
- the law of 17 June 1992 relating to the annual and consolidated accounts of credit institutions, as amended;
- the law of 8 December 1994 relating to: - the annual and consolidated accounts of insurance and reinsurance undertakings governed by the laws of Luxembourg - the obligations in relation to the drawing-up and publication of accounting documents of branches of insurance undertakings governed by foreign laws, as amended;
- the law of 31 May 1999 governing the domiciliation of companies, as amended;
- the law of 22 March 2004 on securitisation, as amended;
- the law of 15 June 2004 relating to the Investment company in risk capital (SICAR), as amended;
- the law of 13 July 2005 on institutions for occupational retirement provision in the form of a SEPCAV and an ASSEP, as amended;
- the law of 13 February 2007 relating to specialised investment funds, as amended;
- the law of 10 November 2009 on payment services, as amended;
- the law of 17 December 2010 relating to undertakings for collective investment, as amended;
- the law of 7 December 2015 on the insurance sector;
- the law of 18 December 2015 on the failure of credit institutions and certain investment firms; [2]

(2) the law of 13 February 2018
1. transposing the provisions on the professional obligations and the powers of the supervisory authorities as regards the fight against money laundering and terrorist financing of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC;
2. implementing Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006;
3. amending:
   a) the law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
   b) the law of 10 November 2009 on payment services, as amended;
   c) the law of 9 December 1976 on the organisation of the profession of notary, as amended;
   d) the law of 4 December 1990 on the organisation of bailiffs, as amended;
   e) the law of 10 August 1991 on the legal profession, as amended;

[1] Mémorial A – N° 229 of 9th December 2015
[2] Mémorial A – N° 94 of 30th May 2016

f) the law of 5 April 1993 on the financial sector, as amended;
g) the law of 10 June 1999 on the organisation of the accounting profession, as amended;
h) the law of 21 December 2012 relating to the Family Office activity;
i) the law of 7 December 2015 on the insurance sector, as amended;
j) the law of 23 July 2016 concerning the audit profession;[3]

(3) the law of 27 February 2018 implementing Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card related payment transactions, and amending it:

1. the law of 5 April 1993 on the financial sector, as amended;
2. the law of 23 December 1998 establishing a financial sector supervisory commission, as amended;
3. the law of 5 August 2005 on financial collateral arrangements, as amended;
4. the law of 11 January 2008 on the transparency obligations of issuers, as amended;
5. the law of 10 November 2009 on payment services, as amended;
6. the law of 17 December 2010 on undertakings for collective investment, as amended;
7. the law of 12 July 2013 on alternative investment fund managers, as amended;
8. the law of 7 December 2015 on the insurance sector, as amended;
9. the law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended; and
10. the law of 23 December 2016 on market abuse;[4]

(4) the law of 17 April 2018 implementing 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 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, and:

1. amending the Consumer Code;
2. amending the law of 23 December 1998 setting up a financial sector supervisory commission, as amended;
3. amending of the law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended; and
4. amending the law of 7 December 2015 on the insurance sector, as amended;[5]

(5) the law of 30 May 2018 on markets in financial instruments and:

1. transposing Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;
2. transposing Article 6 of Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards the safeguarding of financial instruments and client funds, applicable product governance obligations and rules governing the granting or collection of fees, commissions or any other pecuniary or non-pecuniary benefit;
3. implementing 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;
4. amending :
   a) the law of 5 April 1993 on the financial sector, as amended;
   b) the law of 23 December 1998 establishing a financial sector supervisory commission, as amended;
   c) the law of 5 August 2005 on financial collateral arrangements, as amended;
   d) the law of 7 December 2015 on the insurance sector, as amended; and
   e) the law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories and amending various laws relating to financial services; and
5. repealing law of 13 July 2007 on markets in financial instruments, as amended, with the exception of Article 37 thereof;[6]

[3] Mémorial A – N° 131 of 14th February 2018
[4] Mémorial A – N° 150 of 1st March 2018
[5] Mémorial A – N° 257 of 19 April 2018
[6] Mémorial A – N° 446 of 31 May 2018

(6) the law of 10 August 2018 transposing Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on the distribution of insurance and amending the amended law of 7 December 2015 on the insurance sector;[7]

(7) the law of 15 December 2019 amending :
1° with a view to transposing 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)
(a) the Law of 13 July 2005 on institutions for occupational retirement provision in the form of sepcav and assep, as amended ;
(b) the Law of 13 July 2005 on the activities and supervision of institutions for occupational retirement provision, as amended ;
(c) the Law of 7 December 2015 on the insurance sector, as amended ;
2° the Law of 17 April 2018 on key information documents relating to packaged retail and insurance-based investment products;[8]

(8) the law of 20 May 2021 on :
1. transposing :
a) Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures; and
b) Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing capacity and recapitalisation of credit institutions and investment firms and Directive 98/26/EC ;
2. implementation of Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012; and
3. amending :
a) the law of 5 April 1993 on the financial sector, as amended ;
b) the law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended ;
c) the law of 24 March 1989 on the Banque et Caisse d'Épargne de l'Etat, Luxembourg, as amended ;
d) the law of 23 December 1998 establishing a financial sector supervisory commission, as amended;
e) the law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended ;
f) the law of 10 November 2009 on payment services, on the activity of electronic money institution and settlement finality in payment and securities settlement systems, as amended ; and
g) the law of 7 December 2015 on the insurance sector, as amended;[9]

(9) the law of 21 July 2021 amending
1° the Consumer Code ;
2° the law of 5 April 1993 on the financial sector, as amended
3° the law of 23 December 1998 establishing a financial sector supervisory commission, as amended
4° the law of 22 March 2004 on securitisation, as amended
5° the law of 10 November 2009 on payment services, as amended
6° the law of 7 December 2015 on the insurance sector, as amended; and
7° the law of 30 May 2018 on markets in financial instruments, as amended;[10]

(10) the law of 21 July 2021 on :
1° amending :
a) the law of 5 April 1993 on the financial sector, as amended

[7] Mémorial A – N° 710 of 22 August 2018
[8] Mémorial A – N° 859 of 19 December 2019
[9] Mémorial A – N° 384 of 21st May 2021
[10] Mémorial A – N° 560 of 26 July 2021 (“law of 21 July 2021 (1)”)

b) the law of 23 December 1998 establishing a financial sector supervisory commission, as amended

c) the law of 17 December 2010 on undertakings for collective investment, as amended;

d) the law of 12 July 2013 on alternative investment fund managers, as amended

e) the law of 7 December 2015 on the insurance sector, as amended

f) the law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended; and

g) the law of 30 May 2018 on markets in financial instruments, as amended;

2° transposing :

a) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU;

b) part of Directive (EU) 2019/2177 of the European Parliament and of the Council of 18 December 2019 amending Directive 2009/138/EC on the taking up and pursuit of the business of insurance and reinsurance (Solvency II), Directive 2014/65/EU on markets in financial instruments and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing ;

c) Directive (EU) 2020/1504 of the European Parliament and of the Council of 7 October 2020 amending Directive 2014/65/EU on markets in financial instruments; and

d) Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards disclosure requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, in order to support recovery from the COVID-19 crisis; and

3° implementing :

a) Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on prudential requirements for investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014;

b) Article 4 of Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing an Investment Services Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and contracts or to measure the performance of investment funds and Regulation (EU) 2015/847 on information accompanying transfers of funds;[11]

(11) the law of 30 March 2022 on inactive accounts, inactive safe-deposit boxes and unclaimed insurance contracts and amending :

1° the law of 23 December 1998 establishing a financial sector supervisory commission, as amended; and

2° the law of 7 December 2015 on the insurance sector, as amended;[12]

(12) the law of 29 March 2024 :

1° transposing Directive (EU) 2021/2118 of the European Parliament and of the Council of 24 November 2021 amending Directive 2009/103/EC 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; and

2° amending :

a) the law of 16 April 2003 on compulsory insurance against third party motor vehicle liability, as amended;

b) the law of 7 December 2015 on the insurance sector, as amended;

c) the law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories and amending several laws regarding financial services, as amended;[13]

(13) the law of 1st July 2024 modifying :

1° the law of 5 April 1993 on the financial sector, as amended;

[11] Mémorial A – N° 566 of 27th July 2021 ("law of 21 July 2021 (2)")
[12] Mémorial A – N° 149 of 1st April 2022
[13] Mémorial A – N° 136 of 2 April 2024

2° the law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs), as amended;
3° the law of 10 November 2009 on payment services, as amended;
4° the law of 17 December 2010 relating to undertakings for collective investment, as amended;
5° the law of 12 July 2013 on alternative investment fund managers, as amended;
6° the law of 7 December 2015 on the insurance sector, as amended;
7° the law of 18 December 2015 on the resolution, reorganisation and winding up measures of credit institutions and certain investment firms, as amended ;
8° the law of 30 May 2018 on markets in financial instruments, as amended ;
9° the law of 16 July 2019 on the operationalisation of European regulations in the area of financial services, as amended ;

with a view to implementing Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011 and the transposition of Directive (EU) 2022/2556 of the European Parliament and of the Council of 14 December 2022 amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU, 2014/65/EU, (EU) 2015/2366 and (EU) 2016/2341 as regards the digital operational resilience for the financial sector; [14]

(14) the law of 6 February 2025 amending the law of 7 December 2015 on the insurance sector, as amended, in order to insert a chapter 2*ter* relating to the processing of data concerning health;[15]

(15) the law of 6 February 2025 concerning:

1° implementation of Regulation (EU) 2023/606 of the European Parliament and of the Council of 15 March 2023 amending Regulation (EU) 2015/760 as regards requirements pertaining to the investment policies and operating conditions of European long-term investment funds and the scope of eligible investment assets, the portfolio composition and diversification requirements and the borrowing of cash and other fund rules ;

2° implementation of Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 ;

3° implementation of Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849 ;

4° transposition of Article 38 of Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849 ;

5° implementation of Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds ;

6° amendment of:

a) the law of 16 July 2019 on the operationalisation of European regulations in the area of financial services, as amended;
b) the law of 5 April 1993 on the financial sector, as amended ;
c) the law of 23 December 1998 establishing a financial sector supervisory commission, as amended;
d) the law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
e) the law of 10 November 2009 on payment services, as amended;
f) the law of 7 December 2015 on the insurance sector, as amended.[16]

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PART 1

[14] Mémorial A – N° 271 of 2nd July 2024
[15] Mémorial A – N° 37 of 10 February 2025 (“law of 6 February 2025 (1)”)
[16] Mémorial A – N° 38 of 10 February 2025 (“law of 6 February 2025 (2)”)

SUPERVISION OF THE INSURANCE SECTOR

Chapter 1 – *The institution*

Art. 1 – *Legal status and objective*

(1) The "Commissariat aux assurances", referred to in this law by the abbreviation "CAA" is a public institution endowed with legal personality and financial autonomy. The CAA is subjected to the authority of the Minister with responsibility for the insurance sector, hereinafter referred to as the "Minister".

(2) The main objective assigned to the CAA is to ensure the protection of *(…)*[17] policyholders and "insurance beneficiaries as well as members and beneficiaries of the pension funds subject to its supervision"[18].

(3) The CAA's registered office is in Luxembourg.

Chapter 2 - *Missions, powers and responsibility*

Art. 2 – *Missions*

(1) The missions of the CAA are the following:

a) to receive ", examine and decide on"[19] any request from persons wishing to become established in the Grand Duchy of Luxembourg and seeking authorisation "or registration to carry out therein one or more activities referred to in this law "[20] ;

b) to perform a supervisory role, including financial supervision, over those natural and legal persons referred to in point a), in accordance with applicable legal and regulatory provisions concerning the supervision of the insurance "and pension funds"[21] sector;

" b*bis*) to exercise supervision on the market of insurance products which are marketed, distributed or sold within or from the territory of the Grand Duchy of Luxembourg, including those which are marketed, distributed or sold on an ancillary basis;" [22]

c) to pass regulations within the scope of its legal function;

d) to oversee compliance with the professional obligations relating to the fight against money laundering and the financing of terrorism by all persons subject to its supervision, without prejudice to Article 5 of the amended law of 12 November 2004 on the fight against money laundering and the financing of terrorism;

e) to ensure the application of laws and regulations relating to:

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[17] removed by the law of 15 December 2019
[18] law of 15 December 2019
[19] law of 21 July 2021 (1)
[20] law of 21 July 2021 (1)
[21] law of 15 December 2019
[22] law of 10 August 2018

- the relations between parties to insurance contracts and insurance operations, and in particular compliance with legal provisions governing insurance contracts
- reinsurance and reinsurance securitisation operations, and,
- relations between policyholders and insurance intermediaries;

f) to ensure that natural or legal persons known to have, either directly or indirectly, ties other than strictly professional with organised crime do not take either direct or indirect control of persons under its supervision, whether as beneficial owners, by acquiring a significant or controlling interest, by holding a management function or otherwise. As part of this role is an assessment of whether executives are fit and proper, which includes an assessment of their expertise and integrity. To this end, the CAA may request the opinion of the state prosecutor at the Luxembourg law courts and the Grand Ducal police;

" g) to receive and examine any claim from a natural person acting for purposes outside of his trade , industrial, craft or liberal activity and concerning insurance contract concluded or negotiated by any natural or legal person under its supervision; "[23]

h) to monitor requests, and participate in negotiations, pertaining to insurance and reinsurance issues at European Union and international levels;

i) to present to the Government any suggestion likely to improve the legislative and regulatory environment relative to the business of insurance and reinsurance in the Grand Duchy of Luxembourg;

j) to examine any other question relating to insurance and reinsurance which the Minister may submit to it;

" k) to carry out the missions entrusted to it by the Law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories and amending various laws relating to financial services, by the Law of 17 April 2018 on key information documents relating to packaged retail and insurance-based investment products and by the Law of 17 April 2018 on benchmark indices";[24]

" l) to receive and examine claims other than those referred to in point g) lodged against insurance and reinsurance distributors by their customers and by other interested parties, in particular consumer associations"[25] ;

"m) to carry out the missions entrusted to it by the Law of 30 March 2022 on inactive accounts, inactive safe-deposit boxes and unclaimed insurance contracts."[26]

(2) The CAA is the national supervisory authority of insurance and reinsurance undertakings within the meaning of point 10 of Article 13 of Directive 2009/138/EC","[27] the competent authority provided for in "Article 12 of Directive (UE) 2016/97"[28] "and the competent authority provided for in Article 47, paragraph 1, of Directive (EU) 2016/2341 for the pension funds covered by this law"[29].

(3) The CAA is charged with promoting transparency, simplicity and equity on insurance products and services markets. Furthermore, the CAA is the competent authority,

[23] law of 27 February 2018
[24] law of 17 April 2018
[25] law of 10 August 2018
[26] law of 30 March 2022
[27] removed by the law of 15 December 2019
[28] law of 10 August 2018
[29] law of 15 December 2019

as provided for by "Regulation (UE) 2017/2394"[30], to ensure compliance with consumer protection legislation by those persons subject to its supervision.

Art. 3 – *Convergence, supervision and financial stability*

The CAA shall take into account the European Union and international dimensions of prudential supervision and financial stability.

When carrying out its duties, the CAA shall have regard to the convergence in respect of supervisory tools and supervisory practices in application of the laws, regulations and administrative requirements adopted pursuant to Directive 2009/138/EC "and to Directive (EU) 2016/2341"[31]. For that purpose, the CAA shall participate in the activities of the European Insurance and Occupational Pensions Authority, established by Regulation (EU) No. 1094/2010 and hereinafter referred to as "EIOPA", and shall make all efforts to comply with EIOPA guidelines and recommendations and other measures adopted by EIOPA, or state the reasons if it decides not to do so.

Considering its prudential supervisory functions and respecting the legal competences of the various parties, the CAA shall cooperate with the Government, the Central Bank of Luxembourg and the other authorities responsible for prudential supervision at a national, EEA and international level, in order to contribute to ensuring financial stability, in particular within those committees set up for such purpose.

In periods of extreme volatility in the financial markets the CAA shall take into account the potential pro-cyclical effects of its actions.

Art. 4 – *Powers of the CAA*

In connection with the fulfilment of the responsibilities defined in Article 2:

a) The CAA issues instructions with regard to the accounting and other documentation to be forwarded to the CAA by those natural and legal persons of the insurance sector which are approved in the Grand Duchy of Luxembourg, hereinafter designated as "authorised persons".

b) The CAA may request that authorised persons provide all information and documentation deemed useful or necessary for the exercise of its supervision, without prejudice to Articles 174 and 175.

c) The CAA may perform on-site controls on the premises of authorised persons, perform remote inspection or take copies of ledgers, accounts, registers or other instruments and documents.

d) The CAA may interview:

   - natural persons under its supervision as well as their employees and other associated persons;
   - members of the board of directors or of other supervisory and management bodies, senior executive personnel and others employees and associated persons of those legal persons which are subject to its supervision.

e) The CAA may also obtain all information deemed useful from other administrative or judicial bodies or from any other persons.

f) The CAA monitors relationships between, on the one hand, authorised persons and, on the other hand, other natural or legal persons, whenever authorised

[30] law of 29 March 2024
[31] law of 15 December 2019

persons assign "directly or indirectly"[32] to these other natural and legal persons functions having an influence on their financial position or of material importance for the effectiveness of the CAA's controls. This element of supervision entails the authority to perform on-site controls of these natural and legal persons to whom these functions have been assigned.

g) The CAA has the power to take preventive and corrective measures to ensure that persons under its supervision comply with the laws, regulations and administrative provisions with which they have to comply.

h) The CAA has the power to take any necessary measures, including where appropriate, those of an administrative or financial nature, with regard to persons under its supervision, and the members of their administrative, management or supervisory bodies.

i) Within the scope of its missions foreseen in Article 2, point d) to g), of this law, the powers foreseen in this Article shall extend to natural and legal persons authorised to work in the Grand Duchy of Luxembourg under the regimes of freedom of establishment or freedom to provide services within the insurance sector.

j) In cases foreseen by Articles 123 to 125, as well as infringements of this law (...)[33] and legislation governing insurance contracts, their implementing regulations and CAA instructions, the CAA may require authorised persons to take within a stated deadline any measure required to remedy the said breaches, and specifically, to re-establish or strengthen their financial security, to safeguard the interests of creditors, and to correct their practices.

k) The CAA shall exercise its supervisory powers promptly and in a proportionate manner.

l) The powers referred to in Article 61 and in points b), c), g) and h) of this Article, applied with regard to persons subject to the CAA's supervision, shall also be available with regard to those activities which are outsourced by those persons.

m) The powers referred to in Article 61 and in points b), c), g), h) and l) shall be exercised, if need be by enforcement and, where appropriate, through judicial channels.

n) The CAA must provide itself with the appropriate means, methods and powers for verifying the system of governance of insurance and reinsurance undertakings "as well as of pension funds"[34] and for evaluating emerging risks identified by those undertakings "and by pension funds"[35] which may affect their financial soundness. The CAA must, moreover, possess the necessary powers to require that the system of governance be improved and strengthened so as to ensure compliance "for insurance and reinsurance undertakings"[36] with the requirements set out in Articles 72 to 75, 77, 78, 79 and 81 "and for pension funds with those set out in Part II, title II*a*, Chapter 3, Section 1"[37].

" o) The CAA shall establish effective mechanisms to enable and encourage any reporting of potential or actual infringements of the laws and regulations listed in Articles 303, paragraph 1, and 304 or other conduct referred to in Articles 303, paragraph 1, and 304 and the measures taken to enforce them.

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[32] law of 15 December 2019
[33] removed by the law of 13 February 2018
[34] law of 15 December 2019
[35] law of 15 December 2019
[36] law of 15 December 2019
[37] law of 15 December 2019

The mechanisms referred to in paragraph 1 shall include at least:

1. specific procedures for the receipt of reports and their follow-up;
2. appropriate protection against retaliation, discrimination or other types of unfair treatment, for the staff of persons under the supervision of the CAA and, where possible, for other persons who report infringements committed by or within such persons;
3. the protection of personal data, both for the person reporting the infringement and for the natural person allegedly responsible for them;
4. clear rules guaranteeing in all cases confidentiality to the person reporting infringements committed by or within persons under the supervision of the CAA, unless disclosure of information is required by Luxembourg law in the context of further investigation or subsequent judicial proceedings."[38]

Art. 5 – *Collection of data and statistics*

The CAA is authorised to draw up statistics in the fulfilment of its responsibilities and to gather the necessary data to this end from all natural and legal persons authorised in the Grand Duchy of Luxembourg or allowed to operate there by way of freedom of establishment or freedom to provide services within the insurance sector.

The individual data thus gathered shall be covered by the professional secrecy of the CAA's bodies and agents, as described in Article 7 of this law.

The CAA is nevertheless authorised to publish the statistics it compiles, provided that such publication does not contain any individual data or enable any to be inferred, with the exception of any statistics specifically set out in a CAA regulation.

Art. 6 – *Responsibility for, and pursuit of, the public interest*

The State shall be answerable for the measures taken by the CAA by virtue of this law.

Supervision of the insurance sector is not intended to safeguard the individual interests of the undertakings or professionals supervised or of their clients, nor third parties, and is carried out solely in the public interest.

For the State or the CAA to assume civil liability for individual damage incurred by the undertakings or professionals supervised or by their clients or by third parties, it must be shown that the damage was caused through gross negligence in the choice and application of the means implemented in carrying out the CAA's public service remit.

Chapter 3 – *Professional secrecy, information exchange and the promotion of supervisory convergence*

Art. 7 – *Professional secrecy*

Without prejudice to Article 23 of the Code of Criminal Procedure, all persons carrying out or having carried out a function for the CAA, and likewise members of the CAA's internal bodies and approved auditors or experts appointed by the CAA, are bound by professional secrecy and may be liable to the penalties indicated in Article 458 of the Penal Code in the event of such secrecy being violated.

[38] law of 10 August 2018

Such secrecy requires that any confidential information they receive in a professional capacity shall not be divulged to any person or authority whatsoever, other than in summary or aggregated form in which the individual natural or legal persons subject to the CAA's supervision cannot be identified, without prejudice nevertheless to cases within the scope of criminal law.

Nevertheless, if a natural or legal person subject to the CAA's supervision has been declared bankrupt, or if a court has ordered its compulsory winding-up, any confidential information which does not concern the third parties involved in any rehabilitation attempt may be disclosed in the context of civil or commercial proceedings.

Art. 8 – ***Cooperation with the "Commission de surveillance du secteur financier"***

The CAA shall cooperate closely with the "Commission de surveillance du secteur financier" (Financial Sector Supervisory Commission), hereinafter referred to as the "CSSF", where this is necessary to carry out their respective duties of *(...)*[39] supervision, including the performance of the supervision of financial conglomerates referred to in Subtitle IV of Title 2 of Part II of this law, making use of the powers conferred upon it by this law.

The CAA shall collaborate with the CSSF, in particular by exchanging any information which is essential for or conducive to carrying out their respective duties of *(...)*[40] supervision, including the performance of the supervision of financial conglomerates and, where necessary, by cooperating in the context of supervisory activities.

" **Art. 8-1 -** ***Cooperation with the Fonds d'insolvabilité en assurance automobile***

The CAA shall cooperate closely with the *Fonds d'insolvabilité en assurance automobile*, hereinafter referred to as the "FIAA", where this is necessary for the performance of its tasks.

The CAA assists the FIAA in particular by exchanging all information that is essential or useful for the performance of the FIAA's tasks." [41]

Art. 9 – ***Information exchange between the supervisory authorities of Member States***

The obligation of professional secrecy shall not preclude the CAA from exchanging, with other supervisory authorities competent in the insurance sector, any information necessary to carry out the prudential supervision of the insurance sector, provided that such information is covered by the professional secrecy of the receiving authority.

Art. 10 – ***Cooperation agreements with third countries***

The CAA may only conclude cooperation agreements providing for the exchange of information with the supervisory authorities of third countries or with authorities or bodies of third countries as defined in Article 12 paragraphs 1 and 2, if the information to be disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Chapter. Such exchange of information must be intended for the performance of the supervisory task of those authorities or bodies.

Where the information to be disclosed by the CAA to a third country originates from another Member State, it shall not be disclosed without the express agreement of the supervisory

[39] removed by the law of 30 May 2018
[40] removed by the law of 30 May 2018
[41] law of 29 March 2024

authority of that Member State and, where appropriate, then only for the purposes for which that authority gave its agreement.

Art. 11 - *The use of confidential information*

The CAA which receives confidential information under Articles 8 to 9 may use it only in the course of its duties and for the following purposes:

a) to check that the conditions governing the taking-up of the business within the insurance sector are met and to facilitate the monitoring of the conduct of such business, especially with regard to the monitoring of the technical provisions, the Solvency Capital Requirement, the Minimum Capital Requirement, "and the system of governance and information provided to policyholders as well as members and beneficiaries of pension funds"[42];

b) to impose "corrective measures, including"[43] the application of sanctions;

c) in administrative appeals against decisions of the Minister or the CAA;

d) in court proceedings under this law and its implementing regulations.

Art. 12 – *Exchange of information with other authorities*

(1) Articles 7 and 11 shall not preclude any of the following activities:

a) the exchange of information between several supervisory authorities in the same Member State for the discharge of their supervisory functions;

b) the exchange of information, for the discharge of their supervisory functions, between the CAA and any of the following supervisory authorities, and authorities, bodies or persons which are situated in the Grand Duchy of Luxembourg or in another Member State:

- authorities responsible for the supervision of credit institutions and other financial organisations and the authorities responsible for the supervision of financial markets;
- bodies involved in the winding-up and bankruptcy of natural and legal persons within the insurance sector and in other similar procedures;
- persons responsible for carrying out statutory audits of the accounts of undertakings within the insurance sector;

c) the disclosure, to bodies which administer compulsory winding-up proceedings or guarantee funds, of information necessary for the performance of their duties.

The information received by those authorities, bodies and persons under the foregoing provisions shall be subject to the obligation of professional secrecy that provides guarantees equivalent to that laid down in Article 7.

(2) Articles 7 and 11 shall not impede the exchange of information between the CAA and any of the following authorities or persons in the Grand Duchy of Luxembourg:

a) the authorities responsible for overseeing the bodies involved in the winding-up and bankruptcy of insurance undertakings ","[44] reinsurance undertakings "or pension funds"[45] and other similar procedures;

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[42] law of 15 December 2019
[43] law of 15 December 2019
[44] law of 15 December 2019
[45] law of 15 December 2019

b) the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings, "pension funds"[46], credit institutions, investment firms and other financial institutions;

c) independent actuaries of insurance undertakings","[47] reinsurance undertakings "or pension funds"[48] carrying on legal supervision of those undertakings and the bodies responsible for overseeing such actuaries.

For the exchange of information under subparagraph 1, the following conditions must be met:

a) the information must be for the purpose of carrying out the overseeing or legal supervision referred to in subparagraph 1;

b) the information received must be subject to the obligation of professional secrecy which provides guarantees equivalent to those laid down in Article 7;

c) where the information originates in another Member State, it must not be disclosed without the express agreement of the supervisory authority from which it originates and, where appropriate, then only for the purposes for which that authority gave its agreement.

The CAA shall communicate to the Commission and to the other Member States the names of the authorities, persons and bodies which may receive information pursuant to subparagraphs 1 and 2.

(3) With the aim of strengthening the stability and integrity of the financial system, the CAA may exchange information with the authorities or bodies responsible for the detection and investigation of breaches of company law.

The following conditions must be met:

a) the information must be intended for the purpose of detection and investigation of breaches as referred to in subparagraph 1;

b) information received must be subject to the obligation of professional secrecy which provides guarantees equivalent to those laid down in Article 7;

c) where the information originates in another Member State, it shall not be disclosed without the express agreement of the supervisory authority from which it originates and, where appropriate, then only for the purposes for which that authority gave its agreement.

Where the authorities or bodies referred to in subparagraph 1 perform their task of detection or investigation in the Grand Duchy of Luxembourg with the aid of persons appointed, in view of their specific competence, for that purpose and not employed in the public sector, the possibility of exchanging information provided for in subparagraph 1 may be extended to such persons under the conditions set out in subparagraph 2.

In order to implement point (c) of subparagraph 2, the authorities or bodies referred to in subparagraph 1 shall communicate to the CAA, where the information originates from the latter, the names and precise responsibilities of the persons to whom it is to be sent.

(4) The CAA shall communicate to EIOPA any authorisation of an insurance or reinsurance undertaking or pension fund referred to in Article 32, paragraph 1, point 14, any

[46] law of 15 December 2019
[47] law of 15 December 2019
[48] law of 15 December 2019

authorisation of cross-border activity in a Member State and likewise any decision to ban activities of such insurance or reinsurance undertakings or pension funds.

"The CAA shall provide EIOPA with relevant information for the purpose of establishing, publishing on the EIOPA website and keeping up-to-date a single electronic register of insurance and reinsurance intermediaries and ancillary insurance intermediaries who have notified their intention to carry on cross-border business from the Grand Duchy of Luxembourg." [49]

“The CAA informs EIOPA pursuant to article 35 of Regulation (EU) n°1094/2010 of any request for the use or the change of an internal model.”[50]

In addition, the CAA shall provide EIOPA with all other information necessary to carry out its duties in accordance with Regulation (EU) No 1094/2010.

"The CAA shall inform EIOPA of all sanctions and other administrative measures imposed by it on insurance or reinsurance undertakings and intermediaries in connection with insurance or reinsurance distribution, but not published in accordance with Article 306, including any appeal against them and the outcome of such appeal.

When the CAA has disclosed a sanction or other administrative measure in connection with the insurance or reinsurance distribution, it shall at the same time report that fact to EIOPA.

Each year, the CAA shall provide EIOPA with aggregate information on all sanctions and other administrative measures imposed in the field of insurance distribution." [51]

"The CAA shall notify EIOPA of any decision to prohibit or restrict the activities of a pension fund.

The CAA shall provide EIOPA with information for publication on its website on pension funds that carry out cross-border activities in accordance with Article 256-62 in another Member State within the meaning of Article 32, paragraph 1, point 13.”[52]

(5) Articles 7 and 11 shall not preclude the CAA from exchanging information with the mixed committee as provided in Article 220.

Art. 13 – *Transmission of information to central banks and to monetary authorities, supervisory authorities of payment systems, the European Systemic Risk Board and to the Systemic Risk Board*

(1) Without prejudice to Articles 7 to 12, the CAA may transmit information intended for the performance of their tasks to the following:

a) central banks of the European System of Central Banks (ESCB), including the European Central Bank (ECB) and other bodies with a similar function in their capacity as monetary authorities where this information is relevant to their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and securities settlement systems and safeguarding the stability of the financial system;

b) where appropriate, other national public authorities responsible for overseeing payment systems; and

c) the European Systemic Risk Board (ESRB), established by Regulation (EU) No 1092/2010, where that information is relevant to carrying out its tasks;

[49] law of 10 August 2018
[50] law of 21 July 2021 (2)
[51] law of 10 August 2018
[52] law of 15 December 2019

d) the Systemic Risk Board.

(2) In an emergency situation, including an emergency situation as defined in Article 18 of Regulation (EU) No 1094/2010, the CAA may communicate, without delay, information to the central banks of the ESCB, including the ECB, where that information is relevant to their statutory tasks including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and securities settlement systems and safeguarding the stability of the financial system, and to the ESRB, where such information is relevant to its tasks.

(3) Information received by the CAA by such entities and authorities for the purposes laid down in Article 11 shall be subject to the provisions on professional secrecy laid down in this Chapter.

"(4) In the context of the supervision of pension funds, the CAA may also transmit information to the European Banking Authority ("EBA") established by Regulation (EU) n° 1093/2010 and to the European Securities and Markets Authority ("ESMA") established by Regulation (EU) n° 1095/2010 for the performance of their tasks."[53]

Chapter 4 – *Internal bodies of the CAA*

Art. 14 – *Bodies*

The CAA's internal bodies are the Supervisory Board ("the Board") and the Executive Committee.

Art. 15 – *Powers of the Board*

The Board has the following powers:

a) It determines the CAA's budget and annual accounts before they are presented to the Government for approval;

b) It issues an opinion on the general guidelines concerning the CAA's conditions and charges, including those relating to the conditions under which the supervised undertakings and persons shall reimburse the CAA's staff and operating costs;

c) It makes a proposal to the Government concerning the appointment of the CAA's approved auditor;

d) It may ask the approved auditor to carry out specific verifications;

e) It shall issue an opinion on any question raised by the Minister or the Director concerning the development and supervision of the insurance sector.

Art. 16 – *Composition of the Board*

The Board is composed of "seven"[54] members appointed by the Government in Council. "Four shall be appointed on a proposal from the Minister responsible for the CAA, two from among the professionals of the insurance sector established in the Grand Duchy of Luxembourg and one from among Luxembourg insurance policyholders."[55]

Members shall be appointed for a term of five years.

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[53] law of 15 December 2020
[54] law of 29 March 2024
[55] law of 29 March 2024

The appointment of a new member to replace a resigning or deceased member shall take place as soon as possible pursuant to the terms laid down in the preceding paragraphs. Replacements shall be appointed for the remainder of the period of tenure of the person replaced.

Art. 17 – *Board presidency and allowances*

The Government in Council shall appoint a President and Vice-President of the Board and determine the allowances of the members of the Board which are paid by the CAA.

Art. 18 – *Operation of the Board*

(1) The Board is convened by the President or, if he is unable to attend, by the Vice-President. It must be convened if at least three members, or the CAA's Director so request.

(2) The Board's deliberations are valid if a majority of its members are present or represented.

(3) The Board shall adopt internal regulations on a majority vote of its members. They must be approved by the Government in Council.

(4) The Director or his representative attends the Board meetings in an advisory capacity. The representative shall be chosen from among the Executive Committee's members as provided for in Article 19.

(5) The Board's secretarial services shall be provided by a civil servant of the CAA as appointed by the Director.

(6) With the exception of any communications which the Board decides to make official, the Board members and any person called upon to attend meetings shall be required to maintain secrecy regarding its deliberations.

Art. 19 – *Composition and functions of the Executive Committee*

(1) The Executive Committee is the CAA's principal executive body.

(2) It is composed of a "Directeurr", acting as its President, and not more than two members who shall report to the "Directeur". The Executive Committee's members are appointed by the Grand Duke on a proposal from the Government in Council for a term of six years. Appointments are renewable.

(3) The Executive Committee takes its decisions collegiately. It adopts internal regulations with the unanimity of all its members. Before their entry into force, the internal regulations must be approved by the CAA's Board.

(4) The Executive Committee's members have civil servant status with regard to their salary and their pension scheme.

(5) The Executive Committee shall determine the measures and take the decisions necessary to enable the CAA to fulfil its mission pursuant to Article 2 of this law. It shall be responsible for the reports and proposals that its remit requires it to send to the Board and the Government.

(6) It shall be competent to perform any act of administration or provision necessary for, or conducive to, fulfilment of the CAA's mission and its organisation.

(7) The Executive Committee shall represent the CAA judicially and extrajudicially.

(8) The Government may make proposals to the Grand Duke regarding the dismissal of the Executive Committee's members if any fundamental disagreement should arise between the Government and the Executive Committee over policy and execution of the CAA's remit. In such cases, the dismissal shall apply to the Executive Committee as a whole.

Likewise, the Government may make a proposal to the Grand Duke regarding the dismissal of a member of the Directorate who is in the long term unable to perform his duties or has committed a serious offence.

The Government shall consult the CAA's Board before submitting a proposal for dismissal to the Grand Duke.

The mandate of a member of the Executive Committee shall terminate automatically upon his reaching the age of sixty-five years, unless the mandate is extended by decision of the Government in Council.

In the event of an Executive Committee member's tenure not being renewed or being revoked, the said member shall become a general advisor to the CAA with maintenance of his status and his basic level of remuneration, save for the special allowances associated with his previous function. He may be transferred to another administration or a different public institution pursuant to Article 6 of the amended law of 16 April 1979 which lays down the general civil service regulations.

(9) The remuneration and other allowances of the members of the Executive Committee and, where applicable, those of the general advisors, shall be paid by the CAA.

The Government in Council may allocate a special allowance to the members of the Executive Committee for entertainment expenses.

Art. 20 – *Advisory Committee*

(1) A prudential regulatory advisory committee shall be established within the CAA, which may be consulted for advice to the Government on any proposed legislation or Grand Ducal regulation regarding regulation in the field of insurance sector supervision falling within the competence of the CAA. The Executive Committee must seek advice from this advisory committee on any proposed CAA regulation.

(2) Any member of the prudential regulatory advisory committee may refer to it concerning the implementation and application of prudential supervision as a whole or concerning questions of detail.

(3) The prudential regulatory advisory committee is composed of the following members:

a) the competent Minister or a representative appointed by him who chairs the advisory committee;

b) the CAA's Executive Committee considered as a board and reckoned as one member;

c) six members appointed by the competent Minister to represent, respectively, life insurance undertakings and pension funds under the supervision of the CAA, non-life insurance undertakings, reinsurance undertakings, PSA's, insurance and reinsurance intermediaries, and a consumer representative.

(4) The mandates of the members under point c) of paragraph 3 shall have a four-year-term and are renewable.

(5) The advisory committee shall adopt internal regulations and choose a secretary among the CAA's personnel on proposal of the Executive Committee.

Chapter 5 – *CAA Personnel*

Art. 21 – *Personnel structure*

(1) In hierarchical order, the CAA's personnel shall comprise the following functions and posts:

a) In the administrative carrière supérieure, grade calculation based on seniority : grade 12

- a "Directeur"
- "premiers conseillers de direction"
- "conseillers de direction première classe"
- "conseillers de direction"
- "conseillers de direction adjoints"
- "attachés de direction 1er en rang"
- "attachés de direction" and "stagiaires ayant le titre d'attachés d'administration".

Appointments to the functions of "Directeur" and "premier conseiller de direction" shall be made at the discretion of the Government, commensurate with the requirements of the service.

b) In the administrative carrière moyenne, grade calculation based on seniority: grade 7

- "inspecteurs principaux 1er en rang"
- "inspecteurs principaux"
- " inspecteurs"
- "contrôleurs"
- "contrôleurs adjoints"
- "vérificateurs"
- "rédacteurs. "

Promotion to functions above those of a "vérificateur" shall be contingent upon success in a promotion examination.

When a promotion-level function post is vacant, the number of posts for a lower-grade function at the same career grade may be temporarily increased accordingly.

c) In the administrative "carrière inférieure", grade calculation based on seniority: grade 4

- "expéditionnaires".

The "expéditionnaire" category covers the different functions and number of posts referred to in Article 17, I, 1 of the amended Law of 22 June 1963 on civil servants' salary scales.

Any amendment subsequently made to the aforesaid law shall be applicable.

Promotion to functions above those of a "commis adjoint" shall be contingent upon success in a promotion examination.

(2) The personnel may be supplemented by a number of State “employés” required to ensure proper operation of the service and by ”stagiaires” and ”ouvriers”, within the confines of the budget allocations.

(3) Subject to approval from the Board, special non-pensionable payments may be granted to personnel having special training or performing clearly specified important functions.

Art. 22 – *The personnel within the CAA’s framework*

(1) Civil servants in the ”carrière supérieure” and those above ”rédacteur” level in the ”carrière moyenne” shall be appointed by the Grand Duke. The Minister shall make all other appointments.

(2) Before taking up their duties, they shall take the following oath before the Minister or his representative: “I swear loyalty to the Grand Duke and obedience to the constitution and the laws of the State. I promise to perform my duties with integrity, correctness and impartiality and to maintain secrecy regarding the facts I become aware of while, or on account of, performing my functions.”

(3) The CAA’s personnel are State civil servants. Their general status, particularly in regard to rights and duties and conditions of appointment, promotion, remuneration and pensions, is governed by the relevant legal provisions governing State civil servants.

(4) Civil servants and employees holding a university diploma in actuarial studies are authorised to indicate that qualification after their job title and grade.

(5) Without prejudice to the general conditions of admission to the service of the State, and insofar as they are not determined by this law, the special conditions applicable to admission as trainees, appointment and promotion and to the CAA staff generally are determined in a Grand-Ducal Regulation.

(6) The remuneration of all the CAA’s personnel shall be paid by the CAA. Their pension shall be paid by the State if they belong to the civil service pension scheme.

Art. 23 – *Conflicts of interest*

Neither the officials nor the employees of the CAA may in any way be linked, either directly or through another person, to the undertakings it supervises, nor shall they have any interests in such undertakings other than as an insurance policyholder. Failing this, they shall incur the penalties laid down in Article 245 of the Penal Code.

Chapter 6 – *Audit of the annual accounts*

Art. 24 – *Appointment of an approved auditor*

The Government shall appoint an approved auditor on a proposal from the CAA’s Board. It shall be appointed for a term of 3 years; his mandate is renewable.

His fees shall be paid by the CAA.

Art. 25 – *Responsibilities of the approved auditor*

The approved auditor shall be tasked with verifying and certifying the accuracy and completeness of the CAA’s accounts. It shall draw up a detailed report on the CAA’s accounts at the close of the financial year for the Board and the Government. The Board may ask him to carry out specific verifications

Art. 26 – *Financial year*

The CAA's financial year follows the calendar year.

Art. 27 – *Approval of the accounts by the Board*

By 31 March each year, the "Directeur" shall submit the balance sheet and profit and loss account closed off at 31 December of the previous year to the Board for approval, along with his activity report, the approved auditor's report and the budget forecast for the next financial year.

Art. 28 – *Discharge of the CAA bodies and the grant of public funds*

The annual accounts and the reports approved by the CAA's Board shall be sent to the Government. The Government is called upon to decide that discharge be given to the CAA's internal bodies. The decision concerning the discharge to be granted to the CAA's internal bodies and its annual accounts shall be published in the Memorial.

The CAA shall be subject to supervision by the Court of Auditors regarding the use of public funds where these may be granted to the CAA involving public financial assistance for a particular purpose.

Chapter 7 – *Taxes, duties, property and expenses*

Art. 29 – *Taxes and duties*

The CAA shall be exempt from all charges, duties and taxes collected by the State and the municipalities, with the exception of value added tax.

Art. 30 – *Expenses of the CAA*

The CAA shall be responsible for collecting the amount of its personnel costs and operating costs.

Art. 31 – *Revenues of the CAA*

The CAA is authorised to recover the amount of its staff costs and operating costs from fees collected from each undertaking or person subject to its supervision.

A Grand-Ducal Regulation shall determine the amount of such fees as well as this Article's implementing rules.

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PART 2

ACTIVITY IN THE INSURANCE SECTOR

TITLE I

Scope and definitions

Chapter 1 – *General definitions*

Art. 32 – *Definitions and abbreviations*

(1) For the purposes of this law and the regulations made under this law, the following definitions shall apply:

1. «Commission»: the European Commission;
2. «competence»: an adequate professional competence resulting both from qualifications and high-level skills and from the experience of having already carried out similar activities at a high level of responsibility and autonomy;
3. «insurance claim»: any amount owed by an insurance undertaking to insured parties, policyholders or beneficiaries, or any claimant having a right of direct action against the insurance undertaking arising from an insurance "or reinsurance"[56] contract or any transaction referred to in Article 35, in direct insurance business, including any amounts set aside for the aforesaid persons when certain elements of the debt are not yet known. "Obligations giving rise to an insure claim are referred to as "insurance obligations"."[57]

   The premiums owed by an insurance undertaking as a result of the said insurance contracts or transactions not being concluded or being cancelled pursuant to the law applicable to them before the collective liquidation procedure was initiated are also deemed to be insurance claims.
4. «EEA»: the European Economic Area created by the Agreement on the European Economic Area of 2nd May 1992 within the limits provided by that Agreement and the acts relating thereto;
5. «insurance undertaking»: an insurance undertaking of the EEA or of a third country;
6. «insurance undertaking of the EEA»: a direct life or non-life insurance undertaking which has received authorisation in accordance with Article 14 of the Directive 2009/138/EC;
7. «third-country insurance undertaking»: an undertaking which would require authorisation as an insurance undertaking in accordance with Article 14 if its head office were situated in the EEA ;
8. «Luxembourg insurance undertaking»: an insurance undertaking which has its registered office in the Grand Duchy of Luxembourg;
9. «reinsurance undertaking»: a reinsurance undertaking of the EEA or of a third country;

[56] law of 10 August 2018
[57] law of 10 August 2018

10. «reinsurance undertaking of the EEA»: an undertaking which has received authorisation in accordance with Article 14 of the Directive 2009/138/EC to pursue reinsurance activities;
11. «third-country reinsurance undertaking»: an undertaking which would require authorisation as a reinsurance undertaking if its head office were situated in the EEA;
12. «Luxembourg reinsurance undertaking»: a reinsurance undertaking which has its head office in the Grand Duchy of Luxembourg;
13. «Member State»: a Member State of the European Economic Area;
14. «pension fund»: any fund or institution subject to the CAA 's prudential supervision, which is established separately from any participating undertaking or any participating entity with a view to financing retirement and invalidity benefits, life cover, and survivors' or reversionary benefits, for the personnel of the participating undertakings or entities with the latter assuming financial responsibility therefor;
15. «good repute»: professional or extra-professional reputation assessed on the basis of both criminal records and any other element which may establish that the person concerned has a good reputation and provides the guarantee of irreproachable management;
16. «Law on annual accounts»: the amended law of 8 December 1994 relating to:
    - the annual accounts and consolidated accounts of insurance and reinsurance undertakings incorporated in Luxembourg,
    - the obligations relating to the preparation and publication of the accounting documents of branches of insurance undertakings established under foreign law;
17. «Minister»: the member of the Government whose remit includes the supervision of the insurance sector;

" 17-1. "insurance-based investment product" or abbreviated "IBIP": an insurance product which offers a maturity or surrender value and where that maturity or surrender value is totally or partially exposed, directly or indirectly, to market fluctuations, and does not include:

a) non-life insurance products falling within the classes of insurance listed in Annex I;

b) life insurance contracts where the benefits provided under the contract are payable only in the event of death or incapacity due to injury, sickness or disability;

c) pension products which, under national law, are recognised as having as the primary purpose of providing the investor with an income in retirement, and which entitle him to certain benefits;

d) officially recognised occupational pension schemes which fall within the scope of Directive 2003/41/EC or Directive 2009/138/EC;

e) individual pension products for a financial contribution from the employer is required where the employer or the employee has no choice as to the pension product or the provider of the product;"[58]

[58] law of 10 August 2018

18. «European Union regulatory framework» : the regulations of the Commission and any regulation adopted by EIOPA being applicable to the prudential supervision of the entities and persons subject to this law ;

19. «prudential regulation»: the laws, the Grand-Ducal regulations, the CAA regulations and the regulations of the European Union applicable to the prudential supervision of the entities and persons subject to this law ;

"19-1. «RESA»: the electronic register of companies and associations, in accordance with the provisions of Title I, Chapter V*bis*, of the law of 19 December 2002 on the trade and companies register and the accounting and annual accounts of companies, as amended;"[59]

20. «insurance sector»: all natural and legal persons subject to supervision by the CAA under this law ;

21. «outsourcing»: an arrangement of any form, between a natural or legal person within the insurance sector and a service provider whether a supervised entity or not, by which that service provider performs a process, a service or an activity, whether directly or by a third party, which would otherwise be performed by the person itself.

(2) Any numbered reference to a European Union document in the present law shall have the meaning assigned in Annex III.

Chapter 2 - Scope

Art. 33 – *General Provisions*

The provisions of Title II are applicable to Luxembourg insurance and reinsurance undertakings, branches of third-country insurance and reinsurance undertakings and, within the scope of the powers reserved by the European Union Directives for the Luxembourg authorities, the Luxembourg branches of insurance and reinsurance undertakings having their registered office in another Member State, as well as insurance and reinsurance business conducted under freedom to provide services in the Grand Duchy of Luxembourg.

Art. 34 – *Non-life insurance*

With regard to non-life insurance, Title II shall apply to activities of the insurance classes listed in part A of Annex I.

Assistance operations are defined in Article 179 of the present law.

Art. 35 – *Life insurance*

(1) With regard to life insurance, Title II shall apply to activities listed in Annex II.

(2) *(repealed by the law of 15 December 2019)*

[59] law of 27 February 2018

Chapter 3 - Exclusions from scope

Section 1 – General provision

Art. 36 – *Statutory schemes*

This law does not apply to insurances that are part of statutory social security schemes, without prejudice to Article 35, paragraph 2.

Section 2 – Non-life insurance

Art. 37 – *Operations*

In regard to non-life insurance, this law shall not apply to the following operations:

a) capital redemption operations;

b) operations of provident and mutual benefit institutions whose benefits vary according to the resources available and in which the contributions of the members are determined on a flat-rate basis;

c) operations carried out by an organisation not having a legal personality with the purpose of providing mutual cover for their members without there being any payment of premiums or constitution of technical reserves;

d) export credit insurance operations for the account of or guaranteed by the State, or where the State is the insurer; or

e) export credit insurance operations without guarantee of the State performed by the Office du Ducroire, which is regulated by "the law of 4 December 2019 on the Office du Ducroire Luxembourg, as amended,"[60] hereinafter referred to as «ODL», provided that:

- the annual income of gross written premiums by ODL regarding its credit insurance activities without guarantee of the State does not exceed "5,400,000"[61] euros,
- the total technical provisions of ODL within the meaning of Article 100, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles does not exceed "26,600,000"[62] euros,
- the activity of ODL does not include insurance or reinsurance activities covering risks of third-party liability, credit and bonding, unless they constitute ancillary risks within the meaning of Article 46, paragraph 1.

Art. 38 – *Mutual undertakings*

This law shall not apply to mutual undertakings which pursue non-life activities and which have concluded with other mutual undertakings an agreement which provides for the full reinsurance of the insurance policies issued by them or under which the accepting undertaking is to meet the liabilities arising under such policies in the place of the ceding undertaking. In such a case the accepting undertaking shall be subject to the rules of this law.

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[60] law of 29 March 2024
[61] law of 29 March 2024 *(applicable from 19 October 2024)*
[62] law of 29 March 2024 *(applicable from 19 October 2024)*

Section 3 – Life insurance

Art. 39 – *Operations and activities*

In regard to life insurance, this law shall not apply to the following operations and activities:

a) operations of provident and mutual-benefit institutions whose benefits vary according to the resources available and which require each of their members to contribute at the appropriate flat rate;

b) operations carried out by organisations, other than undertakings referred to in Articles 33 to 35, whose object is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or a profession or group of professions, in the event of death or survival or of discontinuance or curtailment of activity, whether or not the commitments arising from such operations are fully covered at all times by mathematical provisions.

Art. 40 – *Organisations providing benefits in the event of death*

In regard to life insurance, this law shall not apply to organisations which undertake to provide benefits solely in the event of death, where the amount of such benefits does not exceed the average funeral costs for a single death or where the benefits are provided in kind.

Section 4 - Reinsurance

Art. 41 – *Reinsurance*

In regard to reinsurance, this law shall not apply to the activity of reinsurance conducted or fully guaranteed by the Luxembourg government acting, for reasons of substantial public interest, in the capacity of reinsurer of last resort, including in circumstances where such a role is required by a situation in the market in which it is not feasible to obtain adequate commercial cover.

Art. 42 – *Reinsurance undertakings closing their activities*

(1) The provisions of this law shall not apply to reinsurance undertakings which by 10 December 2007 ceased to conduct new reinsurance contracts and exclusively administer their existing portfolio in order to terminate their activity.

These undertakings shall continue to be governed by the rules applicable to them before the entry into force of this law.

(2) The CAA shall draw up a list of the reinsurance undertakings concerned and communicate that list to all the other Member States.

TITLE II

Insurance and reinsurance undertakings

Subtitle I

General rules on the taking up and pursuit of the business of direct insurance and reinsurance

Chapter 1 – *Definitions applicable to insurance and reinsurance undertakings*

Art. 43 - *Definitions*

For the purposes of this law and the regulations made under this law, the following definitions shall apply:

1. «business conducted under the right of establishment» : insurance business conducted by an insurance undertaking or reinsurance business conducted by an insurance or reinsurance undertaking in the State in which its registered office is situated or in a State in which it trades through a branch, having regard to paragraphs 1 and 2 of Article 132 of this law;
2. «business conducted under freedom to provide services» : insurance business conducted by an insurance undertaking or reinsurance business conducted by an insurance or reinsurance undertaking in the territory of a State, through its registered office or an establishment situated in another State;
3. «supervisory authority» : the national authority or the national authorities empowered by law or regulation to supervise insurance or reinsurance undertakings;
4. «Bureau luxembourgeois» : the 'Bureau Luxembourgeois des Assureurs contre les Accidents d'Automobiles' as defined by the compulsory motor civil liability insurance law of 16 April 2003, as amended;
5. « probability distribution forecast » : a mathematical function that assigns to an exhaustive set of mutually exclusive future events a probability of realisation;
6. «commitment» : a commitment entered into via an insurance contract or transaction falling under Annex II to this law;
7. «diversification effects» : the reduction in the risk exposure of insurance and reinsurance undertakings and groups related to the diversification of their business, resulting from the fact that the adverse outcome from one risk can be offset by a more favourable outcome from another risk, where those risks are not fully correlated;
8. «captive insurance undertaking» : an insurance undertaking, owned either by a financial undertaking other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of Article 184, point 3 or by a non-financial undertaking, the purpose of which is to provide insurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member;
9. «captive reinsurance undertaking»: a reinsurance undertaking, owned either by a financial undertaking other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of Article 184, point 3 or by a non-financial undertaking, the purpose of which is to provide reinsurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member;
10. «financial undertaking» : any of the following entities:

a) a credit institution, a financial institution or an ancillary banking services undertaking within the meaning of Article 4, paragraph 1, points 1, 18 and 26 of EU Regulation n° 575/2013 respectively;

b) an insurance undertaking, or a reinsurance undertaking or an insurance holding company within the meaning of Article 184, point 6;

c) an investment firm or a financial institution within the meaning of Article 4, paragraph 1, point 1 of Directive 2004/39/EC; or

d) a mixed financial holding company within the meaning of Article 2, point 15 of Directive 2002/87/EC;

11. «parent undertaking»: a parent undertaking within the meaning of Article 92 of the Law on annual accounts ;

12. «establishment» of an undertaking: its registered office or one of its branches;

13. «host Member State»:

a) for non-life insurance, the Member State in which the risk is situated, where that risk is covered by an insurance undertaking or a branch situated in another Member State;

b) for life insurance, the Member State of the commitment, where the commitment is covered by an insurance undertaking or a branch situated in another Member State;

c) for reinsurance, the Member State in which the registered office of the insurance undertaking ceding the risk to the insurance or reinsurance undertaking is situated.

14. «home Member State»: any of the following:

a) for non-life insurance, the Member State in which the registered office of the insurance undertaking covering the risk is situated;

b) for life insurance, the Member State in which the registered office of the insurance undertaking covering the commitment is situated;

c) for reinsurance, the Member State in which the registered office of the reinsurance undertaking is situated;

15. «Member State of the commitment»: the Member State in which either of the following is situated:

a) the habitual residence of the policyholder;

b) if the policyholder is a legal person, that policyholder's establishment to which the contract relates;

16. «Member State of the branch»: the Member State in which the branch of an insurance undertaking or a reinsurance undertaking is situated;

17. «Member State in which the risk is situated»: any of the following:

a) the Member State in which the property is situated, where the insurance relates either to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy;

b) the Member State of registration, where the insurance relates to vehicles of any type;

"c) by way of derogation from point b), where a vehicle is dispatched from one Member State to another, the person responsible for third party liability cover within the meaning of Article 1, point a), of the law of 16 April 2003 on compulsory insurance against third party motor vehicle liability, as amended, may chose the Member State of destination as Member State in which the risk is situated, immediately upon

acceptance of delivery by the purchaser for a period of thirty days, even though the vehicle has not yet formally been registered in the Member State of destination;"[63]

d) the Member State where the policyholder took out the policy in the case of policies of a duration of four months or less covering travel risks, whatever the class concerned;

e) in all cases not explicitly covered by points a), b), c) or d), the Member State in which either of the following is situated:

- the habitual residence of the policyholder; or
- if the policyholder is a legal person, that policyholder's establishment to which the contract relates;

«17-1. « FIAA » : the *Fonds d'insolvabilité en assurance automobile* such as defined by Article 1, letter p), of the law of 16 April 2003 on compulsory insurance against third party motor vehicle liability, as amended; »[64]

18. «subsidiary undertaking»: any subsidiary undertaking within the meaning of Article 92 of the Law on annual accounts, including subsidiaries thereof;

19. «function» within a system of governance: an internal capacity to undertake practical tasks; a system of governance includes the risk-management function, the compliance function, the internal audit function and the actuarial function;

20. «fonds de garantie automobile»: the 'Fonds de Garantie Automobile' as defined by the compulsory motor civil liability insurance law of 16 April 2003, as amended;

21. «large risks»: the risks:

a) classified under the following classes:

- railway rolling stock, aircraft, ships, lake and canal vessels, as well as the civil liability relating to those vehicles,
- goods in transit,
- credit and suretyship where the policyholder is engaged professionally in an industrial or commercial activity or in one of the liberal professions and the risks relate to such activity;

b) relating to land vehicles (other than railway rolling stock), fire and natural forces, other damage to property, motor vehicle civil liability, general civil liability and miscellaneous financial loss, in so far as the policyholder exceeds the limits of at least two of the following criteria:

- a balance-sheet total of "6,6"[65] million euros;
- a net turnover of "13,6"[66] million euros;
- an average number of 250 employees during the financial year.

If the policyholder belongs to a group of undertakings for which consolidated accounts within the meaning of Directive 2013/34/UE are drawn up, the criteria set out above shall be applied on the basis of the consolidated accounts.

22. «control relationship»: the relationship between a parent undertaking and a subsidiary undertaking, as set out in Article 92 of the Law on annual accounts, or a similar relationship between any natural or legal person and an undertaking;

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[63] law of 29 March 2024
[64] law of 29 March 2024
[65] law of 29 March 2024 *(applicable from 19 October 2022)*
[66] law of 29 March 2024 *(applicable from 19 October 2022)*

23. «close links»: a situation in which two or more natural or legal persons are linked by control or participation, or a situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship;

24. "«regulated market»: a regulated market as defined in Article 1, point 31), of the law of 30 May 2018 on markets in financial instruments;"[67]

25. «risk measure» : a mathematical function which assigns a monetary amount to a given probability distribution forecast and increases monotonically with the level of risk exposure underlying that probability distribution forecast;

26. «participation» : the ownership, direct or by way of a control relationship, of 20 % or more of the voting rights or capital of an undertaking;

27. «qualifying holding» : a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking;

« 27-1. « critical ICT third-party service provider » : a critical ICT third-party service provider such as defined by Article 3, point 23, of Regulation (EU) 2022/2554 ; »[68]

28. «reinsurance»: either of the following:

    a) the activity consisting in accepting risks ceded by an insurance undertaking or by another reinsurance undertaking; or

    b) in the case of the association of underwriters known as Lloyd's, the activity consisting in accepting risks, ceded by any member of Lloyd's, by an insurance or reinsurance undertaking other than the association of underwriters known as Lloyd's; or

    c) the cover by a reinsurance undertaking of the commitments of an institution for occupational retirement provision falling under the scope of Directive "EU 2016/2341"[69], where the law of the institution's home Member State permits such cover;

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

    a) the explicit and material consideration of the time value of money;

    b) contractual provisions to moderate the balance of economic experience between the parties over time to achieve the target risk transfer;

30. «concentration risk»: all risk exposures with a loss potential which is large enough to threaten the solvency or the financial position of insurance and reinsurance undertakings;

31. «credit risk»: the risk of loss or of adverse change in the financial situation, resulting from fluctuations in the credit standing of issuers of securities, counterparties and any debtors to which insurance and reinsurance undertakings are exposed, in the form of counterparty default risk, or spread risk, or market risk concentrations;

32. «liquidity risk»: the risk that insurance and reinsurance undertakings are unable to realise investments and other assets in order to settle their financial obligations when they fall due;

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[67] law of 15 December 2019
[68] law of 29 March 2024
[69] law of 15 December 2019

33. «market risk» : the risk of loss or of adverse change in the financial situation resulting, directly or indirectly, from fluctuations in the level and in the volatility of market prices of assets, liabilities and financial instruments;

34. «operational risk»: the risk of loss arising from inadequate or failed internal processes, personnel or systems, or from external events;

35. «underwriting risk»: the risk of loss or of adverse change in the value of insurance liabilities, due to inadequate pricing and provisioning assumptions;

36. «branch»: an agency or a branch of an insurance or reinsurance undertaking which is located in the territory of a Member State other than the home Member State;

37. «risk-mitigation techniques»: all techniques which enable insurance and reinsurance undertakings to transfer part or all of their risks to another party;

38. «intra-group transaction»: any transaction by which an insurance or reinsurance undertaking relies, either directly or indirectly, on other undertakings within the same group or on any natural or legal person linked to the undertakings within that group by close links, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment;

39. «special purpose vehicle («SPV») »: any undertaking, whether incorporated or not, other than an existing insurance or reinsurance undertaking, which assumes risks from insurance or reinsurance undertakings and which fully funds its exposure to such risks through the proceeds of a debt issuance or any other financing mechanism where the repayment rights of the providers of such debt or financing mechanism are subordinated to the reinsurance obligations of such an undertaking.

Chapter 2 – *Taking-up of business*

Art. 44 – *Principle of authorisation*

(1) Without prejudice to the exceptions referred to in chapter 9 of the present subtitle and the Grand-Ducal regulations taken pursuant to Article 312, the taking-up in or from Luxembourg of the business of direct insurance referred to in Annexes I and II of this law or the business of reinsurance shall be subject to prior authorisation.

(2) The authorisation referred to in paragraph 1 shall be sought from *(…)*[70] the CAA by the following entities:

a) any insurance or reinsurance undertaking which is establishing its registered office within the territory of the Grand-Duchy of Luxembourg; or

b) any insurance undertaking which, having received an authorisation pursuant to paragraph 1, wishes to extend its business to an entire insurance class or to insurance classes other than those already authorised.

The contents of the application shall be fixed by a CAA regulation.

Art. 45 – *Scope of authorisation*

(1) An authorisation granted pursuant to the preceding Article shall be valid for the entire EEA. It shall permit insurance and reinsurance undertakings to pursue business there, that authorisation covering also the right of establishment and the freedom to provide services.

[70] removed by the law of 21 July 2021 (1)

(2) Subject to Article 44, authorisation shall be granted for a particular class of direct insurance as mentioned in Part A of Annex I or in Annex II. It shall cover the entire class, unless the applicant wishes to cover only some of the risks pertaining to that class.

The risks included in a class shall not be included in any other class except in the cases referred to in Article 46.

Without prejudice to Article 96, authorisation may be granted for two or more of the classes.

(3) In regard to non-life insurance, the authorisation may also be granted for the groups of classes listed in Part B of Annex I, by reference to the appropriate heading.

The CAA may limit the authorisation requested for a class to the operations described in the business plan, the content of which is set by a CAA regulation.

(4) Undertakings subject to this law may engage in the assistance activity referred to in Article 179 only if they have received authorisation for class 18 in Part A of Annex I, without prejudice to Article 46, paragraph 1. In that event this law shall apply to the operations in question.

(5) In regard to reinsurance undertakings, authorisation shall be granted for non-life reinsurance activity, life reinsurance activity or all kinds of reinsurance activity.

The application for authorisation shall be considered in the light of the scheme of operations to be submitted pursuant to Article 49, paragraph 1, point c) and the fulfilment of the conditions laid down for authorisation by this law and the regulations made thereunder.

Art. 46 – *Ancillary risks*

(1) A Luxembourg insurance undertaking which has obtained an authorisation for a principal risk belonging to one class or a group of classes as set out in Annex 1 may also insure risks included in another class without the need to obtain authorisation in respect of such risks provided that the risks fulfil all the following conditions:

a) they are connected with the principal risk;

b) they concern the object which is covered against the principal risk; and

c) they are covered by the contract insuring the principal risk.

(2) By way of derogation from paragraph 1, the risks included in classes 14, 15 and 17 in Part A of Annex I shall not be regarded as risks ancillary to other classes.

However, legal expenses insurance as set out in class 17 may be regarded as a risk ancillary to class 18, where the conditions laid down in paragraph 1 and either of the following conditions are fulfilled:

a) the principal risk relates solely to the assistance provided for persons who fall into difficulties while travelling, while away from their home or their habitual residence; or

b) the insurance concerns disputes or risks arising out of, or in connection with the use of sea-going vessels.

Art. 47 – *Legal form of the insurance or reinsurance undertaking*

(1) Luxembourg insurance and reinsurance undertakings may only be approved if they adopt either of the following legal forms:

a) European company, limited company, corporate partnership limited by shares, cooperative society or cooperative society organised as a limited company, as defined by the amended Law of 10 August 1915 on commercial companies;

b) mutual insurance association as referred to in Article 48;

c) European cooperative society defined by Regulation (EC) No 1435/2003.

(2) *(repealed by the law of 15 December 2019)*

(3) Luxembourg public-law insurance and reinsurance undertakings set up by the State can also be approved, provided that such undertakings have insurance or reinsurance operations as their object, under conditions equivalent to those under which undertakings governed by private law operate.

Art. 48 – *Mutual insurance associations*

(1) A mutual insurance association is an association of natural or legal persons formed to insure the risks of its members on a non-profit-making basis.

A mutual insurance association is governed by its memorandum of association and the laws and regulations governing the insurance sector in the Grand Duchy of Luxembourg.

The association shall have at least three members.

(2) Under penalty of nullity, a mutual insurance association shall be formed by a special notarial deed.

The memorandum of association of a mutual insurance association shall indicate:

a) the identity of the natural or legal persons who signed the deed or on behalf of whom it was signed;

b) the name of the association;

c) the registered office location, which must be situated in the Grand Duchy of Luxembourg;

d) its object;

e) the amount of the subscribed partnership fund, where applicable;

f) the initial amount of the subscribed fund;

g) the conditions laid down for admission of members and termination of membership;

h) the obligation for the members to pay their contributions when they are due and called by the association;

i) the date of closure of the accounts and the date of the annual ordinary general meeting;

j) the powers of the general meeting and its means of convening;

k) insofar as they do not derive from the law, the rules that determine the number of members of the bodies responsible for representation relative to third parties, administration, management, supervision or control of the association and the procedure for appointing them, as well as the distribution of powers between the said bodies;

l) the duration of the association;

m) the rules to be followed for amendments to the memorandum and articles of association;

n) the procedures for liquidation of the association.

The memorandum of association and any amendment thereto shall be published pursuant to the terms of "Title I, Chapter V*bis*, of the law of 19 December 2002 on the trade and companies register and the accounting and annual accounts of companies".[71]

(3) A mutual insurance association exists and has legal personality with effect from execution of the memorandum of association referred to in paragraph 2.

It is registered in the Trade and Companies Register.

When the memorandum and articles of association are filed at the Trade and Companies Registry, the surnames, forenames, occupations and domiciles of the directors and the address of the registered office shall be indicated. Any amendment thereto shall be notified to the Trade and Companies Registry.

All deeds and documents emanating from a mutual insurance association shall bear the words "mutual insurance association" legibly reproduced in full and placed immediately before or after the association's name.

Mutual insurance associations are subject to the legal formalities for the deposit and publication of their annual accounts under the Law on annual accounts.

(4) The mutual insurance association shall be administered by a board of directors having at least three members.

The board of directors shall be empowered to perform all acts necessary for, or conducive to, achievement of the object, with the exception of any which the memorandum and articles of association reserves for the general meetings of the association's members.

The board shall represent the association in regard to third parties and the courts, whether as plaintiff or defendant.

Art. 49 – *Conditions for authorisation*

(1) Luxembourg insurance and reinsurance undertakings may be authorised only on condition that they:

a) with regard to insurance undertakings,

- limit their object to the business of insurance and the operations directly arising therefrom, to the exclusion of all other commercial business;
- are effectively run by at least one insurance undertaking executive, appointed by a service agreement. However, on the basis of the insurance undertaking's business plan, the CAA may require the establishment of a board comprising up to three members authorised as insurance undertaking executives. A CAA regulation shall lay down the criteria applying to this sub-paragraph.

b) with regard to reinsurance undertakings,

- limit their object to the business of reinsurance and related operations; that requirement may include a holding company function and activities linked to financial sector activities within the meaning of Article 2, point 8 of Directive 2002/87/EC;

[71] law of 27 February 2018

- are effectively run by at least one reinsurance undertaking executive who is a natural person or by an authorised management company of reinsurance undertakings in accordance with Article 265, appointed by a service agreement; In the event that the manager is a management company of reinsurance undertakings, the latter must be represented both towards the CAA and third parties by at least one delegated reinsurance undertaking executive who is a natural person fulfilling the same conditions for authorisation as a reinsurance undertaking executive. However, on the basis of the reinsurance undertaking's business plan, the CAA may require the establishment of a board comprising up to three members authorised as reinsurance undertaking executives or as delegated reinsurance undertaking executives. A CAA regulation shall lay down the criteria applying to this sub-paragraph;
- ensure the daily management either by their own personnel or by a management company of reinsurance undertakings appointed by a service agreement;

c) present a business plan as defined by a CAA regulation;

d) hold the eligible basic own funds necessary to cover the absolute floor of the Minimum Capital Requirement provided for in Article 112;

e) show evidence that they will be in a position to hold the eligible own funds necessary to cover the Solvency Capital Requirement, as provided for in Article 104;

f) show evidence that they will be in a position to hold the eligible own funds necessary to cover the Minimum Capital Requirement, as provided for in Article 112;

g) show evidence that they will be in a position to comply with the governance system referred to in Chapter 4, Section 2 of this subtitle;

h) in regard to non-life insurance, to communicate the name and address of all claims representatives meeting the requirements to be fixed by a CAA regulation and appointed in each Member State other than the Grand Duchy of Luxembourg, if the risks to be covered are classified in class 10 of Part A of Annex I to this law, other than carrier's liability.

(2) Luxembourg insurance and reinsurance undertakings must inform the CAA prior to any material change to the articles of association, any change of executive as well as any extension of the business or major amendment to the business plan and any change of approved independent auditor.

A CAA regulation shall determine the requirements of this paragraph.

Art. 50 – *Close links*

Where close links exist between the Luxembourg insurance undertaking or reinsurance undertaking and other natural or legal persons, the authorisation shall be granted only if those links do not prevent the effective exercise of the CAA's supervisory functions.

Authorisation shall also be refused if the legislative or regulatory provisions of a third country governing one or more natural or legal persons with which the insurance or reinsurance undertaking has close links, or in case of difficulties involved in the enforcement of those provisions, prevent the effective exercise of the supervisory functions.

Insurance and reinsurance undertakings must provide the information required by the CAA to monitor compliance with the conditions referred to in this Article on a continuous basis.

Art. 51 – *Central administration of insurance and reinsurance undertakings*

Any Luxembourg insurance or reinsurance undertaking must establish its central administration in the Grand Duchy of Luxembourg.

Art. 52 – *Economic requirements of the market*

The application for authorisation may not be considered in the light of the economic requirements of the market.

Art. 53 – *Shareholders and members with qualifying holdings*

(1) The approval of a Luxembourg insurance or reinsurance undertaking shall be subject to the communication to the CAA of the identities of the shareholders or members, direct or indirect, whether natural or legal persons, who have qualifying holdings in that undertaking and of the amounts of those holdings.

The qualifications of the shareholders or members must satisfy the CAA, taking into account the need to ensure the sound and prudent management of the undertaking. The concept of sound and prudent management shall be considered in the light of the evaluation criteria laid down in Article 89.

(2) For the purposes of paragraph 1, the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC as well as the conditions regarding aggregation thereof laid down in Article 12 paragraphs 4 and 5 of that Directive, shall be taken into account.

Voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I of Directive 2004/39/EC shall not be taken into account, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of the acquisition.

"Art. 54 – *Prior consultation and information of the competent authorities of other Member States and of EIOPA"*[72]

(1) The CAA shall consult the competent authorities of other Member States prior to the granting of an authorisation to an insurance or reinsurance undertaking which is:

a) a subsidiary of an insurance or reinsurance undertaking authorised in that other Member State;

or

b) a subsidiary of the parent undertaking of an insurance or reinsurance undertaking authorised in that other Member State,

or

c) an undertaking controlled by the same persons, whether natural or legal, who control an insurance or reinsurance undertaking authorised in that other Member State.

(2) The CAA shall consult the competent authorities of other Member States which are responsible for the supervision of credit institutions or investment firms prior to the granting of an authorisation to an insurance or reinsurance undertaking which is:

a) a subsidiary of a credit institution or investment firm authorised in the EEA;

[72] law of 21 July 2021 (2)

b) a subsidiary of the parent undertaking of a credit institution or investment firm authorised in the EEA; or

c) an undertaking controlled by the same persons, whether natural or legal, who control a credit institution or investment firm authorised in the EEA.

(3) The CAA shall in particular consult the competent authorities when assessing the suitability of the shareholders and the fit and proper requirements of all persons who effectively run the insurance or reinsurance undertaking or have other key functions within the insurance or the reinsurance undertaking also utilised in the management of another entity of the same group.

(4) The CAA shall inform the authorities of other Member States of any information regarding the suitability of shareholders and the fit and proper requirements of all persons who effectively run the insurance or reinsurance undertaking or have other key functions which may be of relevance to the other competent authorities concerned in respect to their granting of an authorisation as well as for the on-going assessment of compliance with operating conditions.

"(5) The CAA informs EIOPA and the supervisory authorities of the relevant host Member States prior to authorising an insurance or reinsurance undertaking whose scheme of operations indicates that a part of its activities will be based on the freedom to provide services or the freedom of establishment in such Member State, and whose scheme of operations also indicates that those activities are likely to be of relevance with respect to the host Member State's market.

The notification foreseen in subparagraph 1 is without prejudice to the supervisory mandate granted to the CAA by this law, as supervisory authority of the home or the host Member State."[73]

Art. 55 - ***Extension of authorisation of Luxembourg insurance undertakings***

(1) A Luxembourg insurance undertaking seeking authorisation to extend its business to other classes or to extend an authorisation covering only some of the risks pertaining to one class must submit a business plan concerning such other classes, the details of which are prescribed by a CAA regulation.

Moreover, it must prove that it has available eligible own funds to cover the Solvency Capital Requirement and the Minimum Capital Requirement, as provided for in Article 104, paragraph 1 and Article 112.

(2) Without prejudice to paragraph 1, a Luxembourg insurance undertaking pursuing life insurance activities and seeking authorisation to extend its business to the risks listed in classes 1 or 2 in Part A of Annex 1 as referred to in Article 96, shall demonstrate that it:

a) possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for life insurance undertakings together with the absolute floor of the Minimum Capital Requirement for non-life insurance undertakings, as referred to in Article 112;

b) undertakes to cover the minimum financial obligations set out by a CAA regulation.

(3) Without prejudice to paragraph 1, an insurance undertaking pursuing non-life activities for the risks listed in classes 1 or 2 in Part A of Annex I, and seeking authorisation to extend its business to life insurance risks as referred to in Article 96, shall demonstrate that it:

[73] law of 21st July 2021 (2)

a) possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for life insurance undertakings together with the absolute floor of the Minimum Capital Requirement for non-life insurance undertakings, as referred to in Article 112;

b) undertakes to cover the minimum financial obligations set out by a CAA regulation.

Chapter 3 – *Supervisory authorities and general rules*

Art. 56 – *General principles of supervision*

The supervision of the CAA shall be based on a prospective and risk-based approach, and shall include the verification on a continuous basis of the proper operation of the insurance or reinsurance business and of the compliance with supervisory provisions by insurance and reinsurance undertakings.

Such supervision shall comprise an appropriate combination of documentary reviews and on-site inspections.

The CAA shall ensure that the requirements laid down in this law and in its implementing regulations are applied in a manner which is proportionate to the nature, scale and complexity of the risks inherent in the business of an insurance or reinsurance undertaking.

Art. 57 – *Supervisory authorities and scope of supervision*

(1) The financial supervision of insurance and reinsurance undertakings, including that of the business they pursue either through branches or under the freedom to provide services, shall be the sole responsibility of the CAA.

(2) Financial supervision pursuant to paragraph 1 shall include verification, with respect to the entire business of the insurance and reinsurance undertaking, of its state of solvency, of the establishment of technical provisions, of its assets and of the eligible own funds, in accordance with the rules laid down or practices followed in the Grand Duchy of Luxembourg in accordance with provisions adopted at European Union level.

(3) If the CAA has reason to consider that the activities of an insurance or reinsurance undertaking where the Grand Duchy of Luxembourg is the host Member State might affect the latter's financial soundness, it shall inform the supervisory authorities of the home Member State of that undertaking.

"The CAA may inform the supervisory authority of the home Member State of an insurance or reinsurance undertaking for which the Grand Duchy of Luxembourg is the host Member State, where it has serious and justified concerns regarding consumer protection. This notification shall be sufficiently detailed to allow a proper assessment."[74]

(4) If the CAA is informed by the competent supervisory authorities of a host Member State that the activities of a Luxembourg insurance or reinsurance undertaking being pursued on its territory might affect that State's financial soundness, the CAA shall determine whether the undertaking is complying with the prudential principles that apply to it.

"(5) In addition to the notification provided for in Article 54, paragraph 5, the CAA shall inform EIOPA and the competent authorities of the host Member States where it detects a deterioration of financial conditions or other emerging risks arising from activities which are carried out by a Luxembourg insurance or reinsurance undertaking on the basis of the freedom to provide services or the freedom of establishment and which are likely to

[74] law of 21 July 2021 (2)

have a cross-border effect. This notification shall be sufficiently detailed to allow a proper assessment.

(6) The CAA may refer the matter to EIOPA and request its assistance if no bilateral solution can be found in any of the situations referred to in paragraphs 3 and 5.

(7) The notifications provided for in paragraphs 3 and 5 are without prejudice to the supervisory mandate granted to the CAA by this law, as the home or host Member State supervisory authority."[75]

Art. 58 - ***Transparency and accountability***

(1) The CAA shall conduct its tasks in a transparent and accountable manner with due respect for the protection of confidential information.

(2) The CAA shall ensure that the following information is disclosed:

a) the texts of laws, regulations, administrative rules and general guidance in the field of insurance regulation;

b) the general criteria and methods, including the tools developed in accordance with Article 61, used in the supervisory review process as set out in Article 63;

c) aggregate statistical data on key aspects of the application of the prudential framework;

d) the manner of exercise of the options provided for in Directive 2009/138/EC;

e) the objectives of the supervision and its main functions and activities.

The CAA shall ensure that these disclosures will enable a comparison of the supervisory approaches adopted by the supervisory authorities of the different Member States.

The information above shall be accessible at a single electronic location.

Art. 59 - ***Prohibition of refusal of reinsurance contracts or retrocession contracts***

For the purposes of assessing the financial situation of an insurance or reinsurance undertaking, the CAA may not refuse a reinsurance or a retrocession contract concluded with another insurance or reinsurance undertaking of the EEA on grounds directly related to the financial soundness of that other insurance or reinsurance undertaking.

Art. 60 - ***Supervision of branches established in another Member State***

(1) Where a Luxembourg insurance or reinsurance undertaking carries on business through a branch, the CAA may, after having in advance informed the supervisory authorities of the host Member State concerned, carry out itself, or through the intermediary of persons appointed for that purpose, on-site verifications of the information necessary to ensure the financial supervision of the undertaking. The supervisory authorities of the host Member State of the branch may participate in that verification.

(2) Where an insurance or reinsurance undertaking authorised in another Member State carries on business in Luxembourg through a branch, the supervisory authorities of the home Member State may, after having informed the CAA, carry out themselves, or through the intermediary of persons appointed for that purpose, on-site verifications of

[75] law of 21 July 2021 (2)

the information necessary to ensure the financial supervision of the undertaking. The CAA may participate in these verifications.

(3) Where the CAA has informed the supervisory authorities of the Member State of the branch that it intends to carry out on-site verifications in accordance with paragraph 1 and that it is prevented from exercising its right to carry out such verifications or where the CAA is, in practice, not able to exercise its right to carry out such verifications in accordance with paragraph 2, it may refer the matter to EIOPA.

(4) EIOPA may participate in on-site verifications when these are carried out by at least two supervisory authorities.

Art. 61 – *General supervisory powers*

The CAA may introduce independently of the calculation of the Solvency Capital Requirement and where appropriate, necessary quantitative tools under the supervisory review process to assess the ability of the insurance or reinsurance undertakings to cope with possible events or future changes in economic conditions that could have unfavourable effects on their overall financial standing. The CAA may require that corresponding tests are performed by the undertakings.

Art. 62 – *Information to be provided for supervisory purposes*

(1) Insurance and reinsurance undertakings shall submit to the CAA the information which is necessary for the purposes of supervision. That information shall include as a minimum the information necessary to perform the following tasks within the framework of the process referred to in Article 63:

a) to assess the system of governance applied by the undertakings, the business they are pursuing, the valuation principles applied for solvency purposes, the risks faced and the risk-management systems, and their capital structure, requirements and management;

b) to make any appropriate decisions resulting from the exercise of their supervisory rights and duties.

(2) The CAA may:

a) determine the nature, the scope and the format of the information referred to in paragraph 1 which it requires Luxembourg insurance and reinsurance undertakings to submit at the following points in time:

- at predefined periods;
- upon occurrence of predefined events;
- following enquiries regarding the situation of an insurance or reinsurance undertaking;

b) obtain any information regarding contracts which are held by intermediaries or contracts which are entered into with third parties; and

c) require information from external experts, such as auditors and actuaries.

(3) The information referred to in paragraphs 1 and 2 shall comprise the following:

a) qualitative or quantitative elements, or any appropriate combination thereof;

b) historic, current or prospective elements, or any appropriate combination thereof; and

c) data from internal or external sources, or any appropriate combination thereof.

(4) The information referred to in paragraphs 1 and 2 shall comply with the following principles:

a) it must reflect the nature, scale and complexity of the business of the undertaking concerned, and in particular the risks inherent in that business;

b) it must be accessible, complete in all material respects, comparable and consistent over time; and

c) it must be relevant, reliable and comprehensible.

(5) Luxembourg insurance and reinsurance undertakings shall have appropriate systems and structures in place to fulfil the requirements laid down in paragraphs 1 to 4 as well as a written policy, approved by the administrative, management or supervisory body of the insurance or reinsurance undertaking, ensuring the on-going appropriateness of the information submitted.

Art. 63 - *Supervisory review process*

(1) The CAA reviews and evaluates the strategies, processes and information reporting procedures which are established by Luxembourg insurance and reinsurance undertakings to comply with the laws, regulations and administrative provisions adopted pursuant to the prudential regulation.

That review and evaluation shall comprise the assessment of the qualitative requirements relating to the system of governance, the assessment of the risks which the undertakings concerned face or may face and the assessment of the ability of those undertakings to calculate those risks taking into account the environment in which the undertakings are operating.

(2) The CAA shall in particular review and evaluate compliance with the following:

a) the requirements for a system of governance, as referred to in Chapter 4, Section 2 of this subtitle, including the own-risk and solvency assessment;

b) the requirements for technical provisions as set out in Chapter 6, Section 3 of this subtitle;

c) the capital requirements as set out in Chapter 6, Sections 5 and 6 of this subtitle;

d) the investment rules as set out in Chapter 6, Section 7 of this subtitle;

e) the requirements relating to the quality and quantity of own funds as set out in Chapter 6, Section 4 of this subtitle;

f) where the insurance or reinsurance undertaking uses a full or partial internal model, on-going compliance with the requirements for full and partial internal models set out in Chapter 6, Section 5, Subsection 3 of this subtitle which must be complied with at all times.

(3) The CAA shall have in place appropriate monitoring tools that enable it to identify deteriorating financial conditions in an insurance or reinsurance undertaking and to monitor how that deterioration is remedied.

(4) The CAA shall assess the adequacy of the methods and practices of Luxembourg insurance and reinsurance undertakings designed to identify possible events or future changes in economic conditions that could have adverse effects on the overall financial standing of the undertaking concerned.

The CAA shall assess the ability of the undertakings to withstand those possible events or future changes in economic conditions.

(5) The CAA shall conduct regular reviews, evaluations and assessments referred to in paragraphs 1, 2 and 4.

Without prejudice to the frequencies set at the level of the EEA, the CAA shall establish the minimum frequency and the scope of those reviews, evaluations and assessments having regard to the nature, scale and complexity of the activities of the insurance or reinsurance undertaking concerned.

Art. 64 – *Requirement for a capital add-on*

(1) The CAA may in exceptional circumstances impose a capital add-on for a Luxembourg insurance or reinsurance undertaking by a decision stating the reasons. That possibility shall exist only in the following cases:

a) the CAA concludes that the risk profile of the insurance or reinsurance undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using the standard formula in accordance with Chapter 6, Section 5, Subsection 2 of this subtitle I, and:

- the requirement to use an internal model under "Article 111"[76] is inappropriate or has been ineffective; or
- a partial or full internal model is being developed in accordance with Article 110;

or

b) the CAA concludes that the risk profile of the insurance or reinsurance undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using an internal model or partial internal model in accordance with Chapter 6, Section 5, Subsection 3 of this subtitle, because certain quantifiable risks are captured insufficiently and the adaptation of the model to better reflect the given risk profile has failed within an appropriate timeframe;

or

c) the CAA concludes that the system of governance of an insurance or reinsurance undertaking deviates significantly from the standards laid down in Chapter 6, Section 3 of this subtitle, so that those deviations prevent it from being able to properly identify, measure, monitor, manage and report the risks that it is or could be exposed to and that the application of other measures is in itself unlikely to improve the deficiencies sufficiently within an appropriate timeframe.

or

d) the CAA confirms that the insurance or reinsurance undertaking is applying the matching adjustment, the volatility adjustment or transitional measures while the risk profile of that undertaking deviates significantly from the assumptions underlying those adjustments, corrections and transitional measures

(2) In the circumstances set out in points (a) and (b) of paragraph 1 the required capital add-on shall be calculated in such a way as to ensure that the undertaking complies with Article 105, paragraph 3.

In the circumstances set out in paragraph 1, point (c) the capital add-on shall be proportionate to the material risks arising from the deficiencies which gave rise to the decision of the CAA to set the add-on.

In the circumstances set out in paragraph 1, point (d) the required capital add-on shall be proportionate to the material risks arising from the deviation referred to therein.

[76] law of 15 December 2019

(3) In the cases set out in points (b) and (c) of paragraph 1 the CAA shall ensure that the insurance or reinsurance undertaking makes every effort to remedy the deficiencies that led to the imposition of the capital add-on.

(4) The capital add-on referred to in paragraph 1 shall be reviewed at least once a year by the CAA and be removed when the undertaking has remedied the deficiencies which led to its imposition.

(5) The Solvency Capital Requirement including the capital add-on imposed shall replace the Solvency Capital Requirement which was shown to be inadequate.

Notwithstanding the first subparagraph above, the Solvency Capital Requirement shall not include the capital add-on imposed in accordance with paragraph 1 point (c) for the purposes of the calculation of the risk margin referred to in Article 101, paragraphs 3, 4 and 5.

Art. 65 - ***Supervision of outsourced functions and activities***

(1) Without prejudice to Article 81, Luxembourg insurance and reinsurance undertakings which outsource an insurance or reinsurance function or activity shall take the necessary steps to ensure that the following conditions are satisfied:

a) the service provider must cooperate with the CAA with regard to the outsourced function or activity;

b) the insurance and reinsurance undertakings, their auditors and the CAA must have effective access to data related to the outsourced functions or activities;

c) the CAA must have effective access to the business premises of the service provider and must be able to exercise those rights of access.

(2) The CAA may carry out itself, or through the intermediary of persons it appoints for that purpose, on-site inspections at the premises of the service provider. For this purpose, the CAA shall inform the appropriate authority of the Member State of the service provider prior to conducting the on-site inspection. In the case of a non-supervised entity the appropriate authority shall be the supervisory authority of that Member State.

It may delegate such on-site inspections to the supervisory authorities of the Member State where the service provider is located.

(3) Where a service provider is located in the Grand Duchy of Luxembourg, the supervisory authority of the non-Luxembourg insurance or reinsurance undertaking of the EEA may carry out itself, or through the intermediary of persons appointed for that purpose, on-site inspections at the premises of the service provider. The supervisory authority of the insurance or reinsurance undertaking shall inform the competent authority for the supervision of the service provider prior to conducting the on-site inspection. In the case of a non-supervised entity “the appropriate authority shall be the CAA”[77].

The supervisory authorities of the Member State of the insurance or reinsurance undertaking may delegate such on-site inspections to the CAA.

(4) Where the CAA has informed the appropriate authority of the Member State of the service provider that it intends to carry out an on-site inspection in accordance with paragraph 2 and that it is prevented from exercising its right to carry out such on-site inspection or where the CAA is unable in practice to exercise its right to carry out such on-site inspection in accordance with paragraph 3, it may refer the matter to EIOPA.

[77] law of 27 February 2018

(5) EIOPA may participate in on-site inspections where they are carried out jointly by two or more supervisory authorities.

Art. 66 – *Transfer of portfolio by a Luxembourg insurance or reinsurance undertaking*

(1) A Luxembourg insurance and reinsurance undertaking may transfer all or part of its insurance or reinsurance portfolio of contracts to an accepting insurance or reinsurance undertaking established within the EEA or to a third country undertaking established in the Grand Duchy of Luxembourg, provided that the accepting undertaking, after taking the transfer into account, possesses the necessary eligible own funds to cover the Solvency Capital Requirement set out in Article 104.

Where the accepting undertaking is established in a Member State other than the Grand Duchy of Luxembourg, such transfer shall be authorised only after the supervisory authorities of the home Member State of the accepting undertaking have certified that the accepting undertaking possesses the Solvency Capital Requirement referred to in the preceding subparagraph.

(2) Paragraphs 3 to 5 and Articles 68 and 69, paragraphs 1 and 2 shall apply only to insurance undertakings.

(3) Where a branch proposes to transfer all or part of its portfolio of contracts, the CAA shall consult the Member State where that branch is situated.

(4) In the circumstances referred to in paragraphs 1 and 3, the CAA shall authorise the transfer after obtaining the agreement of the authorities of the Member States where the risks or commitments are situated, that the contracts have been concluded either under the right of establishment or the freedom to provide services.

(5) The absence of any response within the period of three months from the competent authorities whose opinion or agreement has been requested by the CAA shall be considered as a favourable opinion or a tacit consent.

(6) Any total or partial transfer to an accepting undertaking established outside the territory of the EEA shall be subject to the prior authorisation of the CAA.

The transfer may be authorised only after the supervisory authorities of the home Member State of the accepting undertaking have certified that after taking the portfolio transfer into account the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement.

(7) The provisions of this Article as well as those of Articles 68 and 69 shall apply also to portfolio transfers resulting from mergers or splitting-up of undertakings.

Art. 67 – *Transfer of the claims fluctuation provision*

A transfer of the claims fluctuation provision created on the basis of the risks to be transferred as referred to in Article 75, paragraph 2, of the Law on annual accounts can be authorised only if the following two conditions are satisfied:

a) the legislation of the country in which the accepting undertaking's registered office is located requires the compulsory establishment of an equalisation provision for the risk categories concerned by the transfer in accordance with Article 30 of Directive 91/674/EEC;

b) the financial resources represented by the said claims fluctuation provision may only be used by the accepting undertaking to guarantee its contractual commitments arising from a fluctuation of claims within the transferred portfolio.

A transfer of the claims fluctuation provision may take place only within the limits and up to the amounts of the equalisation provision authorised for the transferable risk categories in the accepting undertaking's own country.

Art. 68 – *Transfer of portfolio by a non-Luxembourg insurance undertaking of the EEA*

Where the CAA is consulted, it shall provide its opinion and agreement to the authorities of the home Member State of the ceding insurance undertaking within three months of receipt of the consultation request. The absence of any response shall be considered as a tacit consent.

Art. 69 - *Publication and enforceability of the transfer*

(1) For risks situated and commitments assumed in the Grand Duchy of Luxembourg, any portfolio transfer authorised pursuant to Luxembourg legislation or that of another Member State shall be published in the "Mémorial".

The CAA shall be responsible for publishing transfers authorised pursuant to Article 66.

The CAA may give policyholders the option of cancelling their contracts within three months of the transfer's publication.

(2) Transfers of insurance portfolios authorised in accordance with Luxembourg legislation or the legislation of another Member State become automatically binding on policyholders, insured parties, beneficiaries and other creditors with effect from publication under paragraph 1.

(3) Authorised portfolio transfers from a Luxembourg insurance or reinsurance undertaking to another insurance or reinsurance undertaking may become binding on ceding insurance or reinsurance undertakings, beneficiaries, and other third parties under such conditions as may be determined by a CAA regulation.

Chapter 4 - *Conditions governing business*

Section 1 – Responsibility of the administrative, management or supervisory body

Art. 70 – *Responsibility of the administrative, management or supervisory body*

The administrative, management or supervisory body of the insurance or reinsurance undertaking has the ultimate responsibility for the compliance, by the undertaking concerned, with the laws, regulations and administrative provisions adopted pursuant to prudential regulation.

Section 2 - System of governance

Art. 71 – *General governance requirements*

(1) Luxembourg insurance and reinsurance undertakings shall put in place an effective system of governance which provides for sound and prudent management of the business.

That system shall at least include an adequate transparent organisational structure with a clear allocation and appropriate segregation of responsibilities and an effective system for ensuring the transmission of information. It shall include compliance with the requirements laid down in Articles 72 to 81.

The system of governance shall be subject to regular internal review.

(2) The system of governance shall be proportionate to the nature, scale and complexity of the operations of the insurance or reinsurance undertaking.

(3) Luxembourg insurance and reinsurance undertakings shall have in place written policies in relation to at least risk management, internal control, internal audit and, where relevant, outsourcing. They shall ensure that those policies are implemented.

Those written policies shall be reviewed at least annually. They shall be subject to prior approval by the administrative, management or supervisory body and be adapted in view of any significant change in the system or area concerned.

(4) Luxembourg insurance and reinsurance undertakings shall take reasonable steps to ensure continuity and regularity in the performance of their activities, including the development of contingency plans. To that end, the undertaking shall employ appropriate and proportionate systems, resources and procedures "and, in particular, to set up and manage networks and information systems in accordance with Regulation (EU) 2022/2554" [78].

Art. 72 – *Fit and proper requirements for persons who effectively run the undertaking or have other key functions*

(1) Luxembourg insurance and reinsurance undertakings shall ensure that all persons who effectively run the undertaking or have other key functions at all times fulfil the following requirements:

a) their professional qualifications, knowledge and experience are adequate to enable sound and prudent management; and

b) they shall demonstrate to be of good repute and integrity in accordance with Article 274.

(2) Luxembourg insurance and reinsurance undertakings shall notify the CAA of any changes to the identity of the persons who effectively run the undertaking or are responsible for other key functions, along with all information needed to assess whether any new persons appointed to manage the undertaking are fit and proper.

(3) Insurance and reinsurance undertakings shall notify the CAA if any of the persons referred to in paragraph 2 have been replaced because they no longer fulfil the requirements referred to in paragraph 1.

Art. 73 – *Proof of good repute*

Proof of good repute shall be provided in accordance with Article 274.

The CAA shall inform the other Member States and the Commission of the authorities or bodies which are competent to issue the documents referred to in paragraphs 2 and 3 of Article 274, where the Grand Duchy of Luxembourg is the home or the origin Member State of the persons concerned.

Art. 74 – *Risk management*

(1) Insurance and reinsurance undertakings shall have in place an effective risk-management system comprising strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report, on a continuous basis the

[78] Law of 1st July 2024

risks, at an individual and at an aggregated level, to which they are or could be exposed, and their interdependencies.

That risk-management system shall be effective and well-integrated into the organisational structure and in the decision-making processes of the insurance or reinsurance undertaking and must be taken into account by the persons who effectively run the undertaking or have other key functions.

(2) The risk-management system shall cover the risks to be included in the calculation of the Solvency Capital Requirement as set out in Article 105, paragraph 4 as well as the risks which are not or not fully included in the calculation thereof.

The risk-management system shall cover at least the following areas:

a) underwriting and reserving;

b) asset–liability management;

c) investment, in particular in derivatives and similar commitments;

d) liquidity and concentration risk management;

e) operational risk management;

f) reinsurance and other risk-mitigation techniques.

The written policy on risk management referred to in Article 71, paragraph 3 shall comprise policies relating to points (a) to (f) of the second subparagraph of this paragraph.

(3) As regards investment risk, Luxembourg insurance and reinsurance undertakings must be able to demonstrate that they comply with Chapter 6, Section 7.

(4) Luxembourg insurance and reinsurance undertakings shall provide for a risk-management function which shall be structured in such a way as to facilitate the implementation of the risk-management system.

(5) For Luxembourg insurance and reinsurance undertakings using a partial or full internal model approved in accordance with Articles 110 and 111 the risk-management function shall cover the following additional tasks:

a) design and implement the internal model;

b) test and validate the internal model;

c) document the internal model and any subsequent changes made to it;

d) analyse the performance of the internal model and produce summary reports thereof;

e) inform its administrative, management or supervisory body about the performance of the internal model, suggesting areas needing improvement, and up-dating that body on the status of efforts to improve previously identified weaknesses.

Art. 75 – *Own risk and solvency assessment*

(1) As part of its risk-management system every Luxembourg insurance and reinsurance undertaking shall conduct its own risk and solvency assessment.

That assessment shall include at least the following:

a) the overall solvency needs taking into account the specific risk profile, approved risk tolerance limits and the business strategy of the undertaking;

b) the compliance, on a continuous basis, with the capital requirements, as laid down in Chapter 6, Sections 5 and 6 and with the requirements regarding technical provisions, as laid down in Chapter 6, Section 3;

c) the significance with which the risk profile of the undertaking concerned deviates from the assumptions underlying the Solvency Capital Requirement as laid down in Article 105, paragraph 3, calculated with the standard formula in accordance with Chapter 6, Section 5, Subsection 2 or with its partial or full internal model in accordance with Chapter 6, Section 5, Subsection 3.

(2) For the purposes of paragraph 1, point a), the undertaking concerned shall have in place processes which are proportionate to the nature, scale and complexity of the risks inherent in its business and which enable it to properly identify and assess the risks it faces in the short and long term or to which it is or could be exposed. The undertaking shall demonstrate the methods used in that assessment.

(3) In the case referred to in paragraph 1, point c), when an internal model is used, the assessment shall be performed together with the recalibration that transforms the internal risk numbers into the Solvency Capital Requirement risk measure and calibration.

(4) The own-risk and solvency assessment shall be an integral part of the business strategy and shall be taken into account on an on-going basis in the strategic decisions of the undertaking.

(5) Luxembourg insurance and reinsurance undertakings shall perform the assessment referred to in paragraph 1 regularly, and without any delay following any significant change in their risk profile.

(6) Luxembourg insurance and reinsurance undertakings shall inform the CAA of the results of each own-risk and solvency assessment as part of the information reported under Article 62.

(7) The own-risk and solvency assessment shall not serve to calculate a capital requirement. The Solvency Capital Requirement shall be adjusted only in accordance with Article 64.

Art. 76 – *Premiums for new business*

Premiums for new business shall be sufficient, on reasonable actuarial assumptions, to enable insurance undertakings to meet all their commitments and, in particular, to establish adequate technical provisions in accordance with the provisions of Chapter 6, Section 3.

For that purpose, all aspects of the financial situation of an insurance undertaking may be taken into account, without the input from resources other than premiums and income earned thereon being systematic and permanent in a way that it may jeopardise the solvency of the undertaking concerned in the long term.

A CAA regulation may establish the implementing provisions for this Article and set out in particular the minimum prudential criteria that should govern the fixing of tariffs.

Art. 77 – *Internal control and compliance function*

(1) Luxembourg insurance and reinsurance undertakings shall have in place an effective internal control system.

That system shall at least include administrative and accounting procedures, an internal control framework, appropriate reporting arrangements at all levels of the undertaking and a compliance function.

(2) The compliance function shall include:

a) advising the administrative, management or supervisory body on compliance with prudential regulation;

b) an assessment of the possible impact of any changes in the legal environment on the operations of the undertaking concerned;

c) the identification and assessment of compliance risk.

Art. 78 – ***Internal audit function***

(1) Luxembourg insurance and reinsurance undertakings shall provide for an effective internal audit function.

The internal audit function shall include an evaluation of the adequacy and effectiveness of the internal control system and other elements of the system of governance.

(2) The internal audit function shall be objective and independent from the operational functions.

(3) Any findings and recommendations of the internal audit shall be reported to the administrative, management or supervisory body which shall determine what actions are to be taken with respect to each of the internal audit findings and recommendations and shall ensure that those actions are carried out.

Art. 79 – Actuarial function

(1) Luxembourg insurance and reinsurance undertakings shall provide for an effective actuarial function to:

a) coordinate the calculation of technical provisions;

b) ensure the appropriateness of the methodologies and underlying models used as well as the assumptions made in the calculation of technical provisions;

c) assess the sufficiency and quality of the data used in the calculation of technical provisions;

d) compare best estimates against experience;

e) inform the administrative, management or supervisory body of the reliability and adequacy of the calculation of technical provisions;

f) oversee the calculation of technical provisions;

g) express an opinion on the overall underwriting policy;

h) express an opinion on the adequacy of reinsurance arrangements; and

i) contribute to the effective implementation of the risk-management system referred to in Article 74, in particular with respect to the risk modelling underlying the calculation of the capital requirements set out in Chapter 6, Sections 5 and 6, and to the assessment referred to in Article 75.

(2) The actuarial function shall be carried out by persons who have knowledge of actuarial and financial mathematics, commensurate with the nature, scale and complexity of the risks inherent in the business of the insurance or reinsurance undertaking, and who are able to demonstrate their relevant experience with applicable professional and other standards.

Art. 80 – *Keeping of documents*

Luxembourg insurance and reinsurance undertakings are required to ensure that their accounts ledgers and other documents relating to their business activities are held in the Grand Duchy of Luxembourg at all times, either at their registered office in Luxembourg or in any other place duly notified to the CAA.

A CAA regulation shall determine those records and other documentation that must be continually held in the Grand Duchy of Luxembourg and how they are to be kept.

"By way of derogation from paragraph 1, Luxembourg insurance and reinsurance undertakings may outsource the digital storage of documents and related data and their processing to a critical ICT third-party service provider established in Luxembourg or in another Member State and subject to the supervision of a European Supervisory Authority pursuant to Article 31 of Regulation (EU) 2022/2554."[79]

Art. 81 – Outsourcing

(1) Luxembourg insurance and reinsurance undertakings remain fully responsible for discharging all of their obligations under prudential regulation when they outsource functions or any insurance or reinsurance activities.

(2) Outsourcing of activities or important operational functions or the compliance, internal audit or actuarial functions shall not be undertaken in such a way as to lead to any of the following:

a) materially impairing the quality of the system of governance of the undertaking concerned;

b) unduly increasing the operational risk;

c) impairing the ability of the CAA to monitor the compliance of the undertaking with its obligations;

d) undermining the level of service to policyholders.

(3) Luxembourg insurance and reinsurance undertakings shall, in advance and in a timely manner, notify the CAA of their intention to outsource any of the functions or activities referred to in paragraph 2 as well as of any subsequent material developments with respect to those functions or activities.

Section 3 - Public disclosure

Art. 82 – *Report on solvency and financial condition: contents*

(1) Luxembourg insurance and reinsurance undertakings shall disclose publicly, on an annual basis, a report on their solvency and financial condition, taking into account the information required in Article 62, paragraph 3, and the principles set out in Article 62, paragraph 4.

That report shall contain the following information, either in full or by way of references to equivalent information, both in nature and scope, disclosed publicly under other legal or regulatory requirements:

a) a description of the business and the performance of the undertaking;

b) a description of the system of governance and an assessment of its adequacy for the risk profile of the undertaking;

[79] law of 29 March 2024

c) a description, separately for each category of risk, of the risk exposure, concentration, mitigation and sensitivity;

d) a description, separately for assets, technical provisions, and other liabilities, of the bases and methods used for their valuation, together with an explanation of any major differences in the bases and methods used for their valuation in financial statements;

e) a description of the capital management, including at least the following:

- the structure and amount of own funds, and their quality;
- the amounts of the Solvency Capital Requirement and of the Minimum Capital Requirement;
- information allowing a proper understanding of the main differences between the underlying assumptions of the standard formula and those of any internal model used by the undertaking for the calculation of its Solvency Capital Requirement;
- the amount of any non-compliance with the Minimum Capital Requirement or any significant non-compliance with the Solvency Capital Requirement during the reporting period, even if subsequently resolved, with an explanation of its origin and consequences as well as any remedial measures taken.

(2) Where the matching adjustment is applied, the description referred to in paragraph 1, point d) shall include a description of the matching adjustment and of the portfolio of obligations and assigned assets to which the matching adjustment is applied, as well as a quantification of the impact of a change to zero of the matching adjustment on the undertaking's financial position.

The description referred to in paragraph 1, point d) shall also include a statement on whether the volatility adjustment is used by the undertaking and a quantification of the impact of a change to zero of the volatility adjustment on the undertaking's financial position.

(3) The description referred to in paragraph 1, point e), indent 1 shall include an analysis of any significant changes as compared to the previous reporting period and an explanation of any major differences in relation to the value of such elements in the financial statements, and a brief description of the capital transferability.

The disclosure of the Solvency Capital Requirement referred to in paragraph 1, point e), indent 2 shall show separately:

a) the amount calculated in accordance with Chapter 6, Section 5, Subsections 2 and 3; and

b) any capital add-on imposed in accordance with Article 64; or

the impact of the specific parameters the insurance or reinsurance undertaking is required to use in accordance with Article 111,

together, in the event that Articles 64 and 111 apply, with a concise reference to the reasoning behind the CAA’s decision.

However, and without prejudice to any disclosure that is mandatory under any other legal or regulatory requirements, insurance and reinsurance undertakings are not obliged, during a transitional period ending no later than 31 December 2020, to disclose separately any requirement for a capital add-on, nor the impact of any specific parameters that the insurance or reinsurance undertaking is required to use in accordance with Article 111, even though the total Solvency Capital Requirement referred to in paragraph 1, point e), indent 2 is disclosed.

The disclosure of the Solvency Capital Requirement shall be accompanied, where applicable, by an indication that its final amount is still subject to supervisory assessment.

Art. 83 – *Information reported to EIOPA*

(1) The CAA shall provide the following information to EIOPA on an annual basis:

a) the average capital add-on per undertaking and the distribution of capital add-ons imposed by the CAA during the previous year, measured as a percentage of the Solvency Capital Requirement, shown separately as follows:

- for all insurance and reinsurance undertakings;
- for life insurance undertakings;
- for non-life insurance undertakings,
- for insurance undertakings pursuing both life and non-life activities;
- for reinsurance undertakings;

b) for each of the disclosures set out in point (a), the proportion of capital add-ons imposed under Article 64, paragraph 1, points a), b) and c), respectively.

c) the number of insurance and reinsurance undertakings benefiting from the limitation from regular supervisory reporting and the number of insurance and reinsurance undertakings benefiting from the exemption from reporting on an item-by-item basis, together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of capital requirements, premiums, technical provisions and assets of Luxembourg insurance and reinsurance undertakings;

d) the number of groups benefiting from the limitation from regular supervisory reporting and the number of groups benefiting from the exemption from reporting on an item-by-item basis, together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of capital requirements, premiums, technical provisions and assets of all the groups.

(2) The CAA shall, on an annual basis and until 1 January 2021, provide EIOPA with the following information:

a) the availability of long-term guarantees in insurance products in the Luxembourg market and the business practices of insurance and reinsurance undertakings as long-term investors;

b) the number of insurance and reinsurance undertakings applying the matching adjustment, the volatility adjustment, the extension of the recovery period, the duration-based equity risk sub-module and the transitional measures;

c) the impact on the insurance and reinsurance undertakings' financial position of the matching adjustment, the volatility adjustment, the symmetric adjustment mechanism to the own funds charge, the duration-based equity risk sub-module and the transitional measures at national level and anonymously for each undertaking;

d) the effect of the matching adjustment, the volatility adjustment, the symmetric adjustment mechanism to the own funds charge and the duration-based equity risk sub-module on the investment practices of insurance and reinsurance undertakings and whether or not the use of these provides undue relief from holding own funds;

e) the effect of any extension of the recovery period on the efforts of insurance and reinsurance undertakings to re-establish the level of eligible own funds covering the

Solvency Capital Requirement or to reduce the risk profile in order to ensure compliance with the Solvency Capital Requirement;

f) where insurance and reinsurance undertakings apply the transitional measures, whether they comply with the phasing-in plans and the prospects for reducing dependency on these transitional measures, including any measures that have been taken or are expected to be taken by Luxembourg undertakings and the CAA, taking into account the Luxembourg regulatory environment.

Art. 84 – *Report on solvency and financial condition: applicable principles*

(1) Subject to prior authorisation of the CAA, Luxembourg insurance and reinsurance undertakings need not disclose information where:

a) by disclosing such information, the competitors of the undertaking would gain significant undue advantage;

b) there are obligations to policyholders or other counterparty relationships binding an undertaking to secrecy or confidentiality.

(2) Where non-disclosure of information is authorised, undertakings shall make a statement to this effect in their report on solvency and financial condition and shall state the reasons.

(3) Paragraphs 1 and 2 shall not apply to the information referred to in Article 82, paragraph 1, point e)

Art. 85 – *Report on solvency and financial condition: updates and additional voluntary information*

(1) In the event of any major development affecting significantly the relevance of the information disclosed in accordance with Articles 82 and 84, Luxembourg insurance and reinsurance undertakings shall disclose appropriate information on the nature and effects of that major development.

For the purposes of the first subparagraph, at least the following circumstances shall be regarded as major developments:

a) where non-compliance with the Minimum Capital Requirement is observed, and the CAA either considers that the undertaking will not be able to submit a realistic short-term finance scheme, or do not receive such a scheme within one month of the date when non-compliance was observed, or the CAA considers that the submitted scheme is not realistic;

b) where significant non-compliance with the Solvency Capital Requirement is observed, and the CAA does not receive a realistic recovery plan within two months of the date when non-compliance was observed.

In regard to point a) of the second subparagraph, the undertaking concerned shall disclose immediately the amount of non-compliance, together with an explanation of its origin and consequences, including any remedial measure taken. Where, in spite of a short-term finance scheme initially considered to be realistic, non-compliance with the Minimum Capital Requirement has not been resolved three months after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measures taken as well as any further remedial measures planned.

In regard to point b) of the second subparagraph, the undertaking concerned shall disclose immediately the amount of non-compliance, together with an explanation of its

origin and consequences, including any remedial measure taken. Where, in spite of the recovery plan initially considered to be realistic, a significant non-compliance with the Solvency Capital Requirement has not been resolved six months after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measures taken as well as any further remedial measures planned.

(2) Luxembourg insurance and reinsurance undertakings may disclose, on a voluntary basis, any information or explanation related to their solvency and financial condition which is not already required to be disclosed in accordance with Articles 82 and 84 and paragraph 1 of this Article.

Art. 86 – *Report on solvency and financial condition: policy and approval*

Insurance and reinsurance undertakings shall have appropriate systems and structures in place to fulfil the requirements laid down in Articles 82 and 84 and Article 85(1), as well as have a written policy ensuring the on-going appropriateness of any information disclosed in accordance with Articles 82, 84 and 85, paragraph 1.

The solvency and financial condition report shall be subject to approval by the administrative, management or supervisory body of the insurance or reinsurance undertaking and be published only after that approval.

Section 4 – Qualifying holdings

Art. 87 – *Acquisitions*

Any natural or legal person, whether acting alone or in concert with other persons ("the proposed acquirer") who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a Luxembourg insurance or reinsurance undertaking or to further increase, directly or indirectly, such a qualifying holding in a Luxembourg insurance or reinsurance undertaking as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 % or so that the insurance or reinsurance undertaking would become its subsidiary ("the proposed acquisition"), shall first notify in writing the CAA of their intention to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in Article 89, paragraph 3.

Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a Luxembourg insurance or reinsurance undertaking shall first notify in writing the CAA of its intention, indicating the size of that person's holding after the intended disposal. Such natural or legal person shall likewise notify the CAA in advance of a decision to reduce that person's qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20 %, 30 % or 50 % or so that the insurance or reinsurance undertaking would cease to be a subsidiary of that person.

Art. 88 – *Assessment period*

(1) The CAA shall, promptly and in any event within two working days following receipt of the notification, as well as following the possible subsequent receipt of the information referred to in subparagraph 1 of Article 87, acknowledge receipt thereof in writing to the proposed acquirer.

The CAA shall have a maximum of 60 working days as from the date of the written acknowledgement of receipt of the notification and all documents to be attached to the

notification on the basis of the list referred to in Article 89, paragraph 3 ("the assessment period"), to carry out the assessment provided for in Article 89, paragraph 1.

The CAA shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.

(2) The CAA may, during the assessment period, if necessary, and no later than on the fiftieth working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed.

For the period between the date of request for information by the CAA and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. That interruption shall not exceed 20 working days. Any further requests by the CAA for completion or clarification of the information shall be at their discretion but shall not result in an interruption of the assessment period.

(3) The CAA may extend the interruption referred to in the second subparagraph of paragraph 2 for up to thirty working days if the proposed acquirer is:

a) situated or regulated outside the European Union; or

b) a natural or legal person not subject to supervision pursuant to the legislation of a Member State implementing Directive 2009/138/EC, Directive 85/611/EEC, Directive 2004/39/EC or Directive 2013/36/EU.

(4) If the CAA, upon completion of the assessment, decides to oppose the proposed acquisition, it shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing stating the reasons.

An appropriate statement of the reasons for the decision may be made accessible to the public by the CAA on its own initiative or at the request of the proposed acquirer.

(5) If the CAA does not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.

(6) The CAA may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

Art. 89 – *Assessment*

(1) In assessing the notification provided for in Article 87, point 1 and the information referred to in Article 88, paragraph 2, the CAA shall, in order to ensure the sound and prudent management of the insurance or reinsurance undertaking in which an acquisition is proposed, having regard to the transparent structure of the proposed acquirer's direct and indirect shareholders, and having regard to the likely influence of the proposed acquirer on the insurance or reinsurance undertaking, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

a) the reputation of the proposed acquirer;

b) the reputation and experience of any person who will direct the business of the insurance or reinsurance undertaking as a result of the proposed acquisition;

c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the insurance or reinsurance undertaking in which the acquisition is proposed;

d) whether the insurance or reinsurance undertaking envisaged by the acquisition will be able to comply and continue to comply with the prudential requirements under this law, in particular, whether the group of which the insurance or reinsurance

undertaking will become part following the acquisition has a structure that makes it possible to exercise effective supervision, to effectively exchange information among the supervisory authorities and to determine the allocation of responsibilities among the supervisory authorities;

e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

"In assessing the notification provided for in Article 87, subparagraph 1, and the information referred to in Article 88, paragraph 2, the CAA shall not examine the proposed acquisition in the light of the economic needs of the market." [80]

(2) The CAA may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the proposed acquirer is incomplete.

(3) The CAA shall make publicly available a list specifying the information that is necessary to carry out the assessment and that must be provided to it at the time of notification referred to in Article 89, paragraph 1. The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition.

(4) Notwithstanding Article 88, paragraphs 1, 2 and 3, where two or more proposals to acquire or increase qualifying holdings in the same insurance or reinsurance undertaking have been notified to the CAA, the latter shall treat the proposed acquirers in a non-discriminatory manner.

Art. 90 – ***Acquisitions by regulated financial undertakings***

(1) The CAA shall work in full consultation with the other competent authorities when carrying out the assessment if the proposed acquirer is one of the following:

a) an insurance or reinsurance undertaking, a credit institution, an investment firm or management company within the meaning of point 2 of Article 1a of Directive 85/611/EEC (the UCITS management company) authorised in another Member State or in a sector other than that in which the acquisition is proposed;

b) the parent undertaking of an insurance or reinsurance undertaking, a credit institution, an investment firm or a UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed; or

c) a natural or legal person controlling an insurance or reinsurance undertaking, a credit institution, an investment firm or a UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.

(2) The CAA shall, without undue delay, provide the other competent authorities with any information which is essential or relevant for the assessment. In this regard, the CAA shall communicate to the others upon request all relevant information and shall communicate on its own initiative all essential information.

(3) Any decision taken by the CAA under Article 89 shall indicate any views or reservations expressed by the supervisory authority responsible for the proposed acquirer.

[80] law of 30 May 2018

Art. 91 – *Information to be provided to the CAA by the insurance or reinsurance undertaking*

On becoming aware of them, Luxembourg insurance or reinsurance undertakings shall inform the CAA of any acquisitions or disposals of holdings in their capital that cause those holdings to exceed or fall below any of the thresholds referred to in Article 87.

They shall also, at least once a year, inform the CAA of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by information received at annual general meetings of shareholders or members or as a result of compliance with the regulations relating to companies listed on stock exchanges.

Art. 92 – *Qualifying holding and powers of the CAA*

(1) Where the influence exercised by the persons referred to in Article 87 is likely to operate against the sound and prudent management of a Luxembourg insurance or reinsurance undertaking, the CAA shall take appropriate measures to put an end to that situation. Such measures may consist, for example, of injunctions, sanctions foreseen under this law, or suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.

Similar measures shall apply to natural or legal persons failing to comply with the notification obligation established in Article 87.

(2) Where a holding is acquired despite the opposition of the CAA, the latter shall, regardless of any other sanctions to be adopted, provide for:

a) the suspension of the exercise of the corresponding voting rights; or

b) the nullity of any votes cast or the possibility of their annulment.

Art. 93 – *Voting rights*

For the purposes of the application of Article 87, the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC, as well as the conditions regarding aggregation thereof laid down in Article 12, paragraphs 4 and 5 of that Directive, shall be taken into account.

The CAA shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I to Directive 2004/39/EC, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition.

Section 5 - Persons responsible for carrying out statutory audits of the accounts

Art. 94 – *Designation of persons responsible for statutory audits of the accounts*

Luxembourg insurance and reinsurance undertakings [81]“,” branches of third country insurance and reinsurance undertakings “and insurance holding companies, within the meaning of Article 184, point 6, subject to the supervision of the CAA”[82] are required to submit to an external audit of their accounts on an annual basis at the undertaking’s expense by an approved auditor (“Réviseur d’entreprises agréé”). The latter shall provide proof that it has:

[81] law of 29 March 2024
[82] law of 29 March 2024

a) an experience of at least 5 years in the audit of insurance and reinsurance undertakings; and

b) high level professional knowledge in actuarial techniques, either on his own account, or through his staff, or through his membership of an international audit network meeting this criterion and on structures on which it can rely.

Art. 95 – *Duties of persons responsible for statutory audits of the accounts*

(1) The approved auditor shall have a duty to report promptly to the CAA any fact or decision concerning an undertaking "under Article 94"[83] of which they have become aware while carrying out that task and which could be liable to bring about any of the following:

a) a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of insurance and reinsurance undertakings;

b) the impairment of the continuous functioning of the insurance or reinsurance undertaking;

c) a refusal to certify the accounts or to the expression of reservations;

d) non-compliance with the Solvency Capital Requirement;

e) non-compliance with the Minimum Capital Requirement.

The approved auditor shall also report any facts or decisions of which it has become aware in the course of carrying out a task as described in the first subparagraph in an undertaking which has close links resulting from a control relationship with the insurance or reinsurance undertaking within which they are carrying out that task.

(2) The audit report and the annual accounts are to be addressed to the CAA. "For the purposes of communicating the documents and information referred to in Articles 62, paragraph 2, letter c) and 95-1"[84], the approved auditor is released from professional secrecy towards CAA representatives.

Likewise, the disclosure in good faith to the CAA, by the approved auditor, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not involve such persons in liability of any kind.

"(3) The CAA may require the replacement of the approved auditor, where he acts in breach of his obligations imposed by paragraph 1, or if he fails to provide the information required by the CAA pursuant to Article 62, paragraph 2, letter c)."[85]

" **Art. 95-1 - *Specific audits by the approved auditor***

The CAA may request an approved auditor to carry out an audit of specific aspects of the business and operation of a Luxembourg insurance or reinsurance undertaking, a branch of a third-country insurance or reinsurance undertaking or an insurance holding company, within the meaning of Article 184, paragraph 6, subject to the supervision of the CAA, which includes the preparation and transmission to the CAA of a report setting out the approved auditor's findings. This audit is carried out at the expense of the undertaking concerned."[86]

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[83] law of 27 February 2018
[84] law of 29 March 2024
[85] law of 29 March 2024
[86] law of 29 March 2024

Chapter 5 – *Pursuit of both life and non-life insurance activity*

Art. 96 – *Pursuit of both life and non-life insurance activity*

(1) No insurance undertaking approved in the Grand Duchy of Luxembourg may conduct any of the classes of direct non-life insurance business indicated in part A of Annex I of this law concurrently with the direct insurance business of life classes enumerated in Annex II of this law.

(2) By way of derogation from paragraph 1, the following provisions apply:

a) undertakings authorised to pursue life insurance activity may obtain authorisation for non-life insurance activities for the risks listed in classes 1 and 2 in Part A of Annex I;

b) undertakings authorised solely for the risks listed in classes 1 and 2 in Part A of Annex I may obtain authorisation to pursue life insurance activity.

However, each activity shall be separately managed in accordance with Article 97.

(3) Where an insurance undertaking approved in the Grand Duchy of Luxembourg to conduct one of the groups of activities under paragraph 1 has financial, commercial or administrative links with an undertaking conducting the other group of activities under paragraph 1, the CAA shall ensure that the accounts of the undertaking approved in the Grand Duchy of Luxembourg are not distorted by agreements between those undertakings or by any arrangement which could affect the apportionment of expenses and income.

Art. 97 – *Separation of life and non-life insurance management*

The separate management referred to in Article 96 shall be organised in such a way that the life insurance activity is distinct from non-life insurance activity.

The respective interests of life and non-life policyholders shall not be prejudiced and, in particular, profits from life insurance shall benefit life policyholders as if the life insurance undertaking only pursued the activity of life insurance.

A CAA regulation shall determine the conditions applicable to this Article.

Chapter 6 – *Prudential supervisory rules relating to the valuation of assets and liabilities, technical provisions, own funds, Solvency Capital Requirement, Minimum Capital Requirement and investment rules*

Section 1 – General provision

Art. 98 – *General provision*

The rules relating to valuation referred to in this chapter shall not prejudice the application of the Law on annual accounts.

Section 2 – Valuation of assets and liabilities

Art. 99 – *Valuation of assets and liabilities*

(1) Without prejudice to the provisions of this Chapter, Luxembourg insurance and reinsurance undertakings shall value assets and liabilities as follows:

a) assets shall be valued at the amount for which they could be exchanged between knowledgeable willing parties in an arm's length transaction;

b) liabilities shall be valued at the amount for which they could be transferred, or settled, between knowledgeable willing parties in an arm's length transaction.

(2) When valuing liabilities under paragraph 1, point (b), no adjustment to take account of the own credit standing of the insurance or reinsurance undertaking shall be made.

Section 3 – Rules relating to technical provisions

Art. 100 – *General provisions*

(1) Luxembourg insurance and reinsurance undertakings must establish technical provisions with respect to all of their obligations resulting from direct insurance contracts under Annexes I and II of this law and to all obligations resulting from reinsurance contracts.

(2) The value of technical provisions shall correspond to the current amount insurance and reinsurance undertakings would have to pay if they were to transfer their insurance and reinsurance obligations immediately to another insurance or reinsurance undertaking.

(3) The calculation of technical provisions shall in a coherent manner make use of and be consistent with information provided by the financial markets and generally available data on underwriting risks.

(4) Technical provisions shall be calculated in a prudent, reliable and objective manner.

(5) Following the principles set out in paragraphs 2, 3 and 4 and taking into account the principles set out in Article 99, the calculation of technical provisions shall be carried out in accordance with Article 101.

Art. 101 – *Calculation of technical provisions*

(1) The value of technical provisions shall be equal to the sum of a best estimate and a risk margin as set out in paragraphs 2 and 3.

(2) The best estimate shall correspond to the probability-weighted average of future cash-flows, taking account of the time value of money (expected present value of future cash-flows), using the relevant risk-free interest rate term structure.

(3) The risk margin is to be calculated such as to ensure that the value of the technical provisions is equivalent to the amount that insurance and reinsurance undertakings would require to settle the insurance and reinsurance obligations over the lifetime thereof

(4) Insurance and reinsurance undertakings shall value the best estimate and the risk margin separately.

However, where future cash flows associated with insurance or reinsurance obligations can be replicated reliably using financial instruments for which a reliable market value is observable, the value of technical provisions associated with those future cash flows shall be determined on the basis of the market value of those financial instruments. In this case, separate calculations of the best estimate and the risk margin shall not be required.

(5) A CAA regulation shall determine the applicable conditions to this Article.

Section 4 – Own funds

Art. 102 – *Own funds*

(1) Own funds shall comprise the sum of basic own funds, as shown in the balance sheet and ancillary own funds not shown in the balance sheet.

(2) Basic own funds shall consist of the following items:

a) the excess of assets over liabilities, valued in accordance with Article 99;

b) subordinated liabilities.

The excess amount referred to in "point a)"[87] shall be reduced by the amount of own shares held by the insurance or reinsurance undertaking.

(3) Ancillary own funds shall consist of items other than basic own funds which can be called up to absorb losses.

A CAA regulation shall specify the eligible ancillary own funds and how they are determined.

(4) Furthermore, these own funds shall be classified in accordance with quality criteria into three tiers.

A CAA regulation shall lay down the implementing rules of this Section and in particular the quality criteria for classification by tier.

Art. 103 – *Surplus funds*

Surplus funds shall be deemed to be accumulated profits which have not been made available for distribution to policyholders and beneficiaries.

Surplus funds shall not be considered as insurance and reinsurance liabilities to the extent that they fulfil the criteria set out by a CAA regulation.

Section 5 – Solvency Capital Requirement

Subsection 1 -General provisions for the solvency capital requirement using the standard formula or an internal model

Art. 104 – *General provisions*

Insurance and reinsurance undertakings must hold eligible own funds covering the Solvency Capital Requirement.

The Solvency Capital Requirement shall be calculated, either in accordance with the standard formula conforming to Subsection 2 or by using an internal model, conforming to Subsection 3.

Art.105 – *Calculation of the Solvency Capital Requirement*

(1) The Solvency Capital Requirement shall be calculated in accordance with paragraphs 2 to 4.

(2) The Solvency Capital Requirement shall be calculated on the presumption that the undertaking will pursue its business as a going concern.

[87] law of 27 February 2018

(3) The Solvency Capital Requirement shall be determined and calibrated so as to ensure that all quantifiable risks to which the insurance or reinsurance undertaking is exposed are taken into account. It shall cover existing business, as well as the new business expected to be written over the following twelve months. With respect to existing business, it shall cover only unexpected losses.

The Solvency Capital Requirement shall correspond to the Value-at-Risk of the basic own funds of the insurance or reinsurance undertaking subject to a confidence level of 99,5 % over a one-year period.

(4) A CAA regulation shall specify the risks to be covered by the Solvency Capital Requirement.

Art. 106 – *Frequency of calculation*

(1) Insurance and reinsurance undertakings shall calculate the Solvency Capital Requirement at least once a year and report the result of that calculation to the CAA.

Insurance and reinsurance undertakings shall hold eligible own funds which cover the last reported Solvency Capital Requirement.

Insurance and reinsurance undertakings shall monitor the amount of their eligible own funds and their Solvency Capital Requirement on an on-going basis.

If the risk profile of an insurance or reinsurance undertaking deviates significantly from the assumptions underlying the last reported Solvency Capital Requirement, the undertaking concerned shall recalculate the Solvency Capital Requirement without delay and report it to the CAA.

(2) Where there is evidence to suggest that the risk profile of an insurance or reinsurance undertaking has altered significantly since the date on which the Solvency Capital Requirement was last reported, the CAA may require the undertaking concerned to recalculate the Solvency Capital Requirement.

Subsection 2 - Solvency Capital Requirement – standard formula

Art. 107 - *Standard formula*

A CAA regulation shall determine the structure of the standard formula and its methods of calculation.

Art. 108 – *Authorised simplifications in the standard formula*

Insurance and reinsurance 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 justify it and where it would be disproportionate to require all insurance and reinsurance undertakings to apply the standardised calculation.

Simplified calculations shall be calibrated in accordance with Article 105, paragraph 3).

Upon reasoned request by undertakings, the CAA may grant simplifications not necessarily foreseen in the EU regulation.

Art. 109 – *Significant deviations from the assumptions underlying the standard formula calculation*

Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula, as set out in Subsection 2, because the risk profile of the insurance

or reinsurance undertaking concerned deviates significantly from the assumptions underlying the standard formula calculation, the CAA may, by means of a decision stating the reasons, require the undertaking concerned to replace a subset of the parameters used in the standard formula calculation by parameters specific to that undertaking. A CAA regulation shall specify the modules for the risks concerned.

Subsection 3 – Solvency Capital Requirement - full and partial internal models

Art. 110 – *General provisions for the approval of full and partial internal models*

(1) Insurance and reinsurance undertakings may calculate the Solvency Capital Requirement using a full or partial internal model as approved by the CAA.

The elements to be taken into consideration for the calculation of full and partial internal models, and how a request for approval is to be made, shall be determined by a CAA regulation.

(2) The CAA shall decide on any application within six months from the receipt of the complete application.

"In the context of the decision, the CAA may request technical assistance from EIOPA."[88]

Art. 111 - *Significant deviations from the assumptions underlying the standard formula calculation*

Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula, as set out in Subsection 2, because the risk profile of the insurance or reinsurance undertaking concerned deviates significantly from the assumptions underlying the standard formula calculation, the CAA may, by means of a decision stating the reasons, require the undertaking concerned to use an internal model to calculate its Solvency Capital Requirement, or the relevant risk modules thereof.

*Section 6 – Minimum Capital Requi*rement

Art. 112 – *General provisions*

Insurance and reinsurance undertakings must hold eligible basic own funds, to cover the Minimum Capital Requirement ("MCR"), for which the threshold and methods of calculation shall be determined by a CAA regulation

Art. 113 - *Transitional arrangements regarding compliance with the Minimum Capital Requirement*

By way of derogation from Articles 125 and 130, where insurance and reinsurance undertakings comply with the Required Solvency Margin as defined in the law of 6 December 1991 on the insurance sector, as modified, up to 31 December 2015, but do not hold sufficient eligible basic own funds to cover the Minimum Capital Requirement, the undertakings concerned shall comply with Article 112 by 31 December 2016 at the latest.

Where the undertakings concerned fail to comply with Article 112 within the period set out in the first subparagraph, their authorisation shall be withdrawn, subject to the applicable processes provided for in this law.

[88] law of 21 July 2021 (2)

Section 7 - Investments

Art. 114 – *Prudent person principle*

Insurance and reinsurance undertakings must invest all their assets in accordance with the prudent person principle, according to the requirements to be determined by a CAA regulation.

Art. 115 - *Localisation of assets and prohibition of pledging of assets*

(1) A CAA regulation may determine the conditions for localisation of assets held to cover the technical provisions related to risks situated in the EEA, provided that it may not be a requirement that they be localised within the EEA or in any particular Member State. This regulation may also include provisions in respect of risks situated outside the EEA.

In addition, with respect to recoverable from reinsurance contracts against undertakings authorised in accordance with Directive 2009/138/EC or which have their head office in a third country whose solvency regime is deemed to be equivalent in accordance with this Directive, it may not be a requirement that the assets matching those recoverable be localised within the EEA.

(2) The CAA shall not retain or introduce for the establishment of technical provisions a system with gross reserving which requires pledging of assets to cover unearned premiums and outstanding claims provisions where the reinsurer is an insurance or reinsurance undertaking authorised in accordance with the above Directive.

Art. 116 – *Deposit and freezing of movable matching assets*

In situations falling under Articles 123 to 125 the CAA may require the deposit and freezing of movable matching assets with a deposit institution of its choice, and make withdrawals or reductions of such assets subject to its prior approval. The CAA shall inform the insurance and reinsurance undertakings as well as the depositary institutions of its decision to freeze the assets by any appropriate means to be confirmed by registered letter or via bailiff procedure.

Section 8 – Special provisions applicable to segregated assets of insurance undertakings

Art. 117 – *Movable matching assets*

(1) Insurance undertakings must segregate by way of guarantee of their insurance obligations, assets, hereafter called assets matching technical provisions, to a value at least equivalent of the higher of the following two amounts:

a) The technical provisions, including any equalisation provision, calculated in accordance with the valuation rules in Chapter 7 of the Law on annual accounts;

b) The technical provisions calculated in accordance with the rules set out in Title II, Chapter 6, Section 3 of this law.

(2) The movable assets matching technical provisions must be deposited with a credit institution under conditions to be fixed by a CAA regulation.

Art. 118 – *Segregated assets and permanent inventory*

All the assets matching technical provisions of insurance undertakings constitute segregated assets allocated preferentially to guaranteeing payment of insurance claims.

Such preferential right takes precedence over all other preferential rights as soon as the matching assets of underlying technical provisions are registered in the permanent inventory provided for under the third subparagraph, or as soon as the mortgage registration under Article 121 becomes effective.

Insurance undertakings must maintain the permanent inventory of matching assets and communicate the quarterly positions to the CAA in the forms and deadlines determined by the CAA.

Art. 119 – *Preferential right in case of reduced payment*

If, in the event of the segregated assets referred to in Article 118 proving to be inadequate, liquidation may be effected only by reducing the portion of that resource allocated to the policyholders, insured parties or beneficiaries, these persons shall retain a preferential claim against the insurance undertaking in respect of any surplus.

This preferential claim takes precedence over all other preferential rights with the exception of that envisaged in Article 2101, paragraph 1, points 1 and 4 and 2101, paragraph 2 of the Civil Code, that envisaged by Article 2102, point 8 of the Civil Code, and that of the "Trésor" ("state treasury"), the communes, the social security organisations and the professional chambers pursuant to the provisions of the amended law of 27 November 1933.

Art. 120 – *Exercise of preferential right*

(1) On an application deemed justified, the CAA may communicate to the beneficiaries of the preferential right provided for in Article 118 information concerning the location of the assets matching technical provisions without breaching the secrecy instituted by Article 7 of this law

(2) Eligible parties who wish to exercise the preferential right provided for in Article 118 must inform the CAA by registered letter beforehand. Upon expiry of a period of fifteen clear days, they must proceed as prescribed in Title VII, Book VII, Part 1 of the New Code of Civil Procedure, for the attachment proceedings, and Title XII, Book VII, Part I of the same Code for a foreclosure.

The judgment handed down shall determine the maximum sum for which the assets matching technical provisions shall be realised. The realisation of the assets shall be executed by the CAA.

Any interest, dividends and income receivable but not yet due when proceedings commence shall automatically be included in the attachment application.

Art. 121 – *Mortgage*

The CAA is authorised to demand the registration of a mortgage at any time on the properties which form part of the immovable matching assets.

Such registration shall take place either at the mortgage office, or with the competent administration, depending on the location of the properties, for the sum for which the guarantees were accepted.

The CAA may reduce the amounts registered and order the total or partial deletion of registrations effected in implementation of these provisions.

Deeds and other documents issued in connection with the guarantees referred to in the preceding subparagraphs which relate to properties situated in the Grand Duchy of Luxembourg are exempt from stamp duty, registration duty and mortgage duty, but incur the fees charged for the mortgage formalities.

Chapter 7 – Insurance and reinsurance undertakings in difficulty or in an irregular situation

Art. 122 – *Identification and notification of deteriorating financial conditions by the insurance and reinsurance undertaking*

Insurance and reinsurance undertakings shall have procedures in place to identify deteriorating financial conditions and shall immediately notify the supervisory authorities when such deterioration occurs.

Art. 123 – *Non-Compliance with technical provisions*

Where a Luxembourg insurance or reinsurance undertaking does not comply with Chapter 6, Section 3, the CAA may prohibit the free disposal of its assets after having communicated its intentions to the supervisory authorities of the host Member States. The CAA shall designate the assets to be covered by such measures.

Art. 124 – *Non-Compliance with the Solvency Capital Requirement*

(1) Luxembourg insurance and reinsurance undertakings shall immediately inform the CAA as soon as they observe that the Solvency Capital Requirement is no longer complied with, or where there is a risk of non-compliance within the following three months.

(2) Within two months from the observation of non-compliance with the Solvency Capital Requirement the insurance or reinsurance undertaking concerned shall submit a realistic recovery plan for approval by the CAA.

(3) The CAA shall require the insurance or reinsurance undertaking concerned to take the necessary measures to achieve, within six months from the observation of non-compliance with the Solvency Capital Requirement, the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or to reduce its risk profile to ensure compliance with the Solvency Capital Requirement.

The CAA may, if appropriate, extend that period by three months

(4) In the event of exceptional adverse situations affecting insurance and reinsurance undertakings representing a significant share of the market or of the affected lines of business, as declared by EIOPA, and where appropriate after consulting the ESRB, the CAA may extend, for affected undertakings, the period set out in paragraph 3, subparagraph 2 by a maximum period of seven years, taking into account all relevant factors including the average duration of the technical provisions.

The CAA may request EIOPA to declare the existence of exceptional adverse situations if insurance or reinsurance undertakings representing a significant share of the market or of the affected lines of business are unlikely to meet the requirements set out in paragraph 3. Exceptional adverse situations exist where the financial situation of insurance or reinsurance undertakings representing a significant share of the market or of the affected lines of business are seriously or adversely affected by one or more of the following conditions:

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

b) a persistent low interest rate environment;

c) a high-impact catastrophic event.

The insurance or reinsurance undertaking concerned shall, every three months, submit a progress report to the CAA setting out the measures taken and the progress made to re-establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile to ensure compliance with the Solvency Capital Requirement.

The extension referred to in subparagraph 1 shall be withdrawn where that progress report shows that there was no significant progress in achieving the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or in reducing the risk profile to ensure compliance with the Solvency Capital Requirement between the date of the observation of non-compliance of the Solvency Capital Requirement and the date of the submission of the progress report.

(5) In exceptional circumstances, where the CAA is of the opinion that the financial situation of the undertaking concerned will deteriorate further, it may also restrict or prohibit the free disposal of the assets of that undertaking. The CAA shall inform the supervisory authorities of the host Member States of any measures it has taken, while also designating the assets to be covered by such measures.

Art. 125 – *Non-Compliance with the Minimum Capital Requirement*

Luxembourg insurance and reinsurance undertakings shall inform the CAA immediately where they observe that the Minimum Capital Requirement is no longer complied with or where there is a risk of non-compliance within the following three months.

Within one month from the observation of non-compliance with the Minimum Capital Requirement, the insurance or reinsurance undertaking concerned shall submit, for approval by the CAA, a short-term realistic finance scheme to restore, within three months of that observation, the eligible basic own funds, at least to the level of the Minimum Capital Requirement or to reduce its risk profile to ensure compliance with the Minimum Capital Requirement.

The CAA may also restrict or prohibit the free disposal of the assets of the insurance or reinsurance undertaking. It shall inform the supervisory authorities of the host Member States accordingly, while also designating the assets to be covered by such measures.

Art. 126 – *Prohibition of free disposal of assets*

Where a Luxembourg undertaking finds itself in one of the situations foreseen by Articles 123 to 125, or has been subject to withdrawal of its authorisation, the CAA may request other supervisory authorities to take such restrictive or prohibitive measures relating to the undertaking's assets situated in their territory.

Where the CAA has been informed by the competent authorities of a Member State that an undertaking finds itself in a situation analogous to that foreseen by Articles 123 to 125, or has been subject to withdrawal of its authorisation, the CAA may on the request of these authorities take such restrictive or prohibitive measures relating to the assets of the undertaking concerned situated in the territory of the Grand Duchy of Luxembourg, if the same restrictive or prohibitive measures have been taken in the home Member State.

Art. 127 – *Supervisory powers in deteriorating financial conditions*

Notwithstanding Articles 124 and 125, where the solvency position of the undertaking continues to deteriorate, the CAA shall have the power to take all measures necessary to safeguard the interests of policyholders in the case of insurance contracts, or to ensure the execution of the obligations arising out of reinsurance contracts.

These measures shall be proportionate and thus reflect the level and duration of the deterioration of the solvency position of the insurance or reinsurance undertaking concerned.

Art. 128 – *Recovery plan and finance scheme*

A CAA regulation shall determine the content of the recovery plan and the financial plans.

Chapter 8 – *Renunciation and withdrawal of authorisation*

Art. 129 – *Request for renunciation of authorisation*

(1) Luxembourg insurance undertakings may only relinquish their authorisation to conduct business in any class of insurance with the "CAA's"[89] consent.

Without prejudice to the provisions of Title II, Subtitle V, chapters 2 and 3, and Subtitle VI, where an insurance undertaking renounces its authorisation to conduct business in one or more insurance classes, the CAA shall oversee the relevant liquidation procedures in the interest of the insured parties.

(2) Luxembourg reinsurance undertakings may only renounce their authorisation with the "CAA's"[90] consent.

Without prejudice to the provisions of Title II, Subtitle VI, where a reinsurance undertaking renounces its approval, the CAA shall oversee the relevant liquidation procedures in the interest of the ceding insurance or reinsurance undertakings.

(3) The renunciation request must be sent to the CAA and specify the validity end date of the authorisation.

(4) The CAA shall notify the undertaking "its"[91] decision.

If the request is accepted:

a) the authorisation shall cease to be valid on the date indicated in the request or on the date of notification of the "CAA's"[92] decision if such date comes later. The end of validity of the authorisation results in a prohibition to do new business whether in the class or in the classes for which it was granted or for reinsurance transactions as well as the obligation to rescind those contracts subject to renewal, without prejudice to compliance with specified termination periods;

b) the CAA shall inform the public thereof via publication in the "Mémorial". The renunciation shall only become effective to third parties from the date of such publication.

(5) The provisions of Article 131, paragraphs 6 and 7 shall apply.

Art. 130 – *Withdrawal of authorisation*

(1) The "CAA"[93] may withdraw an authorisation granted to a Luxembourg insurance undertaking for all the insurance classes or only for some of them, and an authorisation

[89] law of 21 July 2021 (1)
[90] law of 21 July 2021 (1)
[91] law of 21 July 2021 (1)
[92] law of 21 July 2021 (1)
[93] law of 21 July 2021 (1)

granted to a Luxembourg reinsurance undertaking for its overall reinsurance activities, where the undertaking concerned:

a) does not make use of the authorisation within twelve months or ceases to pursue business for more than six months; or

b) no longer fulfils the conditions for authorisation; or

c) fails seriously in its obligations under the regulations to which it is subject.

(2) The authorisation granted to a Luxembourg insurance or reinsurance undertaking is in addition withdrawn in the event that the undertaking does not comply with the Minimum Capital Requirement and the CAA considers that the financing scheme submitted is manifestly inadequate or the undertaking concerned fails to comply with the approved scheme within three months from the confirmation of non-compliance with the Minimum Capital Requirement.

Art.131 – *Procedure for the withdrawal of authorisation*

(1) "The CAA shall decide on the withdrawal"[94] referred to in Article 130 *(…)*[95]. A preliminary investigation is carried out by the CAA, the insurance or reinsurance undertaking having been heard through its submissions in response or duly summoned by registered letter. The insurance or reinsurance undertaking may be assisted or represented.

Withdrawal may be determined for all the insurance classes in which the undertaking conducts business or for just one or more of them.

The withdrawal decision must be precisely reasoned and shall be notified to the insurance or reinsurance undertaking via a process served by a bailiff.

With effect from its notification, withdrawal entails a prohibition on the conducting of new business either in the insurance class or classes in respect of which it was ordered, or for reinsurance transactions. The withdrawal shall be published in the "Mémorial" by the CAA.

(2) Without prejudice to the provisions of Chapters 2, 3 and 5 of Sub-title V of Title II, when approval to conduct insurance or reinsurance business is withdrawn, the CAA shall appoint one or more liquidators to manage the liquidation of the insurance or reinsurance contracts and the assets matching technical provisions.

When the authorisation to conduct insurance business is partially withdrawn, the appointment of a liquidator is optional.

(3) Liquidators appointed pursuant to paragraph 2 above have the following powers and responsibilities, inter alia.

When liquidating the insurance contracts, they shall apply the guarantees and the matching assets underlying the technical provisions established for the benefit of the said insurance contracts in accordance with the liquidation priorities.

They may, with the CAA's approval and according to the provisions of Articles 66 and 69, transfer some or all of the insurance or reinsurance contracts they are entrusted with to one or more other insurance or reinsurance undertakings, assigning to such transfer the portion of the assets matching technical provisions established for the benefit of those contracts.

[94] law of 21 July 2021 (1)
[95] removed by the law of 21 July 2021 (1)

(4) The CAA shall determine the fees and expenses of the liquidators it appoints; they shall be met by the insurance or reinsurance undertaking.

Notwithstanding Article 118 of this law, such fees and expenses may be deducted from the segregated assets. Such deductions must have the CAA's prior authorisation.

(5) The provisions of Article 255 shall be applicable to the liquidators appointed by the CAA.

(6) In the event of the withdrawal of the authorisation, the CAA shall notify the competent authorities of the other Member States accordingly and invite them to take appropriate measures to prevent the insurance or reinsurance undertaking concerned from commencing new operations within their territories.

(7) The CAA shall, together with the supervisory authorities concerned, take all measures necessary to safeguard the interests of insured persons and, in particular, shall restrict the free disposal of the assets of the insurance undertaking in accordance with Articles 123 to 126.

Chapter 9 – Right of establishment and freedom to provide services

Section 1 – Establishment by insurance undertakings

Art. 132 – *Conditions for the establishment of a branch within another Member State by a Luxembourg insurance undertaking*

(1) A Luxembourg insurance undertaking which proposes to establish a branch within the territory of another Member State shall notify the CAA.

For the purposes of this Section, any permanent presence of an undertaking in the territory of a Member State shall be treated in the same way as a branch, even where that presence does not take the form of a branch, but consists merely of an office managed by the undertaking's own staff or by a person who is independent but has permanent authority to act for the undertaking as an agency would.

(2) The content of this notification as well as relevant implementing measures shall be determined by a CAA regulation.

Art. 133 – *Conditions for branch establishment within a third country by a Luxembourg insurance undertaking*

(1) Any Luxembourg insurance undertaking wishing to establish a branch in the territory of a third country shall notify the CAA thereof.

" For the purposes of this Section, any permanent presence of an undertaking in the territory of a third country shall be treated in the same way as a branch, even where that presence does not take the form of a branch, but consists merely of an office managed by the undertaking's own staff or by a person who is independent but has permanent authority to act for the undertaking as an agency would."[96]

(2) The CAA may object to the establishment of such branch:

- if, taking into account the business planned, there are reasons to doubt the adequacy of the system of governance or the financial situation of the insurance

[96] law of 29 March 2024

undertaking or the fit and proper requirements of the legal representative in accordance with Article 72;

- if the establishment or the business planned by the branch are in breach of the rules of the host State;
- if the host State is subject to international sanctions or does not apply the international standards on combatting money laundering and terrorism financing or does not allow the CAA to carry out its supervisory missions.

Art. 134 – *Communication of information for the establishment of a branch within another Member State by a Luxembourg insurance undertaking*

(1) Unless the CAA has reason to doubt the adequacy of the system of governance or the financial situation of the insurance undertaking or the fit and proper requirements in accordance with Article 72 of the legal representative, taking into account the business planned, it shall, within three months of receiving all the information referred to in Article 132, paragraph 2, communicate that information to the supervisory authorities of the host Member State and shall inform the insurance undertaking concerned thereof.

The CAA shall also attest that the insurance undertaking covers the Solvency Capital Requirement calculated in accordance with Article 105, and the Minimum Capital Requirement calculated in accordance with the methods to be determined by a CAA regulation.

(2) Where the CAA refuses to communicate the information referred to in Article 132, paragraph 2, to the supervisory authorities of the host Member State it shall state the reasons for its refusal to the insurance undertaking concerned within three months of receiving all the information in question.

Such a refusal or failure to act shall be subject to a right to apply to the administrative court for annulment.

(3) If the host Member State communicates the conditions under which, in the interest of the general good, that business must be pursued in the host Member State, the CAA shall communicate this information to the insurance undertaking concerned.

Art. 135 - *Conditions for the establishment within the Grand Duchy of Luxembourg of a branch of a non-Luxembourg insurance undertaking of the EEA*

(1) Any insurance undertaking having its registered office and being approved in another Member State may establish a branch in the Grand Duchy of Luxembourg after the competent authority of the home Member State has notified the CAA.

(2) The content of the notification as well as the implementing rules shall be determined by a CAA regulation.

Art. 136 - *Communication of information for the establishment of a branch from another Member State within the Grand Duchy of Luxembourg*

(1) Before the branch of the insurance undertaking commences its business, the CAA shall have a period of two months with effect from receipt of the notification referred to in Article 135, paragraph 2 to indicate to the competent authority of the home Member State, where applicable, the conditions under which, for reasons of the general good, the said business must be conducted in the Grand Duchy of Luxembourg.

The insurance undertaking may establish its branch and commence its activities upon receipt of this communication from the CAA by the home Member State or, in the absence of any communication, upon expiry of the period referred to in subparagraph 1 above.

(2) All communications and notifications for the attention of an undertaking's establishment in the Grand-Duchy of Luxembourg shall be sent to the domicile of the nominated legal representative.

The domicile of the legal representative shall also serve to determine the time frame to be observed for all communications and notifications.

Section 2 – Establishment of reinsurance undertakings

Art. 137 - *General principle*

Without prejudice to the provisions of this Chapter, the authorisation granted to a Luxembourg reinsurance undertaking enables it to conduct its business, under the right of establishment throughout the EEA.

Without prejudice to the provisions of this Chapter, the authorisation also entitles business to be conducted in third countries provided this is in compliance with the legislation of the home State of the undertaking ceding the risk.

Art. 138 - *Conditions for the establishment of a branch by reinsurance undertakings*

(1) Any Luxembourg reinsurance undertaking wishing to establish a branch in the territory of another Member State shall notify the CAA accordingly.

(2) Any reinsurance undertaking having its registered office in another Member State may establish a branch in the Grand Duchy of Luxembourg provided that it holds an authorisation in its home country pursuant to Article 14 of Directive 2009/138/EC, for the type of business envisaged.

(3) The CAA may authorise a Luxembourg reinsurance undertaking to establish a branch in a third country under the conditions laid down by it.

(4) The implementing rules relating to paragraphs 1 to 3 shall be fixed by a CAA regulation.

Section 3 - Freedom to provide services: by insurance undertakings

Subsection 1 – Business pursued under freedom to provide services within another Member State or in a third country by insurance undertakings

Art. 139 - *Prior notification to the CAA by the insurance undertaking*

(1) Any Luxembourg insurance undertaking that intends to pursue business for the first time in one or more Member States under the freedom to provide services shall first notify the CAA, indicating the nature of the risks or commitments it proposes to cover.

(2) The insurance undertaking may commence business in a third country as from the date on which it has been notified of the CAA's authorisation.

Art. 140 - *Notification by the CAA to competent authorities of other Member States*

(1) Within one month of the notification provided for in Article 139, the CAA shall communicate the following to the host Member State or States:

a) a certificate attesting that the insurance undertaking covers the Solvency Capital Requirement and Minimum Capital Requirement calculated in accordance with Articles 104 and 112;

b) the classes of insurance which the insurance undertaking has been authorised to offer;

c) the nature of the risks and commitments which the insurance undertaking proposes to cover in the host Member State.

At the same time, the CAA shall inform the insurance undertaking concerned of that communication.

(2) Where the CAA does not communicate the information referred to in paragraph 1 within the period laid down therein, it shall state the reasons for its refusal to the insurance undertaking within that same period.

Such a refusal or failure to act shall be subject to a right to apply to the administrative court for annulment.

(3) The insurance undertaking may start business as from the date on which it is informed of the communication provided for in the first subparagraph of paragraph 1.

Art. 141 - ***Changes in the nature of the risks or commitments***

Any change which an insurance undertaking intends to make to the information referred to in Article 139 shall be subject to the procedure provided for in Articles 139 and 140.

Art. 142 – ***Business pursued under freedom to provide services in the Grand Duchy of Luxembourg***

(1) Without prejudice to the provisions of Articles 143 and 145, any insurance undertaking approved in another Member State may conduct business in the Grand Duchy of Luxembourg under freedom to provide services, and cover risks or make commitments for which it has an authorisation in its home Member State, after the competent authority of the home Member State has provided the following documents and information to the CAA:

a) a certificate attesting that the insurance undertaking in question covers the Solvency Capital Requirement and the Minimum Capital Requirement calculated in accordance with Articles 104 and 112;

b) the insurance classes in which the undertaking is authorised to operate;

c) the nature of the risks and commitments that the insurance undertaking intends to cover and accept in the Grand Duchy of Luxembourg.

(2) Any change which the insurance undertaking intends to make to the information provided under paragraph 1, point c) of this Article shall be subject to the procedure referred to in paragraph 1 above and in Article 143.

(3) The insurance undertaking may commence its activities with effect from the date on which it is informed by the competent authorities of its home Member State of the communication referred to in paragraph 1.

Subsection 2 - Third party motor vehicle liability

Art. 143 - ***Compulsory insurance on third party motor vehicle liability***

Any insurance undertaking covering the risks defined in class 10 in part A of Annexe I, with the exception of carriers' liability, in the Grand Duchy of Luxembourg, under freedom to provide services, must:

a) provide the CAA with a certificate proving that it has become a member of the "Bureau Luxembourgeois" and the "Fonds de Garantie Automobile" and that it participates in their financing;

b) become a member of the "Pool for augmented insurance risks in respect of civil liability for land motor vehicles";

c) communicate to the CAA the name and address of the representative referred to in Article 145;

d) take out insurance contracts in compliance with the compulsory provisions of the Law of 16 April 2003 on Compulsory Insurance against Civil Liability in respect of Motor Vehicles, as amended, and its implementing regulations;

Art. 144 - *Non-discrimination of persons pursuing claims*

The insurance undertaking must ensure that persons pursuing claims arising out of events occurring on Luxembourg territory are not placed in a less favourable situation as a result of the fact that the undertaking is covering a risk, other than carrier's liability, classified under class 10 in Part A of Annex I by way of freedom to provide services rather than through an establishment situated in the Grand Duchy of Luxembourg.

Art. 145 – *Representative*

(1) For the purposes referred to in Article 144, any insurance undertaking covering risks other than carrier's liability, classified under class 10 in Part A of Annex I, must appoint a representative resident or established in the Grand Duchy of Luxembourg who shall collect all necessary information in relation to claims, and shall possess sufficient powers to represent the undertaking in relation to persons suffering damage who could pursue claims, including the payment of such claims, and to represent it or, where necessary, to have it represented before the Luxembourg courts and authorities in relation to those claims.

That representative may also be required to represent the insurance undertaking before the competent Luxembourg authorities with regard to checking the existence and validity of motor vehicle liability insurance policies.

(2) The appointment of the representative shall not in itself constitute the opening of a branch nor an establishment in the context of this law.

(3) Where the insurance undertaking has failed to appoint a representative, as indicated in paragraph 1, the representative responsible for settling claims appointed in accordance with Article 4 of Directive 2000/26/EC by the undertaking covering risks related to insurance against civil liability in respect of motor vehicles, except carrier's liability, in the Grand Duchy of Luxembourg under freedom to provide services shall assume the role of the representative referred to in paragraph 1.

Section 4 – Freedom to provide services: by reinsurance undertakings

Art. 146 – *Place of location of risk for reinsurance business pursued under freedom to provide services*

A reinsurance transaction carried out under freedom to provide services is a reinsurance transaction through which a reinsurance undertaking of a Member State, either through its

registered office or a stable establishment situated in a Member State, accepts risks ceded by an undertaking whose registered office is situated in another Member State.

Art. 147 – *General principle*

Without prejudice to the provisions of this Chapter, the authorisation granted to a Luxembourg reinsurance undertaking enables it to conduct its business, under freedom to provide services, throughout the EEA.

Without prejudice to the provisions of this Chapter, the authorisation also allows business to be conducted in third countries in compliance with the legislation of the home State of the undertaking ceding the risk.

Art. 148 – *Preliminary conditions for pursuing business under freedom to provide services*

(1) Reinsurance transactions undertaken by a Luxembourg reinsurance undertaking under freedom to provide services within the territory of the EEA may be carried out without any additional formalities.

(2) Any reinsurance undertaking approved in a Member State may conduct such business in the Grand Duchy of Luxembourg under freedom to provide services for which it has an authorisation in its home Member State.

(3) A reinsurance undertaking approved in the Grand Duchy of Luxembourg that intends to conduct business for the first time under freedom to provide services in one or more third countries shall notify the CAA accordingly.

(4) Reinsurance undertakings of a third country may operate under freedom to provide services in the Grand Duchy of Luxembourg.

Reinsurance undertakings having their registered office in a third country may not be granted, for their reinsurance business within the Grand Duchy of Luxembourg under freedom to provide services, a more favourable treatment than that granted to Luxembourg reinsurance undertakings.

Section 5 – Competences of the CAA as supervisory authority of the host Member State

Subsection 1 – General provision

Art. 149 – *Language*

All documents that the CAA is authorised to request concerning the activities of insurance or reinsurance undertakings operating in the territory of the Grand Duchy of Luxembourg shall be supplied to it in French, German or any other language agreed with it.

Subsection 2 - Insurance

Art. 150 - *Prior notification and prior approval*

The provisions of Articles 174 and 175, subparagraph 1 shall apply to insurance operations under right of establishment or freedom to provide services.

Art. 151 - *Insurance undertakings not complying with the legal provisions*

(1) Where an undertaking operating in the Grand Duchy of Luxembourg through a branch or pursuing business under the freedom to provide services in its territory does not

comply with the legal provisions applicable to it, the CAA shall require the insurance undertaking concerned to remedy such irregularity.

(2) Where the undertaking concerned fails to take the necessary action, the CAA shall inform the supervisory authorities of the home Member State accordingly, and request them, at the earliest opportunity, to take all appropriate measures to ensure that the undertaking concerned remedies that irregular situation

(3) Where, despite the measures taken by the home Member State or because those measures prove to be inadequate or are lacking in that Member State, the insurance undertaking persists in violating the legal provisions in force in the Grand Duchy of Luxembourg, the CAA may, after informing the supervisory authorities of the home Member State, take appropriate measures to prevent or penalise further irregularities, including, in so far as is strictly necessary, preventing that undertaking from continuing to conclude new insurance contracts within the territory of Luxembourg.

In addition, the CAA may refer the matter to EIOPA and request its assistance.

(4) Paragraphs 1 and 2 shall not affect the power of the CAA to take appropriate emergency measures to prevent or penalise irregularities within the Grand Duchy of Luxembourg. That power shall include the possibility of preventing insurance undertakings from continuing to conclude new insurance contracts within its territory.

(5) Paragraphs 1, 2 and 3 shall not affect the power of the CAA, under the conditions set out in Article 303, to issue the sanctions laid down in that Article, with the exception, for irregularities committed under the regime of freedom to provide services, of those provided for in paragraph 3, point b) of that Article. The CAA, at the expense of the undertaking, shall proceed to publish the measures which it has issued in such newspapers and publications as it designates, and to publicise in such places and for such duration as it decides.

(6) Where an insurance undertaking which has committed an infringement has an establishment or possesses property in the Grand Duchy of Luxembourg, the CAA may, in accordance with Luxembourg law, apply the national administrative penalties prescribed for that infringement by way of enforcement against that establishment or property.

(7) Any measure adopted under paragraphs 2 to 6 involving restrictions on the conduct of insurance business must be properly reasoned and communicated to the insurance undertaking concerned.

(8) Insurance undertakings shall submit to the CAA at its request all documents requested of them for the purposes of paragraphs 1 to 7, to the extent that Luxembourg insurance undertakings are also obliged to do so.

(9) The CAA shall inform the Commission and EIOPA of the number and types of cases which led to refusals under Articles 134 and 140 or where measures have been taken under paragraphs 3 and 4 of this Article.

Art. 152 – *Advertising*

EEA insurance undertakings, other than those established in Luxembourg, which operate in the Grand Duchy of Luxembourg through freedom to provide services or through a branch may advertise their services, through all available means of communication, provided that they respect to the rules governing the form and content of such advertising adopted in the interest of the general good.

Subsection 3 - Reinsurance

Art. 153 - *Reinsurance undertakings of the EEA not complying with the legal provisions*

(1) Where an EEA reinsurance undertaking operating in the Grand Duchy of Luxembourg through a branch or pursuing business under the freedom to provide services is not complying with the legal provisions applicable to it in the Grand Duchy of Luxembourg, the CAA shall require the reinsurance undertaking concerned to remedy that irregular situation. At the same time, they shall refer those findings to the supervisory authority of the home Member State.

(2) Where, despite the measures taken by the home Member State or because such measures prove inadequate, the reinsurance undertaking persists in violating the legal provisions applicable to it in the Grand Duchy of Luxembourg, the CAA may, after informing the supervisory authority of the home Member State, take appropriate measures to prevent or penalise further irregularities, including, insofar as is strictly necessary, preventing that reinsurance undertaking from continuing to conclude new reinsurance contracts within the Grand Duchy of Luxembourg.

In addition, the CAA may refer the matter to EIOPA and request its assistance.

(3) Any measure adopted under paragraphs 1 and 2 involving sanctions or restrictions on the conduct of reinsurance business shall state the reasons and shall be communicated to the reinsurance undertaking concerned.

In default of any indication of an address for service of documents on the undertaking in the Grand Duchy of Luxembourg, the CAA shall proceed, at the expense of the undertaking, to publish the measures which it has issued in such newspapers and publications as it designates, and to publicise in such places and for such duration as it decides.

Art. 154 – *Prohibition on activities*

Where the CAA is informed by the competent authorities of another Member State of the withdrawal of authorisation from an undertaking conducting business in the Grand Duchy of Luxembourg under the right of establishment or freedom to provide services, it shall take appropriate measures to prevent the undertaking concerned from conducting further business in the Grand Duchy of Luxembourg.

Section 6 – Competences of the CAA as supervisory authority of the home Member State

Art. 155 - *Luxembourg insurance and reinsurance undertakings not complying with the legal provisions*

Where the CAA is informed by the supervisory authorities of another Member State that a Luxembourg insurance or reinsurance undertaking operating through a branch or pursuing business under the freedom to provide services within its territory, is ignoring an order to comply with the legal provisions applicable to it in that Member State, the CAA shall, at the earliest opportunity, take all appropriate measures to ensure that the undertaking concerned remedies that irregular situation.

"Section 6a– Collaboration platforms

Art. 155*a* - Collaboration platforms

(1) CAA may request EIOPA, in the case of justified concerns about negative effects on policyholders, to set up and coordinate a collaboration platform to strengthen the

exchange of information and to enhance collaboration between the relevant supervisory authorities where an insurance or reinsurance undertaking carries out, or intends to carry out, activities which are based on the freedom to provide services or the freedom of establishment and where:

a) such activities are of relevance with respect to the Grand Duchy of Luxembourg or the host Member State's market;

b) a notification by the CAA has been made under Article 152*bis,* paragraph 2, of Directive 2009/138/EC of deteriorating financial conditions or other emerging risks; or

c) the matter has been referred by the CAA to EIOPA under Article 152*bis*, paragraph 2, of Directive 2009/138/EC.

Without prejudice to Article 35 of Regulation (EU) n° 1094/2010, the CAA shall, at EIOPA's request, provide all necessary information in a timely manner to allow for the proper functioning of the collaboration platform.

(2) Paragraph 1 is without prejudice to the right of the CAA to set up or to participate in a collaboration platform where the relevant supervisory authorities all agree to do so.

(3) The setting up of a collaboration platform pursuant to paragraphs 1 and 2 is without prejudice to the supervisory mandate granted to the CAA by this law."[97]

Section 7 – Statistical information

Art. 156 - ***Statistical information relating to cross-border activities***

A CAA regulation shall determine how the statistics to be provided by insurance undertakings on their cross-border activities are to be compiled.

Section 8 - Treatment of contracts of branches in winding-up proceedings

Art. 157 – ***Winding-up of Luxembourg insurance undertakings***

Where a Luxembourg insurance undertaking is wound up, commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of the other insurance contracts of that undertaking, without distinction as to nationality as far as the persons insured and the beneficiaries are concerned

Art. 158 - ***Winding-up of Luxembourg reinsurance undertakings***

Where a Luxembourg reinsurance undertaking is wound up, commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of the other reinsurance contracts of that undertaking.

Chapter 10 - *Branches established in the Grand Duchy of Luxembourg and belonging to insurance or reinsurance undertakings with head offices situated outside the EEA*

[97] law of 21 July 2021 (2)

Section 1 – Direct insurance

Art. 159 - *Principle of authorisation and conditions*

(1) The exercise of direct insurance business by any third-country insurance undertaking in or from the Grand Duchy of Luxembourg shall be subject to the grant of a prior authorisation.

A third-country insurance undertaking operating in the Grand Duchy of Luxembourg under freedom to provide services is not deemed to be conducting insurance business in the Grand Duchy of Luxembourg when the policyholder took the initiative to enter into the contract. The policyholder is deemed to have taken the initiative to enter into the contract if it sought to enter into it without being contacted beforehand by the insurance undertaking or by any other person, whether or not appointed by the insurance undertaking.

Insurance undertakings having their registered office in a third country which is a signatory to the General Agreement on Trade in Services (GATS) are exempted from the approval referred to in paragraph 1 above for business transacted under freedom to provide services in the Grand Duchy of Luxembourg when such business relates to:

a) risks associated with:

- maritime commerce,
- aviation,
- the launching and loading of spacecraft, including satellites,

such risks to include those relating to the goods transported, the vehicles transporting such goods and any liability deriving therefrom;

b) insurance of goods in international transit.

Except for insurance undertakings having their registered office in a Member State of the OECD, the authorisation referred to in paragraph 1 above may be refused if reciprocity is not guaranteed by their national legislation to Luxembourg undertakings.

(2) An authorisation foreseen under paragraph 1 may be granted in the Grand Duchy of Luxembourg where the third country undertaking fulfils at least the following conditions:

a) it is entitled to pursue insurance business under its national law;

b) it establishes a branch in the territory of the Grand Duchy of Luxembourg ;

c) it designates a legal representative, to be approved by the "CAA"[98];

d) it possesses in the Grand Duchy of Luxembourg assets of an amount equal to at least one half of the absolute floor prescribed in Article 112 in respect of the Minimum Capital Requirement and deposits one fourth of that absolute floor as security;

e) it undertakes to cover the Solvency Capital Requirement and the Minimum Capital Requirement in accordance with the requirements referred to in Articles 104 and 112;

f) for non-life insurance, it communicates the name and address of all claims handling representatives complying with conditions to be fixed by a CAA regulation and appointed in each Member State other than the Grand Duchy of Luxembourg where the risks to be covered are classified under class 10 of Part A of Annex I of this law, other than carrier's liability;

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g) it submits a scheme of operations, the content of which is determined by a CAA regulation;

h) it fulfils the governance requirements laid down in Chapter 4, Section 2.

i) it complies with the specialisation principle set out in Article 49, paragraph 1, point a), indent 1.

(3) For the purposes of this Section, 'branch' means a permanent presence in the territory of Luxembourg of an undertaking referred to in paragraph 1, which receives authorisation and which pursues insurance business there.

(4) The applicant shall moreover demonstrate that the undertaking is authorised to carry out in the country of its registered office the insurance operations which are the subject of the application, or the reasons why it is not authorised there.

(5) The legal representative must fulfil the conditions of Title III of this law relating to executives of direct insurance undertakings and have sufficient powers to bind the undertaking in relation to third parties and to represent it towards the Luxembourg authorities and courts;

The power of attorney given to the legal representative shall specify his powers in an unequivocal manner. In the event that such power of attorney might undergo a significant modification by the undertaking, the latter must inform the CAA thereof.

Any communication or notice to be served on a third country undertaking relative to its establishment in the Grand Duchy of Luxembourg shall be served at the domicile of the legal representative, on whom jurisdiction is conferred.

The domicile of the legal representative also serves to determine the time limits to be respected for any communication or notice.

(6) The content of the request for authorisation shall be fixed by a CAA regulation.

The undertakings referred to in paragraph 1 must in addition provide all other information requested as being necessary for the consideration of the application.

(7) Branches of third-country insurance undertakings are required to ensure that their books of account and other documents relating to their business activities remain in the Grand Duchy of Luxembourg at all times, either at the registered office of the Luxembourg branch or in any other place duly notified to the CAA.

(8) Third-country insurance undertakings must bring any change of its legal representative as well as any extension of the business or major amendment to the business plan to the CAA's attention.

A CAA regulation shall specify the relevant formalities for this paragraph.

Art. 160 –*Transfer of portfolio*

(1) Under the conditions laid down by this law and its implementing regulations, branches established within the territory of Luxembourg and referred to in this Section shall be authorised to transfer all or part of their portfolios of contracts to an accepting undertaking established within the Grand Duchy of Luxembourg, where the CAA or, if applicable, the competent authority of a Member State referred to in Article 163, certifies that, taking into account the transfer, the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in Article 104, subparagraph 1.

(2) Under the conditions laid down by this law and its implementing regulations, branches established within the territory of Luxembourg and referred to in this Section shall be authorised to transfer all or part of their portfolios of contracts to an insurance

undertaking with its registered office in another Member State, where the competent authorities of that Member State certify that, taking into account the transfer, the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in Article 104, subparagraph 1.

(3) Where, under the conditions foreseen by this law and its implementing regulations, branches established within the territory of Luxembourg and falling under this Section are authorised to transfer all or part of their portfolios of contracts to a branch under this Chapter and established within the territory of another Member State, the CAA shall ensure that the supervisory authorities of the Member State of the accepting undertaking or, if applicable, those of the Member State referred to in Article 163, certify:

a) that the accepting undertaking possesses, after taking the transfer into account, the necessary eligible own funds to cover the Solvency Capital Requirement;

b) that the law of the Member State of the accepting undertaking permits such a transfer; and

c) that this Member State has accepted the transfer.

(4) In the cases referred to in paragraphs 1 to 3, the CAA shall authorise the ceding branch to carry out the transfer after receipt of the agreement of the supervisory authorities of the Member State in which the risk is situated or the Member State of the commitment, where such Member State is not Luxembourg.

(5) In the event that the CAA is consulted by the supervisory authorities of the origin of the ceding branch, it shall give its opinion or consent within three months of receiving the request. The absence of any response within that period from the CAA shall be considered as in favour or as tacit consent.

(6) Where the Grand Duchy of Luxembourg is the State in which the risk is situated or the State of the commitment, the portfolio transfer authorised in accordance with paragraphs 1 to 5 shall be published in the Memorial.

Such transfer shall automatically be valid against policyholders, the insured persons and any other person having rights or obligations arising out of the contracts transferred.

Art. 161 – *Technical provisions*

Third-country insurance undertakings must establish adequate technical provisions to cover the insurance obligations assumed in or from the Grand Duchy of Luxembourg calculated in accordance with Chapter 6, Section 3. Those undertakings must value assets and liabilities in accordance with Chapter 6, Section 2 and determine own funds in accordance with Chapter VI, Section 4.

Art. 162 - *Solvency Capital Requirement and Minimum Capital Requirement*

(1) Branches of third-country insurance undertakings must maintain an amount of eligible own funds consisting of the items referred to in Chapter 6, Section 4.

The Solvency Capital Requirement and the Minimum Capital Requirement shall be calculated in accordance with the provisions of Chapter 6, Sections 5 and 6.

However, for the purpose of calculating the Solvency Capital Requirement and the Minimum Capital Requirement, both for life and non-life insurance, account shall be taken only of the operations effected by the branch concerned.

(2) The eligible amount of basic own funds required to cover the Minimum Capital Requirement and the absolute floor of that Minimum Capital Requirement shall be constituted in accordance with Chapter 6, Section 4.

(3) The eligible amount of basic own funds shall not be less than half of the absolute floor required under Article 112.

The deposit lodged in accordance with Article 159, paragraph 2, point d) shall be counted towards such eligible basic own funds to cover the Minimum Capital Requirement.

(4) The matching assets representing the Solvency Capital Requirement must be kept within the Grand Duchy of Luxembourg up to the amount of the Minimum Capital Requirement, and the balance within the EEA.

Art. 163 – ***Provisions applying to undertakings authorised in more than one Member State***

(1) Third-country insurance undertakings which have requested or obtained authorisation from several Member States, including the Grand Duchy of Luxembourg may apply to benefit from the following advantages which may be granted only jointly with other Member States concerned:

a) the Solvency Capital Requirement referred to in Article 162 shall be calculated in relation to the entire business which they pursue within the EEA;

b) the deposit required under Article 159, paragraph 2, point d) shall be lodged in only one of those Member States;

c) the assets representing the Minimum Capital Requirement shall be localised, in accordance with Article 115, in any one of the Member States in which they pursue their activities.

In the cases referred to in Subparagraph 1, point a) of , account shall be taken only of the operations effected by all the branches established within the EEA for the purposes of this calculation.

(2) Application to benefit from the advantages provided for in paragraph 1 shall be made to the CAA and the supervisory authorities of the other Member States concerned. The application shall state the authority of the Member State which in future is to supervise the solvency of the entire business of the branches established within the EEA. Reasons must be given for the choice of authority made by the undertaking.

The deposit referred to in Article 159 paragraph 2, point d) shall be lodged with that Member State.

(3) The regime provided for in paragraph 1 may be granted only where the supervisory authorities of all Member States in which an application has been made agree to it.

That regime shall take effect from the time when the selected supervisory authority informs the other supervisory authorities that it will supervise the state of solvency of the entire business of the branches within the EEA.

Where the CAA is selected, it shall obtain from the other Member States the information necessary for the supervision of the overall solvency of the branches established in their respective territories. Where a Member State other than Luxembourg is selected, the CAA shall provide the competent authorities of the Member State selected, the information necessary to enable them to supervise the overall solvency of the branches established in their territory.

(4) At the request of one or more of the Member States concerned, the advantages granted under paragraphs 1, 2 and 3 shall be withdrawn simultaneously by all Member States concerned.

Art.164 - ***Accounting, prudential and statistical information and undertakings in difficulty***

For the purposes of this Section, Articles 4, 61 and 123 to 127 shall apply.

As regards the application of Articles 123 and 124, in the event that a third-country insurance undertaking qualifies for the advantages provided for in Article 163 paragraphs 1, to 3, where the CAA is the selected supervisory authority responsible for verifying the solvency of branches established within the EEA with respect to their entire business, it shall be treated in the same way as the supervisory authority of the Member State in the territory of which the registered office of an undertaking established in the EEA.

Art. 165 - ***Separation of non-life and life business***

Branches referred to in this Section shall not simultaneously pursue life and non-life insurance activities in the Grand Duchy of Luxembourg.

Art. 166 - ***Withdrawal of authorisation for undertakings authorised in more than one Member State***

In the case of a withdrawal of authorisation of a third-country insurance undertaking for which the CAA is the selected authority according to Article 163 paragraph 2, it shall notify the supervisory authorities of the other Member States where the undertaking operates and ask them to take the appropriate measures.

Where the CAA is informed by another authority selected pursuant to Article 163 paragraph 2, of a withdrawal, it shall take the appropriate measures.

Where the reason for that withdrawal is the inadequacy of the overall state of solvency as fixed by the Member States which agreed to the request referred to in Article 163, the "CAA"[99] shall withdraw its authorisation.

Section 2 - Reinsurance

Art. 167 - ***Principle of authorisation and conditions for conducting reinsurance activity***

(1) The establishment of a branch in the Grand Duchy of Luxembourg by any third-country reinsurance undertaking is conditional on receipt of the authorisation of the "CAA"[100] before the branch commences its reinsurance business in or from the Grand Duchy of Luxembourg.

Except for undertakings having their registered office in a Member State of the OECD, the authorisation referred to in subparagraph 1 can be refused if reciprocity is not guaranteed to Luxembourg undertakings by the third-country's national legislation.

(2) Third-country reinsurance undertakings may not be granted more favourable treatment than that given to Luxembourg reinsurance undertakings for their reinsurance business in the Grand Duchy of Luxembourg, either under the right of establishment or the freedom to provide services.

(3) The authorisation referred to in paragraph 1 may be granted in the Grand Duchy of Luxembourg to any third-country reinsurance undertaking which meets at least the following conditions:

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a) it is authorised in the country in which its registered office is situated to carry out the reinsurance transactions covered by the application, or the reasons why it is not so authorised;

b) it limits its object to reinsurance business within the meaning of Article 49, paragraph 1, point b), first indent;

c) it has established its central administration there;

d) it is supervised there in accordance with recognised international standards;

e) there are no laws, regulations or administrative provisions in the legislation of the country in which the undertaking's registered office is located that constitute an obstacle to sufficient cooperation between the authorities of the country in which the registered office is located and the CAA;

f) it provides a business plan the contents of which are fixed by a CAA regulation;

g) it possesses In the Grand Duchy of Luxembourg assets of an amount equal to at least one half of the absolute floor prescribed in the CAA regulation adopted pursuant to Article 112 for the Minimum Capital Requirement and it deposits a quarter of this absolute floor for security purposes.

h) it commits to cover the Solvency Capital Requirement and the Minimum Capital Requirement, in accordance with the requirements laid down in Articles 104 and 112;

i) it ensures the direction and the daily management of the branch in accordance with Article 49, paragraph 1, point b), indents 2 and 3;

j) it meets the governance requirements set out in Chapter 4, Section 2 of this Part.

(4) For the purposes of this Chapter, "branch" means any permanent presence on the territory of Luxembourg of an undertaking referred to in paragraph 1 which receives authorisation and which pursues reinsurance business.

(5) The content of the application for authorisation is fixed by a CAA regulation.

The undertakings referred to in paragraph 1 must in addition provide any other information considered as necessary for the assessment of the application.

(6) Branches of third-country reinsurance undertakings are required to ensure that their books of account and other documents relating to their business activities remain in the Grand Duchy of Luxembourg at all times, either at the office of operations of the Luxembourg branch, or in any other place duly notified to the CAA.

(7) The authorisation allows branches of third-country reinsurance undertakings to conduct business in one or more countries outside the Grand Duchy of Luxembourg in compliance with the legislation of the State of origin of the cedant.

A branch which intends to carry on business for the first time in one or more countries outside Luxembourg under the freedom to provide services, must notify the CAA.

(8) Branches of third-country reinsurance undertakings must bring to the attention of the CAA any change in its executive as well as any business extension or significant change to their business plan.

A CAA regulation shall specify the conditions of this paragraph.

(9) Articles 4, 57, 61, 66, 67, Article 69, paragraph 3 and Articles 114, 115, 116, 117, 123 to 128, 161 and 162 shall apply by analogy.

Art. 168 – *Equivalence*

Where the solvency regime of a third country has been deemed to be equivalent or temporarily equivalent to that laid down in Directive 2009/138/EC, reinsurance contracts concluded with undertakings having their head office in that third country shall be treated in the same manner as reinsurance contracts concluded with undertakings authorised in accordance with this law.

The CAA shall not retain or introduce for the establishment of technical provisions a system with gross reserving which requires pledging of assets to cover unearned premiums and outstanding claims provisions where the reinsurer is a third-country insurance or reinsurance undertaking, situated in a country whose solvency regime is deemed to be equivalent or temporarily equivalent to that laid down in Directive 2009/138/EC, in accordance with Article 172 of that Directive.

Section 3 – Termination of activity

Art.169 - *Renunciation and withdrawal of authorisation*

(1) The provisions of Articles 129, 130, 131 and 256 applicable to Luxembourg insurance and reinsurance undertakings shall also apply to Luxembourg branches of third-country insurance or reinsurance undertakings.

(2) Where a third-country insurance or reinsurance undertaking has its authorisation withdrawn or is no longer authorised to conduct insurance business in one or several classes in its home country, its legal representative or its authorised executive in the Grand Duchy of Luxembourg shall inform the CAA thereof without delay.

Approval granted to a branch of a third-country insurance or reinsurance undertaking shall be withdrawn by the "CAA"[101] if the said undertaking has lost its approval in the country in which its registered office is located.

Chapter 11 - *Subsidiaries of insurance and reinsurance undertakings governed by the laws of a third country and acquisitions of holdings by such undertakings*

Art. 170 - *Information to be provided by the CAA to the Commission and to EIOPA*

For the establishment in the Grand Duchy of Luxembourg of a direct or indirect subsidiary, one or more of whose parent undertakings governed by the laws of a third country and for the authorisation of any holding of such parent undertaking in a Luxembourg direct insurance or reinsurance undertaking which would turn that insurance or reinsurance undertaking into a subsidiary of that third country parent undertaking, the CAA shall inform the Commission, EIOPA and the competent authorities of the other Member States of any corresponding approvals and authorisations and specifying the structure of the group concerned.

Art. 171 - *Third-country treatment of Luxembourg insurance and reinsurance undertakings*

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The CAA shall inform the Commission and EIOPA of any general order difficulties encountered by Luxembourg insurance or reinsurance undertakings in establishing themselves and operating in a third country or pursuing activities in a third country.

Subtitle II

Specific provisions for insurance and reinsurance

Chapter 1 - *Applicable law and conditions of direct insurance contracts*

Section 1 – Applicable law

Art. 172 – *Applicable law*

(1) The provisions of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) shall apply in order to determine the law applicable to insurance contracts falling within the scope of Article 7 of that Regulation.

(2) The CAA shall communicate to the Commission the risks against which insurance is compulsory under the Luxembourg legislation, stating the following:

a) the specific legal provisions relating to that insurance;

b) the particulars which must be given in the certificate which a non-life insurance undertaking must issue to an insured person where the Luxembourg legislation requires proof that the obligation to take out insurance has been complied with.

These particulars must include a declaration by the insurance undertaking to the effect that the contract complies with the specific provisions relating to that insurance.

Section 2 – General good

Art. 173 – *General good*

Any policyholder is free to conclude a contract with an insurance undertaking authorised in the EEA relating to risks or commitments situated in the Grand Duchy of Luxembourg as long as that conclusion of contract does not conflict with legal provisions protecting the general good in the Grand Duchy of Luxembourg.

Section 3 - Conditions of insurance contracts and scales of premiums

Art. 174 - *Non-life insurance*

(1) The prior approval or systematic notification of general and special insurance policy conditions, scales of premiums, or forms and other printed documents which an insurance undertaking intends to use in its dealings with policyholders may not be required.

The CAA may require non-systematic notification of those policy conditions and other documents only for the purpose of verifying compliance with Luxembourg provisions concerning insurance contracts. Those requirements shall not constitute a prior condition for an insurance undertaking to pursue business.

(2) In the case of compulsory insurance in the Grand Duchy of Luxembourg, insurance undertakings operating there must communicate to the CAA the general and special conditions of such insurance before circulating them.

Art. 175 – *Life insurance*

The prior approval or systematic notification of general and special insurance policy conditions, scales of premiums, technical bases used in particular for calculating scales of premiums and technical provisions or forms and other printed documents which a life insurance undertaking intends to use in its dealings with policyholders may not be required.

However, the CAA may, for the sole purpose of verifying compliance with Luxembourg provisions concerning actuarial principles, require systematic communication of the technical bases used in particular for calculating scales of premiums and technical provisions. Those requirements shall not constitute a prior condition for an insurance undertaking to pursue business.

Chapter 2 - Provisions specific to non-life insurance

Section 1 - Community co-insurance

Art. 176 – *Conditions of community co-insurance and information exchange*

(1) This Section shall apply to Community co-insurance operations which shall be those co-insurance operations which relate to one or more risks classified under classes 3 to 16 of Part A of Annex I and which fulfil the following conditions:

a) the risk is a large risk;

b) the risk is covered by a single contract at an overall premium and for the same period by two or more insurance undertakings each for its own part as co-insurer, one of them being the leading insurance undertaking;

c) the risk is situated within the EEA;

d) for the purpose of covering the risk, the leading insurance undertaking is treated as if it were the insurance undertaking covering the whole risk;

e) at least one of the co-insurers participates in the contract through a head office or a branch established in a Member State other than that of the leading insurance undertaking;

f) the leading insurance undertaking fully assumes the leader's role in co-insurance practice and in particular determines the terms and conditions of insurance and rating.

(2) Articles 139 to 145 shall apply only to the leading insurance undertaking.

(3) Co-insurance operations which do not satisfy the conditions set out in paragraph 1 shall remain subject to the provisions of this law except those of this Section.

(4) The right of insurance undertakings to participate in Community co-insurance shall not be made subject to any provisions other than those of this Section.

(5) Co-insurers shall keep statistical data showing the extent of Community co-insurance operations in which they participate and the Member States concerned.

(6) For the purposes of the implementation of this Section the CAA shall, in the framework of the cooperation referred to in Articles 3 and 7 to 13, provide the supervisory authorities of the other Member States with all necessary information.

Art. 177 – Technical provisions

The amount of the technical provisions shall be determined by the different co-insurers according to the rules fixed by their home Member State or, in the absence of such rules, according to customary practice in that State.

However, the technical provisions shall be at least equal to those determined by the leading insurer according to the rules of its home Member State.

Art. 178 - *Treatment of co-insurance contracts in winding-up proceedings*

In the event of an insurance undertaking being wound up, liabilities arising from participation in Community co-insurance contracts shall be met in the same way as those arising under the other insurance contracts of that undertaking without distinction as to the nationality of the insureds and of the beneficiaries.

Section 2 - Assistance

Art. 179 – *Assistance*

(1) For the purposes of Article 34, non-life insurance shall include the activity which consists of assistance provided for persons who get into difficulties while travelling, while away from their home or their habitual residence or assistance in other circumstances.

(2) The assistance activity consists, against the prior payment of a premium, of a commitment to immediately provide aid to the beneficiary of an assistance contract when it finds himself in difficulty as a result of an unexpected event in the cases and circumstances covered by the contract.

The aid may consist of cash benefits or benefits in kind. Benefits in kind may also be provided through use of the service provider's own staff or equipment.

The assistance activity does not cover servicing or maintenance, after–sales services or simple indication or provision of aid as an intermediary.

(3) This law shall not apply to the activity of providing assistance, insofar as it fulfils the following conditions:

a) the assistance is provided in the event of an accident or breakdown affecting a road vehicle where the accident or breakdown occurs on the Luxembourg territory;

b) the commitment under the assistance is limited to the following conditions:

- on-the-spot repairs for which the provider of the guarantee uses its own staff and equipment in most cases;
- the transportation of the vehicle to the closest and most appropriate repair site where these repairs may be carried out, as well as accompanied transport, normally in the same vehicle, of the driver and his passengers to the closest place from which they may continue their journey by other means, and
- where the home Member State of the provider of the guarantee so foresees, transportation of the vehicle, accompanied by the driver and the passengers where appropriate, to their domicile, their point of departure or their original destination within the same Member State, and

c) the assistance is not provided by an undertaking subject to this law.

(4) In the cases referred to in paragraph 3, point b), indents 1 and 2, the condition of the accident or breakdown occurring in the Grand Duchy of Luxembourg shall not apply

when the beneficiary is a member of the body providing the guarantee and the repair or transportation of the vehicle is carried out upon simple presentation of the membership card, without payment of any additional premium, by a similar body in the country concerned on the basis of a reciprocity agreement or, in the case of Ireland and the United Kingdom, where the assistance is provided by a same body operating in these two States.

(5) This law does not apply to assistance operations carried out by the Automobile Club du Grand Duchy du Luxembourg where the accident or breakdown affecting a road vehicle occurred outside the territory of the Grand Duchy of Luxembourg and the assistance consists of transportation of the damaged or broken-down vehicle accompanied by the driver and the passengers where appropriate, to their domicile.

(6) The CAA may check the insurance undertakings seeking or having obtained authorisation for class 18 in Part A of Annex I on their direct or indirect resources in staff and equipment, including the qualification of their medical teams and the quality of the equipment available to such undertakings to meet their commitments arising out of that class.

Section 3 - Legal expenses insurance

Art. 180 – *Scope*

(1) This Section shall apply to legal expenses insurance referred to in class 17 in Part A of Annex I whereby an insurance undertaking promises, against the payment of a premium, to bear the costs of legal proceedings and to provide other services directly linked to insurance cover, in particular with a view to the following:

a) securing compensation for the loss, damage or injury suffered by the insured person, by settlement out of court or through civil or criminal proceedings;

b) defending or representing the insured person in civil, criminal, administrative or other proceedings or in respect of any claim made against that person.

(2) This Section shall not apply to any of the following:

a) legal expenses insurance where such insurance concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels;

b) the activity pursued by an insurance undertaking providing civil liability cover for the purpose of defending or representing the insured person in any inquiry or proceedings where that activity is at the same time pursued in the own interest of that insurance undertaking under such cover;

c) the activity of legal expenses insurance undertaken by an assistance insurer which complies with the following conditions:

- the activity is pursued in a Member State other than that in which the insured person is habitually resident;
- the activity forms part of a contract covering solely the assistance provided for persons who fall into difficulties while travelling, while away from their home or their habitual residence.

For the purposes of point c) of subparagraph 1, the contract shall clearly state that the cover concerned is limited to the circumstances referred to in that point and is ancillary to the assistance.

Art. 181 - *Management of claims*

(1) Any insurance undertaking authorised to conduct the business of legal expenses insurance must adopt at least one of the methods for the management of claims set out in paragraphs 2 and 3.

Whichever solution is adopted, the interest of persons having legal expenses cover shall be regarded as safeguarded in an equivalent manner under this Section.

(2) Insurance undertakings shall ensure that no member of the staff who is concerned with the management of legal expenses claims or with legal advice in respect thereof pursues at the same time a similar activity in another undertaking having financial, commercial or administrative links with the first insurance undertaking and pursuing one or more of the other classes of insurance set out in Annex I.

Composite insurance undertakings shall ensure that no member of the staff who is concerned with the management of legal expenses claims or with legal advice in respect thereof pursues at the same time a similar activity for another class transacted by them.

(3) The insurance undertaking shall entrust the management of claims in respect of legal expenses insurance to an undertaking having separate legal personality.

Where the undertaking having separate legal personality has links to an insurance undertaking which carries on one or more of the classes of insurance referred to in Part A of Annex I, members of the staff of the undertaking having separate legal personality who are concerned with the management of claims or with legal advice connected with such management shall not pursue the same or a similar activity in the other insurance undertaking at the same time.

"Chapter 2*bis* - Provisions specific to life insurance

Art. 181-1 - *Benefits under life insurance contracts*

For life insurance and capital redemption contracts, the benefit due is equal to :

a) the value due on the day the benefit falls due for contracts or parts of contracts for which the investment risk is not borne by the policyholder

b) the value obtained by liquidating the assets underlying the contract for contracts or parts of contracts where the investment risk is borne by the policyholder.

For contracts or parts of contracts for which the investment risk is borne by the policyholder, the insurance undertaking shall liquidate the underlying assets as soon as it becomes aware that the payment of the benefit is due."[102]

"Art. 181-2 - *Requests to policyholders of life insurance contracts*

This Article applies to policyholders of life insurance contracts in classes I, III or VI of Annex II and taken out before 6th April 2024.

If the policyholder fails to respond to a request relating to Article 300, paragraph 2bis, subparagraph 2, for a period of three months, the insurance undertaking shall confirm the request by a first registered letter sent to the last known address of the policyholder. For this purpose, the insurance undertaking shall use the data at its disposal.

If the policyholder fails to respond to the request within three months of receiving the first registered letter referred to in subparagraph 2, the insurance undertaking shall send a

[102] law of 30 March 2022

second registered letter to the policyholder, at the earliest within three months of sending the first registered letter referred to in subparagraph 2, informing him of the request, the consequences of his failure to respond and his right to oppose the request. To this end, the insurance undertaking shall make additional enquiries regarding the policyholder's address.

The policyholder's silence in response to the second registered letter referred to in subparagraph 3 is presumed to constitute acceptance of the request relating to article 300, paragraph 2bis, subparagraph 2, after a period of three months following the date of the posting of this second registered letter."[103]

" Chapter 2*ter* - *Processing of data concerning health*

Art. 181-3 - *Processing of data concerning health*

In accordance with Article 9, paragraph 2, letter g), of Regulation (EU) 2016/679, and having regard to the important public interest grounds inherent in insurance and reinsurance contracts for which the health of the data subject is a determining factor, the processing of data concerning health, with the exception of genetic data, is lawful where it is necessary for the performance of pre-contractual insurance or reinsurance measures or the performance of an insurance or reinsurance contract subject to:

1. compliance with the provisions on professional secrecy set out in Article 300 ;
2. the implementation of the following appropriate measures having regard to the state of knowledge, the costs of implementation and the nature, scope, context and purposes of the processing and the risks, which vary in probability and seriousness, to the rights and freedoms of the data subjects :
   a) the appointment of a Data Protection Officer ;
   b) carrying out impact assessments in accordance with Article 35 of Regulation (EU) 2016/679 ;
   c) anonymisation or pseudonymisation of health data or other functional separation measures for certain health data processing operations ;
   d) encryption of health data in transit and state-of-the-art key management;
   e) restrictions on access to health data;
   f) setting up of log files which make it possible to establish the reason, date and time of consultation and to identify the person who collected, modified or deleted the health data;
   g) raising staff awareness of health data protection and professional secrecy;
   h) regular assessment of the effectiveness of the technical and organisational measures put in place by means of an independent audit;
   i) the adoption of sectoral codes of conduct as provided for in Article 40 of Regulation (EU) 2016/679;
   j) the establishment of an internal policy setting out in particular how the principles provided for in Article 5 of Regulation (EU) 2016/679 are complied with.

Each controller and, where applicable, each processor must document and justify internally the exclusion, where applicable, of one or more of the measures listed in paragraph 1, point 2, letters a), b), c), h) and i). This documentation shall be made available to the National Data Protection Commission. Under no circumstances may a derogation be made from the measures listed in paragraph 1, point 2, letters d), e), f), g) and j)."[104]

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[103] law of 29 March 2024
[104] law of 6 February 2025 (1)

Chapter 3 – Rules specific to reinsurance

Art. 182 - *Finite reinsurance*

Insurance and reinsurance undertakings which conclude finite reinsurance contracts or pursue finite reinsurance activities must be able to properly identify, measure, monitor, manage, control and report the risks arising from those contracts or activities, defined in Article 43, point 29 of this law.

Art. 183 - *Special purpose vehicles*

(1) No special purpose reinsurance vehicle shall establish itself within the territory of the Grand Duchy of Luxembourg without prior approval from the "CAA"[105].

(2) The special purpose reinsurance vehicles situated in the Grand Duchy of Luxembourg fall within the exclusive competence of the CAA with regard to their prudential supervision.

Under this law, special purpose reinsurance companies having their registered office in the Grand Duchy of Luxembourg as well as special purpose reinsurance funds without legal personality, whose management company has its registered office in the Grand Duchy of Luxembourg, are deemed to be situated in the Grand Duchy of Luxembourg.

(3) Special purpose vehicles authorised by the Minister prior to 31 October 2015 shall be subject to the law of 6 December 1991 on the insurance sector, as amended, and to its implementing regulations. Any new activity commenced by such a special purpose vehicle after that date shall be subject to the provisions of this law.

Subtitle III

Supervision of insurance and reinsurance undertakings in a group

Chapter 1 - *Group supervision: definitions, application, scope and levels*

Section 1 - Definitions

Art. 184 – *Definitions*

For the purposes of this subtitle the following definitions shall apply:

1. "participating undertaking": an undertaking which is either a parent undertaking or other undertaking which holds a participation, or an undertaking linked with another undertaking by a relationship as set out in Article 22, paragraph 7 of Directive 2013/34/EU;

   For the purposes of this subtitle, any undertaking which, in the opinion of the supervisory authorities concerned, effectively exerts a dominant influence over another undertaking, shall also be considered as a parent undertaking.

2. "related undertaking": either a subsidiary undertaking or other undertaking in which a participation is held, or an undertaking linked with another undertaking by a relationship as set out in Article 22, paragraph 7 of Directive 2013/34/EU;

[105] law of 21 July 2021 (1)

Any undertaking over which, in the opinion of the supervisory authorities concerned, a parent undertaking effectively exerts a dominant influence, shall also be considered as a subsidiary undertaking.

The holding, directly or indirectly, of the voting rights or capital of an undertaking over which, in the opinion of the supervisory authorities concerned, a significant influence is exerted, shall also be considered as a participation.

3. "group": a group of undertakings that:
   a) consists of a participating undertaking, its subsidiaries and the entities in which the participating undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship as set out in Article 22, paragraph 7 of Directive 2013/34/EU; or
   b) is based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among those undertakings, and that may include mutual or mutual-type associations, provided that:
      - one of those undertakings effectively exercises, through centralised coordination, a dominant influence over the decisions, including financial decisions, of the other undertakings that are part of the group; and,
      - the establishment and dissolution of such relationships for the purposes of this subtitle are subject to prior approval by the group supervisor,

      where the undertaking exercising the centralised coordination shall be considered as the parent undertaking, and the other undertakings shall be considered as subsidiaries;
4. "group supervisor": the supervisory authority responsible for group supervision, determined in accordance with Article 192;
5. "college of supervisors": a permanent structure for cooperation and coordination to facilitate the decision-making relating to the group supervision;
6. "insurance holding company": a parent undertaking which is not a mixed financial holding company and the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance or reinsurance undertakings, or third-country insurance or reinsurance undertakings, at least one of such subsidiary undertakings being an insurance or reinsurance undertaking of the EEA;
7. "mixed-activity insurance holding company" : a parent undertaking, other than an insurance undertaking, a third-country insurance undertaking, a reinsurance undertaking, a third-country reinsurance undertaking, an insurance holding company or a mixed financial holding company, which includes at least one insurance or reinsurance undertaking among its subsidiary undertakings of the EEA.
8. "mixed financial holding company": a mixed financial holding company within the meaning of Article 208, point 4.

Section 2 - Applicability and scope

Art. 185 - Applicability of group supervision

(1) The supervision, at the level of the group, of insurance and reinsurance undertakings which are part of a group, shall be subject to the provisions of this subtitle.

The provisions of this law which lay down the rules for the supervision of Luxembourg reinsurance undertakings taken individually shall continue to apply to such undertakings, except where otherwise provided under this subtitle.

(2) The supervision, at the level of the group, of Luxembourg undertakings shall apply as follows:

a) to insurance or reinsurance undertakings, which are a participating undertaking in at least one insurance or reinsurance undertaking, in accordance with Articles 190 to 202;

b) to insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in the EEA, in accordance with Articles 190 to 202;

c) to insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company or a mixed financial holding company having its head office outside the EEA or a third-country insurance or reinsurance undertaking, in accordance with Articles 203 to 206;

d) to insurance or reinsurance undertakings, the parent undertaking of which is a mixed-activity insurance holding company, in accordance with Article 207.

(3) In the cases referred to in points (a) and (b) of paragraph 2, where the CAA is the group supervisor and the participating insurance or reinsurance undertaking or the insurance holding company which has its head office in the EEA is a related undertaking of a regulated entity or a mixed financial holding company which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, under the conditions to be fixed be a CAA regulation, the CAA may, after consulting the other supervisory authorities concerned, decide not to carry out at the level of that participating insurance or reinsurance undertaking or that insurance holding company or that mixed financial holding company the supervision of risk concentration referred to in this law, the supervision of intra-group transactions referred to in paragraph 1 of Article 190 of this law, or both.

(4) Where, under this law, a mixed financial holding company is the subject of equivalent provisions to those of Directive 2002/87/EC, in particular as regards the risk-based supervision, the CAA, when assuming the function of group supervisor, may, after consulting the other supervisory authorities concerned, decide to apply only the relevant provisions of Directive 2002/87/EC to that mixed financial holding company.

(5) Where, under this law, a mixed financial holding company is the subject of equivalent provisions to those of Directive 2013/36/EU, in particular as regards the risk-based supervision, the CAA, when assuming the function of group supervisor, may, with the agreement of the supervisor on a consolidated basis of the banking sector or the investment services sector, decide to apply only the provisions of those above mentioned legislations applicable to the most important sector as determined in accordance with Article 3 paragraph 2 of Directive 2002/87/EC.

(6) Where the CAA assumes the function of group supervisor, it shall inform EIOPA and "EBA"[106], of the decisions adopted in accordance with paragraphs 4 and 5.

Art. 186 - *Scope of group supervision*

(1) The provisions of this Article shall apply where the CAA exercises the function of group supervisor.

[106] law of 15 December 2019

(2) The exercise of group supervision in accordance with Article 185 shall not imply that the CAA is required to play a supervisory role in relation to the third-country insurance or reinsurance undertaking, , the insurance holding company, the mixed financial holding company or the mixed-activity insurance holding company taken individually, without prejudice to Article 201 as far as insurance holding companies or mixed financial holding company are concerned.

(3) The CAA may decide on a case-by-case basis not to include an undertaking in the group supervision referred to in Article 185 where:

a) the undertaking is situated in a third country where there are legal impediments to the transfer of the necessary information;

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

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

However, where several undertakings of the same group, taken individually, may be excluded pursuant to point (b) of the first subparagraph, they must nevertheless be included where, collectively, they are of non-negligible interest.

Where the CAA is of the opinion that an insurance or reinsurance undertaking should not be included in the group supervision under points (b) or (c) of the first subparagraph, it shall consult the other supervisory authorities concerned before taking a decision.

Where the CAA does not include an insurance or reinsurance undertaking in the group supervision under point (b) or (c) of the first subparagraph, the supervisory authorities of the Member State in which that undertaking is situated may ask the undertaking which is at the head of the group for any information which may facilitate their supervision of the insurance or reinsurance undertaking concerned.

Section 3 - Levels

Art. 187 - ***Ultimate parent undertaking at Community level***

(1) Where the Luxembourg participating insurance or reinsurance undertaking, the Luxembourg insurance holding company or the Luxembourg mixed financial holding company referred to in Article 185 paragraph 2, points a) and b) is itself a subsidiary undertaking of another insurance or reinsurance undertaking, of another insurance holding company or of another mixed financial holding company which has its head office in the EEA, the group supervision referred to in this subtitle shall apply only at the level of the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company which has its head office in the EEA.

(2) Where the ultimate parent insurance or reinsurance undertaking or insurance holding company which has its head office in the EEA, referred to in paragraph 1, is a subsidiary undertaking of an undertaking which is subject to supplementary supervision in accordance with Article 5 paragraph 2 of Directive 2002/87/EC, the CAA, when exercising the role of group supervisor, may, after consulting the other supervisory authorities concerned, decide not to carry out at the level of that undertaking, company or ultimate parent undertaking the supervision of risk concentration or the supervision of intra-group transactions, both referred to in Article 190 paragraph 1, or both.

Art. 188 - ***Ultimate parent undertaking at national level***

(1) Where the Luxembourg participating insurance or reinsurance undertaking, the Luxembourg insurance holding company or the Luxembourg mixed financial holding company, referred to in Article 185 paragraph 2, points a) and b), the ultimate parent undertaking of which at EEA level, as referred to in Article 187, has its registered office outside the Grand Duchy of Luxembourg, the CAA may, after consulting the supervisor of the group and the ultimate parent undertaking at EEA level, apply group supervision to the insurance or reinsurance undertaking, insurance holding company or mixed financial holding company at Luxembourg level, hereinafter referred to as "Luxembourg ultimate parent undertaking".

In such a case, the CAA shall explain its decision to both the group supervisor and the ultimate parent undertaking at EEA level.

Articles 190 to 202 shall apply, subject to the provisions set out in paragraphs 2 and 3.

(2) The CAA may restrict group supervision of the Luxembourg ultimate parent undertaking to one or several sections of Chapter 2.

(3) A CAA regulation shall determine the conditions of application of this Article.

Art. 189 - ***Parent undertaking covering several Member States***

(1) In the case where a Luxembourg ultimate parent undertaking is a participating undertaking of a national ultimate parent undertaking of another Member State, the CAA may conclude an agreement with the supervisory authority in that other Member State, with a view to carrying out group supervision at the level of a subgroup covering several Member States.

(2) In the case where a Luxembourg ultimate parent undertaking is a related undertaking of a national ultimate parent undertaking of another Member State, the CAA may conclude an agreement with the supervisory authority in that other Member State, with a view to the carrying out of the group supervision by that other supervisory authority at the level of a subgroup covering several Member States.

Where the CAA has concluded such an agreement, it shall not carry out any group supervision at the level of the Luxembourg ultimate parent undertaking.

(3) The agreements referred to in paragraphs 1 and 2 shall be reported to the group supervisor and the ultimate parent undertaking at EEA level.

(4) The provisions of Article 188, paragraphs 1 and 2 shall apply.

Chapter 2 – *Financial position and system of governance*

Art. 190 – ***Supervision of the financial position and system of governance***

(1) Where the CAA exercises the function of group supervisor, the supervision of the group solvency shall be exercised in accordance with paragraphs 2 and 3 of this Article, Article 185 and Chapter 3 and the supervision of the concentration risk and the intra-group transactions shall be exercised in accordance with the provisions of a CAA regulation.

(2) In the case referred to in Article 185, paragraph 2, point a), the Luxembourg participating insurance or reinsurance undertakings shall ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with the provisions of a CAA regulation.

(3) In the case referred to in Article 185, paragraph 2, point b), Luxembourg insurance and reinsurance undertakings in a group shall ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with the provisions of a CAA regulation.

(4) The requirements referred to in paragraphs 2 and 3 shall be subject to supervisory review by the group supervisor in accordance with Chapter 3. Articles 122 and 124, paragraphs 1 to 4 shall apply.

(5) As soon as the participating undertaking has observed and informed the CAA as group supervisor that the group Solvency Capital Requirement is no longer complied with or that there is a risk of non-compliance in the following three months, the CAA shall inform the other supervisory authorities within the college of supervisors, which shall analyse the situation of the group.

(6) The conditions regarding the control mechanism of the governance system shall be detailed by a CAA regulation.

Art. 191 - ***Frequency of calculation***

(1) Where the CAA is the group supervisor, it shall ensure that the calculations referred to in Article 190, paragraphs 2 and 3 are carried out at least annually, either by the participating insurance or reinsurance undertakings, by the insurance holding company or by the mixed financial holding company.

The relevant data for and the results of that calculation shall be submitted to the CAA by the participating insurance or reinsurance undertaking or, where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company, by the mixed financial holding company or by the undertaking in the group identified by the CAA after consulting the other supervisory authorities concerned and the group itself.

(2) The insurance and reinsurance undertaking, the insurance holding company and the mixed financial holding company referred to in paragraph 1 shall monitor the group Solvency Capital Requirement on an on-going basis. Where the risk profile of the group deviates significantly from the assumptions underlying the last reported group Solvency Capital Requirement, the group Solvency Capital Requirement shall be recalculated without delay and reported to the group supervisor.

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

The conditions regarding the solvency calculation of this paragraph shall be determined by a CAA regulation.

Chapter 3 - *Measures to facilitate group supervision*

Art. 192 - ***Group Supervisor***

(1) A single supervisor, responsible for coordination and exercise of group supervision (hereinafter referred to as" group supervisor"), shall be designated from among the supervisory authorities of the Member States concerned. The CAA shall exercise the function of group supervisor in the cases under this Article.

(2) Where the CAA is the competent supervisory authority for all insurance and reinsurance undertakings in a group, it shall exercise the function of group supervisor.

In all other cases the CAA shall be the group supervisor:

a) where a group is headed by a Luxembourg insurance or reinsurance undertaking;

b) where the parent of an insurance or reinsurance undertaking is an insurance holding company or a mixed financial holding company, and the group includes only Luxembourg insurance or reinsurance undertakings;

c) where several insurance or reinsurance undertakings with a head office in different Member States of the EEA have as their parent the same Luxembourg insurance holding company or Luxembourg mixed financial holding company, and one of those undertakings has been authorised in the Grand Duchy of Luxembourg;

d) where the group is headed by more than one insurance holding company or mixed financial holding company with a head office in different Member States, and there is an insurance or reinsurance undertaking in each of those Member States, and the insurance or reinsurance undertaking with the largest balance sheet total is a Luxembourg undertaking;

e) where several insurance or reinsurance undertakings with a head office in different EEA States have as their parent the same insurance holding company and none of those undertakings has been authorised in the Member State in which the insurance holding company or the mixed financial holding company has its head office, and the insurance or reinsurance undertaking with the largest balance sheet total is a Luxembourg undertaking; or

f) where the group is a group without a parent undertaking, or in any circumstances not referred to in points b) to e), and the insurance or reinsurance undertaking with the largest balance sheet total is a Luxembourg undertaking;

g) where the supervisory authorities concerned have, at the request of one of them, taken a joint decision to derogate from the criteria set out in points a) to f) above, and have designated the CAA as group supervisor.

(3) By way of derogation from points a) to f) of paragraph 2, the CAA shall not exercise the function of group supervisor where the supervisory authorities concerned have taken the joint decision referred to in point g) of paragraph 2 to designate a supervisory authority other than the CAA.

(4) The CAA may request that a discussion be opened on whether the criteria referred to in points a) to f) of paragraph 2 are appropriate. Such a discussion shall not take place more often than annually.

The supervisory authorities concerned shall do everything within their power to reach a joint decision on the choice of the group supervisor within three months from the request for discussion. Before taking their decision, the supervisory authorities concerned shall give the group an opportunity to state its opinion.

(5) During the three-month period referred to in the second subparagraph of paragraph 4, and for such time as no joint decision has been taken, the CAA may submit the case to EIOPA for decision. The joint decision of the supervisory authorities shall be postponed and then comply with the EIOPA decision.

(6) That joint decision resulting from paragraphs 4 and 5 shall be recognised as definitive and shall be applied by the CAA.

In the absence of a joint decision, the task of group supervisor shall be exercised by the supervisory authority identified in accordance with paragraph 2.

Art. 193 – ***Missions of the group supervisor and the other supervisors - College of supervisors***

(1) Where the CAA exercises the function of group supervisor, its missions with regard to group supervision shall comprise the following:

a) coordination of the gathering and dissemination of relevant or essential information for going concern and emergency situations, including the dissemination of information which is of importance for the supervisory task of a supervisory authority;

"aa) set up and preside a college of supervisors;"[107]

b) ensuring the supervisory review and assessment of the financial situation of the group;

c) assessment of compliance of the group with the rules on solvency and of risk concentration and intra-group transactions as set out in paragraph 1 of Article 190;

d) assessment of the system of governance of the group, in accordance with the conditions set out by a CAA regulation, and of whether the members of the administrative, management or supervisory body of the participating undertaking fulfil the requirements set out in Articles 72 and 201;

e) planning and coordination, through regular meetings held at least annually or through other appropriate means, of supervisory activities in going-concern as well as in emergency situations, in cooperation with the supervisory authorities concerned and taking into account the nature, scale and complexity of the risks inherent in the business of all undertakings that are part of the group;

f) effecting other tasks, measures and decisions assigned to the group supervisor by this law and its implementing regulations, or deriving from the application of this law and its implementing regulations.

g) informing the college of supervisors that it has been appointed as group supervisor in accordance with Article192, paragraph 2, point g);

h) submitting to the group the joint decision of the supervisory authorities concerned to derogate from the criteria set out in points a) to f) of paragraph 2 of Article 192 with its full reasoning;

i) submitting the joint decision referred to in paragraph 6 of Article 192 with its full reasoning to the group and the college of supervisors;

j) transmitting any decision regarding the coordination arrangements, taken in accordance with an EIOPA decision, to the other supervisory authorities concerned.

"(1a) The composition of the college of supervisors referred to in paragraph 1, point aa), shall include, in addition to the CAA who is presiding, the supervisory authorities of all Member States in which a subsidiary undertaking has its registered office.

The supervisory authorities responsible for large branches and affiliated undertakings may participate in the college of supervisors. However, their participation is limited only to the achievement of the objective of ensuring an effective exchange of information.

Specific activities of the college may be carried out by a limited number of authorities in order to ensure the proper functioning of the college of supervisors.

[107] law of 15 December 2019

The college of supervisors shall ensure that cooperation, exchanges of information and consultations between the supervisory authorities which are members of the college of supervisors take place in accordance with Title III of Directive 2009/138/EC."[108]

(2) The CAA shall participate in the college of supervisors where the group includes a Luxembourg insurance or reinsurance undertaking or where the CAA exercises the function of group supervisor. In addition, the CAA may request to participate in the activities of the college where a significant branch of an undertaking that is part of the group, is situated in the Grand Duchy of Luxembourg.

Where the group supervisor fails to carry out the tasks referred to in points a) to f) of paragraph 1 or where the members of the college of supervisors do not cooperate to the extent required in this paragraph, the CAA may refer the matter to EIOPA and request its assistance.

(3) Without prejudice to any other measure adopted pursuant to prudential regulation, the establishment and functioning of the college of supervisors, referred to in paragraph 2 shall be based on coordination arrangements concluded by CAA and the other supervisory authorities concerned.

In the event of diverging views concerning the coordination arrangements, the CAA may refer the matter to EIOPA.

The CAA, when exercising the function of group supervisor, shall take its final decision in accordance with the EIOPA decision.

(4) Without prejudice to any other measure adopted pursuant to prudential regulation, a CAA regulation shall specify the procedures that the coordination arrangements referred to in paragraph 3 must follow.

Art. 194 - ***Cooperation and exchange of information between supervisory authorities***

(1) The CAA shall cooperate closely with the other supervisory authorities concerned, in particular in cases where an insurance or reinsurance undertaking encounters financial difficulties.

With the objective of ensuring that the supervisory authorities, including the group supervisor, have the same amount of relevant information available to them, without prejudice to their respective responsibilities, and irrespective of whether they are established in the same Member State, the CAA shall exchange such information with the supervisory authorities concerned in order to allow and facilitate the exercise of the supervisory tasks of the latter. In that regard, the CAA shall communicate without delay all relevant information as soon as it becomes available or on demand. The information referred to in this subparagraph includes, but is not limited to, information about actions of the group and measures taken by the CAA, as well as information provided by the group.

The CAA, when exercising the function of group supervisor, transmits information regarding the group, in accordance with Articles 50, 82 paragraph1) and 198 paragraph2), especially in relation to its legal structure, its governance system and its organisational structure to the supervisory authorities concerned and to EIOPA.

Where a supervisory authority has not communicated relevant information or a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within two weeks, the CAA may refer the matter to EIOPA.

[108] law of 15 December 2019

(2) The CAA shall call immediately for a meeting of all supervisory authorities involved in group supervision in at least the following circumstances:

a) where it becomes aware of a significant breach of the Solvency Capital Requirement or a breach of the Minimum Capital Requirement of an individual insurance or reinsurance undertaking;

b) where it becomes aware of a significant breach of the Solvency Capital Requirement at group level calculated on the basis of consolidated data or the aggregated group Solvency Capital Requirement, in accordance with the calculation method used in accordance with Sub-Title III, Chapter 2;

c) where other exceptional circumstances are occurring or have occurred.

Art. 195 - ***Consultation between supervisory authorities***

(1) Without prejudice to Article 193, the CAA shall, where a decision is of importance for the supervisory tasks of other supervisory authorities, prior to that decision, consult the other supervisory authorities within the college of supervisors with regard to the following:

a) such changes in the shareholder structure and organisational or management structure of the insurance and reinsurance undertakings in a group, which require the approval or authorisation of the CAA;

b) any decision on the extension of the recovery period under Article 124 paragraphs 3 and 4; and

c) any major sanctions or exceptional measures taken by the CAA, including the imposition of a capital add-on to the Solvency Capital Requirement under Article 64 and the imposition of any limitation on the use of an internal model for the calculation of the Solvency Capital Requirement required under the provisions of a CAA regulation.

For the purposes of points b) and c), the group supervisor shall always be consulted.

In addition, the CAA shall, where a decision is based on information received from other supervisory authorities, consult the supervisory authorities concerned prior to that decision.

(2) Without prejudice to Article 193, the CAA may decide not to consult in cases of urgency or where such consultation may jeopardise the effectiveness of the decision. In that case, the CAA shall, without delay, inform the other supervisory authorities concerned.

Art. 196 - ***Requests from the group supervisor to other supervisory authorities***

The CAA, where it is the group supervisor, may invite the supervisory authorities of the Member State in which a parent undertaking has its head office, and which do not themselves exercise the group supervision, to request from the parent undertaking any information which would be relevant for the exercise of its coordination rights and duties as laid down in Article 193, and to transmit that information to the CAA.

The CAA, where it is the group supervisor shall, when it needs information referred to in Article 198 paragraph 2 which has already been given to another supervisory authority, contact that authority whenever possible in order to prevent duplication of reporting to the various authorities involved in supervision.

Art. 197 - *Cooperation with authorities responsible for credit institutions and investment firms*

Where a Luxembourg insurance or reinsurance undertaking and either a credit institution as defined in regulation (EU) no 575/2013 or an investment firm as defined in Directive 2004/39/EC, or both, are directly or indirectly related or have a common participating undertaking, the CAA and the authorities responsible for the supervision of those other undertakings shall cooperate closely.

Without prejudice to their respective responsibilities, the CAA shall provide the other competent authorities concerned with any information likely to simplify their task, in particular as set out in this subtitle.

Art. 198 - *Access to information*

(1) Luxembourg natural and legal persons included within the scope of group supervision, and their related undertakings and participating undertakings, are able to exchange any information which could be relevant for the purposes of group supervision.

(2) Where the CAA is responsible for exercising group supervision, it shall have access to any information relevant for the purposes of that supervision regardless of the nature of the undertaking concerned. The provisions of paragraphs 1 to 5 of Article 62 shall apply. "It may only apply directly to the undertakings of the group to obtain the information when the information has been requested from one of the Luxembourg insurance or reinsurance undertakings subject to group supervision and this undertaking has not provided the information within a reasonable time."[109]

The CAA, where it exercises the function of group supervisor may limit regular supervisory reporting with a frequency shorter than one year at the level of the group where all insurance or reinsurance undertakings within the group benefit from the limitation of regular supervisory reporting, taking into account the nature, scale and complexity of the risks inherent in the business of the group.

The CAA, where it exercises the function of group supervisor may exempt from reporting on an item-by-item basis at the level of the group where all insurance or reinsurance undertakings within the group benefit from the exemption from the regular supervisory reporting requirement, taking into account the nature, scale and complexity of the risks inherent in the business of the group and the objective of financial stability.

[…] (repealed by the law of 15 December 2019)

Art. 199 - *Verification of information*

(1) The CAA may carry out within the Grand Duchy of Luxembourg, either directly or through the intermediary of persons whom it appoints for that purpose, on-site verification of the information referred to in Article 198 on the premises of any of the following:

a) the insurance or reinsurance undertaking subject to group supervision;

b) related undertakings of that insurance or reinsurance undertaking;

c) parent undertakings of that insurance or reinsurance undertaking;

d) related undertakings of a parent undertaking of that insurance or reinsurance undertaking.

[109] law of 15 December 2019

(2) Where the CAA wishes in specific cases to verify the information concerning an undertaking, whether regulated or not, which is part of a group and is situated in another Member State, it shall ask the supervisory authorities of that other Member State to have the verification carried out.

The CAA, where it receives such a request shall, within the framework of its competences, act upon that request either by carrying out the verification directly, by allowing an approved auditor or expert to carry it out, or by allowing the authority which made the request to carry it out itself. The group supervisor shall be informed of the action taken.

The supervisory authority which made the request may, where it so wishes, participate in the verification when it does not carry out the verification directly. In that case, EIOPA may participate in that joint inspection.

(3) Where the request from the CAA to another supervisory authority to have a verification carried out in accordance with this paragraph has not been acted upon within two weeks, or where the CAA has made a request but is unable in practice to exercise its right to participate in the verification in accordance with the third subparagraph of paragraph 2, it may refer the matter to EIOPA.

Art. 200 - ***Group solvency and financial condition report and publication***

(1) Luxembourg insurance and reinsurance undertakings, Luxembourg insurance holding companies and Luxembourg mixed financial holding companies shall disclose publicly, on an annual basis, a report on the solvency and financial condition at the level of the group. Articles 82 and 84 to 87 shall apply.

(2) A Luxembourg participating insurance or reinsurance undertaking, a Luxembourg insurance holding company or a Luxembourg mixed financial holding company, subject to the agreement of the group supervisor, may provide a single solvency and financial condition report which shall comprise the following:

a) the information at the level of the group which must be disclosed in accordance with paragraph 1;

b) the information for any of the subsidiaries within the group which must be individually identifiable and disclosed in accordance with Articles 82 and 84 to 87.

Before granting the agreement in accordance with the first subparagraph, the CAA as group supervisor shall consult and duly take into account any views and reservations of the members of the college of supervisors.

(3) Where the report referred to in paragraph 2 fails to include information which the CAA requires comparable Luxembourg undertakings to provide, and where the omission is material, the CAA shall have the power to require the subsidiary concerned to disclose the necessary additional information.

(4) Luxembourg insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies shall disclose publicly, at the level of the group, on an annual basis, the legal structure and the governance and organisational structure, including a description of all subsidiaries, material related undertakings and significant branches belonging to the group.

Art. 201 - ***Administrative, management or supervisory body of insurance holding companies and mixed financial holding companies***

All persons who effectively run a Luxembourg insurance holding company or a mixed financial holding company must be fit and proper to perform their duties.

The provisions of Article 72 shall apply.

Art. 202 - *Enforcement measures*

(1) Where the insurance or reinsurance undertakings in a group do not comply with the requirements referred to in Articles 191 and 192 or where the requirements are met but solvency may nevertheless be jeopardised or where the intra-group transactions or the risk concentrations are a threat to the financial position of the said insurance or reinsurance undertakings, the CAA shall impose the necessary measures in order to rectify the situation as soon as possible:

a) with respect to the insurance holding company or mixed financial holding company where the CAA exercises the function of group supervisor;

b) with respect to the Luxembourg insurance and reinsurance undertakings.

Where the CAA exercises the function of group supervisor but the insurance holding company or the mixed financial holding company has its head office in another Member State, it shall inform those supervisory authorities concerned of its findings with a view to enabling them to take the necessary measures.

Where the CAA as group supervisor is not the supervisory authority of the Member State in which the insurance or reinsurance undertaking, which has to be subject to a measure, has its registered office, the CAA shall inform those supervisory authorities concerned of its findings with a view to enabling them to take the necessary measures.

Where the CAA is informed of such findings by another supervisory authority exercising the function of group supervisor, it shall where appropriate, at the level of the Luxembourg insurance or reinsurance undertakings which belong to the group, take the measures referred to in Article 4 paragraph 9, in Articles 303 to 306 and in Part II, Title II, Subtitle I, Chapter 7 or any other measure necessary to safeguard the interests of insured persons.

The CAA together with the supervisory authorities concerned, shall where appropriate coordinate their enforcement measures.

(2) Where the CAA, in the exercise of its function as group supervisor, finds that the requirements referred to in Articles 191 and 192 are no longer met at the level of the group or are met but solvency of the group may nevertheless be jeopardised or where the intra-group transactions or the risk concentrations are a threat to the financial position of the regulated entities which belong to the group "or where the CAA is informed of such findings by another supervisory authority acting as group supervisor"[110], it may take with respect to the Luxembourg insurance holding companies or the Luxembourg mixed financial holding companies which are part of the group the measures referred to in Article 4 paragraph 9, in Articles 303 to 306 and in Part II, Title II, Subtitle I, Chapter 7 or any other measure necessary to safeguard the interests of insured persons. The CAA shall, in addition, inform the other interested competent authorities of its findings.

Chapter 4 – *Third-country undertakings*

Art. 203 - *Parent undertakings with registered office outside the EEA: verification of equivalence*

[110] Law of 27 February 2018

In the case referred to in Article 185, paragraph 2, point c), the CAA, where it exercises the function of group supervisor in accordance with Article 192 paragraph 2, shall verify whether the insurance and reinsurance undertakings, the parent undertaking of which has its registered office outside the EEA, are subject to supervision, by a third-country supervisory authority, which is equivalent to that provided for by this Subtitle on the supervision at the level of the group of insurance and reinsurance undertakings referred to in Article 185, paragraph 2, points a) and b).

Where no decision has been taken with regard to the equivalence, the verification shall be carried out by the CAA, at the request of the parent undertaking or of any of the insurance and reinsurance undertakings authorised in the EEA, or on its own initiative, if, pursuant to the criteria set out in Article 192 paragraph 2, the CAA would be the group supervisor (hereinafter designated as the "acting group supervisor"). In so doing, the CAA shall, assisted by EIOPA, consult the other supervisory authorities concerned, before taking a decision on equivalence. That decision shall be taken in accordance with the criteria adopted in accordance with EEA regulation. In that case, the CAA shall not take any decision in relation to a third country that is in opposition to any previous decision taken vis-à-vis that third country, save where it is necessary to take into account significant changes to the supervisory regime applicable in the EEA or in the third country.

Where a supervisory authority other than the CAA is the acting group supervisor and the CAA disagrees with the decision taken by that supervisory authority with regard to equivalence, it may refer the matter to EIOPA and request its assistance within three months after notification of the decision by the acting group supervisor.

Where the prudential regulation determines that the prudential regime of a third country is temporarily equivalent, Article 204 shall apply, unless there is an insurance or reinsurance undertaking situated in the EEA which has a balance sheet total that exceeds the balance sheet total of the parent undertaking situated outside the EEA. In that case, the task of the group supervisor shall be exercised by the acting group supervisor.

Art. 204 - ***Parent undertakings with registered office outside the EEA: equivalence***

(1) In the event of equivalent supervision referred to in Article 203, the CAA shall rely on the equivalent group supervision exercised by the third-country supervisory authorities, in accordance with paragraph 2.

(2) The provisions of Articles 192 to 202 shall apply to the cooperation with third-country supervisory authorities.

Art. 205 - ***Parent undertakings with registered office outside the EEA: absence of equivalence***

(1) Where the verification carried out pursuant to Article 203 and without prejudice to the methods referred to in paragraph 2, reveals the absence of equivalent supervision or where, in the case of temporarily equivalence Article 204 is not applied in accordance with subparagraph 4 of Article 203, the insurance and reinsurance undertakings shall be subject to Articles 190 to 202.

The general principles and methods set out in Articles 190 to 202 shall apply at the level of the insurance holding company, mixed financial holding company, third-country insurance undertaking or third-country reinsurance undertaking.

For the sole purpose of the group solvency calculation, the parent undertaking shall be treated as if it were an insurance or reinsurance undertaking subject to the same conditions as laid down in Part 2, Title II, Subtitle I, Chapter 6 , Section 4 as regards the

own funds eligible for the Solvency Capital Requirement and for the solvency requirement fixed by a CAA regulation.

(2) Where the CAA exercises the function of group supervisor, it may apply other methods which ensure appropriate supervision of the insurance and reinsurance undertakings in a group. Those methods must be agreed by the group supervisor, after consulting the other supervisory authorities concerned.

The CAA may in particular require the establishment of an insurance holding company which has its registered office in the EEA or a mixed financial holding company which has its registered office in the EEA, and apply this Subtitle to the insurance and reinsurance undertakings in the group headed by that insurance holding company or mixed financial holding company.

The methods chosen shall allow the objectives of the group supervision as defined in this Subtitle to be achieved and shall be notified to the other supervisory authorities concerned and the Commission.

Art. 206 - *Parent undertakings with registered office outside the EEA: levels*

Where the parent undertaking referred to in Article 203 is itself a subsidiary of an insurance holding company or a mixed financial holding company having its registered office outside the EEA or of a third-country insurance or reinsurance undertaking, the CAA shall apply the verification provided for in Article 203 only at the level of the ultimate parent undertaking which is a third-country insurance holding company, a third-country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.

However, the CAA may, in the absence of equivalent supervision referred to in Article 203, carry out a new verification at a lower level where a parent undertaking of insurance or reinsurance undertakings exists, whether at the level of a third-country insurance holding company, a third-country mixed financial holding company, or an insurance or reinsurance undertaking having its registered office outside the EEA.

In such a case, the CAA shall explain its decision to the group.

The provisions of Article 205 shall apply.

Chapter 5 - *Mixed-activity insurance holding companies*

Art. 207 - *Intra-group transactions*

(1) Where the parent undertaking of one or more Luxembourg insurance or reinsurance undertakings is a mixed-activity insurance holding company, the CAA shall exercise general supervision over transactions between those insurance or reinsurance undertakings and the mixed-activity holding company and its related undertakings.

(2) Articles 194 to 199 and the provisions relating to the supervision of intra-group transactions of the CAA regulation adopted in application of Article 190, paragraph 1 shall apply mutatis mutandis.

Subtitle IV

Provisions on the supplementary supervision of insurance and reinsurance undertakings belonging to a financial conglomerate

Chapter 1 - *Definitions*

Art. 208 – *Definitions*

For the purposes of this subtitle and the regulations thereunder, the following definitions shall apply:

1. "competent authorities": the national authorities of Member States invested with legal or regulatory power to supervise, individually or at group level, one or more categories of regulated entities. In Luxembourg, supervision of insurance and reinsurance undertakings comes within the remit of the CAA and the supervision of credit institutions, investment firms, asset management companies or managers of alternative investment funds comes within the remit of the CSSF;
2. "competent authorities concerned":
   a) the competent authorities of Member States responsible for the consolidated sectoral supervision of a financial conglomerate's regulated entities, in particular for the supervision of an ultimate parent undertaking of a sector;
   b) the coordinator appointed pursuant to Article 217, if different from the authorities referred to in point a);
   c) other interested competent authorities when the authorities referred to in a) and b) consider it appropriate. Until the entry into force of any technical regulatory standards adopted in accordance with Article 21bis, paragraph 1, point b) of Directive 2002/87/EC, such consideration shall take account of the market share held by the financial conglomerate's regulated entities in the other Member States, particularly if it exceeds 5%, together with the importance within the financial conglomerate of any regulated entity established in another Member State.

   Interested competent authorities means those competent authorities tasked with the supervision of the regulated entities belonging to a given financial conglomerate;
3. "joint committee": the committee referred to in Article 54 of Regulation (EU) No. 1094/2010;
4. "mixed financial holding company": a parent undertaking, other than a regulated entity, which together with its subsidiaries, at least one of which is a regulated entity having its registered office within the European Union, and other entities, forms a financial conglomerate;
5. "concentration of risks": any risk exposure entailing a potential loss which is large enough to threaten the solvency or the financial position in general of the regulated entities belonging to the said conglomerate. Such exposure may result from counterparty or credit risks, investment risks, insurance or market or other risks, or from a combination or interaction of such risks;
6. "financial conglomerate": a group or subgroup in which a regulated entity is at the head of the group or subgroup or in which at least one of the subsidiaries of the said group or subgroup is a regulated entity and which meets all the following conditions:
   a) where a regulated entity is at the head of the group or subgroup:

- this entity is the parent undertaking of a financial sector entity, or an entity having a holding in a financial sector entity, or an entity affiliated to another financial sector entity by the fact of being placed under the same management by virtue of a contract or clauses in its articles of association, or by the fact of having administrative, management or supervisory bodies the majority of which are composed of the same persons,
- at least one entity of the group or subgroup belongs to the insurance sector and at least one entity belongs to the banking sector or to the investment services sector, and
- the group's or subgroup's consolidated or aggregated business in the insurance sector and in the banking sector and in the investment services sector are substantial within the meaning of paragraphs 2 or 3 of Article 209; or

b) where the entity at the head of the group or subgroup is not a regulated entity:

- the group's or subgroup's business is primarily carried out in the financial sector within the meaning of paragraph 1 of Article 209, and
- at least one entity of the group or subgroup belongs to the insurance sector and at least one entity belongs to the banking sector or to the investment services sector,
- the group's or subgroup's entities' consolidated or aggregated business in the insurance sector and the entities' business in the banking sector and the investment services sector are substantial within the meaning of paragraphs 2 or 3 of Article 209;

7. "coordinator": the competent authority responsible for the coordination and performance of the supplementary supervision at the level of a financial conglomerate, appointed from among the competent authorities which have approved the regulated entities belonging to the said financial conglomerate, including those of the Member State in which the mixed activity financial holding company has its registered office;
8. "regulated entity": a credit institution, an insurance undertaking, a reinsurance undertaking, an investment firm, a portfolio management firm or an alternative investment fund manager;
9. "investment firm": an investment firm within the meaning of paragraph 1, point 1 of Article 4 of Directive 2004/39/EC, including the undertakings referred to in paragraph 1, point 25 of Article 4 of Regulation (EU) No. 575/2013, or an undertaking with registered office in a third country and which would require an approval in accordance with Directive 2004/39/EC if its registered office was located in the EEA. In Luxembourg, this applies to any person referred to in Subsection I of Section 2 of Chapter 2 of Part 1 of the amended Law of 5 April 1993 on the financial sector;
10. "subsidiary undertaking": an undertaking in respect of which the rights indicated in point 11 are held. The subsidiaries of a subsidiary are also deemed to be subsidiaries of the parent undertaking;
11. "parent undertaking": an undertaking holding the following rights:

a) it holds the majority of the voting rights of the shareholders or partners of an undertaking, or

b) it is entitled to appoint or dismiss the majority of the members of the administrative, management or supervisory bodies of an undertaking and is at the same time a shareholder or partner of the said undertaking, or

c) it is entitled to exert a dominant influence over an undertaking of which it is a shareholder or partner by virtue of a contract entered into with it or by virtue of a clause in its articles of association, where the right relating to the said undertaking allows it to be made subject to such contracts or clauses in its articles of association, or

d) it is a shareholder or partner in an undertaking and, by virtue of an agreement entered into with other shareholders or partners of the said undertaking, alone controls the majority of the voting rights of its shareholders or partners, or

e) in the opinion of the competent authorities, it effectively exerts a dominant influence over an undertaking;

12. "credit institution": a credit institution within the meaning of Article 4 of Regulation (EU) No. 575/2013. In Luxembourg, this applies to any legal person whose activities correspond to the definition in point 12 of Article 1 of the amended Law of 5 April 1993 on the financial sector;

13. "alternative investment fund manager": an alternative investment fund manager within the meaning of paragraph 1, points b), l) and ab) of Article 4 of Directive 2011/61/EU or a company with registered office in a third country and which would require an approval in accordance with the said Directive if its registered office was in the EEA;

14. "group": a group of undertakings composed of a parent undertaking, its subsidiaries and entities in which the parent undertaking or its subsidiaries have a holding, as well as undertakings linked by the fact of being placed under the same management by virtue of a contract or clauses in the articles of association, or by the fact of having administrative, management or supervisory bodies the majority of which are composed of the same persons, including any subgroup of the group;

15. "close links": a situation in which two or more natural or legal persons are linked by a control or a holding, or a situation where at least two natural or legal persons are permanently linked to the same person by a controlling relationship.

    For the purpose of this definition:

    - "control": the relationship between a parent undertaking and a subsidiary in the cases referred to in point 11, the relationship between undertakings linked by the fact of being placed under the same management or a similar relationship between any natural person or legal person and an undertaking;
    - "holding": rights in the capital of another undertaking, evidenced or not by documents which by creating a permanent link with the latter are intended to contribute to the business of the undertaking holding these rights or the fact of holding, either directly or indirectly at least 20% of the voting rights or the capital of an undertaking;

16. "third country": a State other than a Member State;

17. "sectoral rules": the rules relating to the prudential supervision of regulated entities, arising from national legislation, including the legislation implementing European Directives, especially Directives "2014/65/EU, 2019/2034"[111], 2013/36/EU and 2009/138/EU, and from directly applicable European legislation.

18. "financial sector": a sector composed of one or more of the entities as hereinafter enumerated:

[111] law of 21 July 2021 (2)

a) the banking sector, which consists of credit institutions, financial institutions and ancillary services undertakings within the meaning of points 1, 18 and 26 of Article 4, paragraph 1 of Regulation (EU) No. 575/2013,

b) the insurance sector, which consists of insurance undertakings within the meaning of point 1 of Article 13 of Directive 2009/138/EC, reinsurance undertakings within the meaning of point 4 of Article 13 of Directive 2009/138/EC, insurance holding companies within the meaning of point f) of paragraph 1 of Article 212 of Directive 2009/138/EC, and captive insurance or reinsurance undertakings within the meaning of points 2 and 5 of Article 13 of Directive 2009/138/EC;

c) the investment services sector, which consists of investment firms within the meaning of point 2 of paragraph 1 of Article 4 of Regulation (EU) No. 575/2013;

19. "portfolio management company": a management company within the meaning of point b) of paragraph 1 of Article 2 of Directive 2009/65/EC or an undertaking with registered office in a third country and which would require an agreement in accordance with the said Directive if its registered office was situated in the EEA. In Luxembourg, this applies to any person within the meaning of Chapter 15 of the law of 17 December 2010 relating to undertakings for collective investments;

20. "consolidated sectoral supervision": either the supervision on a consolidated basis of credit institutions pursuant to Regulation (EU) No. 575/2013 and Directive 2013/36/EU, or the supplementary supervision carried out on insurance undertakings pursuant to Chapter 1 of Title III of Directive 2009/138/EC, or the supervision of investment firms on a consolidated basis pursuant to Regulation (EU) No. 575/2013 and to Directive 2013/36/EU;

21. "intragroup transactions": all transactions in which a regulated entity which belongs to a financial conglomerate has direct or indirect recourse to other undertakings in the same group, or to any natural person or legal person affiliated to the undertakings in that group through close links, for performance of an obligation, contractual or otherwise, and in return for payment or otherwise.

Art. 209 - ***Thresholds determining the notion of financial conglomerate***

(1) For the application of indent 1 of point 6 b) of Article 208, a group conducts its business principally in the financial sector when the ratio on the one hand between the balance sheet total of all the group's financial sector entities, regulated or otherwise, and on the other hand the balance sheet total of all the group's entities exceeds 40%.

(2) For the application of indent 3 of point 6 a) of Article 208 or indent 3 of point 6 b) of Article 208, a group conducts a substantial amount of business in a given financial sector when the average value of the ratio between the balance sheet total of the entities from the said financial sector, on the one hand, and the balance sheet total of all the group's financial sector entities plus the ratio between the total solvency requirements of the entities in the said financial sector and the total solvency requirement of all the group's financial sector entities, on the other hand, exceeds 10%.

For the purposes of this Subtitle, the least important financial sector within a financial conglomerate is the one which shows the lowest average and the most important financial sector within a financial conglomerate is the one which shows the highest average. For the purpose of calculating the average and to determine which is the least important financial sector and which is the most important financial sector, the banking sector and the investment services sector are aggregated.

Portfolio management undertakings are added to the sector to which they belong within the group. If they belong to several sectors within the group, they are added to the least important financial sector.

Alternative investment fund managers are added to the sector to which they belong within the group. If they belong to several sectors within the group, they are added to the least important financial sector.

(3) For the application of indent 3 of point 6 a) of Article 208 or indent 3 of point 6 b) of Article 208, the transsectoral activities are also deemed to be important when the balance sheet total of the entities in the least important financial sector within the group exceeds 6 billion euros. If the group does not reach the threshold referred to in paragraph 2, the CAA and the other competent authorities concerned, by mutual agreement may decide not to consider the group to be a financial conglomerate. They may equally decide to exempt the group from application of Articles 213, 214 or 215, if they consider that inclusion of the group within the scope of the supplementary supervision as defined in this Subtitle or application of the said Articles are not necessary or are inappropriate or a source of confusion in view of the objectives of the supplementary supervision.

Where the CAA assumes the function of coordinator, it shall notify the other interested authorities of the decisions taken pursuant to this paragraph, and publish these decisions, except in exceptional cases.

Where the decisions taken pursuant to paragraph 3 of Article 3 of Directive 2002/87/EC are notified to the CAA, the latter shall publish these decisions, except in exceptional cases.

(4) If the group reaches the threshold referred to in paragraph 2, but the least important sector does not exceed 6 billion euros, the CAA and the other competent authorities concerned, may by mutual agreement decide not to consider the group to be a financial conglomerate. They may also decide not to apply the provisions of Articles 213, 214 or 215, if they consider that inclusion of the group within the scope of the supplementary supervision as defined in this Subtitle or application of the said Articles are not necessary or are inappropriate or a source of confusion in view of the objectives of the supplementary supervision.

Where the CAA assumes the function of coordinator, it shall notify the other competent authorities of the decisions taken pursuant to this paragraph, and publish these decisions, except in exceptional cases.

Where the decisions taken pursuant to paragraph 3 of Article 3a of Directive 2002/87/EC are notified to the CAA, the latter shall publish these decisions, except in exceptional cases.

(5) For the application of paragraphs 1, 2 and 3, the CAA, by mutual agreement with the other competent authorities concerned, may decide:

a) to exclude an entity from calculation of the ratios, in the cases referred to in paragraph 6 of Article 212 except in the event that the entity has been transferred from a Member State to a third country and where it is proven to have changed its location with the sole aim of avoiding the regulation;

b) to take account of compliance with the thresholds defined in paragraphs 1 and 2 over three consecutive years to avoid any sudden change of supervisory regime, or to not take account of such compliance in the event of any substantial change in the group's structure;

c) to exclude one or more holdings in the least important sector if these holdings are critical for the identification of a financial conglomerate and if they, collectively,

have insignificant relevance with regard to the objectives of the supplementary supervision.

Where a financial conglomerate has been identified pursuant to paragraphs 1, 2 and 3, the decisions referred to in the first subparagraph are taken on the basis of a proposal made by the said financial conglomerate's coordinator.

(6) For application of paragraphs 1 and 2, the CAA, in exceptional cases and by mutual agreement with the other competent authorities concerned, may replace the criterion based on the balance sheet total by one or more of the following variables, or apply one or more of these variables, if it considers that these variables are of particular interest for the purpose of supplementary supervision under this Subtitle: income structure, off-balance-sheet activities, total assets under management.

(7) For application of paragraphs 1, 2 and 3, if a financial conglomerate already subject to supplementary supervision no longer complies with one or more of the thresholds referred to therein, the said thresholds shall be replaced, in order to avoid any sudden change of supervisory regime for the next three years, by the following thresholds: 40% shall be replaced by 35%, 10% shall be replaced by 8%, 6 billion euros shall be replaced by 5 billion euros.

Notwithstanding the previous subparagraph, the coordinator may, with the agreement of the other competent authorities concerned, decide not to apply, or to no longer apply, such lower thresholds for the aforementioned period of three years, taking account of the objectives of the group's supplementary supervision.

(8) The calculations relating to the balance sheet referred to in this Article are made on the basis of the aggregate balance sheet total of the group's entities, in accordance with their annual accounts. For the purpose of this calculation, the entities in which a participating interest is held are taken into account within the limit of the amount of their balance sheet total corresponding to the aggregated proportional part held by the group. If consolidated accounts are prepared for a specific group or parts of a group, the calculations shall be made on the basis of those accounts.

The solvency requirements referred to in paragraphs 2 and 3 shall be calculated pursuant to the relevant sectoral rules.

(9) The CAA, in cooperation with the other competent authorities, shall reassess on an annual basis the derogations from application of the supplementary supervision and shall review the quantitative indicators provided for in this Article as well as the risk-based assessments of financial groups.

Art. 210 - ***Identification of a financial conglomerate***

(1) The CAA shall identify any group falling within the scope of this Sub-title on the basis of Articles 208, 209 and 211.

For this purpose:

- the CAA shall cooperate closely with the other competent authorities which have approved any regulated entities belonging to the group;
- if the CAA considers that a Luxembourg insurance or reinsurance undertaking incorporated in Luxembourg belongs to a group which is likely to constitute a financial conglomerate but is not yet identified as such, it shall provide its opinion to the other competent authorities concerned and to the Joint Committee.

(2) Where a group has been identified as a financial conglomerate and the CAA is performing the function of coordinator pursuant to Article 217, it shall inform the parent undertaking at the head of the group thereof or, in the absence of a parent undertaking,

the regulated entity having the highest balance sheet total in the group's most important financial sector.

It shall also inform the competent authorities which approved the group's regulated entities thereof, and the competent authorities of the Member State in which the mixed-activity financial holding company has its registered office, and the Joint Committee.

Chapter 2 – *Scope of application*

Art. 211 - *Scope of application of the supplementary supervision of insurance and reinsurance undertakings belonging to a financial conglomerate*

(1) Without prejudice to the provisions relating to supervision set forth in the sectoral rules, Luxembourg insurance and reinsurance undertakings which belong to a financial conglomerate shall be subject to supplementary supervision to the extent and in the manner determined in this Subtitle. The supplementary supervision provided by the CAA shall not compromise the supplementary supervision of insurance and reinsurance undertakings belonging to a group under Sub-Title III nor supervision on an individual basis.

(2) For Luxembourg insurance and reinsurance undertakings which belong to a financial conglomerate for which it assumes the function of coordinator pursuant to Article 217, the CAA shall provide supplementary supervision at financial conglomerate level pursuant to Articles 212 to 225.

All the financial sector entities belonging to the financial conglomerate, whether or not regulated, and whether they are established in a Member State or in a third country, shall come within the scope of the supplementary supervision provided by the CAA.

The supplementary supervision provided by the CAA relates to the financial conglomerate's financial position in general and its adequacy of own funds in particular own funds risk concentration and intragroup transactions, as well as its internal control arrangements and the risk management procedures put in place at financial conglomerate level.

Where the CAA assumes the function of coordinator for a financial conglomerate which is itself a sub-group of another financial conglomerate subject to supplementary supervision, the CAA may exempt the sub-group, in whole or in part, from the application of Articles 212 to 225.

(3) Luxembourg insurance and reinsurance undertakings which belong to a financial conglomerate in respect of which a competent authority other than the CAA assumes the function of coordinator shall be subject to supplementary supervision to the extent and in the manner determined in Articles 212 to 225.

(4) Luxembourg insurance and reinsurance undertakings which belong to a financial conglomerate not subject to supplementary supervision on the basis of paragraphs 2 and 3 and which have as their parent undertaking a regulated entity or a mixed financial holding company having its registered office in a third country, shall be subject to supplementary supervision at financial conglomerate level to the extent and in the manner determined in Article 226.

(5) Where, in cases other than those referred to in paragraphs 2, 3 and 4, an undertaking has a holding in one or more regulated entities or has another capital link with such entities, or exerts a significant influence over such regulated entities without having a holding therein or having another capital link with them, and one of the regulated entities is a Luxembourg insurance or reinsurance undertaking, the CAA, when it is the competent authority concerned, shall determine, together with the other competent

authorities concerned by mutual agreement and in relation to the objectives of the supplementary supervision, whether and to what extent supplementary supervision of the group's regulated entities must be carried out as if the group constitute a financial conglomerate. The competent authority responsible for providing the supplementary supervision at group level shall be designated by analogous application of the provisions of Article 217.

For application of such supplementary supervision, the conditions laid down in indent 2 of point 6 a) or indent 2 of point 6 b) of Article 208 and in indent 3 of point 6 a) or indent 3 of point 6 b) of Article 208 must be met. The CAA takes its decision by taking into account the objectives of supplementary supervision, as defined in this Subtitle.

(6) Without prejudice to Article 221, performance of supplementary supervision at financial conglomerate level shall not in any way imply the CAA performing supervision on an individual basis of mixed financial holding companies, third-country regulated entities which belong to a financial conglomerate or non-regulated entities which belong to a financial conglomerate.

Chapter 3 - Financial situation

Art. 212 - *Adequacy of own funds*

(1) Without prejudice to the sectoral rules, the CAA shall carry out supplementary supervision relative to the own funds' adequacy of Luxembourg insurance and reinsurance undertakings which belong to a financial conglomerate and in respect of which it assumes the function of coordinator, pursuant to this Article, Article 215 and Chapter 4 of this Subtitle.

The CAA shall carry out prudential supervision of the requirement of paragraph 2 pursuant to Chapter 4 of this Subtitle.

(2) The insurance and reinsurance undertakings concerned shall ensure that the own funds available at financial conglomerate level are at all times equivalent, at very least, to the own funds' adequacy requirements.

(3) The entity at the head of a financial conglomerate in respect of which the CAA assumes the function of coordinator shall calculate the own funds and the capital adequacy requirements at least once each year pursuant to the terms, including the frequency, determined by CAA a Regulation. After consulting the other competent authorities concerned and the financial conglomerate, the CAA shall stipulate the specific calculation method the financial conglomerate shall apply.

(4) The entity at the head of a financial conglomerate in respect of which the CAA assumes the function of coordinator shall notify the CAA of the results of the calculations and the relevant data on which such calculations were based pursuant to the terms, including the frequency, determined by the CAA. After consulting the other competent authorities concerned and the financial conglomerate, the CAA may authorise another regulated entity within the financial conglomerate to provide it with the information required.

(5) The entities referred to hereafter are taken into account in the calculation of the requirements for own funds adequacy referred to in paragraph 2:

- a credit institution, a financial institution or an ancillary services undertaking;
- an insurance undertaking, a reinsurance undertaking or an insurance holding company;
- an investment firm;

- a mixed financial holding company.

(6) In its capacity as coordinator, the CAA may omit a specific entity from the calculation of the additional requirements for own funds adequacy in the following cases:

a) when the entity is situated in a third country where legal obstacles impede transfer of the information required, without prejudice to the sectoral rules compelling the competent authorities to refuse approval when effective performance of their supervisory function is impeded;

b) when, in the CAA's opinion, the entity is of only negligible interest with regard to the objectives of the supplementary supervision;

c) when, in the CAA's opinion, the inclusion of the entity would be inappropriate or likely to be misleading with regard to the objectives of the supplementary supervision.

However, if several entities are to be excluded on the basis of point b) of the first subparagraph, there can be grounds for including them where they collectively constitute a not insignificant interest.

In the case referred to in point c) of the first subparagraph, the CAA shall consult the other competent authorities concerned before reaching a decision, unless the matter is urgent.

Where the CAA omits a regulated entity from the calculation in a case referred to in b) or c) of the first subparagraph, the competent authorities of the Member State where the said regulated entity is situated may ask the entity at the head of the financial conglomerate for information likely to facilitate the regulated entity's supervision.

(7) Luxembourg insurance and reinsurance undertakings which belong to a financial conglomerate in respect of which a competent authority other than the CAA assumes the function of coordinator shall make the results of their own funds and capital adequacy requirement calculations available to the entity at the head of the financial conglomerate or, where applicable, another regulated entity of the financial conglomerate tasked by the coordinator with notifying it of the results of the calculations, thus enabling the coordinator to determine whether the own funds at financial conglomerate level are at all times equivalent, at the very least, to the own funds adequacy requirements.

Art. 213 – *Concentration of risks*

(1) Without prejudice to the sectoral rules, the CAA shall carry out supplementary supervision relating to risk concentration pursuant to this Article, Article 215 and Chapter 4 of this Subtitle, on Luxembourg insurance and reinsurance undertakings which belong to a financial conglomerate and in respect of which it assumes the function of coordinator.

The CAA shall carry out prudential supervision on significant concentrations of risks. It shall pay particular attention to the risk of contagion at financial conglomerate level, the existence of any conflicts of interest, any circumvention of the sectoral rules and the level and extent of risk concentration.

(2) The entity at the head of a financial conglomerate in respect of which the CAA assumes the function of coordinator shall notify the CAA periodically, and at least once each year, of any significant concentration of risks at the level of the financial conglomerate, pursuant to the provisions of paragraph 3. After consulting the other competent authorities concerned and the financial conglomerate, the CAA may authorise another

regulated entity within the financial conglomerate to provide it with the information required.

(3) In its capacity as coordinator, and after consulting the other competent authorities concerned and the financial conglomerate, the CAA shall determine the risk categories to be notified and the notification procedure, including the frequency. In so doing, it shall take account of the specific structure of the financial conglomerate and its risk management. In its capacity as coordinator, and after consulting the other competent authorities concerned and the financial conglomerate, the CAA shall define the thresholds beyond which the concentrations of risks must be notified due to their significance. These notification thresholds shall be defined on the basis of the regulatory own funds and/or the technical provisions.

(4) The CAA may impose quantitative limits on any concentration of risks at financial conglomerate level or take other prudential measures which enable the achievement of the objectives of supplementary supervision with regard to any risk concentration at financial conglomerate level. In order to avoid any circumvention of the sectoral rules, the CAA may impose application of the sectoral rules on risk concentration at financial conglomerate level.

(5) Where the financial conglomerate is headed by a mixed financial holding company, the sectoral rules on risk concentration applicable to the most significant financial sector within the financial conglomerate, insofar as any exist, shall apply to the whole of the financial sector concerned, including the mixed financial holding company.

(6) Luxembourg insurance and reinsurance undertakings which belong to a financial conglomerate in respect of which a competent authority other than the CAA assumes the function of coordinator shall make information on any significant concentration of risks available to the entity at the head of the financial conglomerate or, where applicable, another regulated entity of the financial conglomerate tasked by the coordinator with providing it with the information it needs to fulfil its obligation to perform prudential supervision of risk concentration at financial conglomerate level.

Art. 214 – *Intragroup transactions*

(1) Without prejudice to the sectoral rules, the CAA shall carry out supplementary supervision relating to the intragroup transactions of a financial conglomerate's regulated entities, pursuant to this Article, Article 215 and Chapter 4 of this Subtitle, for Luxembourg insurance and reinsurance undertakings which belong to a financial conglomerate in respect of which it assumes the function of coordinator.

The CAA shall carry out prudential supervision on intragroup transactions pursuant to Chapter 4 of this Subtitle. It shall pay particular attention to the risk of contagion at financial conglomerate level, the existence of any conflicts of interest, any circumvention of the sectoral rules and the level and extent of intragroup transactions.

(2) The entity at the head of a financial conglomerate in respect of which the CAA assumes the function of coordinator shall notify the CAA periodically, and at least once each year, of any significant intragroup transaction of regulated entities within the financial conglomerate, pursuant to the provisions of paragraph 3. After consulting the other competent authorities concerned and the financial conglomerate, the CAA may authorise another regulated entity within the financial conglomerate to provide it with the information required.

(3) In its capacity as coordinator, and after consulting the other competent authorities concerned and the financial conglomerate, the CAA shall determine the categories of transactions to be notified and the notification procedure, including the frequency. In so doing, it shall take account of the specific structure of the financial conglomerate

and its risk management. In its capacity as coordinator, and after consulting the other competent authorities concerned and the financial conglomerate, the CAA shall define the thresholds beyond which the intragroup transactions must be notified due to their significance. These notification thresholds shall be defined on the basis of the regulatory own funds and/or the technical provisions. In the absence of any defined notification threshold, an intragroup transaction shall be deemed to be significant if the amount thereof exceeds at least 5% of the total amount of the own funds adequacy requirements at financial conglomerate level.

(4) The CAA may impose quantitative limits and qualitative requirements for the intragroup transactions of the regulated entities within a financial conglomerate or take other prudential measures which enable the achievement of the objectives of supplementary supervision with regard to the said intragroup transactions. In order to avoid any circumvention of the sectoral rules, the CAA may impose application of the sectoral rules on the intragroup transactions of the regulated entities within a financial conglomerate.

(5) Where the financial conglomerate is headed by a mixed financial holding company, the sectoral rules on intragroup transactions applicable to the most significant financial sector within the financial conglomerate, insofar as any exist, shall apply to the whole of the financial sector concerned, including the mixed financial holding company.

(6) Luxembourg insurance and reinsurance undertakings which belong to a financial conglomerate in respect of which a competent authority other than the CAA assumes the function of coordinator shall make information on any significant intragroup transactions available to the entity at the head of the financial conglomerate or, where applicable, another regulated entity of the financial conglomerate tasked by the coordinator with providing it with the information required, thus enabling the coordinator to fulfil its obligation to perform prudential supervision of the intragroup transactions of the regulated entities within a financial conglomerate.

Art. 215 – ***Internal auditing facilities and risk management procedures***

(1) Luxembourg insurance and reinsurance undertakings which belong to a financial conglomerate in respect of which the CAA assumes the function of coordinator must have at their disposal, at the level of the financial conglomerate, adequate risk management procedures and internal control facilities as well as a good administrative and accounting organisation.

(2) The risk management procedures shall include:

a) sound management and good governance of the business, including approval and periodic examination of the strategies and policies, for all the risks incurred, by the appropriate executive bodies at financial conglomerate level;

b) suitable policies as regards own funds adequacy in order to anticipate the impact of the development strategies on the risk profile and the own funds requirements determined pursuant to Article 212;

c) appropriate procedures to guarantee that the risk supervision procedures are suitable for the organisation and that all necessary steps are taken to ensure that the systems put in place within each of the entities included in the supplementary supervision are fully integrated, thus enabling the risks to be measured, monitored and controlled at financial conglomerate level;

d) facilities put in place to contribute to the carrying into effect and, where appropriate, to the development of appropriate mechanisms and salvage procedures and default recovery plans. These facilities are to be regularly updated.

(3) The internal control facilities shall include:

a) appropriate systems to identify, measure and manage the significant risks incurred and procedures designed to guarantee own funds adequacy relative to the risks incurred;

b) sound accounting and reporting procedures to facilitate identification, measurement, monitoring and control of the intragroup transactions and risk concentrations.

(4) The entities included in the supplementary supervision performed by the CAA by virtue of Article 211 shall be required to have internal control facilities which ensure production of the information and data required for the purposes of the supplementary supervision.

The requirement under subparagraph 1 shall also apply to a mixed financial holding company having its registered office in Luxembourg and to insurance sector entities incorporated in Luxembourg which belong to a financial conglomerate in respect of which a competent authority other than the CAA assumes the function of coordinator.

The entities referred to in subparagraph 1 shall regularly provide the CAA at financial conglomerate level with details of their legal structure, their governance system and their organisational structure, by including all their regulated entities, non-regulated subsidiaries and significantly important branches.

The entities referred to in subparagraph 1 shall publish at financial conglomerate level and on a yearly basis, either in full or by way of reference to equivalent information, a description of their legal structure, their governance system and their organisational structure.

(5) Luxembourg insurance and reinsurance undertakings which belong to a financial conglomerate in respect of which a competent authority other than the CAA assumes the function of coordinator must have at their disposal risk management procedures and internal auditing facilities, and likewise a good administrative and accounting organisation, as befits a financial conglomerate.

(6) In its capacity as coordinator, the CAA exercises prudential supervision based on the requirements of paragraphs 1, 2 and 3 and subparagraphs 1, 3 and 4 of paragraph 4.

Chapter 4 - *Measures intended to facilitate supplementary supervision*

Art. 216 – *Crisis simulation*

The CAA may regularly subject financial conglomerates in respect of which it assumes the function of coordinator to appropriate crisis simulations.

Where another competent authority assumes the function of coordinator for a financial conglomerate to which Luxembourg insurance or reinsurance undertakings belong, the CAA shall cooperate fully with it.

Art. 217 – *Competent authority responsible for supplementary supervision (coordinator)*

(1) In order to provide appropriate supplementary supervision for a financial conglomerate's regulated entities, a sole coordinator shall be appointed for each financial conglomerate. The CAA shall perform the function of coordinator in the cases referred to in this Article.

(2) The CAA shall perform the function of coordinator where the financial conglomerate is headed by an insurance or reinsurance undertaking approved under this law.

(3) The CAA shall perform the function of coordinator, within the limits determined in this Article, where the financial conglomerate is headed by a mixed financial holding company which is the parent undertaking of an insurance or reinsurance undertaking approved under this law.

However, the CAA shall not perform the function of coordinator where the mixed financial holding company has its registered office in a Member State other than Luxembourg and is also the parent undertaking of a regulated entity approved in that same Member State. In such cases, the competent authority of the Member State concerned shall perform the function of coordinator.

(4) Where the financial conglomerate is headed by a mixed financial holding company having its registered office in Luxembourg which is the parent undertaking of at least two regulated entities having their registered office in different Member States, the CAA shall perform the function of coordinator if at least one of the said regulated entities is an insurance or reinsurance undertaking approved under this law.

Where the mixed financial holding company is at the same time the parent undertaking: (i) of an insurance or reinsurance undertaking approved under this law and (ii) a credit institution or an investment firm approved by virtue of the amended Law of 5 April 1993 on the financial sector, a portfolio management company approved by virtue of the Law of 17 December 2010 on collective investment undertakings or an alternative investment fund manager approved by virtue of the Law of 12 July 2013 on alternative investment fund managers, the CAA shall perform the function of coordinator if the insurance sector constitutes the most important financial sector within the financial conglomerate.

(5) Where the financial conglomerate is headed by several mixed financial holding companies having their registered office in different Member States including Luxembourg and it includes at least one regulated entity in each of those Member States, including Luxembourg, the CAA shall perform the function of coordinator if the regulated entity situated in Luxembourg is an insurance or reinsurance undertaking approved under this law and if, in the event that the regulated entities situated in the Member States conduct their business in the same financial sector, the insurance undertaking approved under this law has the highest balance sheet total, or, in the event that the regulated entities situated in the Member States conduct their business in more than one financial sector, the insurance or reinsurance undertaking approved under this law has the highest balance sheet total in the most significant financial sector.

(6) Where the financial conglomerate is headed by a mixed financial holding company having its registered office in a Member State other than Luxembourg and is the parent undertaking of at least two regulated entities having their registered office in different Member States, other than the Member State where the mixed financial holding company has its registered office, the CAA shall perform the function of coordinator if at least one of the said regulated entities is an insurance or reinsurance undertaking approved under this law and if the said insurance or reinsurance undertaking has the highest balance sheet total in the most significant financial sector.

(7) Where the financial conglomerate is a group which is not headed by a parent undertaking, or in any other case, the CAA shall perform the function of coordinator if at least one of the group's regulated entities is an insurance or reinsurance undertaking approved under this law and if the said insurance or reinsurance undertaking has the highest balance sheet total in the most important financial sector.

(8) The CAA may enter into agreements with the other competent authorities concerned which depart from the rules laid down in paragraphs 2 to 7 if it seems inappropriate to

apply them in view of the structure of the financial conglomerate and the relative significance of its activities in different countries, and designate another competent authority as coordinator. In such cases, the CAA shall seek the prior opinion of the financial conglomerate.

Art. 218 – *The coordinator's duties*

(1) Where the CAA assumes the function of coordinator it shall perform the following duties under its supplementary supervision:

a) coordination of the collection and dissemination of useful or essential information, both in the normal course of business and in urgent situations, including the dissemination of information of significance for the prudential supervision performed by a competent authority by virtue of the sectoral rules;

b) provision of prudential supervision and assessment of the financial conglomerate's financial position;

c) monitoring the application of the rules relating to own funds adequacy, risk concentration and intragroup transactions;

d) evaluation of the financial conglomerate's structure, organisation and internal auditing facilities;

e) planning and coordination of the prudential activities, both in the normal course of business and in urgent situations, in cooperation with the relevant competent authorities;

f) performance of other duties and the taking of other measures and decisions assigned to the coordinator by this Subtitle or within the framework of its implementing regulations.

(2) In order to facilitate performance of the supplementary supervision and to set it on a broad legal basis, the CAA may enter into coordination agreements with the other competent authorities concerned and, if appropriate, with any other interested competent authority. Such agreements may entrust additional tasks to the coordinator and stipulate the procedures to be followed in taking the decisions referred to in Articles 209 and 210, paragraph 4 of Article 211, Article 212, Article 219, paragraph 2, and Articles 224 and 226, as well as for the cooperation with other competent authorities.

(3) Where the CAA assumes the function of coordinator and requires information which has already been provided to another competent authority pursuant to the sectoral rules, it shall, whenever possible, contact the said authority to avoid duplication of the information sent to the different authorities participating in the prudential supervision.

Where the competent authority of another Member State assumes the function of coordinator and the said authority needs information which has already been provided to the CAA pursuant to the sectoral rules, the CAA shall comply with the request for information from the coordinator whenever possible, if it is made with a view to avoiding duplication of the information sent to the different authorities participating in the prudential supervision.

(4) Without prejudice to the possibility of delegating certain prudential powers and responsibilities, the presence of a coordinator responsible for specific tasks pertaining to the supplementary supervision of regulated undertakings belonging to a financial conglomerate shall not in any way alter the duties and responsibilities incumbent on the CAA by virtue of the sectoral rules.

(5) The cooperation referred to in this Chapter and the performance of the duties listed in paragraphs 1, 2, 3 and 4 of this Article and in Article 219 and, if applicable, the

appropriate coordination and cooperation with the third-country supervisory authorities concerned, to ensure observance of the confidentiality requirements and the European Union law, are to be performed through the colleges established in accordance with Article 116 of Directive 2013/36/EU or paragraph 2 of Article 248 of Directive 2009/138/EC.

The coordination agreements referred to in paragraph 2, are included separately in the written coordination agreements established in accordance with Article 115 of Directive 2013/36/EU or Article 248 of Directive 2009/138/EC. When assuming the function of coordinator and chairing a College established in accordance with Article 116 of Directive 2013/36/EC or paragraph 2 of Article 248 of Directive 2009/138/EC, it is up to the CAA to decide which other competent authorities shall participate in a meeting or in any activity of the said College.

Art. 219 – *Cooperation and exchange of information between competent authorities*

(1) The CAA shall cooperate closely with the other competent authorities tasked with supervision of a financial conglomerate's regulated entities and, where it has no such role, with the coordinator. Without prejudice to its responsibilities as defined by this law, the CAA shall exchange with such authorities any information which is essential for or conducive to the performance of their respective prudential duties under the sectoral rules and the supplementary supervision. For this purpose, the CAA shall communicate to the other competent authorities and, where it has no such role, to the coordinator, on request all relevant information and on its own initiative all essential information.

Such cooperation shall include the collection and exchange of information on the following subjects:

a) the identification of the legal structure of the group, its governance system and its organisational structure, including all the regulated entities, the non-regulated subsidiaries and all the significant branches which form part of the financial conglomerate, the qualifying shareholders at ultimate parent undertaking level and the competent authorities responsible for the prudential supervision of the said group's regulated entities;

b) the financial conglomerate's strategies;

c) the financial conglomerate's financial position, particularly in regard to own funds adequacy, intragroup transactions, risk concentration and profitability;

d) the financial conglomerate's principal shareholders and its executives;

e) the organisational, risk management and internal control systems at financial conglomerate level;

f) the procedures used to collect information from the financial conglomerate's entities and the verification of such information;

g) any problems encountered by the financial conglomerate's regulated entities or other entities which could seriously affect the said regulated entities;

h) the principal sanctions and exceptional measures taken by the competent authorities pursuant to the sectoral rules or this Subtitle.

To assist performance of their respective functions, the CAA may also, pursuant to this law, exchange such information on the regulated entities which belong to a financial conglomerate with the central banks of the Member States, the European System of Central Banks, the European Central Bank, the European Systemic Risk Board pursuant to Article 15 of Regulation (EU) No 1092/2010 and the Systemic Risk Board.

(2) Without prejudice to its responsibilities under the sectoral rules governing insurance and reinsurance undertakings as defined by this law, the CAA shall consult the other interested competent authorities on the following points before making any decision that affects the prudential functions performed by those other authorities:

a) any structural change to the shareholder base, the organisation or the management of the regulated entities of a financial conglomerate requesting approval or authorisation from its competent authorities;

b) the principal sanctions and exceptional measures taken by the CAA.

The CAA may decide not to consult the other interested competent authorities in urgent situations or when such consultation could compromise the effectiveness of decisions. In such cases, the CAA shall inform the other competent authorities without delay.

(3) Where the CAA assumes the function of coordinator, it may request the competent authorities of the Member State where a parent undertaking has its registered office to ask the parent undertaking to provide them with all information pertinent to accomplishment of its coordination function, as defined in Article 218, and then to send it the said information.

Where the information referred to in paragraph 2 of Article 222 has already been communicated to a competent authority pursuant to the sectoral rules, the CAA may request the said information from it when it assumes the function of coordinator.

(4) For the purposes of the supplementary supervision, the CAA may exchange the information referred to in paragraphs 1, 2 and 3 with both the CSSF and the other interested competent authorities and the authorities referred to in the last subparagraph of paragraph 1. The collection or possession of information relating to a non-regulated entity which belongs to a financial conglomerate shall not in any way mean that the CAA is performing a supervisory function on the said entity individually.

The information received in connection with supplementary supervision and, in particular, any information exchanged between the CAA and other interested competent authorities or the authorities referred to in the last subparagraph of paragraph 1 pursuant to this Subtitle shall be subject to the provisions of Articles7 to 13.

"(5) For the purposes of the application of the law of 5 April 1993 on the financial sector, as amended, of the Directive 2013/36/EU and of the Regulation (EU) No 575/2013 on a consolidated basis and in order to facilitate and establish effective cooperation, the CAA, where it assumes the function of coordinator, shall cooperate and establish written coordination and cooperation agreements with the supervisor on a consolidated basis designated in accordance with Article 111 of Directive 2013/36/EU.

Where the CAA acts as coordinator and its agreement is required in accordance with Article 21a*,* paragraph 9, of Directive 2013/36/EU, disagreements shall be referred by the CAA to the relevant European supervisory authority, namely EBA or EIOPA." [112]

Art. 220 – ***Cooperation and exchange of information with the Joint Committee***

(1) The CAA shall for the purposes of this Subtitle cooperate with the Joint Committee, pursuant to Regulation (EU) No. 1093/2010, Regulation (EU) No. 1094/2010 and Regulation (EU) No. 1095/2010.

(2) For the application of Directive 2002/87/EC, the CAA shall, at the earliest opportunity, provide the Joint Committee with all the information required for performance of its

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functions, in accordance with Article 35 of Regulation (EU) No. 1093/2010, Regulation (EU) No. 1094/2010 and Regulation (EU) No. 1095/2010, respectively.

(3) Where the CAA assumes the function of coordinator, it shall provide the Joint Committee with the information referred to in paragraph 4 of Article 215 and in point a) of subparagraph 2 of paragraph 1 of Article 219.

Art. 221 - ***Managers of mixed financial holding companies***

The persons who effectively manage the business of a mixed financial holding company at the head of a financial conglomerate in respect of which the CAA assumes the function of coordinator must prove their professional integrity.

Any change to the persons referred to shall require the CAA's prior authorisation. To this effect, the CAA may request any necessary information on the persons concerned. Subject to a strict time limit of one month, the CAA's decision may be referred to the administrative court, which shall rule as a court of first instance.

Art. 222 - ***Access to information***

(1) Luxembourg insurance and reinsurance undertakings and the other entities that form part of a single financial conglomerate may exchange between themselves any information which is relevant to performance of supplementary supervision.

(2) Entities, regulated or otherwise, which belong to a financial conglomerate must comply with any request for information from the CAA which may be pertinent to supplementary supervision.

Art. 223 - ***Verification***

When, with regard to supplementary supervision, the CAA, in its capacity as coordinator, wishes, in specific cases, to verify information relating to an entity belonging to a financial conglomerate and having its registered office in another Member State, regardless of whether or not it is regulated, it shall request the competent authorities of the other Member State to carry out such verification.

Where the CAA receives such a request from another competent authority acting in its capacity as coordinator, the CAA, within the scope of its powers, shall either verify such information itself or have it verified by an approved auditor or other expert, or it may allow the competent authority which made the request to carry out the verification itself.

Where the competent authority which made the request to the CAA does not carry out the verification itself, it may be involved if it so wishes.

Art. 224 - ***Implementing measures***

Where the CAA, in the performance of its functions as coordinator, finds that the requirements of Articles 212 to 215 are no longer being met at financial conglomerate level or that the said requirements are being met but the financial conglomerate's solvency may nevertheless be compromised, or that the intragroup transactions or risk concentrations are jeopardising the financial position of the regulated entities belonging to the financial conglomerate, it may apply the measures referred to in Articles 126 to 129, 303 and 304, or any other measure likely to safeguard the interests of the insureds, at the level of the mixed financial holding company or the Luxembourg insurance or reinsurance undertaking at the head of the financial conglomerate and the Luxembourg insurance or reinsurance

undertakings belonging to the financial conglomerate. The CAA shall also inform the other interested competent authorities of its findings.

Where the CAA is informed of such findings by another competent authority assuming the function of coordinator, it shall apply, if necessary, the measures referred to in Articles 126 to 129, 303 and 304, or any other measure likely to safeguard the interests of the insureds, to the Luxembourg insurance or reinsurance undertakings belonging to the financial conglomerate.

Where necessary, the CAA and the other interested competent authorities shall coordinate the prudential measures that they take.

Art. 225 - *Additional powers of the competent authorities*

Where the CAA finds that an insurance or reinsurance undertaking it has approved is using its membership of a financial conglomerate to totally or partially circumvent the sectoral rules, it may apply the measures referred to in Articles 123 to 128, 130, 303 and 304 or any other measure likely to safeguard the interests of the insureds.

Likewise, in the event of a mixed financial holding company failing to comply with the provisions of this Subtitle and measures taken in implementation thereof, the CAA may apply to it the measures referred to in Articles 123 to 128, 130, 303 and 304 or any other measure likely to safeguard the interests of the insureds. Such measures shall apply to the persons responsible for the administration or the management of the mixed financial holding company.

The CAA shall cooperate closely with the other interested competent authorities to ensure that the measures taken to put an end to the infractions observed or to eliminate the causes of such infractions have the desired effect.

Chapter 5 – Third countries

Art. 226 - *Parent undertakings having their registered office in a third country*

(1) Without prejudice to the sectoral rules, in the case referred to in paragraph 4 of Article 211, the CAA shall verify that Luxembourg insurance and reinsurance undertakings are subject to supervision by a competent authority of a third country which is equivalent to that provided for in this Subtitle in respect of the supplementary supervision referred to in paragraph 2 of Article 211. The CAA shall carry out such verification on its own initiative or at the request of the parent undertaking or of one of the regulated entities approved in a Member State belonging to the group as soon as it is called upon to assume the function of coordinator in the event of Article 217 being applicable.

The CAA shall consult the other competent authorities concerned regarding the equivalent nature or otherwise of such supplementary supervision. It shall take due account of the applicable guidelines issued by the Joint Committee pursuant to Articles 16 and 56 of the Regulation (EU) No. 1093/2010, Regulation (EU) No. 1094/2010 and Regulation (EU) No. 1095/2010, respectively.

If a competent authority does not agree with the CAA decision, Article 19 of Regulation (EU) No. 1093/2010, Regulation (EU) No. 1094/2010 and Regulation (EU) No. 1095/2010, respectively, shall apply.

(2) If, on the basis of the verification described in paragraph 1, the CAA arrives at the conclusion that equivalent supplementary supervision is lacking, the provisions relating to supplementary supervision referred to in paragraph 2 of Article 211 shall apply by analogy.

(3) Notwithstanding paragraph 2, where the CAA assumes the function of coordinator, it may decide, after consulting the other competent authorities concerned, to apply another method which enables the objectives of the supplementary supervision to be achieved. The CAA may, in particular, require the creation of a mixed financial holding company having its registered office in a Member State and apply the provisions of this Subtitle to the regulated entities of the financial conglomerate headed by the said mixed financial holding company.

The CAA shall inform the other interested competent authorities and the Commission of any decision taken pursuant to this paragraph.

Art. 227 - Cooperation with the competent authorities of third countries

The CAA may enter into cooperation agreements with the competent authorities of third countries which set out terms and conditions for supplementary supervision.

Subtitle V

Reorganisation and winding-up of insurance undertakings

Chapter 1- *Scope and definitions*

Art. 228 – *Scope of this Subtitle*

This Subtitle shall apply to reorganisation measures and winding-up proceedings of:

a) Luxembourg insurance undertakings;

b) branches of third-country insurance undertakings established on Luxembourg territory.

Art. 229 – *Definitions*

For the purposes of this Subtitle, the following definitions shall apply:

1. “competent authorities”: the administrative or judicial authorities of the Member States which are competent for the purposes of the reorganisation measures or the winding-up proceedings;
2. “reorganisation measures”: the stay of payment proceedings referred to in Chapter 3 of this Subtitle, together with any other measures involving any intervention by the administrative or judicial authorities which are intended to preserve or restore the financial situation of an insurance undertaking and which affect pre-existing rights of parties other than the insurance undertaking itself, including but not limited to measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims;
3. “collective winding-up proceedings”: the judicial winding-up procedure referred to in Chapter 4 of this Subtitle, together with any collective proceedings involving the realisation of the assets of an insurance undertaking and the distribution of the proceeds among the creditors, shareholders or members as appropriate, which necessarily involve any intervention by the administrative or judicial authorities of a Member State, including where the collective proceedings are terminated by a composition or other analogous measure, whether or not the proceedings are founded on insolvency or are voluntary or compulsory;

4. “administrator”: a person or body appointed by the competent authorities for the purpose of administering reorganisation measures;
5. “liquidator”: a person or body appointed by the competent authorities or by the governing bodies of an insurance undertaking for the purpose of administering winding-up proceedings.

Chapter 2 - *Provisions common to reorganisation measures and collective winding-up procedures*

Art. 230 – *General provision*

Without prejudice to the provisions of paragraph 3 of Article 250, the following texts shall not apply to insurance undertakings: “Code de Commerce Book III”, the provisions of the Law of 4 April 1886 on court-approved compositions and arrangements with creditors aimed at preventing bankruptcy, as amended, and the provisions of the Grand-Ducal Decree of 24 May 1935 supplementing the legislation relating to stays of payment, court-approved compositions aimed at preventing bankruptcy through a controlled management scheme.

Art. 231 - *Adoption of reorganisation or winding-up measures*

(1) The district court for commercial matters, referred to hereafter in this Chapter as “the court”, shall have sole competence for applying the measures referred to in Articles 244 and 248 in regard to a Luxembourg insurance undertaking, including its branches in other Member States.

(2) Any decision taken pursuant to Articles 244 and 248 in regard to a Luxembourg insurance undertaking, including its branches in other Member States, shall be effective throughout the EEA according to the law of Luxembourg as soon as the decision is effective in the Grand Duchy of Luxembourg.

(3) In exercising their powers pursuant to the law of Luxembourg, the executive bodies of an insurance undertaking subject to stay of payment proceedings and the liquidators of a Luxembourg insurance undertaking placed in judicial liquidation shall respect the law of the Member State on whose territory they plan to take action, particularly in regard to the procedures applicable to realisation of the assets and the information provided to salaried workers. The said executive bodies or liquidators shall not resort to the use of force or settle any litigation or dispute.

Art. 232 – *Adoption of measures in another Member State*

(1) Collective reorganisation or winding-up measures decided by the administrative or judicial authorities of a Member State in which a non-Luxembourg EEA insurance undertaking has its registered office shall be fully effective in Luxembourg without any other formality according to the legislation of the home Member State. This rule shall also apply when the law of Luxembourg makes no provision for such measures or makes their implementation subject to conditions which are not met.

The measures shall be effective in Luxembourg as soon as they become effective in the State in which they have been applied.

(2) When the CAA is informed of a decision to adopt a reorganisation measure or of the opening of a collective winding-up procedure against a non-Luxembourg EEA insurance undertaking, it shall arrange disclosure thereof through publication in the “Mémorial”.

(3) The administrator of a reorganisation measure, the liquidator or any duly empowered authority or person in the home Member State shall request registration of the reorganisation measure or the decision to open a collective winding-up procedure in the Trade and Companies Register in Luxembourg. The mandatory provisions of the law on the Trade and Companies Register shall apply.

(4) The appointment of an administrator of a reorganisation measure or of a liquidator is proven in the Grand Duchy of Luxembourg upon presentation of a certified copy of the decision appointing him or by any other certificate issued by the competent authorities of the home Member State accompanied by a translation in one of the official languages of Luxembourg. No legalisation or similar formality is required.

(5) Administrators of a reorganisation measure and liquidators are empowered to exercise in the Grand Duchy of Luxembourg all the powers that they are empowered to exercise in the territory of the home Member State. Persons tasked with assisting or, where applicable, representing, them in connection with the implementation of the reorganisation measure or the collective winding-up procedure, in particular with reference to the solving of any problems encountered by creditors in Luxembourg, may be appointed in Luxembourg pursuant to the legislation of the home Member State.

(6) In exercising his powers pursuant to the legislation of the home Member State, the administrator of a reorganisation measure or the liquidator shall respect the law of Luxembourg if it intends to take action in the Grand Duchy of Luxembourg, particularly in relation to the procedures applicable to realisation of the assets and the information provided to salaried workers. The said executive bodies or liquidators shall not resort to the use of force or settle any litigation or dispute.

Art. 233 – *Adoption of measures in a third country*

(1) Collective reorganisation or winding-up measures decided by the administrative or judicial authorities of a non-Member State in which a third-country insurance undertaking has its registered office and which, according to the law of that State, are effective in Luxembourg, shall be fully effective in Luxembourg without any other formality according to the legislation of the home Member State. This rule shall also apply when the law of Luxembourg makes no provision for such measures or makes their implementation subject to conditions which are not met.

The measures shall be effective in Luxembourg as soon as they become effective in the State in which they were applied.

(2) Notwithstanding paragraph 1, if the CAA so requests, the court shall be competent to take the measures referred to in Articles 243 and 247 in regard to the Luxembourg branch of a third-country insurance undertaking. Only the CAA shall be competent to request the court to take such measures if it considers this necessary to protect the interests of the Luxembourg branch's creditors.

(3) Any decision taken pursuant to Articles 244 and 248 relating to a Luxembourg branch of a third-country undertaking is effective only for the assets and liabilities relating to transactions undertaken in Luxembourg.

(4) Where a third-country insurance undertaking operating in the Grand Duchy of Luxembourg is the subject of a collective winding-up procedure, the receivers or liquidators shall not be permitted to invoke rights over the property forming the segregated assets referred to in Article 118 in the Grand-Duchy of Luxembourg until the obligations applying thereto have been fully discharged.

Art. 234 – ***Exemption from the formality of stamping and registration, expenses and fees***

All deeds and other documents likely to provide information to the court concerning the requests referred to in Chapters 3 and 4 of this Subtitle shall be exempted from the formality of stamping and registration.

The fees of the administrators and the liquidators and all other expenses incurred pursuant to Chapters 3 and 4 of this Subtitle shall be met by the Luxembourg insurance undertaking concerned. Notwithstanding Article 118, the fees and expenses may be deducted from the segregated assets.

Art. 235 - ***Applicable law***

(1) Without prejudice to Articles 236 to 243 hereunder, the decisions and the proceedings, and their effects arising from application of the provisions of Chapters 3 and 4 of this Subtitle, shall be governed by the laws, regulations and administrative provisions of Luxembourg.

(2) In particular, the following are governed by the laws, regulations and administrative provisions of Luxembourg:

a) the property covered by the divestiture and the situation of the property acquired by the Luxembourg insurance undertaking or in respect of which ownership was transferred to it following the adoption of the reorganisation measure or the opening of the collective winding-up procedure;

b) the respective powers of the Luxembourg insurance undertaking and the liquidator or the person entrusted with the management of the reorganisation measures;

c) the conditions under which compensation may be invoked against third parties;

d) the effects of adopting a reorganisation measure or a collective winding-up procedure for the contracts in force which the Luxembourg insurance undertaking is a party to;

e) the effects of adopting a reorganisation measure or a collective winding-up procedure for individual proceedings, with the exception of the cases in progress, as envisaged in Article 243;

f) the claims to be produced as liabilities of the Luxembourg insurance undertaking and the situation of the claims arising after the adoption of the reorganisation measure or the opening of the collective winding-up procedure;

g) the rules on the production, verification and admission of the claims;

h) the rules of distribution for the proceeds of the realisation of the assets, the ranking of the claims and the rights of the claimants who have been partially paid off after the adoption of the reorganisation measure or the opening of the collective winding-up procedure by virtue of a right in rem or the effect of compensation;

i) the conditions and the effects of the closure of the reorganisation measure or the collective winding-up procedure;

j) the rights of the creditors after the closure of the reorganisation measure or the collective winding-up procedure;

k) the charge for the fees and expenses of the reorganisation measure or the collective winding-up procedure;

l) The rules on the nullity, cancellation or unenforceability of legal acts detrimental to all the claimants.

(3) Without prejudice to Articles 236 to 243 hereunder, the decision concerning the application of a reorganisation measure or the opening of a collective winding-up procedure against a non-Luxembourg undertaking, the reorganisation or winding-up procedures concerning the said undertaking and their effects shall be governed by the laws, regulations and administrative provisions of the said undertaking's home Member State.

Art. 236 – ***Effects on certain contracts and rights***

Notwithstanding Article 235, the effects of the adoption of reorganisation measures or the opening of a collective winding-up procedure for the contracts and rights referred to hereunder shall be governed by the following rules:

a) contracts of employment and working relationships shall be governed exclusively by the law of the Member State applicable to the contract or to the working relationship;

b) a contract giving entitlement to use or purchase real property is governed exclusively by the law of the Member State on whose territory the property is situated;

c) the insurance undertaking's rights over an item of real property, a vessel or an aircraft subject to registration in a public register are governed by the law of the Member State under whose authority the register is kept.

Art. 237 – ***Rights in rem***

(1) The adoption of reorganisation measures or the opening of a collective winding-up procedure shall not affect the rights in rem of a claimant or a third party over tangible or intangible property, movables or immovables - both specific property and aggregates of non-specific property whose composition is subject to change - belonging to the Luxembourg insurance undertaking and which, upon the adoption of such measures or the opening of such a procedure, is situated in the territory of another Member State.

(2) This shall apply, inter alia, to:

a) the right to realise, or arrange realisation of, the property and to be paid off from the proceeds or the income from such property, in particular by virtue of a pledge or a mortgage;

b) the exclusive right to recover a debt, in particular by virtue of the pledging or assignment of such debt by way of guarantee;

c) the right to claim the property and/or claim restitution thereof from whoever may be holding it or using it against the wishes of the claimant;

d) the right in rem to receive the income from a property.

(3) The law governing the constitution of the right in rem determines the real nature of that right within the meaning of this Article.

(4) A right registered in a public register which is binding on third parties and enables a right in rem to be established within the meaning of paragraph 1 shall be treated as a right in rem.

(5) Paragraph 1 shall not impede the actions for nullity, cancellation or unenforceability referred to in paragraph 2, point l), of Article 235.

Art. 238 - *Reservation of title and annulment or cancellation of a sale*

(1) The adoption of reorganisation measures or the opening of a collective winding-up procedure against a Luxembourg insurance undertaking purchasing a property shall not affect the rights of the vendor founded on a reservation of title when, upon the adoption of such measures or the opening of such a procedure, the said property is situated in the territory of a Member State other than the State of adoption of such measures or of the opening of such a procedure.

(2) The adoption of reorganisation measures or the opening of a collective winding-up procedure against an Luxembourg insurance undertaking selling an item of property after delivery of the said property shall not constitute a ground for annulment or cancellation of the sale and shall not impede the purchaser's acquisition of title to the property sold when, at the time of adoption of such measures or of the opening of such a procedure, the property was situated in the territory of a Member State other than the State which adopted such measures or opened such a procedure.

(3) Paragraphs 1 and 2 shall not impede the actions for nullity, cancellation or unenforceability referred to in paragraph 2, point l), of Article 235.

Art. 239 – *Set-off*

(1) The adoption of reorganisation measures or the opening of a collective winding-up procedure shall not affect a creditor's right to request that his debt be offset against the Luxembourg insurance undertaking's debt when such offsetting is permitted by the law applicable to the Luxembourg insurance undertaking's debt.

(2) Paragraph 1 shall not impede actions for nullity, cancellation or unenforceability referred to in paragraph 2, point l), of Article 235.

Art. 240 – *Regulated markets*

(1) Without prejudice to Article 237, the effects of a reorganisation measure or of the opening of a collective winding-up procedure on the rights and obligations of the participants in a regulated market shall be governed exclusively by the law applicable to the said market.

(2) Paragraph 1 shall not impede the bringing of an action for nullity, cancellation or unenforceability referred to in paragraph 2, point l), of Article 235 for failure to take account of payments or transactions pursuant to the law applicable to the said market.

Art. 241 – *Injurious transaction*

Paragraph 2, point l), of Article 235 shall not apply when a person having benefited from a legal transaction prejudicial to the general body of creditors has shown that:

a) the said transaction is subject to the law of a Member State other than the home Member State, and that

b) the said law does not permit any challenge to the transaction concerned in the case in issue.

Art. 242 – *Protection of third-party purchasers*

When, through a transaction concluded after the adoption of a reorganisation measure or the opening of a collective winding-up procedure, the Luxembourg insurance undertaking sells, for a consideration.

a) an item of real property;

b) a vessel or an aircraft subject to registration in a public register, or

c) transferable securities or shares whose existence or transfer entails registration in a register or in an account required under the law, or which are placed in a central depositary governed by the law of a Member State,

the validity of the said transaction shall be governed by the law of the Member State on whose territory the real property is situated or under the authority of which that register, that account or that system is maintained.

Art. 243 – *Pending cases*

The effects of the reorganisation measures or the collective winding-up procedure on a pending case relating to an item of property or a right which the Luxembourg insurance undertaking has been divested of shall be governed exclusively by the law of the Member State in which the case is pending.

Chapter 3 – *Stay of payment*

Art. 244 – *Opening of a stay of payment proceeding*

The stay of payment by an insurance undertaking referred to in Article 228 may be applied in the following cases:

a) when the undertaking's credit is impaired or it faces a liquidity deficit, and whether or not cessation of payments has occurred;

b) when full performance of the undertaking's commitments is compromised;

c) when the undertaking's approval has been withdrawn but the decision is not yet final.

Art. 245 – *Request*

(1) Only the CAA or the Luxembourg insurance undertaking may ask the court to order a stay of payment under Article 244.

(2) The reasoned request, supported by the substantiating documents, shall be filed in the court registry to that effect.

(3) When the Luxembourg insurance undertaking makes the request, it shall be required, under penalty of its claim being declared inadmissible, to inform the CAA thereof before referring the matter to the court. The court registry shall certify the date and time of filing of the request and shall immediately inform the CAA thereof.

(4) When the CAA makes the request, it shall notify the Luxembourg insurance undertaking thereof via a process served by a bailiff. The process served by a bailiff is exempted from stamp duty and registration duty and from the formality of registration.

(5) The filing of the request by the Luxembourg insurance undertaking or, when the CAA initiates the process, the notification of the claim, shall automatically entail a total stay of payments for the said undertaking until a final decision is made concerning the claim, as well as a prohibition, under pain of nullity, on the undertaking performing any acts other than protective measures without express authorisation from the CAA.

Art. 246 – *Procedure*

(1) The court shall rule on the matter promptly at a public hearing on a date and at a time communicated to the parties beforehand. If the court has received the CAA's observations and considers itself sufficiently apprised, it shall rule immediately at a public hearing without summoning the parties. If the CAA has not filed its observations and if the court deems it necessary, it shall instruct the court registry to summon the CAA and the Luxembourg insurance undertaking within three days of the claim being filed. It shall hear them in closed session and rule at a public hearing. The judgment shall indicate the time at which it was delivered.

(2) The court registry shall inform the CAA of the judgment immediately. It shall notify the judgment to the CAA and to the Luxembourg insurance undertaking by registered letter. The CAA shall, as a matter of urgency, inform the competent authorities of all the other Member States of the decision to adopt the said measure and shall indicate its concrete effects.

(3) The judgment shall determine the terms and conditions of the stay of payment for a period which shall not exceed six months.

(4) The judgment, even if rendered without one or both of the parties being heard, may not be the subject of an application to set aside or of third-party proceedings. It shall be immediately enforceable without an execution copy, notwithstanding any appeal, before registration and without security.

(5) The CAA and the Luxembourg insurance undertaking may lodge an appeal within fifteen days of notification of the judgment pursuant to paragraph 2 via a declaration submitted to the court registry. The appeal shall be judged without delay in summary proceedings by a chamber of the "Cour Supérieure de Justice" dealing with civil and commercial cases. The parties shall be summoned by the court registry within eight days. They shall be heard in closed session. The court shall rule at a public hearing on a date and at a time communicated to the parties beforehand. The order shall not be subject to appeal in supreme court.

(6) If a party should fail to appear, the judgment by default may not be set aside.

(7) A judgment granting a stay of payment shall appoint one or more "commissaires de surveillance" to supervise the management of the Luxembourg insurance undertaking's assets.

(8) Written authorisation from the "commissaires de surveillance" shall be required for all acts and decisions of the Luxembourg insurance undertaking and, failing such authorisation, they shall be void. The court may nevertheless limit the scope of the actions subject to authorisation. The "commissaires de surveillance" may submit any proposals they consider appropriate to deliberation by the undertaking's corporate bodies. They may attend the deliberations of the Luxembourg insurance undertaking's general meeting of shareholders and its administrative, executive, management or supervisory bodies.

(9) In the event of disagreement between the Luxembourg insurance undertaking's bodies and the "commissaires de surveillance", the court shall decide the matter in closed session at the request of one of the parties. Its decision shall be unappealable.

(10) The CAA shall perform the functions of a "commissaire de surveillance" as of right until the judgment on the claim provided for in Article 245 is delivered.

(11) The court shall determine the fees and expenses of the "commissaires de surveillance"; it may allocate advances to them.

(12) At the request of the CAA, the Luxembourg insurance undertaking or the "commissaires de surveillance", the court may alter the terms of a judgment delivered on the basis of this Article.

Art. 247 – *Disclosure of the decisions*

(1) Within eight days of its delivery, the judgment granting a stay of payment and appointing one or more "commissaires de surveillance", and likewise any amending judgments, shall be published in the form of an extract at the Luxembourg insurance undertaking's expense and at the behest of the "commissaires de surveillance", in the "RESA"[113] and in at least two Luxembourg or foreign journals of sufficient circulation designated by the court.

(2) A judgement reversing a judgment referred to in the previous paragraph shall be published without delay, in the form of an extract, at the expense of the losing party and at the behest of the "commissaires de surveillance" or, in the absence of "commissaires de surveillance", of the CAA, in the "RESA"[114] and, where applicable, in the same journals in which the judgment was published.

(3) To facilitate their publication in the Official Journal of the European Union, an extract from the decisions referred to in paragraphs 1 and 2 shall be sent to the Publications Office of the European Union within eight days of their delivery, at the behest of the persons referred to in the said points.

(4) The publication referred to in paragraphs 1 and 2 shall indicate the authority which decided the stay of payment, the object and legal basis of the measure taken and the paths of appeal. It shall appear in one of the official languages of the Member State in which the information is published.

(5) A stay of payment shall apply independently of the provisions relating to publication set forth in paragraphs 1 to 4 above and shall be fully effective in regard to creditors.

(6) The persons responsible for the publication referred to in paragraphs 1 and 2 shall request registration of the decisions referred to in the said paragraphs in the Trade and Companies Register in Luxembourg and in any other public register of another Member State in which such registration is compulsory. The imperative provisions of the law on the Trade and Companies Register shall apply. The registration fees shall be treated as procedural costs and expenses.

Chapter 4 – *Judicial winding-up*

Art. 248 – *Opening of dissolution and winding-up proceedings*

Dissolution and winding-up of an insurance undertaking referred to in Article 228 may arise in the following cases:

a) when it appears that the previously decided stay of payment scheme, referred to in Chapter 3 of this Subtitle is not capable of remedying the situation for which the scheme was introduced;

b) when the undertaking's financial position is undermined to the extent that it can no longer meet its commitments;

[113] law of 27 February 2018
[114] law of 27 February 2018

c) when the undertaking's approval has been withdrawn and the decision has become final.

A decision concerning the opening of winding-up proceedings may be taken in the absence of an earlier stay of payment measure.

Art. 249 – *Request*

(1) The request for dissolution or winding-up of a Luxembourg insurance undertaking may only be made by:

   a) the CAA or the Public Prosecutor, with the CAA duly joined in the proceedings, in the cases referred to in points a) and b) of Article 248;

   b) the CAA in the cases referred to in point c) of Article 248.

(2) The reasoned request, supported by substantiating documents, shall be filed in the court registry.

(3) The CAA or the Public Prosecutor shall notify the filing of the request to the Luxembourg insurance undertaking via a process served by a bailiff.

Art. 250 – *Procedure*

(1) The court shall rule on the matter promptly at a public hearing on a date and at a time communicated to the parties beforehand. The Luxembourg insurance undertaking, the CAA and the Public Prosecutor shall be summoned by the court registry within three days of the request being filed. It shall hear them in closed session and pronounce at a public hearing. The judgment shall indicate the time at which it was delivered.

(2) The court registry shall immediately inform the CAA of the content of the judgment. It shall notify the judgment to the CAA and to the Luxembourg insurance undertaking by registered letter. The CAA shall, as a matter of urgency, inform the competent authorities of all the other Member States of the decision to adopt the said measure and shall indicate its concrete effects.

(3) When ordering the winding-up, the court shall appoint a "juge commissaire" (reporting judge) and one or more liquidators. It shall determine the method of winding-up. It may render applicable to such extent as it may determine the rules governing the bankruptcy. In such cases, it may determine the date of cessation of payments; the said date shall not precede the filing of the request referred to in paragraph 2 of Article 249 by more than six months. The method of winding-up may be subsequently changed, either of the court's own motion, or at the request of the liquidators or the CAA.

(4) The judgment pronouncing the dissolution and ordering the winding-up, once the Luxembourg insurance undertaking, the CAA and the Public Prosecutor have been heard, may not be the subject of an application to set aside or of third-party proceedings. It shall be immediately enforceable without an execution copy, notwithstanding any appeal, before registration and without security.

(5) With effect from the judgment, any action concerning movable or immovable property and any enforcement procedures thereon may be pursued, brought or exercised only against the liquidators.

(6) The CAA or the Public Prosecutor and the Luxembourg insurance undertaking may lodge an appeal by way of a declaration to the court registry. The time for lodging an appeal is fifteen days with effect from notification of the judgment pursuant to paragraph 2. The appeal shall be judged without delay in summary proceedings by a chamber of the "Cour Supérieure de Justice" dealing with civil and commercial cases. The parties

shall be summoned by the court registry within eight days. They shall be heard in closed session. The court shall rule at a public hearing on a date and at a time communicated to the parties beforehand.

(7) If a party should fail to appear, the judgement rendered by default may not be the subject of an application to set aside.

(8) The final decision pronouncing the dissolution and ordering the winding-up automatically entails withdrawal of approval for the Luxembourg insurance undertaking to undertake insurance transactions, if such approval has not already been withdrawn.

The provisions of the previous subparagraph shall not prevent the liquidator(s) from pursuing certain activities of the Luxembourg insurance undertaking insofar as this is necessary or appropriate for the purposes of the winding-up. Such activities shall be carried out with the consent of the CAA and under its supervision.

(9) The liquidators shall be accountable both to third parties and to the Luxembourg insurance undertaking for the performance of their duties and for any misconduct in their administration.

(10) The court shall determine the fees and expenses of the liquidators; it may allocate advances to them. In the event of the "juge-commissaire" finding the assets to be non-existent or inadequate, the procedural formalities shall be exempt from any filing and registration fees and the liquidators' fees and expenses shall be met by the "Trésor" (Treasury) and treated as legal fees.

"**Art. 250-1 -** ***Specific procedures***

(1) The CAA, following notification of the judgment in accordance with Article 250, paragraph 2, shall inform the FIAA as a matter of urgency, in case it relates to a Luxembourg insurance undertaking authorised in the line of business regarding motor vehicle liability.

(2) The liquidators or, as the case may be, the members of the board of directors of a Luxembourg insurance undertaking authorised in the line of business regarding motor vehicle liability shall inform the FIAA when they:

a) compensate the injured party in respect of a claim for compensation which has also been received by the FIAA in accordance with the procedures referred to in article 23-6, paragraph 1, of the law of 16 April 2003 on compulsory insurance against civil liability in respect of motor vehicles, as amended; or

b) decline the liability of that insurance undertaking in respect of a claim for compensation which has also been received by the FIAA in accordance with the procedure referred to in Article 23-6, paragraph 1, of the law of 16 April 2003 on compulsory insurance against third party motor vehicle liability, as amended.

(3) Article 300 shall not prevent members of the board of directors and iquidators from cooperating with the FIAA, or from transmitting information to the FIAA, in order to facilitate the handling of claims by injured parties, where a Luxembourg insurance undertaking authorised in the line of business regarding motor vehicle liability. [115]l

Art. 251 – ***Publication of the decisions***

(1) Within eight days of its delivery, the judgment pronouncing the dissolution and ordering the winding-up of a Luxembourg insurance undertaking and appointing a "juge-commissaire" and one or more liquidator(s), and likewise the amending judgments, shall

[115] law of 29 March 2024

be published, in the form of an extract, at the Luxembourg insurance undertaking's expense and at the behest of the liquidators, in the "RESA"[116] and in at least two Luxembourg or foreign journals of sufficient circulation designated by the court.

(2) A judgement reversing a judgment referred to in the previous paragraph shall be published without delay, either in the form of an extract, at the expense of the losing party and at the behest of the liquidators or, in the absence of liquidators, of the CAA, in the "RESA"[117] and, where applicable, in the same journals in which the judgment was published.

(3) To facilitate their publication in the Official Journal of the European Union, an extract from the decisions referred to in paragraphs 1 and 2 shall be sent, at the behest of the persons referred to in the said paragraphs, to the Office for Official Publications of the European Union within eight days of their delivery.

(4) The publication referred to in paragraphs 1 and 2 shall indicate the authority which decided the dissolution and ordered the winding-up, the object and legal basis of the measures taken and the paths of appeal. It shall appear in one of the official languages of the Member State in which the information is published.

(5) The winding-up shall apply in addition to the provisions relating to publication set forth in paragraphs 1 to 4 above and shall be fully effective in regard to creditors.

(6) The persons responsible for the publication referred to in paragraphs 1 and 2 shall request registration of the decisions referred to in the said paragraphs in the Trade and Companies Register in Luxembourg and in any other public register of another Member State in which such registration is compulsory. The imperative provisions of the law on the Trade and Companies Register shall apply. The registration fees shall be treated as procedural costs and expenses.

Art. 252 – ***Information to the creditors and lodging of claims***

(1) The liquidators shall inform any known creditor promptly and individually by means of a written notice.

(2) The notice provided under paragraph 1 shall relate specifically to the time limits to be respected, the penalties applicable to such time limits, the body or authority authorised to accept lodging of claims or observations on claims, and the other measures prescribed. The notice shall also indicate whether creditors whose claim is guaranteed by a preferential right or a charge on property must prove their debt. In the case of insurance claims, the notice shall also indicate the general effects of the winding-up proceedings on the insurance contracts, in particular the date on which the insurance contracts or the transactions cease to be effective and the rights and obligations of the insured relative to the contract or the transaction.

(3) The information in the notice referred to in paragraph 1 shall be provided in one of the official languages of Luxembourg. To this end, a form bearing the title "Invitation to lodge a claim: time limits to be respected" in all the official languages of the European Union, or, when it is requested that observations be submitted concerning the claims, a form "Invitation to submit observations concerning a claim: time limits to be respected", shall be used. Where a known creditor holds an insurance claim, however, the information shall be provided in one of the official languages of the Member State of the said creditor's habitual residence, domicile or registered office.

(4) All creditors shall be entitled to lodge their claims or submit their written observations on claims and to use for that purpose one of the official languages of the State of their

[116] law of 27 February 2019
[117] law of 27 February 2019

habitual residence, domicile or registered office. However, the claim lodged or the observations submitted on the claim, as applicable, must bear the title “Lodging of claim” or “Submission of observations concerning claims” in one of the official languages of Luxembourg.

(5) The claims of all creditors having their habitual residence, domicile or registered office in a Member State other than Luxembourg shall receive the same treatment and have the same rank as any claims of an equivalent type which may be submitted by creditors having their habitual residence, domicile or registered office in Luxembourg.

(6) The creditor shall send a copy of the substantiating documents, if any exist, and shall indicate the nature, origination date and amount of the claim if it is claiming a preferential right, a charge on property or a reservation of title for such debt, as well as the property on which it is secured. It shall not be necessary to indicate the preferential right granted to insurance claims by virtue of Article 118.

(7) The liquidators shall keep the creditors regularly and appropriately informed of the progress of the winding-up proceedings.

(8) The competent authorities of the Member States may request information from the CAA concerning the progress of the winding-up proceedings.

Art. 253 - ***Permanent inventory of the matching assets – Impacts***

(1) The composition of the assets registered in the permanent inventory of the matching assets pursuant to Article 118 at the opening of the winding-up proceedings may no longer be called into question, nor may any change be made to the said inventory, other than correction of simple clerical errors, without the “juge-commissaire’s” consent.

(2) Notwithstanding paragraph 1 above, the liquidators shall add to the said assets the financial income arising thereon, as well as the amount of any pure premiums collected between the opening of the winding-up proceedings and the payment of insurance claims or a portfolio transfer.

(3) If the proceeds from realisation of the assets are below their valuation in the aforementioned inventory, the liquidators shall be required to substantiate this to the “juge-commissaire”.

"**Art. 253-1 - Valuation of life insurance claims**

For insurance obligations arising from insurance contracts falling within the classes of insurance listed in Annex II, insurance claims are valued as follows:

a) For insurance claims or parts of insurance claims for which the investment risk is borne by the policyholder, the claim is equal to the number of units held in the underlying asset or assets on the day of the opening of the winding-up, as documented for each asset in the management tools of the undertaking winding up.

b) For other insurance claims or parts of insurance claims corresponding to a savings transaction of a life insurance or capital redemption contract, the claim is equal to the value of the corresponding technical provisions calculated on the day of the opening of the winding-up procedure in accordance with the valuation rules of Chapter 7 of the Law on annual accounts.

c) Insurance claims corresponding to technical provisions for risks are equal to the amounts of provisions set aside in the insurer's books.

d) Without prejudice to the fact that the insurance claims corresponding to the outstanding claims are equal to the cost of the compensation provided for in the contract, they shall

be valued by the liquidators on a provisional basis at the amount of the technical provisions which should be established in the insurer's books six months after the opening of the winding-up.

e) Insurance claims do not include amounts not individually allocated in the provisions for bonuses or in the equalisation provisions.

Art. 253-2 - *Valuation of non-life insurance receivables*

For insurance obligations arising from insurance contracts in the classes of insurance listed in Annex I, insurance claims are valued as follows:

a) The claims corresponding to the technical provisions for unearned premiums and the ageing provisions are equal to the amounts of the provisions set aside in the insurer's books thirty days after the publication of the decision to open the liquidation.

b) Without prejudice to the fact that the claims corresponding to the claims to be paid are equal to the cost of the indemnification provided for in the contract, they shall be valued by the liquidators on a provisional basis at the amount of the technical provisions which should be established in the insurer's books six months after the publication of the decision to open the liquidation.

c) Insurance claims do not include amounts not individually allocated in the provision for unexpired risks, the provision for bonuses or the equalisation provisions.

Art. 253-3 - *Segregation of non-life insurance assets*

For the purposes of applying Article 118, insurance undertakings authorised for the classes of insurance listed in Annex I shall identify within the permanent inventory:

" a-0) reinsurers' share of technical provisions and claims on SPVs covering compulsory motor third party liability insurance;"[118]

a) assets allocated to insurance claims resulting from accepted reinsurance;

b) assets allocated to insurance claims arising from contracts which are the subject of reinsurance with one or more insurance or reinsurance captives.

All assets of the permanent inventory other than those referred to in ”subparagraph 1, letters a-0), a) and b)”[119] shall be allocated to other insurance claims.

Art. 253-4 – *Termination of non-life insurance contracts*

Non-life insurance contracts in the classes of insurance listed in Annex I shall be automatically terminated 30 days after the publication of the decision to open the liquidation.

Insurance claims resulting from claims covered by current insurance contracts and arising after the opening of the liquidation but before the automatic termination referred to in the preceding subparagraph shall be added to the insurance claims existing on the date of the opening of the liquidation and shall be granted the same rights and preferential rights.

[118] law of 29 March 2024
[119] law of 29 March 2024

Art. 253-5 - *Ranking of life insurance claims*

For insurance obligations arising from insurance contracts falling within the classes of insurance listed in Annex II, the preferential right referred to in Article 118 shall be exercised as follows:

a) For each asset underlying the insurance claims referred to in Article 253-1, point a), creditors of that asset's units shall be granted a first lien on the proceeds from the realisation of that asset. In the event that, for an asset, the total number of units forming part of the matching assets is less important than the rights of the aforementioned insurance creditors, their first lien shall be reduced proportionately.

   For any asset referred to in the preceding subparagraph, to the extent that the insurance contract so provides or with the consent of the creditor concerned, the liquidators may, transfer to the creditor all or some of the units corresponding to its contract, in the absence of its liquidation.

b) Holders of insurance claims falling under Article 253-1, points b) and c), shall be granted a first lien on the proceeds of the liquidation of all the matching assets allocated to such claims. In the event that this income is less important than the rights of the aforementioned insurance creditors, their first lien is reduced proportionately.

c) Holders of an insurance claim other than those referred to in points a) and b) and insurance creditors whose claims could not be fully satisfied by their first lien referred to in points a) and b) shall be granted the preferential right of Article 118 on amounts not distributed following the application of the first lien."[120]

"Art. 253-6 - *Ranking of non-life insurance claims*

For insurance claims arising from insurance contracts falling within the classes of insurance in Annex I, the privilege referred to in Article 118 shall be exercised as follows:

"a-0) Holders of insurance claims falling within the scope of Article 253-3, paragraph 1, letter a-0), shall be granted a first lien on the proceeds of the liquidation of the reinsurers' share of the technical provisions and claims on SPVs, covering the compulsory motor third party liability insurance referred to in Article 253-3, paragraph 1, letter a-0)."[121]

a) Holders of insurance claims falling within the scope of Article 253-3, paragraph 1, point a), shall be granted a first lien on the proceeds of the liquidation of all the matching assets allocated to such claims. In the event that this income is less important than the rights of the aforementioned insurance creditors, their first lien is reduced proportionately.

b) Holders of insurance claims falling within the scope of Article 253-3, paragraph 1, point b), shall be granted a first lien on the proceeds of the liquidation of all the matching assets allocated to such claims. In the event that this income is less important than the rights of the aforementioned insurance creditors, their first lien is reduced proportionately.

c) Holders of insurance claims falling within the scope of Article 253-3, paragraph 2, shall be granted a first lien on the proceeds of the liquidation of all the matching assets allocated to such claims up to the provisional value of their claim or the actual cost of the insurance benefit if this is lower than the provisional value. In the event that this income is less important than the rights of the aforementioned insurance creditors, their first lien is reduced proportionately.

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[120] law of 10 August 2018
[121] law of 29 March 2024

"Holders of insurance claims falling within the scope of Article 253-3, paragraph 2,"[122] whose claims could not be fully met by their first lien, shall be granted a second lien on the amounts resulting from the liquidation of the assets referred to in Article 253-3, paragraph 2, and not distributed following the application of the first lien.

Holders of an insurance claim other than those referred to in subparagraph 1, points "a-0",[123] a), b) and c) and insurance creditors whose claims could not be fully satisfied by their first or second lien referred to in points a), b) and c) shall be granted the preferential right of Article 118 over undistributed amounts following the application of first or second lien." [124]

Art. 254 – *Completion of the winding-up proceedings*

(1) Sums or assets due to creditors, shareholders and partners who did not come forward before the close of the winding-up proceedings shall be lodged with the "caisse des consignations" (Consignation office) for the benefit of those they may concern.

(2) When the winding-up is completed, the liquidators shall report to the court on the application of the Luxembourg insurance undertaking's assets and shall submit the accounts and supporting documents. The court may appoint one or more commissioners to examine the documents. A ruling shall be given, after submission of the commissioners' report where applicable, on the liquidators' management and the close of the winding-up. It shall be published pursuant to paragraph 1 of Article 251.

The said publication shall also indicate:

a) the place designated by the court where the company's books and documents must be lodged for at least five years;

b) the measures taken pursuant to paragraph 1 above relative to the consignment of any sums and assets which it has not been possible to return to the creditors, shareholders and partners who might be entitled to them.

Art. 255 – *Actions against the liquidators*

Any action brought against the liquidators acting in such capacity shall become time-barred five years after publication of the close of the winding-up proceedings pursuant to Article 254, paragraph 2.

Actions brought against the liquidators relative to acts associated with their functions shall become time-barred five years after the date of such acts, or, if these acts were wilfully concealed, with effect from the date of their discovery.

Subtitle VI

Voluntary liquidation

Art. 256 – *Opening a voluntary liquidation and its effects*

(1) A Luxembourg insurance or reinsurance undertaking may only put itself into voluntary liquidation if it:

[122] law of 29 March 2024
[123] law of 29 March 2024
[124] law of 15 December 2019

a) has relinquished its approval pursuant to Article 129 or has been divested of it pursuant to points a), b) ou c) of Article 130, and

b) has informed the CAA thereof at least one month before the convening of the relevant extraordinary general meeting.

The CAA shall retain its supervisory rights. In the event of a voluntary liquidation, the liquidators appointed by the Luxembourg insurance or reinsurance undertaking must be approved by the CAA when there remain outstanding insurance or reinsurance commitments. In the event of a voluntary liquidation following withdrawal of authorisation, the liquidators appointed pursuant to paragraph 2 of Article 131 shall be responsible for the Luxembourg insurance or reinsurance undertaking's voluntary liquidation.

(2) A decision of a Luxembourg insurance undertaking to go into voluntary liquidation shall not deprive the CAA or the Public Prosecutor of the right to ask the court to order the dissolution and winding-up of an undertaking pursuant to Article 248.

A decision of a Luxembourg reinsurance undertaking to go into voluntary liquidation shall not impede the opening of dissolution and winding-up proceedings of such undertaking pursuant to Regulation (EC) No. 1346/2000 of 29 May 2000.

"Title II*a*

Pension funds

Chapter 1 - *General provisions*

Section 1 - Definitions and scope

Art. 256-1 - *Definitions and abbreviations*

For the purposes of this Title, the following definitions shall apply:

1. "cross-border activity" means operating a pension scheme where the relationship between the sponsoring undertaking and the members and beneficiaries concerned is governed by the relevant social and labour law relevant to the field of occupational pension schemes of a Member State other than the home Member State;
2. "members" means persons other than beneficiaries or prospective members, whose past or current occupational activities entitles or will entitle him to retirement benefits in accordance with the provisions of a pension scheme;
3. "prospective members": means persons who are eligible to join a pension scheme;
4. "competent authority" means a national authority designated to carry out the duties provided for in Directive (EU) 2016/2341;
5. "beneficiaries": means persons receiving retirement benefits;
6. "sponsoring undertaking" means any undertaking or other body, regardless of whether it includes or consists of one or more legal or natural persons, which acts as an employer

or in a self-employed capacity or any combination of these two capacities and which offers a pension scheme or pays contributions to a pension fund;

7. "host Member State" means the Member State whose social and labour law relevant to occupational pension schemes is applicable to the relationship between the sponsoring undertaking and members or beneficiaries;

8. "home Member State" means the Member State in which the IORP has been registered or approved and where its main administration is located;

9. "key function": means within a system of governance, a capacity to undertake practical tasks, comprising the risk management function, the internal audit function and the actuarial function;

10. "institution for occupational retirement provision" or "IORP" means an institution, irrespective of its legal form, operating on a funded basis, established separately from any sponsoring undertaking or trade for the purpose of providing retirement benefits in the context of an occupational activity, on the basis of an agreement or contract agreed:

    - individually or collectively between the employer(s) and the employee(s) or their respective representatives, or
    - with non-salaried workers, individually or collectively, in compliance with the law of the host and home Member States,

    and which carries out activities directly arising from this purpose;

11. "regulated market" means a regulated market within the meaning of Article 43, point 24;

12. "management or supervisory body" means the board of directors of a pension fund, or failing that, any body performing similar functions or roles.

13. "retirement benefits" means benefits paid by reference to reaching, or the expectation of reaching, retirement or, where they are supplementary to those benefits and provided on an ancillary basis, in the form of payments paid in the event of death, disability or cessation of activity, or in the form of support payments or services in case of sickness, indigence or death; these benefits may take the form of a life annuity, a temporary annuity, a single lump sum or any combination of these various possibilities;

14. "pension scheme" means a contract, an agreement, a trust deed or rules stipulating which retirement benefits are granted, and under which conditions;

15. "pension regulation" means a written document outlining the content of a pension scheme;

16. "biometric risks": risks related to death, disability and longevity;

17. "durable medium" means an instrument enabling a member or a beneficiary to store information addressed personally to him in a way that is accessible for future reference or for a period of time adequate for the purposes for which the information is intended and which allows the unchanged reproduction of the information stored;

18. "multilateral trading facility" or "MTF" means a multilateral trading facility or MTF as defined in Article 1, point 32, of the Law of 30 May 2018 on markets in financial instruments;

19. "organised trading facility" or "OTF" means an organised trading system or OTF as defined in Article 1, point 38, of the Law of 30 May 2018 on markets in financial instruments.

Art. 256-2 - *Scope of application*

This Title shall apply to the pension funds referred to in Article 32, paragraph 1, point 14.

Section 2 – Taking-up of business

Art. 256-3 - *Principle of approval and registration*

(1) Any pension fund that is established in the territory of the Grand Duchy of Luxembourg must be approved by the "CAA"[125] before starting its activities.

(2) The application for approval shall be accompanied by the following documents and information:

a) the articles of association of the pension fund;

b) the names, forenames, domicile, residence, profession and nationality or, in the case of legal persons, the name and registered office of the pension fund executive as well as the extent of his powers and the duration of his mandate;

c) the names, forenames, domicile, residence, profession and nationality of the members of the administrative and management bodies of the pension fund;

d) the names, forenames, domicile, residence, profession and nationality or, in the case of legal persons, the articles of association and registered office of the participating undertaking or undertakings and entities;

e) the name of the pension fund's approved auditor;

f) the business plan.

In addition, the pension fund must provide any other requested information necessary for the assessment of the request.

The technical details of the application for approval may be laid down by a CAA regulation.

(3) Any pension fund approved in accordance with paragraph 1 shall be entered in a pension fund register which shall also indicate the names of the Member States in which it carries out cross-border activities in accordance with Articles 256-62 and 256-63.

Art. 256-4 - *Legal form of the pension fund*

Pension funds may only be approved if they adopt one of the following legal forms:

a) cooperative society or cooperative society organised as a public limited company, as defined by the Law of 10 August 1915 on commercial companies, as amended;

[125] law of 21 July 2021 (1)

b) non-profit-making association, as defined by the law of 21 April 1928 on non-profit-making associations and foundations;

c) mutual insurance association as referred to in Article 48;

d) European cooperative society (SCE) as defined in Regulation (EC) No 1435/2003.

Public-law institutions may also be approved if their purpose is to provide pension benefits under conditions equivalent to those of private law bodies.

A legal separation must exist between the pension fund and any sponsoring undertaking so that, in the event of the sponsoring undertaking's bankruptcy, the assets of the pension fund are safeguarded in the interest of the members and beneficiaries.

Art. 256-5 - *Conditions for approval*

A pension fund may be approved only if:

a) its corporate purpose is limited to operations relating to pension benefits and those arising directly therefrom;

b) its central administration is established in the Grand Duchy of Luxembourg, the place of central administration referring to the place where the main strategic decisions of a pension fund are taken;

c) its articles of association specify that the sponsoring undertakings commit to guarantee at all times the solvency and liquidity of the pension fund and the coverage of technical provisions by making the necessary contributions on first call, when it guarantees the payment of pension benefits;

d) it is effectively managed by a pension fund executive or a management company of pension funds fulfilling the conditions set out in Part II, Title III, Chapters 1 and 2, whose services it has contracted by binding agreement;

e) it implements appropriate rules for the management of the pension schemes offered.

For pension funds operating only under class 2 of Annex IV and in the absence of a commitment by the sponsoring undertaking to ensure at all times solvency and liquidity as well as coverage of technical provisions, members of the administrative and management bodies shall provide proof of adequate civil liability insurance coverage as members of those bodies.

Art. 256-6 - Pension fund managing social security schemes

In the event that a pension fund does also operate compulsory employment-related pension schemes considered to be social security schemes covered by Regulations (EC) No 883/2004 and (EC) No 987/2009, the liabilities and assets corresponding to its non-compulsory occupational pension activities must be ring-fenced.

Section 3 - Transfer of commitments

Art. 256-7 - *Definitions*

(1) For the purposes of this section, the following definitions shall apply

a) "transferring IORP" means an IORP, other than a pension fund within the meaning of Article 32, paragraph 1, point 14, which transfers, in whole or in part, a pension scheme's commitments, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to a pension fund within the meaning of Article 32, paragraph 1, point 14;

b) "transferring pension fund" means a pension fund within the meaning of Article 32, paragraph 1, point 14, which transfers, in whole or in part a pension scheme's commitments, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to a pension fund within the meaning of Article 32, paragraph 1, point 14, or to a pension fund subject to supervision by the CSSF or to an IORP registered or authorised in another Member State;

c) "receiving IORP" means an IORP, other than a pension fund within the meaning of Article 32, paragraph 1, point 14, which receives, in whole or in part, a pension scheme's commitments, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, from a transferring pension fund;

d) "receiving pension fund" means a pension fund within the meaning of Article 32, paragraph 1, point 14, which receives, in whole or in part, a pension scheme's commitments, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, from a pension fund within the meaning of Article 32, paragraph 1, point 14, or from a pension fund subject to supervision by the CSSF or an IORP registered or authorised in another Member State.

Art. 256-8 - *Domestic transfers*

(1) Paragraphs 2 to 14 shall apply to transfers of all or part of a pension fund's commitments, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to a pension fund within the meaning of Article 1, point 2, of the law of 13 July 2005 concerning institutions for occupational retirement provision in the form of sepcav and assep, as amended, referred to as "receiving IORP" for the purposes of this Article.

(2) Pension funds may transfer all or part of a pension scheme's commitments, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to a receiving IORP.

(3) The costs of such a transfer shall not be incurred by the remaining members and beneficiaries of the pension fund or by the existing members and beneficiaries of the receiving IORP.

(4) The transfer is subject to prior approval by:

a) a majority of the members and a majority of the beneficiaries concerned or, where applicable, by a majority of their representatives. Information on the conditions of the

transfer shall be made available to the members and beneficiaries concerned and, where applicable, to their representatives, in a timely manner by the pension fund before the application referred to in paragraph 5 is submitted;

b) the sponsoring undertaking, where applicable.

(5) The transfer of all or part of a pension scheme's commitments, technical provisions and other obligations and rights, as well as the corresponding assets or cash equivalent thereof, from the pension fund to the receiving IORP, is subject to the authorisation by the CSSF after obtaining the prior consent of the CAA.

The request for authorisation of transfer shall be submitted simultaneously to the CSSF and the CAA.

(6) The application for the authorisation of the transfer referred to in paragraph 5 shall contain the following information:

a) the written agreement between the pension fund and the receiving IORP, setting out the conditions of the transfer;

b) a description of the main characteristics of the pension scheme;

c) a description of the commitments or technical provisions to be transferred, and of the other obligations and rights, as well as the corresponding assets or cash equivalent thereof;

d) the name and location in Luxembourg of the receiving IORP's main administration and the name and location of the pension fund's main administration;

e) the location of the main administration of the sponsoring undertaking and its name;

f) evidence of the prior approval in accordance with paragraph 4;

g) where applicable, the names of the Member States whose social and labour law relevant to the field of occupational pension schemes is applicable to the pension scheme concerned.

(7) The CSSF shall assess whether:

a) all the information referred to in paragraph 6 has been provided;

b) the administrative structure, the financial situation of the receiving IORP and the good repute and competence or professional experience of its managers are compatible with the proposed transfer;

c) the long-term interests of the members and beneficiaries of the receiving IORP and the transferred part of the scheme are duly protected during and after the transfer;

d) the technical provisions of the receiving IORP are fully funded at the date of the transfer, where the transfer results in cross-border activity;

e) the assets to be transferred are sufficient and appropriate to cover the commitments and technical provisions, as well as the other obligations and rights to be transferred, in accordance with the law of 13 July 2005 concerning institutions for occupational retirement provision in the form of sepcav et assep, as amended, and its implementing measures.

(8) The CAA shall assess whether:

a) in case of a partial transfer of a pension scheme's commitments, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, the long-term interests of the members and beneficiaries of the remaining part of the scheme are adequately protected;

b) the individual entitlements of the members and beneficiaries are at least identical after the transfer;

c) the assets corresponding to the pension scheme to be transferred are sufficient and appropriate to cover the commitments and technical provisions, as well as other obligations and rights to be transferred.

(9) The CAA shall communicate to the CSSF the results of the assessment referred to in paragraph 8 within eight weeks of receipt of the application referred to in paragraph 5 in order to enable the CSSF to take a decision in accordance with paragraph 10.

(10) The CSSF shall grant or refuse the authorisation and communicate its decision to the pension fund and the receiving IORP within three months of receipt of the application.

(11) Where the CSSF refuses the authorisation, it shall communicate the reasoning for such refusal to the pension fund and the receiving IORP within the three-month period referred to in paragraph 10. That refusal, or the failure to act by the CSSF, may be subject to an action for annulment before the administrative court.

(12) The CSSF shall inform the CAA and, as the case may be, the IGSS or the host authorities concerned by the transfer, of the decision referred to in paragraph 10 within two weeks of taking that decision.

(13) Where the transfer concerns a pre-existing cross-border activity, the CAA shall inform the CSSF of the social and labour law provisions relating to occupational pension schemes which govern the operation of the pension scheme and the host Member State's information requirements referred to in Title IV of Directive (EU) 2016/2341 which apply to the cross-border activity. The CAA shall communicate this information within four weeks of being informed of the decision taken by the CSSF in accordance with paragraph 10.

The CSSF shall communicate this information to the receiving IORP within one week of its receipt.

(14) Upon receipt of a decision to grant the authorisation referred to in paragraph 10, the receiving IORP may start to operate the pension scheme.

(15) Paragraphs 16 to 25 apply to transfers of all or part of a pension scheme's commitments, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, from one pension fund to another pension fund.

(16) Pension funds may transfer all or part of a pension scheme's commitments, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to another pension fund after authorisation by the CAA.

(17) The costs of such a transfer shall not be incurred by the remaining members and beneficiaries of the transferring pension fund or by the existing members and beneficiaries of the receiving pension fund.

(18) The transfer is subject to prior approval by:

a) a majority of the members and a majority of the beneficiaries concerned or, where applicable, a majority of their representatives. Information on the conditions of the transfer shall be made available to the members and beneficiaries concerned and, where applicable, to their representatives, in a timely manner by the pension fund before the application referred to in paragraph 19 is submitted;

b) of the sponsoring undertaking, where applicable.

(19) The transfer of all or part of a pension scheme's commitments, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, from the transferring pension fund to the receiving pension fund is subject to the authorisation of the CAA.

(20) The application for the authorisation of the transfer referred to in paragraph 19 shall contain the following information:

a) the written agreement between the transferring pension fund and the receiving pension fund, setting out the conditions of the transfer;

b) a description of the commitments or technical provisions to be transferred, and of the other obligations and rights, as well as corresponding assets or cash equivalent thereof;

c) evidence of the prior approval in accordance with paragraph 18;

d) where applicable, the names of the Member States whose social and labour law relevant to the field of occupational pension schemes is applicable to the pension scheme concerned.

(21) The CAA checks whether :

a) the administrative structure, the financial situation of the receiving pension fund and the good repute and competence or professional experience of its managers are compatible with the proposed transfer;

b) the long-term interests of the members and beneficiaries of the receiving pension fund and the transferred part of the scheme are adequately protected during and after the transfer;

c) the technical provisions of the receiving pension fund are fully funded at the date of the transfer, where the transfer results in cross-border activity;

d) the assets to be transferred are sufficient and appropriate to cover the technical commitments and provisions, as well as other obligations and rights to be transferred, in accordance with this law and its implementing measures.

e) in case of a partial transfer of a pension scheme's liabilities, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, the long-term interests of the members and beneficiaries of the remaining part of the scheme shall be adequately protected;

f) the individual entitlements of the members and beneficiaries are at least identical after the transfer;

g) the assets corresponding to the pension scheme to be transferred are sufficient and appropriate to cover the commitments and technical provisions, as well as other obligations and rights to be transferred.

(22) The CAA shall grant or refuse the authorisation and communicate its decision to the transferring and receiving pension funds within three months of receipt of the application.

Where the transfer concerns a pre-existing cross-border activity, the CAA shall inform the receiving pension fund of the social and labour law provisions relating to occupational pension schemes governing the operation of the pension scheme and the information requirements of the host Member State referred to in Title IV of Directive (EU) 2016/2341 which apply to the cross-border activity.

(23) Where the CAA refuses the authorisation, it shall communicate the reasoning for such refusal to the transferring pension fund and the receiving pension fund within the three-month period referred to in paragraph 22. That refusal, or the failure to act by the CAA, may be subject to an action for annulment before the administrative court.

(24) The CAA shall inform, as the case may be, the IGSS or the host authorities concerned by the transfer of the decision referred to in paragraph 22 within two weeks of taking that decision.

(25) Upon receipt of a decision to grant the authorisation referred to in paragraph 22, the receiving pension fund may start to operate the pension scheme.

Art. 256-9 - *Cross-border transfers from the Grand Duchy of Luxembourg to another Member State*

(1) Pension funds may transfer all or part of a pension scheme's commitments, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to a receiving IORP located in another Member State.

(2) The costs of such transfer should not be incurred by the remaining members and beneficiaries of the transferring pension fund or by the members and existing beneficiaries of the receiving IORP.

(3) The transfer is subject to prior approval by:

a) a majority of the members and a majority of the beneficiaries concerned or, where applicable, a majority of their representatives. The majority is defined in accordance with the pension regulation. Information on the conditions of the transfer shall be made available to the members and beneficiaries concerned and, where applicable, to their representatives, in a timely manner by the pension fund, before the application referred to in paragraph 4 is submitted;

b) of the sponsoring undertaking, where applicable.

(4) The transfers referred to in paragraph 1 shall be subject to authorisation by the competent authority of the receiving IORP's home Member State after obtaining the prior consent of the CAA.

(5) Where the CAA, in its capacity as competent authority of the transferring pension fund, receives the request referred to in Article 12, paragraph 4, of Directive (EU) 2016/2341

from the competent authority of the home Member State of the receiving IORP, it shall only assess whether:

a) in the case of a partial transfer of a pension scheme's commitments, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, the long-term interests of the members and beneficiaries of the remaining part of the scheme shall be adequately protected;

b) the individual entitlements of the members and beneficiaries are at least identical after the transfer;

c) the assets corresponding to the pension scheme to be transferred are sufficient and appropriate to cover the commitments and technical provisions, as well as other obligations and rights to be transferred, in accordance with this law and its implementing measures.

(6) The CAA shall communicate the results of the assessment referred to in paragraph 5 within eight weeks of receipt of the application referred to in Article 12, paragraph 6, of Directive (EU) 2016/2341.

(7) Where the transfer results in a cross-border activity or concerns a pre-existing cross-border activity, the CAA shall inform the competent authority of the IORP's home Member State of the host Member State's provisions on social and labour law relating to occupational pension schemes governing the operation of the pension scheme and the information requirements referred to in Title IV of Directive (EU) 2016/2341 which apply to the cross-border activity. The CAA shall communicate this information within four weeks of being informed of the decision taken by the competent authority of the receiving IORP home Member State pursuant to Article 12, paragraph 4, of Directive (EU) 2016/2341.

If the transfer gives rise to cross-border activity within the meaning of Article 7, paragraph 1, of the law of 13 July 2005 on the activities and supervision of institutions for occupational retirement provision, as amended, the CAA shall inform the IGSS of the decision referred to in Article 12, paragraph 4, of Directive (EU) 2016/2341.

(8) In the case of a disagreement about the procedure, the content of an action or inaction of the other competent authority concerned, including a decision to authorise or refuse a cross-border transfer, the CAA may request EIOPA to carry out non-binding mediation procedures.

Art. 256-10 - ***Cross-border transfers from another Member State to the Grand Duchy of Luxembourg***

(1) Pension funds may receive all or part of a pension scheme's commitments, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, from a transferring IORP located in another Member State.

(2) The costs of such transfer shall not be incurred by the remaining members and beneficiaries of the transferring IORP or by the existing members and beneficiaries of the receiving pension fund.

(3) The transfer is subject to prior approval by:

a) a majority of the members and a majority of the beneficiaries concerned or, where applicable, a majority of their representatives. The majority is defined according to the national law of the transferring home Member State. Information on the conditions of the transfer shall be made available to the members and beneficiaries concerned and, where applicable, to their representatives, in a timely manner, by the transferring IORP before the application referred to in paragraph 4 is submitted;

b) of the sponsoring undertaking, where applicable.

(4) The transfers referred to in paragraph 1 must be authorised by the CAA after obtaining the prior consent of the competent authority of the transferring IORP's home Member State as provided for in Article 12, paragraph 4 of Directive (EU) 2016/2341. The application for authorisation must be submitted by the receiving pension fund to the CAA. The CAA shall grant or refuse the authorisation and communicate its decision to the receiving pension fund within three months of receipt of the application.

(5) The application for authorisation of the transfer referred to in paragraph 4 shall contain the following information:

a) the written agreement between the transferring IORP and the receiving pension fund, setting out the conditions of the transfer;

b) a description of the main characteristics of the pension scheme;

c) a description of the commitments or technical provisions to be transferred, and of the other obligations and rights, as well as corresponding assets or cash equivalent thereof;

d) the names and the locations of the main administrations of the receiving pension fund and the transferring IORP and the Member State in which the latter is registered or authorised;

e) the location of the main administration of the sponsoring undertaking and its name;

f) evidence of the prior approval in accordance with paragraph 3;

g) where applicable, the names of the Member States whose social and labour law relevant to occupational pension schemes is applicable to the pension scheme concerned.

(6) The CAA shall forward the application referred to in paragraph 4 to the transferring IORP’s competent authority, without delay following its receipt.

(7) The CAA shall only assesses whether:

a) all the information referred to in paragraph 5 has been provided by the receiving pension fund;

b) the administrative structure, the financial situation of the receiving pension fund and the good repute and competence or professional experience of its managers are compatible with the proposed transfer;

c) the long-term interests of the members and beneficiaries of the receiving pension fund and the transferred part of the scheme are duly protected during and after the transfer;

d) the technical provisions of the receiving pension fund are fully funded at the date of transfer, where the transfer results in cross-border activity;

e) the assets to be transferred are sufficient and appropriate to cover the commitments and technical provisions, as well as the other obligations and rights to be transferred, in accordance with the rules applicable in the Grand Duchy of Luxembourg.

(8) Where authorisation is refused, the CAA shall provide the reasoning for such refusal to the receiving pension fund within the three-month period referred to in paragraph 4; such refusal, or the failure to act by the CAA, may be subject to an action for annulment before the administrative court of the Grand Duchy of Luxembourg.

(9) The CAA shall inform the competent authority of the transferring IORP's home Member State of the decision referred to in paragraph 4 within two weeks of taking that decision.

The CAA shall forward the information it was communicated by the competent authority of the transferring IORP's home Member State under Article 12, paragraph 11, of Directive (EU) 2016/2341 to the receiving pension fund within one week of its receipt.

(10) Upon receipt of a decision to grant the authorisation referred to in paragraph 4, or if no information on the decision is received from the CAA on expiry of the period referred to in paragraph 9, subparagraph 2, the receiving pension fund may start to operate the pension scheme.

(11) In the case of disagreement about the procedure, the content of an action or inaction of the other competent authority concerned, including a decision to authorise or refuse a cross-border transfer, the CAA may request EIOPA to carry out non-binding mediation procedures.

(12) Where, taking into account the transfer, the pension fund carries out cross-border activity, the CAA shall inform the host authorities concerned. Article 256-62, paragraphs 8 and 9, shall apply.

Chapter 2 - *Quantitative Requirements*

Art. 256-11 - *Calculation of contributions*

Contributions must be sufficient, under reasonable assumptions, to enable the pension fund to meet all its obligations, and in particular to establish technical provisions in accordance with Article 256-12.

To this end, account may be taken of all aspects of the financial situation of the pension fund without the provision of foreign resources to these contributions being systematic and permanent in nature, which could jeopardise the solvency of the pension fund in the end.

Art. 256-12 - *Technical provisions*

(1) Pension funds, whether or not they cover biometric risks or guarantee either investment returns or a given level of benefits, shall establish at all times, in respect of the total range of their pension schemes an adequate amount of technical provisions corresponding to the financial commitments which arise out of their portfolio of existing pension contracts.

(2) Third-country pension funds must establish technical provisions, as referred to in paragraph 1, for their Luxembourg activities.

(3) The amount of the provisions referred to in paragraphs 1 and 2 shall be determined in accordance with the rules laid down by the law on annual accounts.

(4) The calculation of technical provisions shall be carried out by an actuary or other specialist in that field, including an auditor, in accordance with the following principles:

a) the calculation of the technical provisions is made on the basis of actuarial methods recognised by the CAA;

b) the amount of the technical provisions shall be calculated by means of a sufficiently prudent actuarial valuation, taking account of all of the pension fund's commitments for benefits and for contributions for each of the pension schemes it manages. It must at least be sufficient both to ensure that pensions and benefits already in payment continue to be paid to their beneficiaries and to reflect the commitments arising out of members' accrued pension rights. The economic and actuarial assumptions used for the valuation of the commitments shall also be chosen prudently, taking account, where applicable, of an appropriate margin for adverse deviation;

c) where the commitments of a pension fund in classes 1 and 3 involve one or more technical interest rates, the CAA shall determine the maximum interest rates in accordance with Article 72, paragraph 4 of the Law on Annual Accounts. These rates may differ depending on the currency in which the commitments are expressed;

d) the biometric tables used for the calculation of the technical provisions are based on prudent principles, having regard to the main characteristics of the group of members and pension schemes, in particular the expected evolution of the risks concerned;

e) the method and basis of calculation of technical provisions shall in general remain constant from one financial year to another. However, discontinuities may be justified by a change in the legal, demographic or economic circumstances underlying the assumptions.

(5) The CAA may make the calculation of technical provisions subject to additional and more detailed requirements, with a view to ensuring that the interests of members and beneficiaries are adequately protected.

Art. 256-13 - *Coverage of technical provisions*

(1) Technical provisions, including insurance claims not included in technical provisions, must be represented at all times by matching assets, hereinafter referred to as "assets matching technical provisions".

(2) Technical provisions shall at all times be fully funded in respect of the total range of pension schemes operated. If this condition is not met, the CAA shall intervene and require the pension fund to immediately draw up appropriate measures and implement them without delay in a way that members and beneficiaries are adequately protected.

Art. 256-14 - *Regulatory own funds*

(1) Pension funds operating pension schemes, where the pension fund itself, and not the sponsoring undertaking or a life insurance undertaking or credit institution, undertakes to cover biometric risks or guarantees a given investment performance or level of benefits,

shall on a permanent basis hold, in addition to the technical provisions, additional assets in order to serve as a buffer. The level of this buffer must reflect the type of risk and the portfolio of assets held in respect of the total range of schemes operated. Those additional assets shall be free from any foreseeable commitment and serve a safety capital to absorb discrepancies between the anticipated and the actual expenses and profits.

(2) For the purposes of calculating the minimum amount of additional assets, the rules laid down in Articles 256-15 to 256-17 shall apply.

(3) A CAA regulation may establish more precise rules for determining the minimum and maximum amount of additional assets provided that they are prudentially justified.

Art. 256-15 - *Available solvency margin*

(1) The pension funds referred to in Article 256-14, paragraph 1, shall at all times hold an adequate available solvency margin, with regard to all their activities, at least equal to the requirements of this law, in order to ensure the long-term sustainability of occupational pension schemes.

(2) The available solvency margin shall consist of the assets of the pension fund, free of any foreseeable commitments and less any intangible items, including:

a) the paid-up portion of the share capital or, in the case of pension funds taking the form of mutual insurance associations, the effective initial fund plus any accounts of the members of the mutual insurance association which fulfil all the following criteria:

(i) the memorandum and articles of association must stipulate that payments to members of the mutual insurance association may be made from those accounts only insofar as this does not cause the available solvency margin to fall below the required level or, after the dissolution of the undertaking, where all its other debts have been settled;

(ii) the memorandum and articles of association shall provide that, for any payment referred to in point (i) made for reasons other than the individual termination of membership of the mutual insurance association, the competent authorities shall be notified at least one month in advance and may, during that period, prohibit the payment;

(iii) the relevant provisions of the memorandum and articles of association may be amended only after the CAA has declared that it has no objection to such amendment, without prejudice to the criteria referred to in points (i) and (ii);

b) legal and free reserves that do not correspond to the commitments entered into;

c) the profit or loss brought forward, net of dividends payable;

d) profit reserves appearing in the balance sheet where they may be used to cover any losses which may arise and where they have not been made available for distribution to members or beneficiaries.

The available solvency margin shall be reduced by the amount of own shares held directly by the pension fund.

(3) The available solvency margin may also be constituted:

a) by cumulative preferential shares and subordinated loans up to 50% of the lesser of the available solvency margin or the required solvency margin, of which a maximum of 25% shall consist of fixed-term subordinated loans or fixed-term cumulative preferential shares, provided that binding agreements exist under which, in the event of bankruptcy or liquidation of the pension fund, subordinated loans or preferential shares rank after the claims of all other creditors and are not repaid until all other debts outstanding at that time have been settled;

b) by securities with no specified maturity date and other instruments, including cumulative preferential shares other than those referred to in letter a), up to a maximum of 50 % of the available solvency margin or the required solvency margin, whichever the lesser, for the total of these securities, and the subordinated loans referred to in letter (a), provided that they fulfil the following conditions:

(i) they must not be repaid at the initiative of the bearer or without the prior consent of the CAA;

(ii) the contract of issue must enable the pension fund to defer the payment of interest on the loan;

(iii) the lender's claims on the pension fund must rank entirely after those of all non-subordinated creditors;

(iv) the documents governing the issue of securities must provide for the loss-absorption capacity of the debt and unpaid interest, while enabling the pension fund to continue its business;

(v) only fully paid-up amounts shall be taken into account.

For the purposes of letter a), subordinated loans shall also fulfil the following conditions:

(i) only fully paid-up funds shall be taken into account;

(ii) for loans with a fixed maturity, the original maturity shall be at least five years. No later than one year before the repayment date, the pension fund shall submit to the CAA for approval a plan showing how the available solvency margin will be kept at or brought to the required level at maturity, unless the extent to which the loan may rank as a component of the available solvency margin is gradually reduced during at least the five years preceding the repayment date. The CAA may authorise the early repayment of such loans, provided application is made by the issuing pension fund and its available solvency margin does not fall below the required level;

(iii) loans the maturity of which is not fixed shall be repayable only subject to five years' notice, unless they are no longer considered as a component of the available solvency margin or unless the prior consent of the CAA is specifically required for their early repayment. In the latter case, the pension fund shall notify the CAA at least six months before the date of the proposed repayment, specifying the available solvency margin and the required solvency margin both before and after that repayment. The CAA shall only authorise it where

the available solvency margin of the pension fund will not fall below the required level;

(iv) the loan agreement does not contain any clause providing that, in specified circumstances, other than the winding-up of the pension fund, the debt will become repayable before the agreed repayment dates;

(v) the loan agreement may only be amended after the CAA has declared that it has no objection to the amendment.

(4) Upon application, with supporting advice, by the pension fund to the CAA, and with the agreement of the latter, the available solvency margin may also be established:

a) where zillmerising is not practised or where, if practised, it is less than the loading for acquisition costs included in the premium, by the difference between the non-zillmerized or partially zillmerized mathematical provision and a mathematical provision zillmerized at a rate equal to the loading for acquisition costs included in the premium;

b) by hidden net reserves arising out of the valuation of assets, insofar as such hidden net reserves are not of an exceptional nature;

c) by one half of the unpaid share capital or initial fund, once the paid-up portion amounts to 25% of that share capital or fund, up to 50% of the available or required solvency margin, whichever is the lesser.

The amount referred to in letter a) shall not exceed 3,5 % of the sum of the differences between the relevant capital sums of life insurance and occupational pension activities and the mathematical provisions for all policies for which zillmerisation is possible. The difference may be reduced by the amount of undepreciated acquisition costs entered as an asset.

Art. 256-16 - *Solvency margin requirement*

(1) The required solvency margin, depending on the commitments entered into, is equal to the sum of the following results:

a) first result :

it is obtained by multiplying a fraction corresponding to 4% of the mathematical provisions relating to direct business and reinsurance acceptances, gross of reinsurance cessions, by the ratio, equal to or greater than 85%, existing for the previous financial year, between the total amount of mathematical provisions after deduction of reinsurance cessions and the total gross amount of mathematical provisions;

b) second result :

for policies on which the capital at risk is not negative, it is obtained by multiplying a fraction of 0.3% of the amount of such capital underwritten by the pension fund by the ratio, equal to or greater than 50%, existing for the previous financial year, between the total amount of capital at risk retained by the pension fund after ceding and retroceding in reinsurance and the total amount of capital at risk without reinsurance deduction.

For term insurance in the event of death, whose duration does not exceed three years, this fraction is 0.1%. For those with a term of more than three years, but not more than five years, this fraction is 0.15%.

(2) For supplementary insurance as referred to in Article 2, paragraph 3, letter a), point iii), of Directive 2009/138/EC, the required solvency margin shall be equal to that provided for pension funds in Article 256-17.

(3) For capital redemption operations referred to in Article 2, paragraph 3, letter b), point ii), of Directive 2009/138/EC, the required solvency margin shall be equal to a fraction corresponding to 4 % of the mathematical provisions, calculated in accordance with paragraph 1, letter a).

(4) For the transactions referred to in Article 2(3)(b)(i) of Directive 2009/138/EC, the required solvency margin shall be 1 % of their assets.

(5) For insurance linked to investment funds and covered by Article 2, paragraph 3, letter a, point i) and ii), of Directive 2009/138/EC and for operations referred to in Article 2, paragraph 3, letter b), points iii), iv) and v) of Directive 2009/138/EC, the required solvency margin shall be equal to the sum of the following factors

a) insofar as the pension fund bears an investment risk, a fraction corresponding to 4 % of the technical provisions, calculated in accordance with paragraph 1, letter a);

b) insofar as the pension fund bears no investment risk, but the allocation to cover management expenses is fixed for a period exceeding five years, a fraction corresponding to 1 % of the technical provisions, calculated in accordance with paragraph 1, letter a);

c) insofar as the pension fund bears no investment risk and the allocation to cover management expenses is not fixed for a period exceeding five years, an amount equivalent to 25 % of the net administrative expenses relating to such insurance and operations of the preceding financial year;

d) insofar as the pension fund bears a mortality risk, a fraction corresponding to 0,3 % of the capital at risk, calculated in accordance with paragraph 1, letter b).

Art. 256-17 - ***Solvency margin requirement for the purposes of Article 256-16, paragraph 2***

(1) For the supplementary insurance referred to in Article 256-16, paragraph 2, the required solvency margin shall be determined on the basis of either the annual amount of premiums or contributions, or the average cost of claims over the last three financial years.

(2) The required solvency margin shall be equal to the higher of the two results set out in paragraphs 3 and 4.

(3) The premium basis shall be calculated using the higher of the gross written premiums or contributions as calculated below or the gross earned premiums or contributions.

Premiums or contributions, including charges ancillary to premiums or contributions, due in respect of direct business during the previous financial year are aggregated.

To that sum is added the premiums accepted for all reinsurance during the previous financial year.

From that sum shall then be deducted the total amount of premiums or contributions cancelled during the previous financial year, as well as the total amount of taxes relating to the premiums or contributions entering into the aggregate.

The sum so obtained shall be divided into two portions, a first portion extending up to 50,000,000 euros and a second portion corresponding to the excess; the fractions corresponding to 18% of the first portion and 16% of the second shall be added together.

The sum so obtained shall be multiplied by the existing ratio, cumulatively over the last three financial years, between the amount of claims remaining to be borne by the pension fund after deduction of amounts recoverable under reinsurance and the gross amount of claims. This ratio shall not be less than 50%.

(4) The claims basis is calculated as follows:

The amounts of claims paid in respect of direct business, without deduction of claims borne by reinsurers and retrocessionaires, during the periods specified in paragraph 1 shall be aggregated.

To this sum there shall be added the amount of claims paid in respect of reinsurance or retrocession accepted during these same periods and the amount of provisions for claims outstanding established at the end of the previous financial year, both for direct business and for reinsurance acceptances.

From that there shall be deducted the amount of recoveries effected during the periods specified in paragraph 1.

There shall then be deducted from the sum then remaining the amount of provisions for claims outstanding established at the beginning of the second financial year preceding the last financial year for which there are accounts, both for direct business and for reinsurance acceptances.

One third of the amount so obtained shall be divided into two portions, one of which extending up to 35,000,000 euros and a second portion corresponding to the excess; the fractions corresponding to 26 % of the first portion and 23 % of the second shall be added together.

The sum so obtained shall be multiplied by the existing ratio, cumulatively over the last three financial years, between the amount of claims remaining to be borne by the institution after deduction of amounts recoverable under reinsurance and the gross amount of claims. That ratio shall not be less than 50%.

(5) Where the required solvency margin, calculated in accordance with paragraphs 2 to 4, is lower than the required solvency margin for the previous financial year, the required solvency margin shall be at least equal to that of the previous financial year, multiplied by the ratio of the amount of technical provisions for claims outstanding at the end of the previous financial year and their amount at the beginning of the previous financial year. In those calculations, the technical provisions shall be calculated net of reinsurance, but the ratio may not exceed 1.

Art. 256-18 - *Investment rules: basic principles*

(1) Assets shall be invested in the best long-term interests of members and beneficiaries as a whole, taking into account the principle of an equitable distribution of risks and benefits between generations. In the case of a potential conflict of interest, the pension fund and, where applicable, the entity managing its portfolio shall ensure that the investment is made in the sole interest of members and beneficiaries.

(2) In accordance with the prudent person principle, pension funds may take into account the potential long-term impact of investment decisions on environmental, social and governance factors.

(3) The assets matching technical provisions must take into account the type of operations carried out by the pension fund in order to ensure the safety, quality, liquidity and profitability of the fund's investments.

Art. 256-19 - *Investment rules: coverage of commitments in classes 1, 2 and 3 of Annex IV*

(1) The choice of asset categories is made within the framework of an investment policy for the investment of assets accepted by the CAA, the rules of which cannot prevent pension funds from:

a) investing up to 70% of the assets matching technical provisions or of the entire portfolio for schemes in which the investment risk is borne by members, in shares, in securities or negotiable securities treated as shares and corporate bonds admitted to trading on regulated markets, MTFs or OTFs, and deciding for themselves on the relative weight of these securities in their investment portfolio;

b) investing up to 30% of the assets matching technical provisions in assets denominated in currencies other than those in which the commitments are expressed;

c) investing their assets in long-term investment instruments that are not traded on regulated markets, MTFs or OTFs;

d) investing in instruments that are issued or guaranteed by the EIB provided in the framework of European Fund for Strategic Investments, European Long-Term Investment Funds, European Social Entrepreneurship Funds and European Venture Capital Funds.

(2) Pension funds shall not be required to invest in specific asset classes or to have their individual investment decisions authorised or systematically notified.

(3) The CAA may impose, on an individual basis, stricter investment rules on pension funds justified from a prudential point of view, in particular with regard to the commitments entered into by the pension fund.

(4) Pension funds must invest their assets in accordance with the prudent person principle and, in particular, in accordance with the following rules:

a) the assets shall predominantly be invested on regulated markets. Investments in assets that are not admitted to trading on a regulated financial market must in any event be kept to prudent levels;

b) investments in derivative instruments shall be possible insofar as they contribute to a reduction in investment risks or facilitate efficient portfolio management. They must be valued on a prudent basis, taking into account the underlying asset, and included in the valuation of a pension fund's assets. Pension funds shall also avoid excessive exposure to a single counterparty and to other derivative operations;

c) assets shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and accumulation of risk in the portfolio as a whole. Investments in assets from the same issuer or issuers belonging to the same group shall not expose a pension fund to excessive risk concentration;

d) investment in instruments issued by the sponsoring undertaking shall not exceed 5% of the portfolio as a whole and, when the sponsoring undertaking belongs to a group, investment in instruments issued by undertakings belonging to the same group as the sponsoring undertaking shall not exceed 10% of the portfolio. Where the pension fund operates on behalf of a number of sponsoring undertakings, investments in instruments issued by those undertakings shall be made prudently, taking into account the need for proper diversification.

The requirements referred to in letters c) and d) shall not apply to investments in government bonds.

(5) The CAA, taking into account the size, nature, scale and complexity of the activities of pension funds, shall monitor the adequacy of the credit assessment processes of each pension fund, assess the use of references to credit ratings issued by credit rating agencies within the meaning of Article 3, paragraph 1, point b), of Regulation (EC) No 1060/2009 in their investment policies and, where appropriate, encourage mitigation of the impact of such references, with a view to reducing the sole and mechanistic reliance on such credit ratings.

(6) Pension funds shall be prohibited from borrowing, except for liquidity purposes and on a temporary basis, or acting as a guarantor on behalf of third parties.

Art. 256-20 - ***Investment rules: Hedging of commitments under class 2 of Annex IV***

(1) For commitments in class 2 of Annex IV, where the benefits provided for in a pension regulation are directly linked to the value of units in a collective investment undertaking or to the value of assets contained in an internal fund held by the pension fund, generally divided into units, the technical provisions concerning these benefits must be represented as closely as possible by these units or, where the units are not defined, by these assets.

(2) Where the benefits provided for in a pension regulation are directly linked to an equity index or a reference value other than the values referred to in paragraph 1, the technical provisions relating to those benefits shall be represented as closely as possible either by the shares intended to represent the reference value or, where the shares are not defined, by assets of appropriate security and negotiability corresponding as closely as possible to those on which the particular reference value is based.

(3) Where the benefits referred to in paragraphs 1 and 2 include a performance guarantee for the investment or any other guaranteed benefit, the coverage of the corresponding additional technical provisions shall be subject to the provisions of Article 256-19.

Chapter 3 - *Conditions governing the activity*

Section 1 - System of governance

Subsection 1 - Responsibility of the management or supervisory body

Art. 256-21 - *Responsibility of the management or supervisory body*

The management or supervisory body of a pension fund has the ultimate responsibility for the compliance by the pension fund concerned with prudential regulations.

Subsection 2 - System governance

Art. 256-22 - *General governance requirements*

(1) A pension fund must have in place a good administrative and accounting organisation and adequate internal control procedures.

The administrative and accounting organisation and the internal control procedures must be comprehensive and adapted to the nature, scale and complexity of the business.

(2) Pension funds shall put in place an effective system of governance which provides for a sound and prudent management of the business.

That system shall include at least a transparent and adequate organisational structure with a clear allocation and appropriate segregation of responsibilities and an effective system for ensuring the transmission of information.

The governance system shall include consideration of environmental, social and governance factors related to the assets matching technical provisions when making investment decisions and must be subject to regular internal review.

(3) The governance system shall be proportionate to the size, nature, scale and complexity of the pension fund's activities.

(4) Pension funds shall have written policies concerning at least their risk management, internal audit and, where relevant, actuarial activities and outsourcing. They are required to ensure that these policies are implemented.

These written policies must be reviewed at least every three years. They shall be subject to prior approval by the management or supervisory body and shall be adapted in the light of any significant changes affecting the system or area concerned.

(5) Pension funds must have an effective internal control system that includes administrative and accounting procedures, an internal control framework and appropriate reporting arrangements at all levels of the pension fund.

(6) Pension funds must take reasonable measures to ensure continuity and regularity in the performance of their activities, including the development of contingency plans. To that end, they shall employ appropriate and proportionate systems, resources and procedures "and, in particular, to set up and manage networks and information systems in accordance with Regulation (EU) 2022/2554" [126].

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[126] Law of 1st July 2024

(7) The team responsible for the effective management of a pension fund shall include, in addition to the pension fund executive or delegated pension fund executive referred to in Article 272, paragraph 3, letters d) and e), another person who fulfilling the requirements of good repute referred to in Article 274 and of competence referred to in Article 275, paragraph 2.

The CAA may, on the basis of a reasoned assessment taking into account at least the role of the social partners in the overall management of the pension fund and the size, nature, scale and complexity of the activities of the pension fund, authorise it to be managed by a single pension fund executive or a management company of pension funds, represented vis-à-vis the pension fund, the CAA and third parties by a single delegated pension fund executive.

Art. 256-23 - *Requirements of good repute and competence*

(1) Pension funds must ensure that all persons who effectively run the pension fund or carry out key functions, as well as persons or entities to which a key function has been outsourced, permanently comply with the following requirements:

a) persons who effectively run the pension fund must have skills in terms of qualifications, knowledge and experience adequate to enable them to ensure collectively a sound and prudent management of the pension fund;

b) persons in key functions must have the skills in terms of qualifications, knowledge and professional experience adequate to enable them to properly carry out their key functions;

c) the persons referred to in letters a) and b) must demonstrate their good repute.

(2) The CAA shall assess whether persons who actually run the pension fund or carry out key functions meet the requirements laid down in paragraph 1.

(3) Where the CAA requires persons referred to in paragraph 1 to provide evidence of good repute, proof of previous bankruptcy or both, it shall accept as sufficient evidence, for nationals of other States, the production of an extract from the criminal record or, in the absence of an extract from the criminal record in the other State, an equivalent document showing that those requirements are met, issued by a competent judicial or administrative authority either of the State of which the person concerned is a national or of the Grand Duchy of Luxembourg.

(4) Where no competent judicial or administrative authority either of the State of which the person concerned is a national or of Luxembourg issues an equivalent document as referred to in paragraph 3, it may be replaced by a declaration on oath, or, in States where such an oath is not provided for, by a solemn declaration, made by the person concerned before a competent judicial or administrative authority or, where appropriate, a notary of the State of which the person concerned is a national or of the Grand Duchy of Luxembourg.

(5) Evidence in respect of no previous bankruptcy may also be provided in the form of a declaration made by the national of the other State concerned before a competent judicial authority or qualified professional body of the other State.

(6) The documents referred to in paragraphs 3 to 5 shall be presented within three months of their date of issue.

(7) The CAA shall publish on its website the Luxembourg authorities and bodies competent to issue the documents referred to in paragraphs 3 to 5 and shall immediately inform the European Commission and the other Member States of any change in this information.

Art. 256-24 - *Remuneration policy*

(1) Pension funds shall establish and apply a sound remuneration policy for all persons who effectively run or manage them and carry out key functions and for other categories of staff whose professional activities have a material impact on the risk profile of the pension fund, in a manner that is proportionate to their size and internal organisation, as well as to the size, nature, scale and complexity of their activities.

(2) Pension funds regularly disclose publicly relevant information regarding their remuneration policy.

(3) When establishing and applying the remuneration policy referred to in paragraph 1, pension funds shall comply with the following principles:

a) the remuneration policy shall be established, implemented and maintained in line with the activities, risk profile, objectives, long-term interests, financial stability and performance of the pension fund as a whole, and shall support the sound, prudent and effective management of pension funds;

b) the remuneration policy shall be in line with the long-term interests of the members and beneficiaries of the pension schemes operated by the pension fund;

c) the remuneration policy includes measures to avoid conflicts of interest;

d) the remuneration policy shall be consistent with sound and effective risk management and shall not encourage risk-taking which is inconsistent with the risk profiles and rules of the pension fund;

e) the remuneration policy shall apply to the pension fund and to the service providers referred to in Article 256-35, unless those service providers are covered by Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU or 2014/65/EU;

f) the pension fund shall establish the general principles of the remuneration policy, shall review and update it at least every three years, and shall be responsible for its implementation;

g) the remuneration and its monitoring shall be subject to clear, transparent and effective governance.

Subsection 3 - Key Functions

Art. 256-25 - *General provisions*

(1) Pension funds shall have in place the following key functions:

a) a risk management function,

b) an internal audit function and,

c) an actuarial function, where the requirements of Article 256-28 are met.

Pension funds shall ensure that holders of key functions are able to carry out their duties in an objective, fair and independent manner.

(2) Pension funds may allow the same person or organisational unit to carry out several key functions, with the exception of the internal audit function, which shall be independent from the other key functions.

(3) The individual person or organisational unit carrying out a given key function is different from that performing a similar key function in the sponsoring undertaking. Taking into account the size, nature, scale and complexity of the pension fund's activities, the CAA may, upon a reasoned request from the pension fund, allow the pension fund to carry out key functions through the same person or organisational unit as in the sponsoring undertaking, provided that the pension fund explains how it intends to prevent or manage any potential conflict of interest with the sponsoring undertaking.

(4) Holders of a key function are required to report any material findings and recommendations in the area of their responsibility to the pension fund’s management or supervisory body, which shall determine the actions to be taken.

(5) Without prejudice to the privilege against self-incrimination, the holder of a key function in a pension fund shall inform the CAA if the management or supervisory body of the pension fund does not take appropriate and timely remedial action in the following cases:

a) where the person or organisational unit carrying out the key function has detected a risk that the pension fund will not comply with a legal requirement and has reported its findings to the management or supervisory body of the pension fund and where this could have a significant impact on the interests of members and beneficiaries; or

b) where the person or organisational unit carrying out the key function has identified a significant material breach of the legislation applicable to the pension fund and its activities in the performance of its key function, and has reported this to the management or supervisory body of the pension fund.

(6) The communication made under Article 4, letter o), to the CAA, of information referred to in paragraph 5 shall not constitute an infringement of any restriction on the disclosure of information contractually or legally required and shall not give rise to any liability of any kind with regard to such communication.

Art. 256-26 - *Risk-management*

(1) Pension funds must establish an effective risk management function in a manner proportionate to their size and internal organisation, as well as the size, nature, scale and complexity of their activities. This function shall be structured so as to facilitate the

functioning of a risk management system, for which pension funds are required to adopt the necessary information strategies, processes and procedures to identify, measure, monitor, manage and report to the management or supervisory body of the pension fund the risks, at an individual and at an aggregate level, to which the pension funds and the pension schemes operated by them are or could be exposed and the interdependencies between these risks.

This risk-management system shall be effective and well-integrated into the organisational structure and in the decision-making procedures of the pension fund.

(2) The risk-management system shall cover, in a manner that is proportionate to the size and internal organisation of pension funds, as well as the size, nature, scale and complexity of their activities, risks that may occur in pension funds or in organisations to which tasks or activities of a pension fund have been outsourced at least in the following areas, where applicable:

a) underwriting and reserving;

b) asset-liability management;

c) investment, in particular in derivatives, securitisations and similar commitments;

d) liquidity and concentration risk management;

e) operational risk management;

f) insurance and other risk-mitigation techniques;

g) environmental, social and governance risks related to the investment portfolio and the management thereof.

(3) Where the provisions of the pension scheme provide that members and beneficiaries bear the risks, the risk management system shall also consider these risks from the perspective of members and beneficiaries.

Art. 256-27 - *Internal audit function*

Pension funds must provide for an effective internal audit function in a manner that is proportionate to their size and internal organisation, as well as the size, nature, scale and complexity of their activities. The internal audit function shall include an evaluation of the adequacy and effectiveness of the internal control system and other elements of the system of governance, including, where applicable, outsourced activities.

Art. 256-28 - *Actuarial function*

(1) Where a pension fund itself provides cover against biometric risks or guarantees either an investment performance or a given level of benefits, it shall provide an effective actuarial function to:

a) coordinate and oversee the calculation of technical provisions;

b) assess the appropriateness of the methodologies and underlying models used in the calculation technical provisions and the assumptions used for this purpose;

c) assess the sufficiency and quality of the data used in the calculation of technical provisions;

d) compare the assumptions underlying the calculation of the technical provisions with empirical observations;

e) inform the pension fund's management or supervisory body of the reliability and adequacy of the calculation of technical provisions;

f) express an opinion on the overall underwriting policy, in the event of the pension fund having such a policy;

g) express an opinion on the adequacy of insurance or reinsurance arrangements, in the event of the pension fund having such arrangements;

h) contribute to the effective implementation of the risk-management system.

(2) Pension funds shall designate at least one independent person, inside or outside the pension fund, who is responsible for the actuarial function.

Subsection 4 – Documents concerning governance

Art. 256-29 - *Own-risk assessment*

(1) Pension funds must carry out and document their own-risk assessment in a manner that is proportionate to their size and internal organisation, as well as the size, nature, scale and complexity of their activities.

That risk assessment shall be performed at least every three years or without delay after any significant change in the risk profile of the pension fund or pension schemes operated by the pension fund. Where there is a significant change in the risk profile of a specific pension plan, the risk assessment may be limited to that pension scheme.

(2) The risk assessment referred to in paragraph 1 shall include the following elements:

a) a description of how own-risk assessment is integrated into the management process and into the decision-making procedures of the pension fund;

b) an assessment of the effectiveness of the risk-management system;

c) a description of how the pension fund prevents conflicts of interest with the sponsoring undertaking when outsourcing key functions to that sponsoring undertaking;

d) an assessment of the overall funding needs of the pension fund, including a description of the recovery plan, where applicable;

e) an assessment of 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:

i. indexation mechanisms;

ii. benefit reduction mechanisms, including the extent to which accrued pension benefits can be reduced, under which conditions and by whom;

f) a qualitative assessment of the mechanisms protecting retirement benefits, including, as applicable, guarantees, covenants or any other type of financial support from the sponsoring undertaking, insurance or reinsurance contracts or coverage by a pension protection scheme in favour of the pension fund or members and beneficiaries;

g) a qualitative assessment of the operational risks;

h) where environmental, social and governance factors are considered in investment decisions, an assessment of new or emerging risks, including risks related to climate change, use of resources and the environment, social risks, as well as risks related to depreciation of assets due to changes in the regulatory environment.

(3) For the purposes of paragraph 2, pension funds must put in place methods to identify and assess the risks to which they are or could be exposed in the short and in the long term that may have an impact on the ability of the pension fund to meet its obligations. These methods shall be proportionate to the size, nature, magnitude and complexity of the risks inherent in their activities. They are described in the own-risk assessment.

(4) The own-risk assessment shall be taken into account in the strategic decisions of the pension fund.

Art. 256-30 - *Statement of investment policy principles*

Every pension fund shall prepare, and review at least every three years, a written statement of investment policy principles for each pension scheme operated. It must be revised without delay after any significant change in the investment policy. It must contain, at least, such matters as investment risk measurement methods, risk-management processes implemented and strategic asset allocation with respect to the nature and duration of pension commitments, as well as how the investment policy takes into account environmental, social and governance factors and is made publicly available.

A CAA regulation may specify more detailed rules as to the content and format of the statement of investment policy principles.

Subsection 5 – Pension fund's accounting

Art. 256-31 - *Methods of application of the law on annual accounts*

In accordance with Articles 1, paragraph 1, and 61 of the Law on Annual Accounts, that law is applicable to pension funds, with the following adaptations:

a) By way of derogation from Article 60, paragraph 1, of the Law on Annual Accounts, pension funds must value the investments in asset item C at current value in accordance with the provisions of Articles 78 and 79 of the Law on Annual Accounts.

b) For investments in item C, the change between the valuation of investments between two successive balance sheet dates should be recorded in items II 3 and 10 of the profit and loss account.

c) Any positive balance of the amounts referred to in letter b) must be used in priority to offset the losses carried forward, the remainder being allocated to the provision for bonuses and

rebates in item C IV of the liabilities. A negative balance is allocated to this item only to the extent that the available amount shown therein allows.

d) For item C investments valued at their current value, their acquisition value is shown in the notes.

e) When the commitments of a pension fund in classes 1 and 3 involve one or more technical interest rates, the CAA determines the maximum interest rates. These rates may differ depending on the currency in which the commitments are denominated.

f) Article 72, paragraph 4, letter a), subparagraphs 1 and 2 of the Law on Annual Accounts is not applicable.

Art. 256-32 - *Designation of persons responsible for the statutory audit*

Pension funds are required to submit an external audit of their accounts on an annual basis, at the pension fund's expense, by an approved auditor ("réviseur d'entreprises agréé") who provide evidence of having the professional experience and knowledge referred to in Article 94.

" Art. 256-32*bis* - *Specific audits by the approved auditor*

The CAA may ask an approved auditor to carry out an audit relating to specific aspects of the activity and operation of a pension fund subject to the supervision of the CAA, which includes the preparation and transmission to the CAA of a report setting out the approved auditor's findings. This audit is carried out at the expense of the pension fund concerned, and may not prejudice the rights of members."[127]

Art. 256-33 - *Duties of persons responsible for statutory audits of the accounts*

(1) The approved auditor has the obligation to report promptly to the CAA any fact or decision concerning a pension fund, of which he has become aware while carrying out that task and which could be liable to bring about any of the following:

a) to constitute a material breach of the provisions of this law and of its implementing measures which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of pension funds,

b) to impair the continuous functioning of the pension fund,

c) to lead to the refusal of the certification of the accounts or the expression of reservations.

(2) The approved auditor shall also report any facts and decisions of which he has become aware in the course of carrying out a task as described in paragraph 1 carried out in an undertaking having close links resulting from a control relationship with the pension fund within which he is carrying out that task.

(3) The provisions of Article 95, paragraph 2, shall apply.

[127] law of 29 March 2024

" (4) The CAA may require the replacement of the approved auditor where he acts in breach of his obligations under paragraphs 1 and 2, or if he fails to provide the information required by the CAA under Article 62, paragraph 2, letter c)."[128]

Subsection 6 - Keeping of documents

Art. 256-34 - *Keeping of documents*

(1) Pension funds are required to ensure that their accounts ledgers and other documents relating to their business activities are held in the Grand Duchy of Luxembourg at all times, either at their registered office or at any other place duly notified to the CAA.

(2) A CAA regulation shall determine those records and other documentation that must be continually held and how they are to be kept.

Section 2 - Outsourcing and investment management

Art. 256-35 - *Outsourcing*

(1) Pension funds may entrust, in whole or in part, any activity, including key functions and their management, to service providers operating on their behalf.

The outsourcing of the management function or the day-to-day management of the pension fund may be entrusted only to a management company of pension funds referred to in Article 266.

(2) Pension funds remain fully responsible for compliance with all their obligations under prudential regulations when outsourcing key functions or any other activity.

(3) The outsourcing of key functions or other significant operational activities and functions, including the deposit of assets matching technical provisions, shall not be undertaken in such a way as to lead to any of the following consequences:

a) impairing the quality of the pension fund's system of governance;

b) unduly increasing the operational risk;

c) impairing the CAA's ability to monitor the compliance of the pension fund with its obligations;

d) undermining continuous and satisfactory service to members and beneficiaries.

(4) Pension funds shall ensure the proper functioning of outsourced activities through the process of selecting a service provider and ongoing monitoring of the activities of that service provider.

(5) The outsourcing agreement concluded between a pension fund and the service provider must be in the form of a written contract and define the rights and obligations of the parties.

(6) Pension funds shall notify the CAA in a timely manner of any outsourcing of the activities referred to in paragraph 3. The CAA shall be informed of outsourcing relating to key functions or the management of the pension fund, before the agreement in respect of any

[128] law of 29 March 2024

such outsourcing enters into force. Pension funds shall notify the CAA of any subsequent important developments concerning outsourced activities.

(7) Pension funds must take the necessary measures to ensure that the following conditions are met:

a) the service provider must cooperate with the CAA, with regard to the outsourced function or activity;

c) the pension fund, the persons responsible for its day-to-day management, the persons responsible for carrying out auditing its accounts and the CAA must have effective access to data relating to the functions or activities outsourced;

b) the CAA must have effective access to the premises of the service provider and must be able to exercise this right of access.

Art. 256-36 - *Investment management*

Without prejudice to Article 256-35, pension funds may outsource the management of their investment portfolio to one or more investment managers established in Luxembourg or in another Member State and duly authorised for the management of investment portfolios, in accordance with Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/65/EU and those referred to in Article 2, paragraph 1, of Directive (EU) 2016/2341.

Section 3 - The deposit of matching assets

Art. 256-37 - *Segregated assets and permanent inventory*

(1) Pension funds must segregate by way of guarantee of their commitments, assets matching technical provisions, to a value at least equivalent to the technical provisions, including the provision for bonuses, calculated in accordance with the valuation rules of Chapter 7 of the Law on the Annual Accounts.

(2) The movable assets matching technical provisions must be deposited with a depositary referred to in Article 256-38 under the conditions laid down by CAA regulation.

(3) Pension funds must maintain the permanent inventory of matching assets and communicate the quarterly positions to the CAA in the forms and deadlines determined by the CAA.

(4) Articles 118 to 121 shall apply to pension funds.

Art. 256-38 - *The selection of a depositary*

(1) Transferable securities matching technical provisions must be deposited with a depositary which is:

a) a credit institution having its registered office in the EEA and being authorised in accordance with Directive 2013/36/EU or

b) a depositary for the purposes of Directive 2009/65/EC, Directive 2011/61/EU or Directive 2014/65/EU.

and admitted by the CAA.

(2) The depositary shall be appointed by means of a written contract. This contract shall stipulate the transmission of the information necessary for the depositary to carry out its tasks.

Art. 256-39 - *Management of conflicts of interest*

(1) When carrying out the tasks laid down in Articles 256-40 and 256-41, the pension fund and the depositary shall act honestly, fairly, professionally and independently, in the interests of the scheme's members and beneficiaries.

(2) A depositary shall not carry out activities with regard to the pension fund which may create conflicts of interest between the pension fund, the scheme's members and beneficiaries and the depositary itself, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the scheme's members and beneficiaries and to the management or supervisory body of the pension fund.

Art. 256-40 - *Safekeeping of assets and depositary liability*

(1) Where the assets of a pension fund relating to a pension scheme consisting of financial instruments that can be held in custody are entrusted to a depositary for safekeeping, the depositary shall hold in custody all financial instruments that can be registered in a financial instruments account opened in the depositary's books and all financial instruments that may be physically delivered to the depositary.

For these purposes, the depositary shall ensure that financial instruments which can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts, in accordance with the rules laid down in Directive 2014/65/EU, opened in the name of the pension fund, so that they can be clearly identified as belonging to the pension fund or to the scheme's members and beneficiaries at all times.

(2) Where the assets of a pension fund relating to a pension scheme consist of assets other than those referred to in paragraph 1, the depositary shall verify that the pension fund is the owner of the assets and shall maintain a record of those assets. This verification shall be carried out on the basis of information or documents provided by the pension fund and on the basis of external evidence if such elements are available.

(3) The depositary shall be liable to the pension fund and to members and beneficiaries for any loss suffered by them as a result of unjustifiable failure to perform its obligations or improper performance thereof.

(4) The depositary shall not be released from its liability, as referred to in paragraph 3, by the fact that it entrusts all or part of the assets in its custody to a third party.

Art. 256-41 - Oversight duties

In addition to the tasks referred to in Article 256-40, paragraphs 1 and 2, the depositary appointed for the oversight duties:

a) carry out instructions of the pension fund, unless they conflict with the Law or the rules of the pension fund;

b) ensure that, in transactions involving the assets of the pension fund relating to a pension scheme, any consideration is remitted to the pension fund within the usual time limits;

c) ensure that the income produced by assets is applied in accordance with the pension fund regulation.

Art. 256-42 - *Powers of the CAA in respect of assets located in the Grand Duchy of Luxembourg*

As national supervisory authority for insurance or reinsurance undertakings within the meaning of Article 2, paragraph 2, the CAA may prohibit the free disposal of assets of an IORP, resulting from insurance or reinsurance contracts with Luxembourg insurance or reinsurance undertakings or pension funds. Such a prohibition may only take place at the request of the IORP's home authority in accordance with the provisions of its national law adopted pursuant to Article 48 of Directive (EU) 2016/2341.

Chapter 4 - *Information to be given to prospective members, members and beneficiaries*

Section 1 - General provisions

Art. 256-43 - *Principles*

(1) Without prejudice to more stringent provisions in the pension scheme's pension regulation and in the social and labour law applicable to the pension scheme, each pension fund must provide to:

a) prospective members at least the information forest out in Article 256-48;

b) affiliates at least the information forest out in Articles 256-44, 256-45, 256-46, 256-47, 256-49 and 256-51;

c) beneficiaries at least the information forest out in Articles 256-44, 256-50 and 256-51.

(2) The information referred to in paragraph 1 are:

a) regularly updated;

b) written in a clear manner, using clear, succinct and comprehensible language, avoiding the use of jargon and avoiding technical terms where everyday words can be used instead;

c) not misleading, and consistency shall be insured in the vocabulary and content;

d) presented in a way that is easy to read;

e) available in an official language of the Member State whose social and labour law relevant to the field of occupational pension schemes is applicable to the pension scheme concerned;

f) made available to prospective members, members and beneficiaries free of charge, through electronic means, including on a durable medium or by means of a website, or on paper.

Art. 256-44 - *General information onwards the pension scheme*

(1) Depending on the nature of the pension scheme, each pension fund must make available to members and beneficiaries, in its pension regulation, at least the following information:

a) the name of the pension fund, the fact that it is authorised in the Grand Duchy of Luxembourg and supervised by the CAA,

b) the circle of persons that could become members and beneficiaries,

c) the definition of contributors and, where applicable, financial institutions with commitments to the pension fund,

d) the rights and obligations of the parties to the pension scheme, including:

(i) all obligations of the contributor(s), including in the event of underfunding of the pension scheme, and, where applicable, the obligations of financial institutions with commitments towards the pension fund,

(ii) the pension fund's obligations to inform members and beneficiaries, as well as their representatives, where applicable,

(iii) the rights of members at the time of their retirement, in the event of disability, termination of employment and insolvency of the contributing company, as well as the rights of dependants in the event of the death of a member,

e) the method of calculation and the frequency of calculation of the accrued rights of each member and beneficiary and the rules relating to the communication of information on these rights,

f) the conditions of affiliation and exit of members and beneficiaries and, where applicable, the definition of the waiting period,

g) mechanisms for protecting accrued entitlements and benefit reduction mechanisms, where applicable,

h) the terms and conditions for the retention, transfer and redemption of members' acquired rights, including in the event of termination of employment and non-acceptance of the pension regulation or a clause or amendment thereto,

i) information on the investment profile,

j) information on the financial, technical and other risks related to the pension scheme, as well as on the nature and distribution of these risks, including a statement of the principles on which the investment policy is based within the meaning of Article 256-30,

k) the conditions relating to total or partial guarantees under the pension scheme or a given level of benefits or, where no guarantee is foreseen under the pension scheme, a statement to that effect,

l) for schemes covered by class 2 of Annex IV and for those where investment decisions may be taken by members:

(i) the definition of the investment policy, the specific goals it proposes and the criteria on which it is based,

(ii) in the case of options between several investment profiles, information on the conditions regarding the range of possible investment options and, where applicable, the default investment option and the provisions of the pension scheme governing the allocation of a given member to an investment option,

(iii) the place where to find information on the past performance of investments related to the pension scheme over a minimum period of five years or over the entire period of operation of the scheme if it is less than five years,

m) the cost structure borne by members and beneficiaries, for schemes which do not provide a given level of benefits,

n) the options available to members and beneficiaries to obtain payment of their pension benefit,

o) the procedures for establishing and amending the pension regulation and the pension benefit statement as laid down in the articles of association,

p) where applicable, a description of the principles governing the allocation of any surplus remaining on the winding-up of the pension scheme.

(2) Members and beneficiaries or their representatives shall receive, within a reasonable period of time, all relevant information concerning any amendments to the provisions of the pension scheme. In addition, pension funds shall provide them with an explanation of the impact of significant changes in technical provisions on members and beneficiaries.

Art. 256-45 - *Information to be provided by the pension fund to members*

(1) Without prejudice to more stringent provisions in the pension scheme's pension regulation or the pension benefit statement, each member shall also receive upon request detailed and substantial information on:

a) the level of pension benefits to be achieved, if any;

b) the level of benefits in the event of termination of employment;

c) where the member bears the investment risk, the range of possible investment options and the existing investment portfolio, with a description of the risks and costs relating to these investments;

d) the terms of the transfer of pension benefits to another IORP in the event of termination of the employment contract.

(2) Each year, members shall receive brief information on the situation of the pension fund.

Section 2 - Pension benefit statement and Supplementary Information

Art. 256-46 – *Pension benefit statement*

(1) Pension funds shall draw up a concise pension benefit statement containing key information for each member, taking into consideration the specific nature of each national pension system and the internal social, tax and labour laws applicable. The title of the document must contain the expression "pension benefit statement".

(2) The exact date on which the information in the pension benefit statement refers is clearly indicated.

(3) The information contained in the pension benefit statement rights must be accurate, updated and made available free of charge to each member at least annually, by electronic means, including a durable medium or by website, or on paper. Where information has been transmitted electronically, a paper copy shall be provided free of charge to members on request.

(4) Any material change in the information contained in the pension benefit statement compared to the previous year shall be clearly indicated.

(5) The pension benefit statement shall include at least the following key information for members:

a) personal details of the member, including, where applicable, a clear indication of the statutory retirement age laid down in the pension scheme or estimated by the pension fund, or the retirement age set by the member, as the case may be;

b) the name of the pension fund and its contact address and the identification of the member's pension scheme;

c) where applicable, any information on full or partial guarantees under the pension scheme and, if relevant, where further information can be found;

d) information on pension benefits projections based on the retirement age as specified in letter a), and a disclaimer that such projections may differ from the final value of the benefits received. If the pension benefit projections are based on economic scenarios, that information shall also include a best estimate scenario and an unfavourable scenario, taking into consideration the specific nature of the pension scheme;

e) information on accrued entitlements and accumulated capital, taking into consideration the specific nature of the pension scheme;

f) information on the contributions paid by the sponsoring undertaking and the member to the pension scheme at least over the last 12 months, taking into account the specific nature of the pension scheme;

g) a breakdown of the costs deducted by the pension funds at least over the last 12 months;

h) information on the funding level of the pension scheme as a whole.

In order to determine the assumptions on which the projections referred to in paragraph 1, letter d), are based, pension funds must take into account the following rules:

a) they shall favour official sources;

b) they shall select their sources taking into consideration the quality and timeliness of the data;

c) they must take appropriate measures to identify and manage potential conflicts of interest related to the selection of such sources;

d) they shall be able to provide information on the sources, methods and procedures used;

These rules are applied by pension funds to determine, where applicable, the annual nominal rate of return on investment, the annual inflation rate and future wage developments.

Art. 256-47 - *Additional information*

(1) The pension benefit statement shall specify the procedures for obtaining additional information, including in particular:

a) further practical information on the options available to members under the pension scheme;

b) documents drawn up in accordance with Articles 256-30 and 256-31;

c) where applicable, information on the assumptions used to estimate the amounts expressed in life annuities, in particular with respect to the annuity rate, the type of provider and the duration of the annuity;

d) information on the level of benefits, in case of cessation of employment.

(2) For pension schemes falling under class 2 of Annex IV and where an investment option is imposed on the member by a specific rule provided for in the pension scheme, the pension benefit statement shall indicate where additional information is available.

Section 3 - Other information and documents to be provided

Art. 256-48 - *Information to be provided to prospective members*

(1) Pension funds must ensure that prospective members of a pension scheme are informed of the following:

a) the options available to them, including investment options;

b) the relevant features of the pension scheme, including the kind of benefits;

c) information on whether and how environmental, climatic, social and corporate governance factors are considered in the investment approach;

d) where further information is available.

(2) The information referred to in paragraph 1 shall be provided to prospective members:

a) before their affiliation if this is not automatic; or

b) immediately after affiliation if it takes place automatically.

(3) For pension schemes falling under class 2 of Annex IV, prospective members shall receive from the pension fund information on the past performance of investments related to the pension scheme over a minimum period of five years or over the entire period of operation of the scheme if it is less than five years, and information on the cost structure borne by members and beneficiaries.

Art. 256-49 - *Information to be provided to members during the pre-retirement phase*

(1) Pension funds must provide each member in due time before the retirement age referred to in Article 256-46, paragraph 6, letter a), with information on the options about the benefit pay-out options available to members in taking their retirement benefits t.

(2) The information referred to in paragraph1 shall be provided to each member who so requests.

Art. 256-50 - *Information to be provided to beneficiaries during the payment phase*

(1) Pension funds must periodically provide beneficiaries with information about the benefits due and the corresponding pay-out options.

(2) Pension funds must inform beneficiaries without delay after a final decision has been taken, resulting in any reduction in the level of benefits due, and at the latest three months before that decision is implemented.

(3) When a significant level of investment risk is borne by beneficiaries during the pay-out phase, beneficiaries should receive appropriate information on a regular basis.

Art. 256-51 - *Additional information to be provided on request to members, beneficiaries and sponsoring undertakings*

(1) At the request of a member, a beneficiary or theirs representative, the pension fund shall provide the following additional information:

a) the annual accounts and annual reports referred to in Article 256-31 or, where a pension fund is responsible for more than one scheme, those accounts and reports relating to their particular pension scheme;

b) the statement of investment policy principles, as referred to in Article 256-30;

c) any further information on the assumptions used to generate the projections in the pension benefit statement.

(2) Sponsored undertakings may also, on request, be provided with the accounts and annual reports of the pension fund.

Chapter 5 - *Prudential supervision*

Section 1 - Supervisory authorities and general rules for prudential supervision

Art. 256-52 - *Prudential supervision*

The CAA supervision is based on a forward-looking and risk-based approach.

That supervision appropriately combines off-site reviews and on-site inspections.

The CAA shall exercise its supervisory powers in a manner which is timely and proportionate to the size, nature, scale and complexity of the pension fund's activities.

Art. 256-53 - *Prudential control process*

(1) The CAA shall review the strategies, processes and reporting procedures established by pension funds to comply with the provisions of this law and the regulations, taking into account the size, nature, scale and complexity of the pension fund's activities.

That review shall take into account the circumstances in which pension funds operate and, where applicable, third parties carrying out outsourced key functions or other activities for them. The review shall comprise the following elements:

a) an assessment of the qualitative requirements relating to the system of governance;

b) an assessment of the risks the pension fund faces;

c) an assessment of the pension fund's ability to assess and manage those risks.

(2) The CAA has monitoring tools, including stress-tests, that enable it to identify any deterioration in a pension fund's financial condition and to monitor how it is being remedied.

(3) The CAA requires pension funds to remedy weaknesses and deficiencies identified in the prudential supervision process.

(4) The CAA shall define the minimum frequency and scope of the review laid down in paragraph 1, having regard to the size, nature, scale and complexity of the activities of the pension fund concerned.

Art. 256-54 - *Other provisions concerning prudential supervision*

Articles 57, 58, except paragraph 2, letter d), 61, 62 and 63, with the exception of paragraph 2, letter d), shall apply to pension funds.

The CAA shall ensure that the rules on administrative sanctions and other measures applicable to violations of this Title are published.

Art. 256-55 - *National prudential provisions*

The CAA shall communicate to EIOPA the national prudential provisions relating to occupational pension schemes imposed by this law and by the measures taken for its implementation. The CAA updates this information regularly, and at least every two years.

Section 2 - Pension funds in difficulty or in an irregular situation

Art. 256-56 - *Powers of intervention and duties of the competent authorities*

(1) The CAA may restrict or prohibit the activities of a pension fund, in particular if:

a) it fails to protect the interests of members and beneficiaries;

b) it no longer fulfils the conditions of operation;

c) it fails seriously in its obligations under the rules to which it is subject;

d) in the case of cross-border activity, it does not respect the requirements of the host Member State's social and labour law on occupational pension schemes.

Any decision to prohibit or restrict the activities of a pension fund shall be fully justified and notified to the pension fund.

(2) The CAA may also restrict or prohibit the right of a pension fund to dispose of its assets, in particular where it has failed to established sufficient technical provisions for its entire business, has insufficient assets matching technical provisions or has failed to hold the regulatory own funds;

(3) In order to safeguard the interests of members and beneficiaries, the CAA may transfer, in whole or in part, the powers conferred by Luxembourg law on the executives of a pension fund to a special representative with the competences to exercise these powers.

Art. 256-57 - *Identification and notification of deteriorating financial conditions by pension funds*

Pension funds shall have procedures in place to identify deteriorating financial conditions and shall immediately notify the CAA when such deterioration occurs.

Art. 256-58 - *Prohibition of free disposal of assets*

Where a pension fund does not comply with Article 256-12 or has been subject to a measure to withdrawal of its authorisation, the CAA may request the other supervisory authorities to take such restrictive or prohibitive measures relating to the pension fund's assets situated in their territory.

Section 3 - Waiver and revocation of approval

Art. 256-59 - *Request for waiver of approval*

(1) Pension funds may only relinquish their authorisation to conduct business on any class of activity listed in Annex IV with the "CAA's"[129] consent.

Without prejudice to the provisions of Sections 2 and 3 and Chapter 7 of this Title, where a pension fund renounces its authorisation to conduct business in one or more classes of activity, the CAA shall oversee the relevant liquidation procedures in the interest of the members.

(2) The renunciation request must be sent to the CAA and specify the validity end date of the authorisation.

(3) The CAA shall notify the pension fund of "its"[130] decision.

If the request is accepted:

a) the authorisation shall cease to be valid on the date indicated in the request or on the date of notification of the "CAA's"[131] decision, if such date comes later. The end

[129] law of 21 July 2021 (1)
[130] law of 21 July 2021 (1)
[131] law of 21 July 2021 (1)

of validity of the authorisation results in a prohibition to do new business in the class or classes of activity for which it was granted;

b) the CAA shall inform the public thereof via publication in the Official Journal of the Grand Duchy of Luxembourg. The renunciation shall only become effective to third parties from the date of such publication.

(4) The provisions of Article 256-61, paragraphs 6 and 7, shall apply.

Art. 256-60 - *Withdrawal of authorisation*

The "CAA"[132] may withdraw an authorisation granted to a pension fund for all classes of activity or only some of them where the pension fund concerned:

a) does not make use of the authorisation within twelve months or ceases to pursue business for more than six months; or

b) no longer fulfils the conditions for authorisation; or

c) fails seriously in its obligations under the regulations to which it is subject.

Art. 256-61 - *Procedure for the withdrawal of authorisation*

(1) "The CAA shall decide on the withdrawal"[133], referred to in Article 256-60 *(…)*[134]. A preliminary investigation is carried out by the CAA, the pension fund having been through its submissions in response or duly summoned by registered letter. The pension fund may be assisted or represented.

Withdrawal may be determined for all the classes of activity in which the pension fund conducts business or for just one or more of them.

The withdrawal decision must be precisely reasoned and shall be notified to the pension fund via a process served by a bailiff.

With effect from its notification, withdrawal entails a prohibition on the conducting of business in the class or classes of activity in respect of which it was ordered. The withdrawal shall be published in the Official Journal of the Grand Duchy of Luxembourg by the CAA.

(2) Without prejudice to the provisions of Sections 2 and 3 and Chapter 7 of this Title, in the event of withdrawal of authorisation, the CAA shall appoint one or more special administrators.

In the event of a partial withdrawal of the authorisation, the appointment of a special administrator is optional.

(3) The special administrators appointed pursuant to paragraph 2 shall have the following powers and duties, inter alia.

They shall collect from the sponsoring undertakings the contributions and unpaid and future premiums resulting from the commitments made by those undertakings.

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[132] law of 21 July 2021 (1)
[133] law of 21 July 2021 (1)
[134] removed by the law of 21 July 2021 (1)

They may, with the CAA's approval and according to the provisions of Articles 256-8 and 256-9, transfer all or part of the pension commitments they are entrusted with to one or more IORPs or to one or more insurance undertakings, assigning to such transfer the portion of the assets matching technical provisions established for the benefit of those commitments.

(4) The CAA shall determine the fees and expenses of the special administrators it appoints; they shall be met by the pension fund.

Notwithstanding Article 118, such fees and expenses may be deducted from the segregated assets. Such deductions must have the CAA's prior authorisation.

(5) The provisions of article 256-82 shall apply to special administrators appointed by the CAA.

(6) In the event of the withdrawal of the authorisation, the CAA shall notify the supervisory authorities of the other Member States and EIOPA and invite them to take appropriate measures to prevent the pension fund concerned from commencing new operations within their territories.

(7) The CAA shall, together with the supervisory authorities concerned, take all measures necessary to safeguard the interests of members and, in particular, shall restrict the free disposal of the assets of the insurance undertaking in accordance with Articles 256-56.

Section 4 - Cross-border activities

Art. 256-62 - ***Cross-border activities and procedures in another Member State***

(1) Pension funds authorised under this law may provide their services to sponsoring undertakings established in the territory of other Member States.

(2) Any pension fund wishing to carry out cross-border activity in one or more Member States shall first notify its intention to the CAA by indicating:

a) the host Member States, identified by the sponsoring undertaking;

b) the name and the location of the main administration of the sponsoring undertaking;

c) the main characteristics of the pension scheme to be operated for the sponsoring undertaking.

(3) Where the CAA receives a notification referred to in paragraph 2, and unless the CAA has issued a reasoned decision that the administrative structure or the financial situation of a pension fund or the good repute or competence of the managers of a pension fund are not compatible with the proposed cross-border activity, the CAA shall communicate to the competent authority of the host State the information referred to in paragraph 2 within three months of receipt of the complete notification and shall inform the pension fund thereof.

The reasoned decision referred to in the first subparagraph shall be taken within three months of receipt of all the information referred to in paragraph 2.

(4) Where the CAA does not communicate the information referred to in paragraph 2 within the period provided for in paragraph 3 to the competent authority of the host State, it shall inform the pension fund of the reasons for its refusal within the same period.

This non-communication of information is equal to refusal and may be subject to an action for annulment before the administrative court.

(5) Pension funds carrying outs cross-border activity are subject to the information requirements referred to in Title IV of Directive (EU) 2016/2341, imposed by the host Member State in respect of prospective members, members and beneficiaries which that cross-border activity concerns.

(6) The CAA shall forward to the pension fund the information received from the competent authority of the host Member State pursuant to Article 11, paragraph 7, of Directive (EU) 2016/2341.

(7) On receipt of the communication referred to in paragraph 6, or in the absence of such communication from the CAA on expiry of the period provided for in Article 11, paragraph 7, of Directive (EU) 2016/2341, the pension fund may start to carry out cross-border activity in accordance with the provisions of the host Member State's social and labour law relating to occupational pension schemes and the host Member State's information requirements referred to in Article 11, paragraph 7, of Directive (EU) 2016/2341.

(8) The CAA shall forward the information received from the competent authority of a host Member State pursuant to Article 11, paragraph 9, of Directive (EU) 2016/2341 to the pension funds concerned.

(9) If the competent authority of the host Member State informs the CAA of irregularities revealed by its supervision in accordance with Article 11, paragraph 7, of Directive (EU) 2016/2341, the CAA, in coordination with the competent authority of the host Member State, shall take the necessary measures to ensure that the pension fund concerned puts an end to the detected breach.

Art. 256-63 - *Cross-border activity in a third country*

Pension funds may provide their services to sponsoring undertakings established in third countries in accordance with the provisions of the national law applicable to such activity.

Chapter 6 - *Reorganisation and winding-up of pension funds*

Section 1- *Scope and definitions*

Art. 256-64 – *Scope of this Chapter*

This Chapter shall apply to reorganisation measures and winding-up proceedings of Luxembourg pension funds.

Art. 256-65 – *Definitions*

For the purposes of this Chapter, the following definitions shall apply:

1. “competent authorities”: the administrative or judicial authorities of the Member States which are competent for the purposes of the reorganisation measures or the winding-up proceedings;
2. “reorganisation measures”: the stay of payment proceedings referred to in Section 3, together with any other measures involving any intervention by the administrative or judicial authorities which are intended to preserve or restore the financial situation of pension fund and which affect pre-existing rights of parties other than the pension fund itself, including but not limited to measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims;
3. “collective winding-up proceedings”: the judicial winding-up procedure referred to in Section 4, together with any collective proceedings involving the realisation of the assets of a pension fund and the distribution of the proceeds among the creditors or sponsoring undertakings, which necessarily involve any intervention by the administrative or judicial authorities of a Member State, including where the collective proceedings are terminated by a composition or other analogous measure, whether or not the proceedings are founded on insolvency or are voluntary or compulsory;
4. “administrator”: a person or body appointed by the competent authorities for the purpose of administering reorganisation measures;
5. “liquidator”: a person or body appointed by the competent authorities or by the governing bodies of a pension fund for the purpose of administering winding-up proceedings.

Section 2 - *Provisions common to reorganisation measures and collective winding-up procedures*

Art. 256-66 – *General provision*

Without prejudice to the provisions of Article 256-77, paragraph 3, the following texts shall not apply to pension funds : “Code de Commerce Book III”, the provisions of the Law of 4 April 1886 on court-approved compositions and arrangements with creditors aimed at preventing bankruptcy, as amended, and the provisions of the Grand-Ducal Decree of 24 May 1935 supplementing the legislation relating to stays of payment, court-approved compositions aimed at preventing bankruptcy through a controlled management scheme, as amended.

Art. 256-67 - *Adoption of reorganisation or winding-up measures*

(1) The district court for commercial matters, referred to hereafter in this Chapter as “the court”, shall have sole competence for applying the measures referred to in Articles 256-71 and 256-75 in regard to a pension fund.

(2) In exercising their powers pursuant to the law of Luxembourg, the executive bodies of a pension fund subject to stay of payment proceedings and the liquidators of a Luxembourg pension fund placed in judicial liquidation shall respect the law of the Member State on whose territory they plan to take action, particularly in regard to the procedures applicable to realisation of the assets and the information provided to salaried workers. The said executive bodies or liquidators shall not resort to the use of force or settle any litigation or dispute.

Art. 256-68 – *Exemption from the formality of stamping and registration, expenses and fees*

All deeds and other documents likely to provide information to the court concerning the requests referred to in Sections 3 and 4 shall be exempted from the formality of stamping and registration.

The fees of the administrators and the liquidators and all other expenses incurred pursuant to Sections 3 and 4 shall be met by the Luxembourg pension fund concerned. Notwithstanding Article 118, the fees and expenses may be deducted from the segregated assets.

Art. 256-69 - *Applicable law*

(1) Pension funds shall be wound up in accordance with Luxembourg law and the procedures applicable in Luxembourg, insofar as this Part does not otherwise provide.

(2) Luxembourg law determines in particular:

a) the property covered by the divestiture and the situation of the property acquired by the pension fund or in respect of which ownership was transferred to it following the adoption of the reorganisation measure or the opening of the collective winding-up procedure;

b) the respective powers of the pension fund and the liquidator or the person entrusted with the management of the reorganisation measures;

c) the conditions under which compensation may be invoked against third parties;

d) the effects of adopting a reorganisation measure or a collective winding-up procedure for the contracts in force which the pension fund is a party to;

e) the effects of adopting a reorganisation measure or a collective winding-up procedure for individual proceedings, with the exception of the cases in progress, as envisaged in Article 243;

f) the claims to be produced as liabilities of the pension fund and the situation of the claims arising after the adoption of the reorganisation measure or the opening of the collective winding-up procedure;

g) the rules on the production, verification and admission of the claims;

h) the rules of distribution for the proceeds of the realisation of the assets, the ranking of the claims and the rights of the claimants who have been partially paid off after the adoption of the reorganisation measure or the opening of the collective winding-up procedure by virtue of a right in rem or the effect of compensation;

i) the conditions and the effects of the closure of the reorganisation measure or the collective winding-up procedure;

j) the rights of the creditors after the closure of the reorganisation measure or the collective winding-up procedure;

k) the charge for the fees and expenses of the reorganisation measure or the collective winding-up procedure;

l) The rules on the nullity, cancellation or unenforceability of legal acts detrimental to all the claimants.

Art. 256-70 – *Effects*

The provisions of Articles 236 to 243 are applicable.

Section 3 – *Stay of payment*

Art. 256-71 – *Opening of a stay of payment proceeding*

The stay of payment by a pension fund may be applied in the following cases:

a) when the pension fund's credit is impaired or it faces a liquidity deficit, and whether or not cessation of payments has occurred;

b) when full performance of the pension fund's commitments is compromised;

c) when the pension fund's approval has been withdrawn but the decision is not yet final.

Art. 256-72 – *Request*

(1) Only the CAA or the pension fund may ask the court to order a stay of payment under Article 256-71.

(2) The reasoned request, supported by the substantiating documents, shall be filed in the court registry to that effect.

(3) When the pension fund makes the request, it shall be required, under penalty of its claim being declared inadmissible, to inform the CAA thereof before referring the matter to the court. The court registry shall certify the date and time of filing of the request and shall immediately inform the CAA thereof.

(4) When the CAA makes the request, it shall notify the pension fund thereof via a process served by a bailiff. The process served by a bailiff is exempted from stamp duty and registration duty and from the formality of registration.

(5) The filing of the request by the pension fund or, when the CAA initiates the process, the notification of the claim, shall automatically entail a total stay of payments for the said pension fund until a final decision is made concerning the claim, as well as a prohibition, under pain of nullity, on the pension fund performing any acts other than protective measures without express authorisation from the CAA.

Art. 256-73 – *Procedure*

(1) The court shall rule on the matter promptly at a public hearing on a date and at a time communicated to the parties beforehand. If the court has received the CAA's observations and considers itself sufficiently apprised, it shall rule immediately at a public hearing without summoning the parties. If the CAA has not filed its observations and if the court deems it necessary, it shall instruct the court registry to summon the CAA and the pension fund within three days of the claim being filed. It shall hear them in closed session and rule at a public hearing. The judgment shall indicate the time at which it was delivered.

(2) The court registry shall inform the CAA of the judgment immediately. It shall notify the judgment to the CAA and to the pension fund by registered letter. The CAA shall, as a matter of urgency, inform the competent authorities of all the other Member States of the decision to adopt the said measure and shall indicate its concrete effects.

(3) The judgment shall determine the terms and conditions of the stay of payment for a period which shall not exceed six months.

(4) The judgment, even if rendered without one or both of the parties being heard, may not be the subject of an application to set aside or of third-party proceedings. It shall be immediately enforceable without an execution copy, notwithstanding any appeal, before registration and without security.

(5) The CAA and the pension fund may lodge an appeal within fifteen days of notification of the judgment pursuant to paragraph 2 via a declaration submitted to the court registry.

The appeal shall be judged without delay in summary proceedings by a chamber of the "Cour Supérieure de Justice" dealing with civil and commercial cases. The parties shall be summoned by the court registry within eight days. They shall be heard in closed session. The court shall rule at a public hearing on a date and at a time communicated to the parties beforehand. The order shall not be subject to appeal in supreme court.

(6) If a party should fail to appear, the judgment by default may not be set aside.

(7) A judgment granting a stay of payment shall appoint one or more "commissaires de surveillance" to supervise the management of the pension fund's assets.

(8) Written authorisation from the "commissaires de surveillance" shall be required for all acts and decisions of the pension fund and, failing such authorisation, they shall be void. The court may nevertheless limit the scope of the actions subject to authorisation. The "commissaires de surveillance" may submit any proposals they consider appropriate to deliberation by the pension fund's corporate bodies. They may attend the deliberations of the pension fund's general meeting of shareholders and its administrative, executive, management or supervisory bodies.

(9) In the event of disagreement between the pension fund's bodies and the "commissaires de surveillance", the court shall decide the matter in closed session at the request of one of the parties. Its decision shall be unappealable.

(10) The CAA shall perform the functions of a "commissaire de surveillance" as of right until the judgment on the claim provided for in Article 256-72 is delivered.

(11) The court shall determine the fees and expenses of the "commissaires de surveillance"; it may allocate advances to them.

(12) At the request of the CAA, the pension fund or the "commissaires de surveillance", the court may alter the terms of a judgment delivered on the basis of this Article.

Art. 256-74 – *Disclosure of the decisions*

(1) Within eight days of its delivery, the judgment granting a stay of payment and appointing one or more "commissaires de surveillance", and likewise any amending judgments, shall be published in the form of an extract at the pension fund's expense and at the behest of the "commissaires de surveillance", in the RESA and in at least two Luxembourg or foreign journals of sufficient circulation designated by the court.

(2) A judgement reversing a judgment referred to in paragraph 1 shall be published without delay, in the form of an extract, at the expense of the losing party and at the behest of the "commissaires de surveillance" or, in the absence of "commissaires de surveillance", of the CAA, in the RESA and, where applicable, in the same journals in which the judgment was published.

(3) The publication referred to in paragraphs 1 and 2 shall indicate the authority which decided the stay of payment, the object and legal basis of the measure taken and the paths of appeal. It shall appear in one of the official languages of the Member State in which the information is published.

(4) A stay of payment shall apply independently of the provisions relating to publication set forth in paragraphs 1 to 3 above and shall be fully effective in regard to creditors.

(5) The persons responsible for the publication referred to in paragraphs 1 and 2 shall request registration of the decisions referred to in the said paragraphs in the Trade and Companies Register in Luxembourg and in any other public register of another Member State in which such registration is compulsory. The imperative provisions of the law of 19 December 2002 on the Trade and Companies Register and on the accounting and

annual accounts of companies, as amended shall apply. The registration fees shall be treated as procedural costs and expenses.

Section 4 – *Judicial winding-up*

Art. 256-75 – *Opening of dissolution and winding-up proceedings*

Dissolution and winding-up of a pension fund may arise in the following cases:

a) when it appears that the previously decided stay of payment scheme, referred to in Section 3 is not capable of remedying the situation for which the scheme was introduced;

b) when the pension fund's financial position is undermined to the extent that it can no longer meet its commitments;

c) when the pension fund's approval has been withdrawn and the decision has become final.

A decision concerning the opening of winding-up proceedings may be taken in the absence of an earlier stay of payment measure.

Art. 256-76 – *Request*

(1) The request for dissolution or winding-up of a pension fund may only be made by:

   a) the CAA or the Public Prosecutor, with the CAA duly joined in the proceedings, in the cases referred to Article 256-75, letters a) and b);

   b) the CAA in the cases referred to in Article 256-75, letter c).

(2) The reasoned request, supported by substantiating documents, shall be filed in the court registry.

(3) The CAA or the Public Prosecutor shall notify the filing of the request to the pension fund via a process served by a bailiff.

Art. 256-77 – *Procedure*

(1) The court shall rule on the matter promptly at a public hearing on a date and at a time communicated to the parties beforehand. The pension fund, the CAA and the Public Prosecutor shall be summoned by the court registry within three days of the request being filed. It shall hear them in closed session and pronounce at a public hearing. The judgment shall indicate the time at which it was delivered.

(2) The court registry shall immediately inform the CAA of the content of the judgment. It shall notify the judgment to the CAA and to the pension fund by registered letter. The CAA shall, as a matter of urgency, inform the competent authorities of all the other Member States of the decision to adopt the said measure and shall indicate its concrete effects.

(3) When ordering the winding-up, the court shall appoint a "juge commissaire" (reporting judge) and one or more liquidators. It shall determine the method of winding-up. It may render applicable to such extent as it may determine the rules governing the bankruptcy. In such cases, it may determine the date of cessation of payments; the said date shall not precede the filing of the request referred to in Article 256-76, paragraph 2, of by more than six months. The method of winding-up may be subsequently changed, either of the court's own motion, or at the request of the liquidators or the CAA.

(4) The judgment pronouncing the dissolution and ordering the winding-up, once the pension fund, the CAA and the Public Prosecutor have been heard, may not be the subject of an application to set aside or of third-party proceedings. It shall be immediately enforceable without an execution copy, notwithstanding any appeal, before registration and without security.

(5) With effect from the judgment, any action concerning movable or immovable property and any enforcement procedures thereon may be pursued, brought or exercised only against the liquidators.

(6) The CAA or the Public Prosecutor and the pension fund may lodge an appeal by way of a declaration to the court registry. The time for lodging an appeal is fifteen days with effect from notification of the judgment pursuant to paragraph 2. The appeal shall be judged without delay in summary proceedings by a chamber of the "Cour Supérieure de Justice" dealing with civil and commercial cases. The parties shall be summoned by the court registry within eight days. They shall be heard in closed session. The court shall rule at a public hearing on a date and at a time communicated to the parties beforehand.

(7) If a party should fail to appear, the judgement rendered by default may not be the subject of an application to set aside.

(8) The final decision pronouncing the dissolution and ordering the winding-up automatically entails withdrawal of approval for the pension fund to undertake new transactions in the classes of activity it was approved for, if such approval has not already been withdrawn.

The provisions of subparagraph 1 shall not prevent the liquidator(s) from pursuing certain activities of the pension fund insofar as this is necessary or appropriate for the purposes of the winding-up. Such activities shall be carried out with the consent of the CAA and under its supervision.

(9) The liquidators shall be accountable both to third parties and to the pension fund for the performance of their duties and for any misconduct in their administration.

(10) The court shall determine the fees and expenses of the liquidators; it may allocate advances to them. In the event of the "juge-commissaire" finding the assets to be non-existent or inadequate, the procedural formalities shall be exempt from any filing and registration fees and the liquidators' fees and expenses shall be met by the "Trésor public" (Treasury) and treated as legal fees.

Art. 256-78 – *Publication of the decisions*

(1) Within eight days of its delivery, the judgment pronouncing the dissolution and ordering the winding-up of a pension fund and appointing a "juge-commissaire" and one or more liquidator(s), and likewise the amending judgments, shall be published, in the form of an extract, at the pension fund's expense and at the behest of the liquidators, in the RESA and in at least two Luxembourg or foreign journals of sufficient circulation designated by the court.

(2) A judgement reversing a judgment referred to in paragraph 1 shall be published without delay, either in the form of an extract, at the expense of the losing party and at the behest of the liquidators or, in the absence of liquidators, of the CAA, in the RESA and, where applicable, in the same journals in which the judgment was published.

(3) The publication referred to in paragraphs 1 and 2 shall indicate the authority which decided the dissolution and ordered the winding-up, the object and legal basis of the measures taken and the paths of appeal. It shall appear in one of the official languages of the Member State in which the information is published.

(4) The winding-up shall apply in addition to the provisions relating to publication set forth in paragraphs 1 to 3 above and shall be fully effective in regard to creditors.

(5) The persons responsible for the publication referred to in paragraphs 1 and 2 shall request registration of the decisions referred to in the said paragraphs in the Trade and Companies Register in Luxembourg and in any other public register of another Member State in which such registration is compulsory. The imperative provisions of the law of 19 December 2002 on the Trade and Companies Register and on the accounting and annual accounts of companies, as amended shall apply. The registration fees shall be treated as procedural costs and expenses.

Art. 256-79 – *Information to the creditors and lodging of claims*

(1) The liquidators shall inform any known creditor promptly and individually by means of a written notice.

(2) The notice provided under paragraph 1 shall relate specifically to the time limits to be respected, the penalties applicable to such time limits, the body or authority authorised to accept lodging of claims or observations on claims, and the other measures prescribed. The notice shall also indicate whether creditors whose claim is guaranteed by a preferential right or a charge on property must prove their debt. In the case of commitments towards members, the notice shall also indicate the general effects of the winding-up proceedings on those commitments, in particular the date on which the commitments cease to be effective and the rights and obligations of the member relating to the commitments.

(3) The information in the notice referred to in paragraph 1 shall be provided in one of the official languages of Luxembourg. To this end, a form bearing the title “Invitation to lodge a claim: time limits to be respected” in all the official languages of the European Union, or, when it is requested that observations be submitted concerning the claims, a form “Invitation to submit observations concerning a claim originating from pension commitments: time limits to be respected”, shall be used. Where a known creditor holds a claim, however, the information shall be provided in one of the official languages of the Member State of the said creditor’s habitual residence, domicile or registered office.

(4) All creditors shall be entitled to lodge their claims or submit their written observations on claims and to use for that purpose one of the official languages of the State of their habitual residence, domicile or registered office. However, the claim lodged or the observations submitted on the claim, as applicable, must bear the title “Lodging of claim” or “Submission of observations concerning claims” in one of the official languages of Luxembourg.

(5) The claims of all creditors having their habitual residence, domicile or registered office in a Member State other than Luxembourg shall receive the same treatment and have the same rank as any claims of an equivalent type which may be submitted by creditors having their habitual residence, domicile or registered office in Luxembourg.

(6) The creditor shall send a copy of the substantiating documents, if any exist, and shall indicate the nature, origination date and amount of the claim if it is claiming a preferential right, a charge on property or a reservation of title for such debt, as well as the property on which it is secured. It shall not be necessary to indicate the preferential right granted to claims originating from pension commitments protected by virtue of Article 118.

(7) The liquidators shall keep the creditors regularly and appropriately informed of the progress of the winding-up proceedings.

(8) The competent authorities of the Member States may request information from the CAA concerning the progress of the winding-up proceedings.

Art. 256-80 - *Permanent inventory of the matching assets – Impacts*

(1) The composition of the assets registered in the permanent inventory of the matching assets pursuant to Article 118 at the opening of the winding-up proceedings may no longer be called into question, nor may any change be made to the said inventory, other than correction of simple clerical errors, without the “juge-commissaire’s” consent.

(2) Notwithstanding paragraph 1, the liquidators shall add to the said assets the financial income arising thereon, as well as the amount of any pure premiums collected between the opening of the winding-up proceedings and the payment of claims originating from pension commitments or a portfolio transfer.

(3) If the proceeds from realisation of the assets are below their valuation in the aforementioned inventory, the liquidators shall be required to substantiate this to the “juge-commissaire”.

Art. 256-81 – *Completion of the winding-up proceedings*

(1) Sums or assets due to creditors, shareholders and partners who did not come forward before the close of the winding-up proceedings shall be lodged with the “caisse des consignations” (Consignation office) for the benefit of those they may concern.

(2) When the winding-up is completed, the liquidators shall report to the court on the application of the pension fund’s assets and shall submit the accounts and supporting documents. The court may appoint one or more commissioners to examine the documents. A ruling shall be given, after submission of the commissioners’ report where applicable, on the liquidators’ management and the close of the winding-up. It shall be published pursuant to Article 256-78, paragraph 1.

The said publication shall also indicate:

a) the place designated by the court where the company’s books and documents must be lodged for at least five years;

b) the measures taken pursuant to paragraph 1 above relative to the consignment of any sums and assets which it has not been possible to return to the creditors, shareholders and partners who might be entitled to them.

Art. 256-82 – *Actions against the liquidators*

Any action brought against the liquidators acting in such capacity shall become time-barred five years after publication of the close of the winding-up proceedings pursuant to Article 256-81, paragraph 2.

Actions brought against the liquidators relative to acts associated with their functions shall become time-barred five years after the date of such acts, or, if these acts were wilfully concealed, with effect from the date of their discovery.

Chapter 7 - *Voluntary liquidation*

Art. 256-83 – *Opening a voluntary liquidation and its effects*

(1) A pension fund may only put itself into voluntary liquidation if it:

a) has relinquished its approval pursuant to Article 256-59 or has been divested of it pursuant to Article 256-60, letters a), b) ou c), and

b) has informed the CAA thereof at least one month before the convening of the body empowered to deliberate thereon.

The CAA shall retain its supervisory rights. In the event of a voluntary liquidation, the liquidators appointed by the pension fund must be approved by the CAA when there remain outstanding pension commitments. In the event of a voluntary liquidation following withdrawal of authorisation, the liquidators appointed pursuant to Article 256-61, paragraph 2, shall be responsible for the pension fund's voluntary liquidation.

(2) A decision of a pension fund to go into voluntary liquidation shall not deprive the CAA or the Public Prosecutor of the right to ask the court to order the dissolution and winding-up of a pension fund pursuant to Article 256-75."[135]

TITLE III

Professionals of the insurance sector and "distributors of insurance and reinsurance products"[136]

Chapter 1 - Professionals of the insurance sector

Section 1 – General provisions

Art. 257 – *Scope*

This Chapter shall apply to any person established in the Grand-Duchy of Luxembourg, hereinafter referred to as "professional of the insurance sector" or "PSA", whose regular business consists of carrying out as a professional one or several of the insurance sector activities referred to in Section 2 hereafter.

Art. 258 – *The requirement for an authorisation*

No one shall carry out any of the activities referred to in Articles 264 to 270 of this law without prior written approval from the "CAA"[137].

Art. 259 – *The approval procedure*

(1) The request for approval shall be submitted to *(…)*[138] the CAA and accompanied by supporting documents showing that the conditions of this Chapter are fulfilled.

(2) The request for approval shall be supported by all the information necessary for its evaluation, as well as a business plan indicating the nature and extent of the envisaged business and the administrative and accounting structure of the PSA.

(3) The decision taken on the application for approval shall be reasoned and notified to the applicant within six months of the receipt of the application or, if the latter is incomplete, within six months of the receipt of the information necessary for the decision. The decision may, within one month or penalised by foreclosure, be referred to the administrative court to decide on the merits of the case.

(4) Prior authorisation of the CAA is required for any modification of the object, name or legal form, for the formation or acquisition of subsidiaries and for the formation of agencies or branches abroad.

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[135] law of 15 December 2019
[136] law of 10 August 2018
[137] law of 21 July 2021 (1)
[138] removed by the law of 21 July 2021 (1)

Art. 260 – *Corporate form and nationality*

Without prejudice to the provisions of Article 271, in order to be authorised as PSA, legal personality must be established in the Grand-Duchy of Luxembourg under one of the forms provided for in the legislation governing commercial companies or under the form of an Economic Interest Grouping or European Economic Interest Grouping.

Art. 261 – *Good repute*

In order to obtain an authorisation, natural persons applying for a PSA licence, the members of the administrative, management and supervisory bodies and likewise the shareholders and partners of the proposed PSA, must demonstrate their good repute.

Art. 262 – *Financial assets and professional indemnity insurance*

(1) For legal persons carrying out a PSA activity, the authorisation is conditional on the production of evidence of a fully paid-up share capital amounting to not less than 50,000 euros. The fully paid-up share capital must be raised to not less than 125,000 euros within a timeframe of five years from the date of the authorisation.

(2) For natural persons carrying out a PSA activity pursuant to Articles 267, 269 and 270 below, the authorisation is conditional on the production of evidence of financial assets amounting to not less than 25,000 euros. This amount must be raised to not less than 50,000 euros within a timeframe of five years from the date of the natural person's authorisation. Financial assets shall mean net assets of the PSA as a natural person.

(3) The amounts referred to in paragraphs 1 and 2 shall remain valid, even in cases of the aggregation of several PSA authorisations. Where there is an aggregation of several PSA authorisations, the timeframes referred to in paragraphs 1 and 2 are linked to the first PSA authorisation.

(4) The PSA must, moreover, subscribe to an insurance policy with an insurance undertaking authorised to carry out professional indemnity insurance covering all the activities covered by the authorisation and including the following minimum guaranteed cover:

- 50,000 euros per single claim and, in aggregate, 500,000 euros per year for PSA authorised natural persons, and
- 125,000 euros per single claim and, in aggregate, 1,250,000 euros per year for legal persons.

Deductibles, if any, shall not be enforceable against an injured party.

(5) The funds referred to in this Article shall be retained at the disposal of the PSA on a permanent basis and may be invested for the benefit of the PSA's business.

(6) "The net equity of a PSA, legal person, and the financial assets of a PSA, natural person, may not fall below the amounts required under paragraphs 1 and 2."[139]

(7) If the financial assets "referred to in this Article"[140] fall below the amount required under paragraphs "1, 2 and 6"[141], the CAA may, where the circumstances so justify, allow the PSA a limited period in which to rectify its situation or cease its activities.

[139] law of 10 August 2018
[140] law of 10 August 2018
[141] law of 10 August 2018

Art. 263 – *Withdrawal of authorisation*

(1) Authorisation may be withdrawn ”by”[142] the CAA if the PSA does not make use of the authorisation “for”[143] a period of 12 months *(…)*[144] or where the PSA expressly renounces its authorisation.

(2) Authorisation may be withdrawn if the conditions for granting or using the authorisation are no longer met.

(3) The decision on withdrawal of authorisation must be reasoned and may be referred, within one month or penalised by foreclosure, to the administrative court which shall decide on the merits of the case.

Section 2 – Specific provisions relating to different categories of PSA

Art. 264 – *Management companies of captive insurance undertakings and management companies of insurance undertakings in run-off*

(1) Management companies of captive insurance undertakings are legal persons whose business is to handle the daily management of one or several captive insurance undertakings within the meaning of point 8 of Article 43.

(2) Management companies of insurance undertakings in run-off are legal persons whose business is to handle the daily management of one or several direct insurance undertakings which have ceased the underwriting of new insurance contracts.

(3) Upon reasoned request by the insurance undertaking concerned, the CAA may authorize it to have recourse to management companies of captive insurance undertakings and to management companies of insurance undertakings in run-off in situations other than those referred to in paragraphs 1 and 2.

(4) The management companies referred to in paragraphs 1 and 2 must be effectively run, respectively, by an executive of a management company of captive insurance undertakings or by an executive of a management company of insurance undertakings in run-off.

Such companies shall have all the in-house technical, legal, actuarial and accounting means and skills necessary to perform their duties.

(5) Insurance undertakings shall be exempt from the requirement to apply for approval as a management company of captive insurance undertakings, or as a management company of insurance undertakings in run-off.

(6) Any management company of captive insurance undertakings may, moreover, operate as a corporate domiciliation agent within the meaning of the legislation governing the domiciliation of companies, i.e. agree to the establishment of an office at its address by one or more "captive insurance undertakings and, where applicable, companies belonging to the same group as these undertakings,"[145] in which it is not itself a partner exercising significant influence on the running of the business, in order to carry out business within their corporate scope and *(…)*[146] provide services of any kind connected with that activity.

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[142] law of 21 July 2021 (1)
[143] law of 29 March 2024
[144] removed by the law of 29 March 2024
[145] law of 29 March 2024
[146] removed by the law of 29 March 2024

Approval for the additional activity as corporate domiciliation agent under this "paragraph"[147] shall be conditional on a justification that the executive of the management company of captive insurance undertakings supplies evidence of a university education in law, economics or business management.

"(7) Any management company of insurance undertakings in run-off may, moreover, operate as a corporate domiciliation agent within the meaning of the legislation governing the domiciliation of companies, i.e. agree to the establishment of a registered office at its address by one or more insurance undertakings in run-off, in order to carry out business within their corporate scope and to provide services of any kind connected with that activity.

Approval for the additional activity of domiciliation of companies under this paragraph shall be conditional on a justification that the executive of the management company supplies evidence of a university education in law, economics or business management."[148]

Art. 265 – ***Management companies of reinsurance undertakings***

(1) Management companies of reinsurance undertakings are legal persons whose business is to handle the daily management or to assume the function as executive of one or several reinsurance undertakings.

(2) A management company of reinsurance undertakings must be effectively run by a natural person duly authorised as an executive of a management company of reinsurance undertakings.

(3) Any management company of reinsurance undertakings may, moreover, operate as a corporate domiciliation agent within the meaning of the legislation governing the domiciliation of companies, i.e. agree to the establishment of a registered office at its address by "reinsurance undertakings and, where applicable, companies belonging to the same group as these undertakings,"[149] *(…)*[150] in order to carry out business within their corporate scope and to provide services of any kind connected with that activity.

Approval for the additional activity as corporate domiciliation agent under this "paragraph"[151] shall be conditional on a justification that the executive of the management company "of reinsurance undertakings"[152] supplies evidence of a university education in law, economics or business management.

Art. 266 – ***Management companies of pension funds***

(1) Management companies of pension funds are legal persons whose business is to handle the daily management or to assume the function of an executive of one or several pension funds under the supervision of the CAA.

(2) A management company of pension funds must be effectively run by a natural person duly authorised as an executive of a management company of pension funds.

Art. 267 – ***Authorised providers of actuarial services***

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[147] law of 29 March 2024
[148] law of 29 March 2024
[149] law of 29 March 2024
[150] removed by the law of 29 March 2024
[151] law of 29 March 2024
[152] law of 29 March 2024

(1) Authorised providers of actuarial services are natural and legal persons whose business is to provide actuarial services within a framework requiring both the knowledge and processing of data broadly described as falling within the scope of Article 300.

(2) In order to be authorised as a provider of actuarial services, a legal person must be effectively run by a natural person duly authorised as an executive of an actuarial services provider.

(3) In order to be authorised as a provider of actuarial services, a natural person must meet the requirements of educational qualification and work experience provided for in paragraph 3 of Article 275.

Art. 268 – ***Management companies of insurance portfolios***

(1) Management companies of insurance portfolios are legal persons whose business is to handle the daily management of the portfolios of contracts entered into by one or more insurance undertakings.

(2) A management company of insurance portfolios must be effectively run by a natural person duly authorised as an executive of a management company of insurance portfolios.

(3) A management company of insurance portfolios must have an in-house actuarial department or have available the assistance of an authorised actuarial services provider appointed by a service agreement.

(4) Insurance undertakings, management companies of captive insurance undertakings and management companies of insurance undertakings in run-off shall be exempt from the requirement to apply for approval as a management company of insurance portfolios.

Art. 269 – ***Authorised providers of governance-related services for insurance and reinsurance undertakings***

(1) Authorised providers of governance-related services for insurance and reinsurance undertakings are natural and legal persons whose usual business is to provide insurance and reinsurance undertakings with services in relation to the internal auditing, compliance and risk management functions encompassed within European Union law and national law.

(2) In order to be authorised as a provider of governance-related services for insurance and reinsurance undertakings, a legal person must be effectively run by a natural person duly authorised as an executive of an authorised provider of governance-related services for insurance and reinsurance undertakings.

(3) In order to be authorised as a provider of governance-related services for insurance and reinsurance undertakings, a natural person must meet the requirements of educational qualification and work experience provided for in paragraph 4 of Article 275.

(4) Insurance and reinsurance undertakings shall be exempt from the requirement to apply for approval as an authorised provider of governance-related services for insurance and reinsurance undertakings.

Art. 270 – ***Claims handlers***

(1) Claims handlers are natural and legal persons whose usual business is to provide services in relation to the indemnification of beneficiaries of insurance contracts.

(2) In order to be authorised as a claims handler, a legal person must be effectively run by a natural person duly authorised as an executive of a claims handler.

(3) In order to be authorised as a claims handler, a natural person must meet the requirements of educational qualification and work experience provided for in paragraph 1 of Article 275, in respect of executives of claims handlers.

(4) Insurance undertakings, management companies of captive insurance undertakings, management companies of insurance undertakings in run-off and management companies of insurance portfolios shall be exempt from the requirement to apply for approval as a claims handler.

Section 3 – PSA's governed by foreign law

Art. 271 – *PSAs of foreign origin*

(1) PSAs of foreign origin that wish to establish a branch in Luxembourg shall be governed by the same authorisation rules as a PSA under Luxembourg law as respectively referred to in Sections 1 and 2 of this Chapter.

(2) For the purposes of applying the previous paragraph, compliance with the required authorisation conditions in respect of executives of legal persons is determined by reference to the branch's legal representative.

Chapter 2 – Executives of insurance or reinsurance undertakings, pension funds, PSA's or brokerage firms

Art. 272 – *Authorisation requirement*

(1) No one shall carry out any of the activities referred to in paragraph 3 of this Article without having a prior written approval from the "CAA"[153].

(2) No one shall be authorised to carry out an activity referred to in paragraph 3, either under the guise of another person, or as a third party engaged for the performance of such activity.

(3) Authorisation as executive shall be required for the following functions:

a) insurance undertaking executive

b) reinsurance undertaking executive

c) delegated reinsurance undertaking executive

d) pension fund executive

e) delegated pension fund executive

f) executive of a management company of captive insurance undertakings

g) executive of a management company of insurance undertakings in run-off

h) executive of a management company of reinsurance undertakings

i) executive of a management company of pension funds

j) executive of an authorised provider of actuarial services

k) executive of a management company of insurance portfolios

[153] law of 21 July 2021 (1)

l) executive of an authorised provider of governance-related services for insurance and reinsurance undertakings

m) executive of a claims handler

n) executive of an insurance brokerage firm

o) executive of a reinsurance brokerage firm

(4) Except for the functions referred to in points b) and d) of paragraph 3, the authorisation shall only be issued to natural persons.

(5) In the case where the functions referred to in points b) and d) of paragraph 3 are performed by legal persons, such persons must be represented both towards the reinsurance undertaking or the pension fund, and towards the CAA and third parties, by a delegated reinsurance undertaking executive, or a delegated pension fund executive.

(6) Delegated reinsurance undertaking executives are natural persons authorised as a reinsurance undertaking executive and subordinated to a management company of reinsurance undertakings.

(7) Delegated pension fund executives are natural persons authorised as a pension fund executive and subordinated to a management company of pension funds.

Art. 273 – *The status of an executive*

Any insurance or reinsurance undertaking having its registered office in the Grand Duchy of Luxembourg, any branch of a third-country insurance or reinsurance undertaking, any pension fund subject to supervision of the CAA, any PSA and insurance or reinsurance brokerage firm must appoint an authorised executive who fulfils the conditions set out in this Chapter.

Any change of the authorised executive must be communicated beforehand to the CAA.

Art. 274 – *Conditions for authorisation of executives and other natural persons*

(1) In order to obtain the authorisation, the natural persons referred to in Articles 267, 269, 270 and 272, paragraph 3 must demonstrate their good repute and competence.

(2) In order to verify compliance with the conditions under Article 72, paragraph 1, point b), "or under Article 256-23, paragraph 1, point c)"[154] Luxembourg insurance and reinsurance undertakings "or Luxembourg pension funds"[155] shall supply the CAA with an extract from the formal judicial record or in the absence of such by an equivalent document issued by a competent judicial or administrative authority of the country of origin or country of domicile of the persons concerned. Insofar as such documents do not provide any indication on whether the persons concerned have not previously been declared bankrupt, these documents must be supported by a statement to this effect fulfilling the conditions of paragraph 3 hereinafter.

(3) Where the document referred to in paragraph 2 is not issued by the Member State of origin or the Member State of domicile of the natural person concerned, it may be replaced by a statutory declaration – or, in the States where such a declaration is not foreseen, by a solemn declaration – provided by the foreign national concerned before a competent judicial or administrative authority or, where applicable, a notary of the State of origin or the State of domicile of the said foreign national.

[154] law of 15 December 2019
[155] law of 15 December 2019

(4) Such authority or notary shall issue a certificate authenticating the declaration on oath or the solemn declaration.

The declaration in respect of no previous bankruptcy referred to in subparagraph 1 may also be made before a qualified professional body of the State concerned.

(5) The documents and certificates referred to in paragraphs 2 and 3 shall not be presented more than three months after their date of issue. The proposed executives referred to in points n) and o) of paragraph 3 of Article 272 shall prove their knowledge in accordance with the provisions of Article "288, paragraph 1"[156].

(6) The executive must have the authority to effectively determine the direction of the business and effectively manage the legal person.

(7) The executives and other natural persons referred to in paragraph 1 shall ensure an on-going effective daily management by their effective physical presence in Luxembourg.

(8) All the conditions for authorisation must be met at all times.

Art. 275 – ***Professional experience and knowledge of executives of insurance or reinsurance undertakings or PSA's***

(1) For the positions of insurance or reinsurance executive, or the positions of PSA executive under Article 272 paragraph 3 points f), g), h), k) and m), candidates shall "demonstrate knowledge in the field of business management and"[157] be deemed to satisfy the conditions for professional knowledge where:

a) they possess a diploma certifying a complete degree course of at least four years' study in law, economics or actuarial practice, and also have a working experience of at least three years,

- for executives of insurance undertakings, executives of management companies of captive insurance undertakings, executives of management companies of insurance undertakings in run-off, executives of reinsurance undertakings or of management companies of reinsurance undertakings: within an insurance or reinsurance undertaking, a pension fund or a PSA,
- for executives of management companies of insurance portfolios; within a department handling the management of insurance portfolios for an insurance or reinsurance undertaking, a pension fund or a PSA,
- for executives of claims handlers: within the department handling the claims of an insurance or reinsurance undertaking, a pension fund or a PSA,

or

b) they evidence an activity of over ten years within an insurance or reinsurance undertaking, a pension fund or a PSA or another financial institution, of which at least three years

- for executives of insurance undertakings, executives of management companies of captive insurance undertakings, executives of management companies of insurance undertakings in run-off, executives of reinsurance undertakings or executives of management companies of reinsurance undertakings: at a level close to the executive management of an insurance or reinsurance undertaking, a pension fund or a PSA,

[156] law of 10 August 2018
[157] law of 10 August 2018

- for executives of management companies of insurance portfolios: within the department handling the management of insurance portfolios of an insurance or reinsurance undertaking, a pension fund or a PSA,
- for executives of claims handlers: within the claims-handling department of an insurance or reinsurance undertaking, a pension fund or a PSA.

In the absence of having the professional experience required under "point b) of subparagraph 1,"[158] candidates may also be approved if they possess a professional experience at the same level and the same duration with an establishment or organisation within a financial sector other than insurance, provided they successfully pass a test on their knowledge of insurance. The detailed programme and procedures for the test are determined by a CAA regulation.

On request and where a candidate shows justification for the position of executive of an insurance or reinsurance undertaking, the "CAA"[159] may assimilate to a professional experience within the insurance sector an activity carried out in a risk management department in a sector other than the insurance sector.

(2) To be able to be approved as executive of a pension fund or of a PSA under Article 272 paragraph 3, point i), a natural person must "demonstrate knowledge in the field of business management"[160] and professional knowledge at a senior management level for managing pension funds.

The conditions for professional knowledge shall be deemed to be fulfilled for candidates possessing a diploma certifying a completed degree course of at least four years' university studies in actuarial practice, and having at least three years' working experience within the actuarial department of an insurance or reinsurance undertaking, a pension fund or a PSA.

(3) To be able to be approved as executive for an actuarial services provider, a natural person must "demonstrate knowledge in the field of business management"[161] and professional knowledge at a high level in actuarial and financial mathematics.

The conditions for professional knowledge shall be deemed to be fulfilled by candidates possessing a diploma certifying a completed degree course of at least four years' university studies in actuarial practice and having at least three years professional experience in the actuarial sector.

(4) To be able to be approved as executive of an authorised provider of governance-related services for insurance and reinsurance undertakings, a natural person must "demonstrate knowledge in the field of business management"[162] and professional knowledge at a high level in corporate governance matters.

(5) In exceptional circumstances and on justified request by an insurance or reinsurance undertaking, a pension fund or a PSA, the "CAA"[163] may grant an approval as an insurance or reinsurance or PSA executive for a period not exceeding 12 months to candidates who do not fulfil all the conditions of paragraph 1.

*(**Art. 276** repealed by the law of 10 August 2018)*

[158] law of 10 August 2018
[159] law of 21 July 2021
[160] law of 10 August 2018
[161] law of 10 August 2018
[162] law of 10 August 2018
[163] law of 21 July 2021

Art. 277 – *Specific provisions applicable to certain executive functions*

(1) The candidate for the position of executive of an insurance undertaking may only be approved following the written request of a Luxembourg insurance undertaking or of a third-country insurance undertaking for its Luxembourg branch, and supported by a binding agreement. An executive may not be approved for more than one insurance undertaking.

The CAA may grant derogations from this one company only approval rule on a justified request and with the agreement of all the insurance undertakings concerned.

(2) At such time as it may engage the services of a reinsurance undertaking executive by binding agreement, the reinsurance undertaking must notify the CAA accordingly. Where the function of executive is conferred upon a reinsurance undertaking management company, the notification must include the name of the delegated reinsurance undertaking management executive charged with representing the management company towards the reinsurance undertaking, the CAA and third parties.

A reinsurance undertaking executive may manage one or more reinsurance undertakings, either in his own name or as delegated reinsurance undertaking executive.

Any change to the delegated reinsurance undertaking executive must be notified in advance to the CAA.

(3) At such time as it may engage the services of a pension fund executive by binding agreement, the pension fund must notify the CAA accordingly. Where the function of executive is conferred upon a management company of pension funds, the notification must include the name of the delegated pension fund executive charged with representing the management company towards the pension fund, the CAA and third parties.

A pension fund executive may manage one or more pension funds, either in his own name or as delegated pension fund executive.

Any change to the delegated pension fund executive must be notified in advance to the CAA.

(4) An executive of a brokerage firm may not be approved simultaneously for more than one insurance or reinsurance brokerage firms.

The CAA may grant derogations from this one company only approval rule on a justified request and with the agreement of all the brokerage firms concerned.

Natural persons must carry out the principal part of their activities in or from the Grand Duchy of Luxembourg. This condition must be fulfilled at all times.

Art. 278 – *The procedure for approval and renunciation of an authorisation*

(1) The request for approval shall be submitted to *(…)*[164] the CAA and accompanied by supporting documents showing that the conditions of this Chapter are fulfilled.

(2) The request for approval shall be supported by all the information necessary for its evaluation.

(3) The decision taken on the application for approval shall be reasoned and notified to the applicant within six months of the receipt of the application or, if the latter is incomplete, within six months of the receipt of the information necessary for the decision. The

[164] removed by the law of 21 July 2021 (1)

decision may, within one month or penalised by foreclosure, be referred to the administrative court to decide on the merits of the case.

(4) An authorisation may be withdrawn:

a) upon request of the executives referred to in points b) and d) of paragraph 3 of Article 272;

b) either upon the joint request of the executives referred to in paragraph 3 of Article 272, with the exception of those in points b) to e) and of the undertaking they manage, or upon the request of one of these parties. In the event that the withdrawal request emanates from only one of these parties, the other party is informed thereof by the CAA and the withdrawal may only take place at the end of a fifteen-day period starting from the date of being so informed, to enable the other parties concerned to state their position.

The renunciation request shall be addressed to the CAA and indicate the expiration date of the authorisation.

Chapter 3 - "Distributors of insurance and reinsurance products"[165]

Section 1 - General provisions

"Art. 279 – *Definitions*

For the purposes of this Chapter and its regulations the following definitions shall apply:

1. "insurance agency": any legal person, other than an ancillary insurance intermediary, engaged in insurance mediation for and on behalf of one or several insurance undertakings;
2. "agent": any insurance agent and any insurance agency;
3. "insurance agent": any natural person, other than an ancillary insurance intermediary, engaged in insurance mediation for and on behalf of one or several insurance undertakings;
4. "competent authority": the authority designated by a Member State for the registration or the approval of intermediaries.
5. "advice": the provision of a personal recommendation to a customer, either upon his request or at the initiative of the distributor of insurance products, in respect of one or more insurance contracts;
6. "insurance product manufacturer": any insurance undertaking and any insurance intermediary which manufacture insurance products for sale to customers;
7. "broker": any insurance broker, insurance brokerage firm, reinsurance broker or reinsurance brokerage firm;
8. "insurance broker": any natural person, other than an ancillary insurance intermediary, established for its own account who, without being linked to one or more insurance undertakings, acts as an intermediary between the policyholders it represents as an agent ("mandataire") and insurance undertakings authorised in Luxembourg or abroad;
9. "reinsurance broker": any natural person established for its own account who, without being linked to one or more insurance or reinsurance undertakings, acts as an intermediary between insurance undertakings it represents as an agent ("mandataire") and reinsurance undertakings;

[165] law of 10 August 2018

10. “executive of an insurance brokerage firm”: any natural person who is authorised to manage an insurance brokerage firm. The executive of an insurance brokerage firm may not be linked to one or more insurance undertakings;
11. “executive of a reinsurance brokerage firm”: any natural person who is authorised to manage a reinsurance brokerage firm. The executive of a reinsurance brokerage firm may not be linked to one or more insurance or reinsurance undertakings;
12. “distributor”, any natural or legal person who carries out any of the activities referred to under points 16 and 17;
13. "distributor of insurance products" means any insurance intermediary, any ancillary insurance intermediary or any insurance undertaking;
14. "distributor of reinsurance products" means any reinsurance intermediary or reinsurance undertaking and any insurance undertaking when distributing reinsurance products;
15. "Luxembourg distributor of insurance products" means any distributor of insurance products whose home Member State is the Grand Duchy of Luxembourg;
16. “insurance distribution”: any activity consisting of
    a) giving advice on insurance contracts,
    b) proposing insurance contracts,
    c) carrying out other work preparatory to their conclusion,
    d) concluding such contracts,
    e) contributing to their management and their execution, subject to the provisions of Article 281-1, paragraph 2, point b), in particular in the event of a claim or
    f) providing any of the following services when the customer may select the criteria relating to an insurance contract through a website or other communication means and when it may conclude the contract directly or indirectly by this way :
        (i) the provision of information on one or more insurance contracts, or
        (ii) the compilation of an insurance product ranking list, including price and product comparison or a premium discount;
17. “reinsurance distribution”: any activity consisting of
    a) giving advice on reinsurance contracts,
    b) proposing reinsurance contracts,
    c) carrying out other work preparatory to their conclusion,
    d) concluding such contracts, or
    e) contributing to their management and their execution, in particular in the event of a claim.
18. “host Member State”: the Member State, other than the home Member State, in which an intermediary has a permanent presence in order to provide insurance or reinsurance distribution or provides services for this purpose;
19. “home Member State”:
    a) when the intermediary is a natural person, the Member State in which it has his professional residence from where he is principally engaged in insurance intermediation,

b) when the intermediary is a legal person, the Member State in which its registered office is situated, or, if it has no registered office under its national law, the Member State in which its central administration is situated;

"19-1."subsidiary undertaking": any legal person in respect of which the rights set out in Article 92, paragraph 1, letters a), b), c) or d) of the Law on annual accounts, are held;"[166]

20. "large risks", risks within the meaning of Article 43, point 21;

21. "intermediary": any insurance intermediary, any reinsurance intermediary and any ancillary insurance intermediary;

22. "insurance intermediary": any natural or legal person, other than an insurance or reinsurance undertaking, or their staff, and other than an ancillary insurance intermediary, who takes up or pursues insurance distribution activities in return for payment;

23. "ancillary insurance intermediary" means any natural or legal person other than a credit institution or investment firm within the meaning of Article 4, paragraph 1, points 1 and 2 of Regulation (EU) no 575/2013, who, for remuneration, takes up or pursues insurance distribution activities on an ancillary basis and fulfils the conditions of Article 285, paragraph 1, point c);

24. "reinsurance intermediary": any natural or legal person who takes up or pursues reinsurance distribution activities in return for payment;

25. "Luxembourg intermediary": any intermediary whose home Member State is the Grand Duchy of Luxembourg;

26. "close links", any links within the meaning of Article 43, point 23;

"26-1."«qualifying holding» : a direct or indirect holding in a PSA or an intermediary, legal person, which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking;"[167]

27. "remuneration", any commission, fee, charge or other kind of 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;

28. "insurance brokerage firm": any legal person, other than an ancillary insurance intermediary, which, without being linked to one or more insurance undertakings, acts as an intermediary between the policyholders it represents as an agent ("mandataire") and insurance undertakings authorised in Luxembourg or abroad;

29. "reinsurance brokerage firm": any legal person which, without being linked to one or more insurance or reinsurance undertakings, acts as an intermediary between insurance undertakings it represents as an agent ("mandataire") and reinsurance undertakings;

30. "insurance sub-broker": any natural person other than an executive of an insurance brokerage firm working under the responsibility of an insurance broker or an insurance brokerage firm established in the Grand Duchy of Luxembourg, and who, without being linked to one or more insurance undertakings, acts as an intermediary between the policyholders represented by the broker and insurance undertakings authorised in Luxembourg or abroad;

31. "branch" means an agency or a branch of an intermediary which is located in the territory of a Member State other than the home Member State;

32. "durable medium" means any instrument which:

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[166] Law of 29 March 2024
[167] law of 29 March 2024

a) enables a customer to store information addressed personally to that customer in a way accessible for future reference and for a period of time adequate for the purposes of the information; and

b) allows the unchanged reproduction of the information stored."[168]

"Art. 280 – ***The principle of approval and registration***

(1) Without prejudice to the exceptions referred to in paragraph 4 and Articles 292 and 294, the carrying out of insurance or reinsurance distribution activities in or from the Grand Duchy of Luxembourg is subject to

a) the granting of prior approval and registration in the register of distributors for insurance and reinsurance intermediaries; and

b) registration in the register of distributors for ancillary insurance intermediaries; and

c) from 1 January 2020, the granting of an approval as an insurance agent and registration in the register of distributors for persons who, within insurance undertakings, are directly involved in the distribution of insurance.

No one shall be authorised or registered to carry out an activity referred to in subparagraph 1, whether under the guise of another person, nor through a third party for the performance of such activity.

The requirement referred to in subparagraph 1 shall not apply to the distributors' administrative staff.

Insurance and reinsurance undertakings shall be required to register in the register of distributors the natural person or persons who, within their management, are responsible for the distribution of insurance or reinsurance.

(2) The approval referred to in paragraph 1 may only be sought for persons whose professional residence or registered office is in the Grand Duchy of Luxembourg. It may only be requested for the following categories of insurance or reinsurance intermediaries:

a) for natural persons:

(i) insurance or reinsurance brokers;

(ii) executives of insurance brokerage and reinsurance brokerage firms;

(iii) insurance sub-brokers;

(iv) insurance agents; and

b) for legal persons:

(i) insurance brokerage or reinsurance brokerage firms; or

(ii) insurance agencies;

Agents may be authorised only on behalf of insurance undertakings established in the Grand Duchy of Luxembourg.

(3) The same natural or legal person may not be authorised for more than one activity referred to in paragraph 2. When a person already authorised for one of these activities receives an approval for another one, the first approval is automatically withdrawn.

(4) By way of derogation from paragraph 1, ancillary insurance intermediaries who are natural persons employed by an ancillary insurance intermediary, legal person, and

[168] law of 10 August 2018

who distribute insurance products on its behalf, shall not be registered in the register of distributors. In this case, this legal person itself and the person responsible for the distribution, which is to be designated by that legal person, shall be registered.

The legal persons referred to in the previous subparagraph must draw up and keep up to date a list of all their ancillary insurance intermediaries, natural persons, who are not responsible for distribution and are therefore exempt from registration in the register of distributors.

The list of ancillary insurance intermediaries, referred to in subparagraph 2, must contain the following information for each intermediary referred to therein:

a) the last name;

b) the first names;

c) the date of birth;

d) the place of birth.

The setup of this list is determined by a CAA regulation.

(5) An intermediary may not use any title other than that appearing in the register of distributors or in the list referred to in paragraph 4, subparagraph 2." [169]

"Art. 281 - *Scope of the authorisation*

(1) The authorisation resulting from the approval or registration pursuant to Article 280 shall be valid throughout the EEA. As the authorisation confers the right of establishment and freedom to provide services, Luxembourg intermediaries may carry out activities in such territory subject to the notifications, provided for in Articles 291 or 293, being made.

(2) Approvals of Luxembourg insurance and reinsurance intermediaries are issued:

a) for the insurance distribution activity covering :

(i) either all life classes,

(ii) or all non-life classes;

(iii) or all life and non-life classes, as mentioned in Annexes I and II,

b) for the reinsurance intermediation activity.

(3) The registration of ancillary insurance intermediaries applies to both life and non-life products insofar as the cover is ancillary to the goods or services provided in the course of their main activity.

Art. 281-1 - Exclusions from the scope of application

(1) This Chapter shall not apply to ancillary insurance intermediaries carrying out insurance distribution activities where all the following conditions are met:

a) the insurance is complementary to the product or service supplied by these persons, when it covers:

(i) the risk of breakdown of, loss of, or damage to, the goods or non-use of the service provided by these persons, or

(ii) damage to, or loss of, baggage and other risks linked to travel booked with these persons;

[169] law of 10 August 2018

b) the amount of the annualised premium paid for that insurance product does not exceed 600 euros;

c) by way of derogation from point b), where the insurance product is complementary to a service referred to in point a) and the duration of that service is equal to or less than three months, the amount of the premium per person shall not exceed 200 euros.

(2) None of the following activities are considered as insurance or reinsurance distribution:

a) the provision of information on an incidental basis in the context of another professional activity when:

(i) the provider does not take any additional steps to assist in concluding or performing an insurance contract;

(ii) the purpose of these activities is not to assist the customer in concluding or performing a reinsurance contract;

b) the management of claims of an insurance or reinsurance undertaking on a professional basis and loss adjusting and expert appraisal of claims;

c) the mere provision of data and information on potential policyholders to insurance intermediaries, reinsurance intermediaries, insurance undertakings or reinsurance undertakings, where the provider does not take other steps to assist the customer in the conclusion of an insurance or reinsurance contract;

d) the mere provision of information about insurance or reinsurance products, an insurance intermediary, a reinsurance intermediary, an insurance undertaking or a reinsurance undertaking to potential policyholders, where the provider does not take other steps to assist the customer in the conclusion of an insurance or reinsurance contract. »[170]

"Section 2 - Access to distribution activity, operating conditions and end of activity**"**[171]

"Subsection 1 - Approval and registration procedure

***Art. 282* - Approval and registration procedure**

(1) The application for approval or registration shall be submitted to *(…)*[172] the CAA together with supporting documents justifying that the conditions set out in this Section are met.

For insurance and reinsurance intermediaries, the application for approval is considered as an application for registration.

(2) The application for approval or registration must be supported by all the information necessary for its assessment.

(3) The decision taken on an application for approval or registration must be reasoned and notified to the applicant within three months of the receipt of the application or, if it is incomplete, within three months of the receipt of the information necessary for the decision. The applicant must be promptly informed of the decision. Subject to a strict time limit of one month, the CAA's decision may be referred to the administrative court, which shall rule as a court of first instance.

(4) Luxembourg insurance or reinsurance intermediaries shall inform the CAA in advance of any major amendment of a document which was required during the approval or registration procedure. »*[173]*

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[170] law of 10 August 2018
[171] law of 10 August 2018
[172] removed by the law of 21 July 2021 (1)
[173] law of 10 August 2018

"Subsection 2 - Insurance and reinsurance brokers and brokerage firms" [174]

***"Art. 283* - Conditions of approval and operation applicable to an insurance or reinsurance brokerage firm**

(1) The approval of an insurance or reinsurance brokerage firm is subject to the following conditions:

a) it must be incorporated in the Grand Duchy of Luxembourg in one of the forms provided for by the legislation on commercial companies;

b) with regard to its insurance or reinsurance brokerage activity, it is effectively managed by one or more executives of an insurance or reinsurance brokerage firm duly authorised pursuant to Article 274;

c) it has internally at its disposal all the technical resources and skills as well as the human resources necessary to carry out its missions;

d) the members of its administrative, management and supervisory bodies are able to prove their good repute;

e) evidence is submitted that the requirements for financial assets and professional indemnity insurance, as referred to in Article 290, are fulfilled;

f) a business plan indicating the type and volume of operations envisaged, as well as a description of its administrative and accounting structure is presented; and

g) the application fee applicable to brokers as determined in accordance with Article 31 has being paid; and

h) its shareholders or associates shall meet the requirements of Article 296.

(2) In addition to the conditions set out in paragraph 1, points a), b), c), d), e) and h), the brokerage firm must fulfil all the following operating conditions:

a) be able to demonstrate compliance with the requirements for continuous professional training and development referred to in Article 288, paragraph 2, for persons authorised on its behalf;

b) carry out its activity in accordance with the latest business plan submitted to the CAA; and

c) be up to date with the payment of fees applicable to brokers as determined in accordance with Article 31.

(3) All the conditions referred to in this Article are operating conditions and must be constantly met.

***Art. 283-1* - Conditions of approval and operation applicable to an insurance or reinsurance broker**

(1) The approval of an insurance or reinsurance broker is subject to the following conditions:

a) he must fulfil the same conditions of good repute and professional knowledge as the executive of a brokerage firm as referred to in Articles 272, 274 and 288;

b) he has internally at its disposal all the technical resources and skills as well as human resources in-house necessary to carry out his missions; and

[174] law of 10 August 2018

c) evidence is submitted that the requirements for financial assets and professional indemnity insurance, as referred to in Article 290, are fulfilled;

d) a business plan indicating the type and volume of operations envisaged, as well as a description of its administrative structure is presented; and

e) the application fee applicable to brokers as determined in accordance with Article 31, has been paid.

(2) In addition to the conditions set out in paragraph 1, point a), b), c), d), the insurance or reinsurance broker must fulfil the following operating conditions:

a) be able to demonstrate compliance with the requirements for continuous professional training and development referred to in Article 288, paragraph 2, for himself and for persons authorised on his behalf;

b) carry out his activity in accordance with the latest business plan submitted to the CAA; and

c) be up to date with the payment of fees applicable to brokers as determined in accordance with Article 31.

(3) All the conditions referred to in this Article are operating conditions and must be constantly met.

***Art. 283-2* – Conditions of approval and operation applicable to an insurance sub-broker**

(1) The approval of an insurance sub-broker is subject to the following conditions:

a) he shall demonstrate to be of good repute and have professional knowledge as referred to in Article 288, paragraph 1;

b) he shall demonstrate to work under the responsibility of the broker who introduced the request for approval; and

c) he shall demonstrate the coverage by a professional indemnity insurance.

(2) In addition to the conditions set out in paragraph 1, the sub-broker must comply with the requirements for continuous professional training and development referred to in Article 288, paragraph 2.

(3) All the conditions referred to in this Article are operating conditions and must be constantly met.

***Art. 283-3* - Specific provisions applicable to insurance or reinsurance brokerage**

The combination of the functions of an insurance broker with those of a reinsurance broker, respectively of an insurance brokerage firm and a reinsurance brokerage firm is authorised conditionally upon the CAA being informed in advance of such intention to combine by respectively the insurance or reinsurance broker or brokerage firm.

These intermediaries may address the public by using the title of insurance and reinsurance broker, respectively insurance and reinsurance brokerage firm.

***Art. 283-4* - Specific provisions applicable to advice provided to customers by an intermediary acting on their behalf**

(1) In relation to the contracts proposed or advised, the advice given by a broker having received approval in the Grand Duchy of Luxembourg must be based upon an impartial and personalised analysis.

(2) Similarly, any non-Luxembourg distributor of insurance products who, for the selling of any insurance product, or for certain types thereof, to customers whose habitual residence or establishment is situated in the Grand Duchy of Luxembourg, informs its customer, within the framework of pre-contractual information, that it is representing him, must give advice on the basis of an impartial and personalised analysis. »[175]

"Subsection 3 - Insurance Agents and Agencies" [176]

***"Art. 284* - Conditions of approval and operation applicable to the insurance agency**

(1) The approval of an insurance agency is subject to the following conditions:

a) it must be incorporated in the Grand Duchy of Luxembourg in one of the forms provided for by the legislation on commercial companies;

b) with regard to its activity as an insurance agency, it is effectively managed by one or more natural persons, all of whom must be duly authorised as insurance agents for the applicant insurance undertaking(s) and provide evidence of their knowledge of the general principles of business management;

c) it has internally at its disposal all the technical resources and skills as well as human resources necessary to carry out its missions; and

d) the members of its administrative, management and supervisory bodies as well as shareholders or partners who are able to prove their good repute.

(2) The conditions set out in paragraph 1, points a), b) and c) are operating conditions which must be constantly met.

***Art. 284-1* - Conditions of approval and operation applicable to an insurance agent**

(1) Approval may be granted only if the insurance agent can provide evidence of his good repute and professional knowledge as referred to in Article 288, paragraph 1.

(2) In addition to the conditions set out in paragraph 1, the insurance agent must comply with the requirements for continuous professional training and development referred to in Article 288, paragraph 2.

(3) All the conditions referred to in this Article are operating conditions and must be constantly met.

***Art. 284-2* - Specific provisions applicable to agents**

(1) Agents are agents (“mandataires”) of insurance undertakings and may carry out this activity as their main activity or as an ancillary activity.

Agents, who are natural persons, may perform their functions as employees or self-employed. Agents may receive approval only upon written request of an insurance undertaking established in the Grand Duchy of Luxembourg. No agent may receive approval for several insurance undertakings in the same class of insurance.

However, an agent may receive approval in the same class for several undertakings, if these undertakings jointly so request.

[175] law of 10 August 2018
[176] law of 10 August 2018

(2) The agent shall act under the responsibility of the company for which it has received approval. In the event of joint approval, its liability shall be covered by the insurance undertaking from which the marketed product originates.

(3) Are governed by labour law the contractual relationship:

a) between an insurance agent and the principal insurance undertaking where the agent is an employee of that undertaking;

b) between an insurance agent and an insurance agency where the agent is an employee of that agency.

Are governed by a written agency agreement the contractual relationship:

a) between a self-employed or employed insurance agent, in circumstances other than those referred to in subparagraph 1, and the principal insurance undertaking;

b) between an insurance agency and the principal insurance undertaking.

This agreement lists the rights and duties of the parties and contains at least provisions relating to the obligations of the insurance agency or agent towards the principal undertaking and towards policyholders, as well as the obligations of insurance undertakings, in particular as regards the terms of remuneration of agents during and at the end of their term of office. The agency agreement concluded with an insurance agency must also contain provisions governing the relationship between the principal insurance undertaking and the agency's employees approved as insurance agents of the same insurance undertaking, in particular in the event of termination of the employment contract or loss of approval as an insurance agent.

A CAA Regulation may lay down the framework for the agency agreements referred to in subparagraph 2 by specifying the key points to be negotiated between the parties and laid down in writing.

(4) Insurance undertakings may grant their agents or some of them the title of principal agent or general agent.

An agent shall only address the public by using the title of agent or, where applicable, principal agent or general agent.

(5) Agents may only offer for subscription insurance contracts of the companies for which they have received approval.

(6) Any decision to refuse approval or to withdraw approval must be justified and notified to the parties concerned. In the event that the refusal or withdrawal of approval is motivated by reasons of lack of good repute, the precise reasons for such refusal shall be communicated only to the person concerned, excluding the principal insurance undertaking."[177]

"Subsection 4 – Ancillary insurance intermediaries"[178]

***"Art. 285* - Conditions for registration in the register of distributors and of operation applicable to an ancillary insurance intermediary**

(1) Registration in the register of distributors may only completed out if the ancillary insurance intermediary fulfils the following conditions:

a) It must demonstrate that it is working for an insurance undertaking authorised to carry on insurance business in the Grand Duchy of Luxembourg;

[177] law of 10 August 2018
[178] law of 10 August 2018

b) Insofar as it does not work under the responsibility of an insurance undertaking, it must demonstrate coverage by an insurance policy with an insurance undertaking authorised to practice professional indemnity insurance in the Grand Duchy of Luxembourg and covering their professional civil liability, the scope of the cover, the territorial scope, the exclusions and the evidence of cover being laid down by a CAA Regulation;

(c) in addition, the ancillary insurance intermediary shall demonstrate that:

(i) insurance distribution does not constitute its main professional activity;

(ii) it distributes only certain insurance products that are complementary to a good or service;

(iii) the insurance products concerned do not cover life insurance or liability risks, unless that cover complements the good or service which the intermediary provides as its main professional activity and the thresholds in Article 281-1 are not exceeded;

d) The ancillary insurance intermediary, natural person, or the person responsible for distribution within an ancillary insurance intermediary, legal person, must demonstrate his good repute and the professional knowledge referred to in Article 288, paragraph 1.

(2) In addition to the conditions set out in paragraph 1, the ancillary insurance intermediary must comply with the requirements for continuous professional training and development referred to in Article 288, paragraph 2.

(3) All conditions referred to in this Article are operating conditions and must be constantly met. »[179]

"Subsection 5 - Direct sales by insurance or reinsurance undertakings

Art. 285-1 – *Operating conditions for direct sales by insurance and reinsurance undertakings established in the Grand Duchy of Luxembourg*

(1) By 1 January 2020 at the latest, persons working in the Grand Duchy of Luxembourg who, within insurance undertakings, are directly involved in insurance distribution, must have been approved as insurance agents.

Until the expiry of the time limit referred to in subparagraph 1, insurance undertakings must keep lists of persons working in the Grand Duchy of Luxembourg who, in their midst, are directly involved in insurance distribution without being approved as insurance agents.

Insurance undertakings must also keep lists of persons, who are directly involved in insurance distribution, working in their branches located in other Member States.

(2) Reinsurance undertakings must keep lists of persons, who, in their midst, including in their branches located in other Member States, are involved in reinsurance distribution.

(3) Insurance and reinsurance undertakings shall ensure that the persons referred to in paragraphs 1 and 2 possess the knowledge and skills set out in Article 288.

(4) Persons referred to in paragraphs 1 and 2 must also demonstrate their good repute.

(5) The lists referred to in paragraphs 1 and 2 must contain the following information on each person referred to therein:

a) the last name;

[179] law of 10 August 2018

b) the first names;

c) the date of birth;

d) the place of birth.

The setup of this list is determined by a CAA regulation.

Art. 285-2 - Additional governance requirements specific to direct sales

In order to ensure compliance with the requirements set out in Article 285-1, insurance and reinsurance undertakings shall approve and implement appropriate internal policies and procedures and shall review them regularly.

They must designate a function to ensure the proper implementation of approved policies and procedures.

They shall create, maintain and update registers containing all the relevant documentation regarding the application of the above provisions and shall forward to the CAA the name of the person responsible for the function referred to in subparagraph 2."[180]

"Subsection 6 - Provisions concerning the continuous verification of good repute

***Art. 285-3* - Verification of good repute**

The undertakings referred to in Article 285-1 shall check regularly the good repute of their agents and of persons who, in their midst, are directly involved in insurance or reinsurance distribution and brokers established in the Grand Duchy of Luxembourg are required to check regularly the good repute of their sub-brokers, in accordance with the procedures laid down by a CAA Regulation. »[181]

"Subsection 7 - Registration in the register of distributor" ***[182]***

***"Art. 286* - Registration in the register of distributors**

(1) Are registered in a register maintained by the CAA and accessible by electronic means:

a) natural or legal persons approved pursuant to Article 280, paragraph 2,

b) ancillary insurance intermediaries who fulfil the conditions for registration detailed in Article 285, paragraph 1, and who are not exempt from registration pursuant to Article 280, paragraph 4, and

c) natural persons who, within the management of an insurance or reinsurance undertaking, are responsible for insurance or reinsurance distribution activities.

The setup and content of this register of distributors are determined by a CAA regulation.

The conditions for registration shall apply, notwithstanding that an intermediary may act under the responsibility of an insurance or reinsurance undertaking or another intermediary.

(2) The persons referred to in paragraph 1, point c), shall meet the requirements of good repute referred to in Article 32, point 15, and the provisions of Article 274, paragraphs 1, 2 and 3.

[180] law of 10 August 2018
[181] law of 10 August 2018
[182] law of 10 August 2018

(3) The CAA shall regularly review the validity of the registration."[183]

(4) Where insurance "or reinsurance"[184] undertakings use the services of an intermediary to market their insurance products within the EEA, they may only use the services of intermediaries included in the register "of distributors"[185] kept by the CAA or by a competent authority of another Member State ", or an ancillary insurance intermediary excluded from the scope of Directive (EU) 2016/97 pursuant to Article 1, paragraph 3, thereof".[186]

"The obligation referred to in subparagraph 1 shall also apply to insurance or reinsurance intermediaries using the services of other intermediaries."[187]

***"Art. 287* - The procedure for withdrawing approval or removal from the register**

(1) The withdrawal of the approval of an insurance or reinsurance intermediary or the removal of an ancillary insurance intermediary from the register of distributors shall be pronounced:

a) either as a sanction under Article 303;

b) or when the operating conditions are no longer met;

c) or in the event of withdrawal of approval as an intermediary of the person under whose responsibility these persons work;

d) or in the event of the death of the intermediary, natural person;

e) or at the request of the intermediary concerned;

f) or at the request of the intermediary or insurance undertaking under whose responsibility the intermediary concerned operates.

In the cases referred to in points e), where that intermediary operates under the responsibility of an insurance undertaking or other intermediary, and f), and if the request for withdrawal or removal from the register of distributors originates from only one of the parties, the other party shall be informed thereof by the CAA and the withdrawal or removal may only take place after a period of 15 days following the date on which the person was informed thereof by the CAA, to enable the other party concerned to assert its position.

The approval may also be withdrawn "by"[188] the CAA if the intermediary does not use it for a period of 12 months.

The request for withdrawal of approval or removal from the register of distributors referred to in points e) and f) above must be addressed to the CAA and specify the expiry date of the approval.

(2) The withdrawal of the approval of an insurance or reinsurance intermediary automatically entails the removal from the register.

(3) The competent authorities of the other Member States to which the CAA has communicated the intermediary's intention to carry on business under the freedom of

[183] law of 10 August 2018
[184] law of 10 August 2018
[185] law of 10 August 2018
[186] law of 10 August 2018
[187] law of 10 August 2018
[188] law of 21 July 2021 (1)

establishment or the freedom to provide services on their territory, in accordance with Articles 291 and 293, shall be informed of the removal from the register."[189]

"Section 3 - Professional and organisational requirements applicable to Luxembourg distributors" [190]

***"Art. 288* - Professional knowledge and skills**

(1) Natural persons approved for the distribution of insurance or reinsurance products under this Chapter, ancillary insurance intermediaries and natural persons who, within insurance or reinsurance undertakings, are responsible for the distribution of insurance and reinsurance products or are directly involved in the distribution of reinsurance products must have the appropriate knowledge and skills to enable them to carry out their tasks and fulfil their obligations in an appropriate manner. This obligation also applies to persons who, within insurance undertakings, are directly involved in the distribution of insurance products and who do not have an approval as insurance agent.

In order to be approved, the persons referred to in subparagraph 1 shall demonstrate their professional knowledge and skills by means of an aptitude test relating to the legislation governing the supervision of insurance undertakings and their intermediaries, the insurance contract and insurance techniques for the insurance classes listed in Annexes I and II depending on the application for approval, the Law on annual accounts and the legislation against money laundering and terrorist financing. The detailed programme and the terms and conditions of the test are determined by a CAA regulation, which may differentiate between the professional categories concerned.

Persons who can demonstrate sufficient knowledge on the basis of their studies or appropriate professional experience may be exempted, in whole or in part, by the CAA from the aptitude test.

In addition, insurance or reinsurance brokers and executives of insurance or reinsurance brokerage firms must have business management knowledge.

Under exceptional circumstances and upon a reasoned request, the "CAA"[191] may grant approval for a period not exceeding 12 months to candidates who do not meet the conditions of this paragraph.

Ancillary insurance intermediaries must have knowledge in relation to the insurance products marketed.

(2) In order to maintain an adequate level of performance corresponding to the position they hold and the market concerned, insurance and reinsurance intermediaries approved pursuant to Article 280, paragraph 1, and the staff of insurance and reinsurance undertakings referred to in Article 285-1, paragraph 1, must undergo at least 15 hours of continuous professional training and development per year, taking into account the nature of the products sold, the type of distributor, the position they hold and the activity pursued within the distributor of insurance or reinsurance products.

Ancillary insurance intermediaries must keep their knowledge of the products marketed up-to-date, and in particular when marketing new products.

(3) A CAA regulation determines:

a) the detailed content and modalities of the continuous professional training and development;

[189] law of 10 August 2018
[190] law of 10 August 2018
[191] law of 21 July 2021

b) the details and practical aspects of the mechanisms put in place to monitor and assess such knowledge and skills."[192]

Art. 289 – *Consumer protection measures*

(1) The premiums and all other sums relating to an insurance contract governed by the Law of 27 July 1997 on the insurance contract, as amended, which the policyholder pays to a Luxembourg intermediary "or an ancillary insurance intermediary"[193] shall be deemed to be paid to the insurance undertaking.

Sums of money intended for the policyholder and claimants of insurance benefits which are paid to the intermediary "or the ancillary insurance intermediary"[194] by the insurance undertaking shall not be deemed to have been paid to the policyholder until the latter has effectively received them.

(2) Where the funds referred to in paragraph 1 are entrusted to an intermediary, they shall be transferred via strictly separate client accounts *(...)*[195].

Art. 290 - *Financial assets and professional indemnity insurance "of brokers"*[196]

(1) For insurance or reinsurance brokerage firms, the authorisation is conditional on the production of evidence of a fully paid-up share capital amounting to not less than 50,000 euros. This fully paid-up share capital must be raised to not less than 125,000 euros within a timeframe of five years from the date of the authorisation.

(2) For insurance or reinsurance brokers, the authorisation is conditional on the production of evidence of financial assets amounting to not less than 25,000 euros. This amount must be raised to not less than 50,000 euros within a timeframe of five years from the date of the authorisation *(...)*[197]. Financial assets shall mean the net assets of the insurance or reinsurance broker.

(3) The amounts referred to in paragraphs 1 and 2 shall remain valid, even in cases of an aggregation of insurance and reinsurance mediation activities. In cases of aggregation of insurance and reinsurance broker approvals or of insurance and reinsurance brokerage firm approvals, the timeframes referred to in paragraphs 1 and 2 are linked to the first broker approval.

(4) Brokers must, moreover, take out an insurance policy with an "insurance"[198] undertaking authorised to carry out professional indemnity insurance in the Grand Duchy of Luxembourg covering their professional civil liability, where the extent of the guarantees, territorial scope, exclusions and proof of cover shall be fixed by a "CAA"[199] regulation.

(5) The funds referred to in this Article shall be at the disposal of the broker on a permanent basis and be invested in the own interests of the insurance or reinsurance broker's business.

(6) "The net equity of an insurance or reinsurance brokerage firm and the financial assets of an insurance or reinsurance broker"[200] may not fall to less than the amounts required under paragraphs 1 and 2.

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[192] law of 10 August 2018
[193] law of 10 August 2018
[194] law of 10 August 2018
[195] removed by the law of 10 August 2018
[196] law of 10 August 2018
[197] removed by the law of 10 August 2018
[198] law of 10 August 2018
[199] law of 10 August 2018
[200] law of 10 August 2018

(7) If the “assets referred to in this Article”[201] fall below the amount required under paragraphs “1, 2 and 6”[202], the CAA may, where the circumstances so justify, allow the broker a limited period in which to rectify the situation or cease activities.

"Section 4 - Freedom to provide services and freedom of establishment"[203]

"Subsection 1 - Freedom of establishment"[204]

***"Art. 291* - Conditions for the establishment of a branch by a Luxembourg intermediary in another Member State**

(1) Any Luxembourg intermediary who intends to establish a branch in the territory of another Member State for the purpose of carrying on insurance or reinsurance distribution activities must first provide the CAA with the following information:

a) its name, address and registration number of the register of distributors;

b) the Member State in whose territory it intends to establish a branch;

c) the category of intermediary to which it belongs and, where applicable, the name of any insurance or reinsurance undertaking it represents;

d) the classes of insurance concerned, if applicable;

e) the address in the host Member State at which documents may be obtained;

f) the name of any person responsible for managing the branch.

For the purposes of this Chapter, any permanent presence of an intermediary in the territory of another Member State which is equivalent to a branch shall be treated in the same way as a branch, unless it lawfully sets up its permanent presence in the form of a legal person.

(2) By way of derogation from paragraph 1, for any Luxembourg agent, such notification shall be made by the insurance undertaking for which it is approved and shall be supplemented by the name of the Member State or States in which the risk is situated or the State or States of the commitment of the contracts marketed by the agent's branch and evidence that the insurance undertaking is authorised to work in that State or States.

(3) In the event of a change in any of the information communicated in accordance with paragraph 1, the Luxembourg intermediary shall notify the CAA in writing at least one month before applying the change. The competent authority of the host Member State shall also be informed of this change by the CAA as soon as possible, and at the latest one month after the date on which the information is received by the CAA.

(4) Luxembourg intermediaries may entrust insurance distribution activities to staff members of their branches only if they are themselves registered in a register of distributors in the host country or meet equivalent conditions of professional competence and good repute necessary for such registration.

(5) The implementing provisions of this Article shall be determined by a CAA regulation.

***Art. 291-1* - Communication of information in the event of the establishment of a branch of a Luxembourg intermediary in another Member State**

(1) Unless the CAA has reason to doubt the adequacy of the intermediary's organisational structure or financial situation in view of the proposed distribution activities, it shall, within

[201] law of 10 August 2018
[202] law of 10 August 2018
[203] law of 10 August 2018
[204] law of 10 August 2018

one month of receipt, communicate the information listed in Article 291, paragraph 1, subparagraph 1, to the competent authority of the host Member State and shall inform in writing the intermediary, or the insurance undertaking concerned in the case of an agent, that the competent authority of the host Member State has received the information.

(2) Where the CAA has received the address of the website of the competent authority of the host Member State where the conditions under which, for reasons of general good, intermediation activities must be carried out in that State and the single contact point in the host Member State relating to those general good rules are published, the CAA shall communicate that information to the intermediary and indicate that it may start operating in that Member State, subject to compliance with those conditions.

By way of derogation from the first subparagraph, the information referred to therein shall be provided to the insurance undertaking concerned in the case of a notification for an agent.

The intermediary may establish its branch and start its activities from this communication by the CAA.

Where no communication is received within one month of the notification, the intermediary may establish the branch and start operating.

(3) Where the CAA refuses to forward the information referred to in Article 291 to the competent authority of the host Member State, it shall communicate to the intermediary, the reasons for such refusal, within one month of receipt of such information.

A refusal as indicated in subparagraph 1 or any failure by the CAA to communicate the information referred to in Article 291 shall be the subject to a right to apply to the administrative court for annulment.

Art. 291-2 **- Conditions for establishing a branch of a Luxembourg intermediary in a third country**

(1) Any Luxembourg intermediary who intends to establish a branch in the territory of a third country for the purpose of carrying on insurance or reinsurance distribution activities shall be required to inform the CAA in advance, to indicate the name of the third country or countries in which it intends to establish a branch and to provide the information referred to in Article 291, paragraph 1, points a), c), d), e) and f).

" For the purposes of this Chapter, any permanent presence of an intermediary in the territory of a third country which is equivalent to a branch shall be treated in the same way as a branch, unless it lawfully sets up its permanent presence in the form of a legal person."[205]

(2) By way of derogation from paragraph 1, for any Luxembourg agent, such notification shall be made by the insurance undertaking for which it is approved and shall be supplemented by the name of the Member State or States in which the risk is situated or the State or States of the commitment of the contracts marketed by the agent's branch and evidence that the insurance undertaking is authorised to operate in that State or States.

(3) The CAA may object to the establishment of this branch:

a) if it has reason to doubt, having regard to the activity envisaged, the adequacy of the intermediary's organisational structure or financial situation, or the good repute or competence of the persons responsible for the management of the branch;

b) if the branch's establishment or proposed activity is in breach of the rules of the host country;

[205] law of 29 March 2024

c) if the host country is subject to international sanctions, does not apply international standards in the fight against money laundering and terrorist financing or does not allow the CAA to carry out its supervisory missions.

(4) Luxembourg intermediaries may entrust insurance distribution activities to staff of their branches in a third country only if they fulfil conditions of professional competence and good repute equivalent to those of intermediaries established in that country.

(5) The implementing provisions of this Article shall be determined by a CAA regulation.

***Art. 292* - Freedom of establishment in the Grand Duchy of Luxembourg**

Within the limits of the authorisation it holds in its home Member State, any intermediary shall be authorised to establish a branch in the Grand Duchy of Luxembourg provided that the competent authority of the home Member State has notified this intention to the CAA, which shall acknowledge receipt thereof without delay.

Within one month of receipt of the notification referred to in paragraph 1, the CAA shall communicate to the competent authority of the home Member State the address of the CAA website where the conditions under which, for reasons of general good, intermediation activities must be carried out in the Grand Duchy of Luxembourg and the single contact point in the Grand Duchy of Luxembourg relating to these general good rules are published. The intermediary may start operating in the Grand Duchy of Luxembourg after the CAA has communicated this information to the competent authority of its home Member State, provided that the intermediary complies with these conditions.

Where the CAA has not made such a communication within the time limit provided for in subparagraph 2, the intermediary may establish the branch and commence business. »[206]

"Subsection 2 - Freedom to provide services"[207]

***"Art. 293* - Preconditions for the freedom to provide services by an intermediary in another Member State**

(1) Any Luxembourg intermediary who intends to carry on insurance or reinsurance distribution activities for the first time in the territory of another Member State under the freedom to provide services must first provide the CAA with the following information:

a) its name, address and registration number of the register of distributors;

b) the Member State in which it intends to carry on business under the freedom to provide services;

c) the category of intermediary to which it belongs and, where applicable, the name of any insurance or reinsurance undertaking it represents;

d) the classes of insurance concerned, if applicable.

(2) By way of derogation from paragraph 1, for any Luxembourg agent, such notification shall be made by the insurance undertaking for which it is approved and shall be supplemented by the name of the Member State or States in which the risk is situated or the State or States of the commitment of the contracts marketed under the freedom to provide services and evidence that the insurance undertaking is authorised to work in that State or States.

(3) In the event of a change in any of the information communicated in accordance with paragraph 1, the Luxembourg intermediary shall notify the CAA in writing at least one month before applying the change. The competent authority of the host Member State

[206] law of 10 August 2018
[207] law of 10 August 2018

shall also be informed of this change by the CAA as soon as possible, and at the latest one month after the date on which the information is received by the CAA.

(4) The implementing provisions of this Article shall be determined by a CAA regulation.

Art. 293-1 **- Communication of information in the event of the exercise of an activity under the freedom to provide services by a Luxembourg intermediary in another Member State**

(1) The CAA shall, within one month of receipt, communicate the information listed in Article 283, paragraph 1, to the competent authority of the host Member State and shall inform in writing the intermediary, or the insurance undertaking concerned in the case of an agent, that the competent authority of the host Member State has received the information and that the intermediary may therefore start operating.

(2) Where the CAA has received the address of the website of the competent authority of the host Member State where the conditions under which, for reasons of general good, intermediation activities must be carried out in that host Member State and the single contact point in the host Member State relating to those general good rules are published, the CAA shall communicate that information to the intermediary and indicate that it may start operating in that Member State, subject to compliance with those conditions.

By way of derogation from the first subparagraph, the information referred to therein shall be provided to the insurance undertaking concerned in the case of a notification for an agent.

Art. 293-2 **- Preconditions for the freedom to provide services by an intermediary in a third country**

(1) Any Luxembourg intermediary who intends to carry on insurance or reinsurance distribution activities for the first time in the territory of a third country under the freedom to provide services shall be required to inform the CAA in advance, to indicate the name of the third country or countries in which it intends to provide those services and to provide the information referred to in Article 293, paragraph 1, point a), c) and d).

(2) By way of derogation from paragraph 1, for any Luxembourg agent, such notification shall be made by the insurance undertaking for which it is approved and must be supplemented by the name of the Member State or States in which the risk is situated or the State or States of commitment of the contracts marketed under the freedom to provide services and evidence that the insurance undertaking is authorised to operate in that State or States.

(3) The CAA may oppose the activity under the freedom to provide services:

a) if the proposed activity is carried out in breach of the rules of the host country;

b) if the host country is subject to international sanctions, does not apply international standards in the fight against money laundering and terrorist financing or does not allow the CAA to carry out its supervisory missions.

(4) The implementing provisions of this Article shall be determined by a CAA regulation.

Art. 294 **- Prerequisites for the freedom to provide services through an intermediary of another Member State in the Grand Duchy of Luxembourg**

Within the limits of the authorisation it holds in its home Member State, any intermediary shall be authorised to carry on business in the Grand Duchy of Luxembourg under the freedom to

provide services, provided that the competent authority of the home Member State has notified this intention to the CAA, which shall acknowledge receipt thereof without delay.

The intermediary may start operating in the Grand Duchy of Luxembourg after the CAA has received the notification referred to in paragraph 1 and provided that the intermediary complies with the legal provisions referred to in Article 295-4, paragraph 1.[208]

"Section 5 - Missions and powers of the CAA specific to the distribution of insurance and reinsurance"[209]

"Subsection 1 - Powers of the CAA as competent authority of the home Member State

***Art. 295* - Powers of the CAA in the event of failure by a Luxembourg intermediary to fulfil obligations in connection with the exercise of the freedom of establishment or the freedom to provide services**

The CAA, after having been informed by the competent authority of the host Member State that it has reason to believe that a Luxembourg intermediary carrying on activities in its territory under the freedom of establishment or the freedom to provide services infringes any of the obligations laid down in Directive (EU) 2016/97, shall examine this information and take, if necessary, appropriate measures to remedy the situation. The CAA shall take these measures as soon as possible and shall inform the competent authority of the host Member State.

Where the Luxembourg intermediary has persisted in his actions and the competent authority of the host Member State, after informing the CAA, has taken measures to prevent further irregularities in the host Member State, the CAA, in the event of disagreement with these measures, may refer the matter to EIOPA and request its assistance.

Subsection 2 - Powers of the CAA as the competent authority of the host Member State

***Art. 295-1* - Failure to fulfil obligations in connection with the exercise of the freedom of establishment or the freedom to provide services**

(1) Where the CAA has reasons to consider that a non-Luxembourg intermediary established in the Grand Duchy of Luxembourg is in breach of the Luxembourg legal or regulatory provisions of Sections 6 and 7 of this Chapter, it may take appropriate measures.

(2) Where the CAA has reason to consider that a non-Luxembourg intermediary operating in the territory of the Grand Duchy of Luxembourg under the freedom of establishment or the freedom to provide services is in breach of the obligations laid down in this Chapter, and that the responsibility for supervision does not lie with the CAA in accordance with "Article 295-2"[210], it shall inform the competent authority of the home Member State of its conclusions.

(3) Where, despite the measures taken by the home Member State, or because such measures are inadequate or are lacking, the intermediary referred to in paragraph 2 persists in acting in a manner which is clearly detrimental to the interests of consumers in the Grand Duchy of Luxembourg or to the orderly functioning of the insurance and reinsurance market, the CAA may, after informing the competent authority of the home Member State, take appropriate measures to prevent further irregularities, including, insofar as is strictly necessary, preventing the intermediary concerned from continuing to carry on new activities within the Luxembourg territory.

[208] law of 10 August 2018
[209] law of 10 August 2018
[210] law of 6 February 2025 (2)

In addition, in the event of disagreement with the position adopted by the competent authority, the CAA may refer the matter to EIOPA and request its assistance.

(4) Paragraphs 2 and 3 shall not affect the power of the CAA to take appropriate and non-discriminatory measures to prevent or penalise irregularities committed within the Luxembourg territory, in situations where immediate action is strictly necessary to protect consumer rights in the Grand Duchy of Luxembourg, and where equivalent measures by the Member State of origin are insufficient or lacking. In such a case, the CAA has the possibility of preventing the intermediary concerned from carrying out new activities within the Luxembourg territory.

(5) Any measure adopted by the CAA under this Article must be duly justified, communicated to the intermediary and notified in writing without undue delay to the competent authority of the home Member State, EIOPA and the Commission.

***Art. 295-2* - Competences of the CAA in the context of freedom of establishment**

The CAA shall ensure that services provided under the freedom of establishment within the Luxembourg territory comply with the obligations laid down in Sections 6 and 7 of this Chapter and the measures adopted pursuant thereto.

The CAA shall have the right to examine the establishment arrangements and to request such changes as are needed to enable it to enforce the obligations laid down in Sections 6 and 7 of this Chapter and the measures adopted pursuant thereto with regard to the services and activities of the establishment within the Luxembourg territory.

Subsection 3 - Shared competencies

***Art. 295-3* - Main activity in a Member State other than the home Member State**

(1) If the principal place of business of a Luxembourg intermediary is located within a Member State other than the Grand Duchy of Luxembourg, the CAA may agree with the competent authority of that other Member State that it acts as if it were the competent authority of the home Member State with regard to the provisions of Chapters IV, V, VI and VII of Directive (EU) 2016/97. In such a case, the CAA shall notify the Luxembourg intermediary and EIOPA of the conclusion of such an agreement without delay.

(2) If the principal place of business of an intermediary registered in another Member State is located within the Grand Duchy of Luxembourg, the CAA may agree with the competent authority of the home Member State to act as if the CAA were the competent authority of the home Member State with regard to the provisions of Chapters IV, V, VI and VII of Directive (EU) 2016/97.

Subsection 4 – General good rules

***Art. 295-4* - Publication of general good rules**

(1) The CAA shall publish, in an appropriate manner, the general good rules at national level to the exercise of insurance and reinsurance distribution activities in the territory of the Grand Duchy of Luxembourg.

(2) The CAA shall act as the single point of contact responsible for providing information on the general good rules referred to in paragraph 1 applicable in Luxembourg.

Subsection 5 - Powers of the CAA to enforce national provisions in the field of distribution

***Art. 295-5* - Powers of the CAA in the event of avoidance of Luxembourg legal provisions**

Where the activity of a distributor of insurance products established in another Member State is entirely or principally directed towards the Luxembourg territory for the sole purpose of avoiding the legal provisions which would be applicable if that distributor had its residence or registered office in the Grand Duchy of Luxembourg and, in addition, where its activity seriously endangers the proper functioning of the Luxembourg insurance and reinsurance market with regard to consumer protection, the CAA, after informing the competent authority of the home Member State, may take all appropriate measures with regard to that distributor in order to protect the rights of consumers in the host Member State. The CAA may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

Subsection 6 - Cooperation with other authorities and EIOPA

***Art. 295-6* - Cooperation and exchange of information between the competent authorities of Member States**

(1) The CAA shall cooperate and exchange any relevant information on distributors of insurance and reinsurance products with the competent authorities of other Member States in order to ensure the proper application of Directive (EU) 2016/97.

(2) During the registration procedure, and on an ongoing basis, the CAA shall exchange relevant information with the competent authorities of other Member States, in particular concerning the good repute and the professional knowledge and the competence of distributors of insurance and reinsurance products.

(3) The CAA shall also exchange information with competent authorities in other Member States concerning distributors of insurance and reinsurance products which have been subject to a sanction or other measure referred to in Chapter VII of "Directive (EU) 2016/97"[211] which may lead to the removal from the register of such distributors.

Subsection 7 – Complaints handling

***Art. 295-6a*– Complaints handling**

The complaints referred to in Article 2, paragraph 1, point l), must be submitted by letter duly signed by the claimant. The CAA shall acknowledge receipt without delay and provide a response within three months of the acknowledgement of receipt when the complaint concerns a specific insurance or reinsurance distributor. This period may be extended by the CAA to six months on detailed grounds to be provided by the CAA to the claimant. For complaints that do not concern a specific insurance or reinsurance distributor, the deadline for replying is six months. »*[212]*

"Section 6 - Information to be provided and rules of conduct

***Art. 295-7* - General principle**

(1) When carrying on an insurance distribution activity, distributors of insurance products shall always act honestly, fairly and professionally in accordance with the best interests of their customers.

(2) Without prejudice to Directive 2005/29/EC, all information related to the subject of this Chapter, including marketing communications, addressed by the distributor of insurance

[211] law of 15 December 2019
[212] law of 10 August 2018

products to customers or potential customers must be fair, clear and not misleading. Marketing communications must always be clearly identifiable as such.

(3) Distributors of insurance products shall not be remunerated or shall not remunerate or assess the performance of their employees and other collaborators in a way that conflicts with their duty to act in the best interests of their customers. In particular, a distributor of insurance products shall not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to itself or its employees or other collaborators to recommend a particular insurance product to a customer, when the distributor of insurance products could offer a different insurance product which would better meet the customer's needs.

(4) Luxembourg intermediaries may only contact undertakings established or authorised to offer their services in the State in which the risk is situated or the State of the commitment within the meaning of Article 43, points 15 and 17.

Art. 295-8 - General information provided by the insurance intermediary or insurance undertaking

(1) In good time before the conclusion of an insurance contract, an insurance intermediary must provide its customers with the following information:

a) its identity, address and the fact that it is an insurance intermediary;

b) whether or not it provides advice on the insurance products sold;

c) procedures for customers and other interested parties to register a complaint against insurance intermediaries and about the out-of-court complaint and redress procedures;

d) the register in which it has been included and the means of verifying its registration; and

e) whether it is representing the customer or is acting for and on behalf of an insurance undertaking or another insurance or reinsurance intermediary.

In the event that an insurance intermediary acts on behalf of one or more insurance undertakings, it must inform the customer of the name of the undertaking or undertakings for which it works.

In the event that an insurance intermediary works on behalf of one or more other intermediaries, natural or legal persons, it must also inform the customer about the name of those intermediaries, the register of distributors in which they are registered and their registration number.

(2) In good time before the conclusion of an insurance contract, an insurance undertaking shall provide its customers with the following information when acting in the context of direct selling:

a) its identity, address and the fact that it is an insurance undertaking;

b) whether or not it provides advice on the insurance products sold;

c) procedures for customers and other interested parties to lodge a complaint against insurance undertakings and about the out-of-court complaint and redress procedures.

Art. 295-9 - Conflicts of interest and transparency

(1) In good time before the conclusion of an insurance contract, an insurance intermediary shall provide the customer with at least the following information:

a) any direct or indirect holding representing 10 % or more of the voting rights or of the capital in a specific insurance undertaking it holds;

b) any direct or indirect holding representing 10 % or more of the voting rights or capital of the insurance intermediary held by a specific insurance undertaking or by the parent undertaking of a specific insurance undertaking;

c) the existence of any service agreement with a specific insurer going beyond the insurance distribution activity;

d) in relation to the contracts proposed or advised, whether the insurance intermediary:

(i) gives advice on the basis of a fair and personalised analysis; or

(ii) is under a contractual obligation to distribute exclusively the products of one or more insurance undertakings, in which case it shall provide the names of such insurance undertakings; or

(iii) is not under a contractual obligation to distribute exclusively products of one or more insurance undertakings, but does not give advice on the basis of a fair and personalised analysis of products, in which case it shall provide the names of the insurance undertakings with which it may and does conduct business;

e) the nature of the remuneration received in relation to the insurance contract;

f) whether in relation with the insurance contract, it is working:

(i) on the basis of a fee, that is the remuneration paid directly by the customer;

(ii) on the basis of a commission of any kind, that is the remuneration included in the insurance premium;

(iii) on the basis of any other type of remuneration, including an economic benefit of any kind offered or given in connection with the insurance contract; or

(iv) on the basis of a combination of any type of remuneration referred to in point f), under i) to iii).

(2) Where the fee is payable directly by the customer, the insurance intermediary shall inform the customer of the amount of the fee or, where this is not possible, the method for calculating the fee.

(3) If any payments other than current premiums and scheduled payments are made by the customer under the insurance contract after its conclusion, the insurance intermediary shall also provide the customer with the information required under this Section for each such payment.

(4) In case of direct sales, an insurance undertaking must inform its customer, in good time before the conclusion of an insurance contract, of the nature of the remuneration received by its staff directly involved in the sale of that insurance contract.

(5) If the customer makes payments under the insurance contract after its conclusion other than current premiums and payments under the insurance contract, the insurance undertaking must also provide the customer with the information to be provided under this Article for each such payment.

Art. 295-10 - Provision of advice and sales practices in the absence of advice

(1) When distributing insurance products to customers whose habitual residence or establishment is in the Grand Duchy of Luxembourg, any distributor of insurance products shall provide advice within the meaning of Article 279, paragraph 5, however the customer may agree to waive this advice individually in writing and before any act of distribution.

(2) Regardless of the decision taken under paragraph 1, prior to the conclusion of an insurance contract, the distributor of insurance products shall specify, on the basis of information obtained from the customer, the demands and needs of that customer and shall provide the customer with objective information about the insurance product in an comprehensive form in order to enable him to make an informed decision.

Any contract proposed must be consistent with the customer’s insurance demands and needs.

Where advice is provided prior to the conclusion of any specific contract, the distributor of insurance products is required to provide the customer with a personalised recommendation explaining why a particular product would best meet the customer's demands and needs.

(3) The details referred to in paragraph 2 shall be modulated according to the complexity of the insurance product being proposed and the type of customer.

(4) Where an insurance intermediary informs the customer, pursuant to Article 295-9, paragraph 1, point d, that it gives advice on the basis of a fair and personalised analysis, it shall give advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market to enable it to make a personal recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs.

(5) Without prejudice to Article 10 of the Law of 27 July 1997 on insurance contracts, as amended, prior to the conclusion of a contract, whether or not advice is given and irrespective of whether the insurance product is part of a package pursuant to Article 295-14, the distributor of insurance products shall provide the customer with relevant information about the insurance product in a comprehensible form in order to enable him to make an informed decision, while taking into account the complexity of the insurance product and the type of customer.

(6) In relation to the distribution of the non-life insurance products listed in Annex I, the information referred to in paragraph 5 must be provided by way of a standardised insurance product information document, in paper form or on another durable medium.

(7) The insurance product information document referred to in paragraph 6 shall be prepared by the manufacturer of the non-life insurance product having the following characteristics:

a) The insurance product information document shall:

(i) be a short and stand-alone document;

(ii) be presented and laid out in a way that is clear and easy to read, using characters of a readable size;

(iii) be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white;

(iv) be written in the official languages, or in one of the official languages, used in the part of the Member State in which the insurance product is offered or, if agreed by the consumer and the distributor, in another language;

(v) be accurate and not misleading;

(vi) contain the title " insurance product information document " at the top of the first page;

(vii) include a statement that pre-contractual and contractual information on the product is provided in other documents.

The insurance product information document may be provided together with other pre-contractual information required under this law or the Law of 27 July 1997 on the

insurance contract, as amended, provided that all the requirements set out in the first subparagraph are met.

b) The insurance product information document shall contain the following information:

(i) information on the type of insurance;

(ii) a summary of the insurance cover, including the main risks insured, the insured sum and, where applicable, the geographical scope and a summary of the excluded risks;

(iii) the means of payment of premiums and the duration of payments;

(iv) the main exclusions that make it impossible to claim compensation;

(v) obligations at the beginning of the contract;

(vi) obligations during the term of the contract;

(vii) obligations in the event of a claim;

(viii) the term of the contract, including the start and end dates of the contract;

(ix) the means of terminating the contract.

(8) Luxembourg distributors of insurance products must comply with the obligation to provide advice laid down by a Member State other than Luxembourg on the basis of Article 22, paragraph 2, subparagraph 2 of Directive (EU) 2016/97 for the sale of any insurance product or for certain types of insurance products under the freedom to provide services or the freedom of establishment to customers whose habitual residence or establishment is in that Member State.

Art. 295-11 - Information provided by insurance intermediaries on an ancillary basis

(1) Ancillary insurance intermediaries shall comply with the provisions of Article 295-8, paragraph 1, points a), c) and d), and Article 295-9, paragraph 1, point e).

(2) A Luxembourg insurance undertaking or an insurance intermediary approved in the Grand Duchy of Luxembourg, when carrying out a distribution activity through an ancillary insurance intermediary which is exempted pursuant to Article 1, paragraph 3, of Directive (EU) 2016/97, must ensure that:

a) information is made available to the customer, prior to the conclusion of the contract, about the identity and address of the insurance undertaking or intermediary, as well as on the complaint procedures referred to in Article 2, paragraph 1, point g);

b) appropriate and proportionate arrangements are in place to comply with Articles 295-7 and 295-14, and to consider the demands and needs of the customer before proposing the contract;

c) the insurance product information document referred to in 295-10, paragraph 6, is provided to the customer prior to the conclusion of the contract.

Art. 295-12 - Exemptions from the provision of information and flexibility clause

(1) The information referred to in Articles 295-7, 295-8 and 295-9 need not be provided when the distributor of insurance products carries out distribution activities related to the insurance of large risks.

(2) Where the distributor of insurance products is responsible for the provision of a mandatory occupational pension arrangement and an employee becomes a member of such an arrangement without having taken an individual decision to join it, the information referred

to in this Section shall be provided to him without delay after his enrolment in the arrangement concerned.

***Art. 295-13* - Information procedures**

(1) Any information provided to customers under Articles 295-8, 295-9, 295-10 and 295-19 shall be communicated:

a) on paper;

b) in a clear and accurate manner, comprehensible to the customer;

c) in an official language of the Member State where the risk is situated or of the Member State of the commitment or in any other language agreed upon by the parties; and

d) free of charge.

(2) By way of derogation from paragraph 1, point a), the information may be provided to the customer on one of the following media:

a) a durable medium other than paper, where the conditions set out in paragraph 4 are met; or

b) a website, where the conditions set out in paragraph 5 are met.

(3) However, where the information referred to in paragraph 1 is provided by means of a durable medium other than paper or by means of a website, a paper copy shall be provided to the customer upon request and free of charge.

(4) The information referred to in paragraph 1 may be provided to the customer on a durable medium other than paper where the following conditions are met:

a) the use of the durable medium is appropriate in the context of the business conducted between the distributor of insurance products and the customer; and

b) the customer has been given the choice to receive the information either on paper or on a durable medium, and has chosen the latter.

(5) The information referred to in paragraph 1 may be provided by means of a website if it is addressed personally to the customer or if the following conditions are met:

a) the provision of such information by means of a website is appropriate in view of the business conducted between the distributor of insurance products and the customer;

b) the customer has consented to be provided with such information by means of a website;

c) the customer has been notified by electronic means of the address of the website and the location on the website where such information can be accessed;

d) access to that information on the website is guaranteed for such period of time as the customer may reasonably need to consult it.

(6) For the purposes of paragraphs 4 and 5, the provision of information on a durable medium other than paper or by means of a website shall be regarded as appropriate with regard to business transactions between the distributor of insurance products and the customer if there is evidence that the customer has regular access to the internet. The provision by the customer of an e-mail address for the purpose of these business transactions shall be regarded as such evidence.

(7) In the case of telephone selling, the information provided to the customer by the distributor of insurance products prior to the conclusion of the contract, including the insurance product information document, shall be provided in accordance with the European Union rules applicable to the distance marketing of consumers financial services. Moreover,

even if the customer has chosen to obtain prior information on a durable medium other than paper in accordance with paragraph 4, it shall be provided by the distributor of insurance products to the customer in accordance with paragraph 1 or 2 immediately after the conclusion of the insurance contract.

Art. 295-14 - Cross-selling

(1) Where, in the context of a cross sale, an insurance product is offered with an ancillary product or service which is not an insurance contract, the distributor of insurance products shall inform the customer whether the various components of the cross sale can be purchased separately and, if so, shall provide an adequate description of each of these components, as well as separate evidence for the costs and charges associated with each component.

(2) In the circumstances referred to in paragraph 1, and where the insurance risk or the insurance coverage resulting from such a sale to a customer is different from the risk or insurance coverage associated with the individual components taken separately, the distributor of insurance products shall provide an adequate description of the individual components of the sale and shall explain how their interaction modifies the insurance risk or coverage.

(3) Where, in the context of a cross sale, an insurance product is ancillary to a good or service that is not insurance, the distributor of insurance products shall offer the customer the possibility to purchase the good or service separately. This paragraph shall not apply where an insurance product is ancillary to an investment service or activity within the meaning of Article 4, paragraph 1, point 2, of Directive 2014/65/EU, a credit agreement within the meaning of Article 4, paragraph 3 of Directive 2014/17/EU or a payment account within the meaning of Article 2, paragraph 3, of Directive 2014/92/EU.

(4) This Section does not prevent the distribution of multi-risk insurance policies.

(5) In the cases referred to in paragraphs 1 and 3, the insurance distributor shall specify the customer's demands and needs in relation to the insurance products that form part of the cross-selling.

(6) The CAA may intervene on a case-by-case basis to prohibit the sale of an insurance contract together with a ancillary service or product which is not an insurance contract, in the context of cross selling, where it can demonstrate that such practices causes serious harm to consumers.

Art. 295-15 - Product oversight and governance requirements

(1) Insurance product manufacturers shall maintain, operate and review a process for the approval of each insurance product, prior to its marketing or distribution to customers. A similar process should be provided for significant adaptations to an existing insurance product.

The product approval process shall be proportionate and appropriate to the nature of the insurance product.

The product approval process shall specify a identified target market for each product, ensure that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the defined target market, and take reasonable steps to ensure that the insurance product is distributed to the defined target market.

The insurance undertaking shall understand and regularly review the insurance products it offers or markets, taking into account any event that could materially affect the potential

risk to the identified target market, to assess at least whether the product remains consistent with the needs of the identified target market and whether the intended distribution strategy remains appropriate.

The insurance product manufacturer shall make available to distributors all appropriate information on the insurance product and the product approval process, including the defined target market of each insurance product.

Where a distributor of insurance products advises on, or proposes, insurance products which it does not manufacture, it shall have adequate arrangements in place to obtain the information referred to in subparagraph 5 and to understand the characteristics and identified target market for each insurance product.

(2) The policies, processes and arrangements referred to in this Article are without prejudice to all other requirements provided for in this Chapter, including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interest, and inducements.

(3) This Section does not apply to insurance products consisting of insurance of large risks."[213]

"Section 7 - Additional requirements for the distribution of insurance-based investment products

***Art. 295-16* - Scope of additional requirements**

Without prejudice to Articles 295-7 to 295-10, the provisions of this Section shall apply to the distribution of IBIPs:

a) either by an insurance intermediary;

b) or by an insurance undertaking.

***Art. 295-17* - Prevention of conflicts of interest**

Without prejudice to Article 295-7, an intermediary or insurance undertaking carrying on IBIP distribution activities shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable measures to prevent conflicts of interest, as defined in Article 295-18, from adversely affecting the interests of its customers. Those arrangements must be proportionate to the activities performed, the insurance products sold and the type of distributor.

***Art. 295-18* - Conflicts of interest**

(1) Insurance intermediaries and undertakings must take all appropriate measures to identify conflicts of interest between themselves, including their managers and employees, or any person directly or indirectly linked to them by control, and their customers or between two customers, that arise in the course of carrying out insurance distribution activities.

(2) Where the organisational or administrative arrangements made up by the insurance intermediary or insurance undertaking in accordance with Article 295-17 to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that the risk of damage to the customer's interests will be prevented, the insurance intermediary or insurance undertaking shall clearly disclose to the customer the general nature or sources of such conflicts of interest in good time before the conclusion of any insurance contract.

[213] law of 10 August 2018

(3) By way of derogation from Article 295-13, paragraph 1, the information referred to in paragraph 2 shall:

a) be communicated on a durable medium; and

b) include sufficient detail, taking into account the characteristics of the customer, to enable him to make an informed decision with respect to the insurance distribution activities in respect of which the conflict of interest arises.

Art. 295-19 **- Information to customers**

(1) Without prejudice to Articles 295-8 and 295-9, paragraphs 1 and 2, appropriate information shall be provided in good time before the conclusion of a contract to customers or potential customers with regard to the distribution of IBIPs, and with regard to all costs and related charges. This information shall include at least the following elements:

a) where advice is provided, it shall indicate whether the intermediary or insurance undertaking will provide the customer with a periodic assessment, as referred to in Article 295-20, of the suitablity of the IBIPs chosen by that customer;

b) with regard to information on IBIPs and proposed investment strategies, appropriate guidance on, and warnings of, the risks associated with IBIPs or in respect of particular investment strategies proposed;

c) with regard to information on all costs and related charges to be disclosed, information on the distribution of the IBIP, including

(i) the cost of advice, where relevant;

(ii) the distribution costs of the IBIP recommended to the customer or marketed to the customer including, where applicable, any payments by third parties.

This information should specify how the customer should pay for these costs.

Information on all costs and charges, including costs and charges in connection with the distribution of the IBIP, that are not caused by the occurrence of an underlying market risk, shall be in aggregated form to allow the customer to understand the overall cost as well as the cumulative effect on the return of the investment, and, where the customer so requests, a breakdown of costs and charges by item shall be provided. This information shall be provided to the customer on a regular basis, at least once a year, during the life cycle of the investment.

The information referred to in this paragraph shall be provided in a comprehensible form, in such a manner that customers or potential customers are reasonably able to understand the nature and risks of the IBIP offered and, consequently, to take investment decisions on an informed basis. This information may be provided in a standardised format.

(2) Without prejudice to Article 295-9, paragraph 1, e) and f) and Article 295-9, paragraph 3, where intermediaries or insurance undertakings pay or are paid any fee or commission, or provide or are provided a non-monetary benefit in connection with the distribution of an IBIP or an ancillary service, they shall be regarded as fulfilling their obligations under Article 295-7, paragraph 1, Article 295-17 or Article 295-18 only where the payment or benefit:

a) does not have a detrimental impact on the quality of the service provided to the customer; and

b) does not impair compliance of the intermediary or insurance undertaking's duty to act honestly, fairly and professionally in accordance with the best interests of its customers.

(3) Luxembourg insurance intermediaries and undertakings, carrying on their insurance distribution activities under the freedom to provide services or the freedom of establishment, shall comply with stricter rules adopted by a Member State other than Luxembourg pursuant to Article 29, paragraph 3, of Directive (EU) n° 2016/97 when concluding insurance contracts with customers whose habitual residence or establishment is in that Member State.

Art. 295-20 - Assessment of suitability and appropriateness, and reporting to customers

(1) Without prejudice to "Article 295-10, paragraph 2,"[214] when providing advice on an IBIP, the intermediary or insurance undertaking shall also obtain the necessary information on:

a) the knowledge and experience of the customer or potential customer in the investment field relevant to the specific type of product or service,

b) that person's financial situation, including the ability to bear losses, and

c) his investment objectives, including his risk tolerance,

to be able to recommend to the customer or potential customer the IBIPs suitable for him and that, in particular, are appropriate to his risk tolerance and ability to bear losses.

Where an insurance intermediary or insurance undertaking provides investment advice recommending a package of services or products bundled in accordance with Article 295-14, the overall bundled package must be appropriate as a whole.

(2) Without prejudice to Article 295-10, paragraph 2, an insurance intermediary or insurance undertaking, when carrying out insurance distribution activities without advice, shall ask the customer or potential customer to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or requested, in order to assess whether the insurance service or product envisaged is appropriate for the customer. Where a bundle of services or products is envisaged pursuant to Article 295-14, the assessment shall consider whether the overall bundled package is appropriate.

Where the insurance intermediary or insurance undertaking considers, on the basis of the information received in accordance with subparagraph 1, that the product is not appropriate for the customer or potential customer, it must warn the latter to that effect. This warning may be provided in writing in a standardised format.

Where customers or potential customers do not provide the information referred to in subparagraph 1, or where they provide insufficient information about their knowledge and experience, the insurance intermediary or insurance undertaking shall warn them that it is not in a position to determine whether the product envisaged is appropriate for them. This warning may be provided in a standardised format.

(3) Without prejudice to "Article 295-10, paragraph 2"[215], where IBIPs are distributed without advice in Luxembourg, insurance intermediaries or undertakings may carry on these activities without the need to obtain the information or determine the appropriateness as provided for in paragraph 2, provided that all the following conditions are met:

a) the activities refer to either of the following IBIPs:

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[214] law of 6 February 2025 (2)
[215] law of 6 February 2025 (2)

(i) contracts which only provide investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU and which do not incorporate a structure which makes it difficult for the customer to understand the risks involved; or

(ii) other non-complex insurance-based investments for the purpose of this paragraph;

b) the insurance distribution activity is carried out at the initiative of the customer or potential customer;

c) the customer or potential customer has been clearly informed that, in the provision of insurance distribution activity, the insurance intermediary or insurance undertaking is not required to assess the appropriateness of the IBIP or insurance distribution activity provided or offered and that the customer or potential customer does not benefit from the corresponding protection of the relevant conduct of business rules. This warning may be provided in a standardised format;

d) the intermediary or insurance undertaking complies with its obligations under Articles 295-17 and 295-18.

Luxembourg insurance intermediaries and insurance undertakings carrying on insurance distribution activities under the freedom to provide services or the freedom of establishment, when concluding insurance contracts with customers whose habitual residence or establishment is in a Member State other than Luxembourg and which does not make use of the derogation referred to in this paragraph, shall comply with the provisions applicable in that Member State.

(4) The insurance intermediary or insurance undertaking shall establish a record including

a) the document or documents agreed with the customer, setting out the rights and obligations of the parties; and

b) the other terms on which the services are provided to the customer.

The rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.

(5) The intermediary or insurance undertaking shall provide the customer with adequate information on the service provided on a durable medium. This information shall consist at least of periodic communications to its customers, which:

a) shall take into account the type and complexity of the IBIPs involved and the nature of the services provided to the customer, and

b) shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the customer.

(6) When providing advice on an IBIP, the intermediary or insurance undertaking shall provide the customer, prior to the conclusion of the contract, with a suitability statement on a durable medium, specifying the advice given and how it meets the preferences, objectives and other characteristics of the customer. The conditions set out in Article 295-13, paragraphs 1 to 4 shall apply.

(7) Where the contract is concluded using a means of distance communication which does not allow the prior transmission of the suitability statement, the insurance intermediary or insurance undertaking may provide the suitability statement on a durable medium immediately after the customer is bound by any contract, provided that the following two conditions are met:

a) the customer has consented to receiving the suitability statement after the conclusion of the contract; and

b) the insurance intermediary or insurance undertaking has given the customer the option of delaying the conclusion of the contract in order to receive the suitability statement before the conclusion of the contract.

Where the customer has agreed to receive the declaration of adequacy after the conclusion of the contract, the intermediary or insurance undertaking must provide it without undue delay and at least seven days before the expiry of the withdrawal period provided for in Article 100 of the Law of 27 July 1997 on the insurance contract, as amended.

(8) Where an insurance intermediary or insurance undertaking has informed the customer that it will carry out a periodic assessment of suitability in accordance with Article 295-19, paragraph 1, subparagraph 1, point a), the periodic report shall contain an updated statement of how the insurance-based investment meets preferences, objectives and other characteristics of the customer. »[216]

Chapter 4 – Common provisions applicable both to PSA's and *(...)*[217] intermediaries

Art. 296 - *Shareholdings*

"(1) The approval or registration of PSAs and intermediaries, legal persons, is subject to communication to the CAA of:

a) the identity of the direct or indirect shareholders or partners, either natural or legal persons, that have in the legal person to be approved or registered a qualifying holding of at least 10% of the share capital or voting rights and the amount of such holdings,

b) the identity of the natural or legal persons having close links with the legal person to be approved or registered, and

c) information demonstrating that such holdings and close links do not prevent the effective exercise of the CAA's supervisory functions.

Approval or registration shall be refused if, having regard to the need to ensure the sound and prudent management of the legal person to be approved or registered, the status of the shareholders or partners is not satisfactory or the proper exercise of the supervisory function of the CAA cannot be ensured.

The concept of sound and prudent management shall be assessed in the light of the evaluation criteria set out in paragraph "6"[218]."[219]

(2) Authorisation "or registration"[220] is subject to the condition that the ownership structure, including both direct and indirect shareholders, of the legal person seeking approval "or registration"[221] is transparent and organised in such a way that the authorities responsible for the prudential supervision of the legal person and, if applicable, the group to which it belongs are clearly identified and that such supervisions can be exercised without hindrance.

(3) *(repealed by the law of 10 August 2018)*

"(3*bis*)"[222] "Approval or registration shall be refused if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which

[216] law of 10 August 2018
[217] removed by the law of 10 August 2018
[218] law of 29 March 2024
[219] law of 10 August 2018
[220] law of 10 August 2018
[221] law of 10 August 2018
[222] law of 15 December 2019

the PSA or intermediary has close links, or difficulties involved in their enforcement, prevent the effective exercise of the supervisory task."[223]"

(3*ter*)"[224]"The persons referred to in paragraph 1 shall inform the CAA without undue delay of any change in the information provided under "paragraphs 1, 3 and 3*bis*"[225]."[226]

"(4) Any natural or legal person, acting alone or in concert with others, hereinafter the "proposed acquirer", with the intention of acquiring, either directly or indirectly, a qualifying holding of at least 10% of the share capital or voting rights in a legal person under this Part, or of increasing, either directly or indirectly, its qualifying holding such that the proportion of voting rights or shares held reaches or exceeds the thresholds of 20%, 33 1/3% or 50% or that the legal person becomes its subsidiary, hereinafter referred to as the "proposed acquisition", must notify its decision to the CAA in writing and in advance, specifying the intended amount of this holding and the relevant information under paragraph 5.

(5) The CAA shall make publicly available a list specifying the information that is necessary to carry out the assessment and that must be provided to it at the time of notification. The information required shall be proportionate and appropriate to the nature of the proposed acquirer and the proposed acquisition."[227]

(6) In assessing the notification provided for in paragraph 4 and the information referred to in paragraph 5, the CAA shall, in order to ensure the sound and prudent management of the legal person in which an acquisition is proposed and having regard to the likely influence of the proposed acquirer on the legal person, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

a) whether the proposed acquirer is fit and proper;

b) the fit and proper and professional experience credentials of any person who will run the business of the legal person as a result of the proposed acquisition;

c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged within the legal person in which the acquisition is proposed;

d) whether the legal person envisaged by the acquisition will be able to comply and continue to comply with the prudential requirements under this law, in particular, whether the group of which the legal person will become part following the acquisition, has a structure that makes it possible to exercise effective supervision, to effectively exchange information among the supervisory authorities and to determine the allocation of responsibilities among the supervisory authorities;

e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing is being or has been committed, or that the proposed acquisition could increase the risk thereof.

(7) Within a maximum period of three months from the date of the submission of the information provided for in the previous subparagraph, the CAA may declare its opposition to the said proposal if, taking into account the need to guarantee sound and prudent management of the legal person, it feels that the proposed acquirer is not a suitable choice. When there is no opposition, the CAA may set a maximum time limit for implementing the project.

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[223] law of 10 August 2018
[224] law of 15 December 2019
[225] law of 15 December 2019
[226] law of 10 August 2018
[227] law of 15 December 2020

(8) Any natural or legal person with the intention of relinquishing, whether directly or indirectly, a qualifying holding of at least 10% of the share capital or voting rights in a legal person under this Part, must notify the CAA in writing and in advance, specifying the intended amount of the disposal. Any natural or legal person must also notify the CAA in writing and in advance of any decision to decrease its qualifying holding such that the proportion of voting rights or shares held falls below the thresholds of 20%, 33 1/3% or 50% or that the legal person ceases to be its subsidiary.

(9) The legal persons under this Part are required to inform the CAA, as soon as they become aware of acquisitions or disposals of holdings in their share capital that cross, in either direction, any one of the thresholds referred to in points 4 and 8. In addition, at least once a year they must submit to the CAA a list identifying the shareholders or partners having qualifying holdings of at least 10% of the share capital or voting rights, as well as the amount of these holdings, as shown, in particular, from the information recorded at the annual general meeting of shareholders or partners, or from information received in respect of bonds issued by publicly traded companies on a regulated market.

(10) In cases where the influence exerted by any of the persons referred to in subparagraph 1 of paragraph 1 is likely to jeopardize the sound and prudent management of the legal person, the CAA shall take the appropriate measures to put an end to the situation.

The same measures may be taken with regard to natural or legal persons who do not comply with the obligation to give the advance notification referred to in paragraphs 4 and 8.

Where a holding is acquired despite the opposition of the CAA, the latter may suspend the exercise of the voting rights in relation to these shares or demand the nullity or annulment of the votes cast by them, without prejudice to any other penalties that may be applied.

Art. 297 – *Central administration and infrastructure*

(1) The approval and activity of a legal person acting as PSA or “intermediary”[228] shall be conditional on the production of evidence of the existence in Luxembourg of its central administration and its registered office.

The approval and activity "of a natural person acting as a PSA or intermediary"[229] shall be conditional on the production of evidence that the said person effectively exercises its activity in Luxembourg and has its principal establishment there.

(2) A PSA and a broker must prove a good administrative and accounting organisation as well as efficient internal control procedures. The administrative and accounting organisation and the internal control procedures must be comprehensive and adapted to the nature, scale and complexity of the business.

Art. 298 – *Documentation for PSA’s and insurance and reinsurance intermediaries*

(1) The persons referred to “in this Title”[230] who are subject to a financial assets requirement, are required to ensure that their account files and other documents relating to their business activities are held in the Grand Duchy of Luxembourg at all times,

a) either at the main place of business for natural persons,

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[228] Law of 10 August 2018
[229] Law of 10 August 2018
[230] Law of 10 August 2018

b) or at the registered office for legal persons,

c) or at any other place duly notified to the CAA.

(2) Without prejudice to Article 4, in order to monitor the obligations required by this law and its implementing regulations for the persons referred to in this Part, the CAA may request delivery, of all documents and any other useful elements by insurance or reinsurance undertakings or pension funds which those persons represent. It may also perform on-site controls at the professional premises of insurance or reinsurance undertakings or pension funds which those persons represent.

Art. 299 – *Review of the accounts*

(1) Unless they are required to appoint an approved auditor ("Réviseur d'entreprises agréé") pursuant to Article 69 of the law of 19 December 2002 on the trade and companies register and the accounting and annual accounts of companies, as amended, or they voluntarily choose to submit their annual accounts to a "réviseur d'entreprises agréé" for audit, the PSA's and insurance or reinsurance brokerage firms must entrust the audit of their annual accounting documents to a "commissaire" to be chosen from among the "réviseurs d'entreprises" who are members of the " Institut des Réviseurs d'Entreprises", or accounting experts who are members of the "Ordre des Experts Comptables". The appointment of such persons shall be made by the internal body responsible for managing the PSA or the insurance or reinsurance brokerage firm concerned.

(2) Any change to the persons appointed pursuant to paragraph 1 shall be notified to the CAA in advance.

"Art 299-1 - *Transmission of personal data to EIOPA*

When the CAA transmits personal data to EIOPA for storage in the register referred to in Article 3(4) of Directive (EU) No 2016/97, it shall inform the intermediaries concerned."[231]

Title IV

Professional secrecy and the fight against money-laundering and financing of terrorism

Chapter 1 – *Professional secrecy*

Art. 300 – *Insurance secrecy*

(1) "Natural and legal persons established in the Grand Duchy of Luxembourg, subject to the prudential supervision of the CAA or a foreign supervisory authority for the exercise of an activity covered by this law, as well as directors, members of the governing and supervisory bodies and executives, employees and other persons in the service of such natural and legal persons are obliged to keep secret the information entrusted to them in the exercise of their mandate or in the course of their professional activity, carried out either in or from the Grand Duchy of Luxembourg under the freedom to provide services.

[231] law of 10 August 2018

Disclosure of such information shall be sanctioned by the penalties provided for in Article 458 of the Penal Code.

The provisions of this paragraph shall also apply to natural and legal persons who have been authorised under this law and who are subject to reorganisation, controlled management, court-approved composition or arrangement with creditors aimed at preventing bankruptcy, winding-up or bankruptcy proceedings, as well as to all persons who are appointed, employed or mandated in any capacity in such proceedings and to persons who are in the service of such natural and legal persons.

The provisions of paragraphs 1 and 2 shall not apply to reinsurance undertakings, or to executives, delegated executives, employees or other persons in the service of such entities, except where such entities carry on the activity referred to in Article 269 for one or more direct insurance undertakings.

The provisions of paragraphs 1 and 2 shall not apply to pension funds, management companies of reinsurance undertakings or pension funds, or to executives, delegated executives, employees or other persons employed by such entities."[232]

(2) "The obligation of secrecy does not exist when disclosure of confidential information"[233] is authorised or imposed by or by virtue of a legal provision, even if it predates this law, or is necessary in the context of proper execution of the commitments arising from insurance contracts or to prevent and curb insurance fraud.

"(2a) The obligation of secrecy does not exist with regard to persons established in Luxembourg who are subject to prudential supervision by the CAA, the CSSF or the ECB, and who are bound by an obligation of secrecy punishable by penal sanctions, insofar as the information communicated to such persons is provided under a service level agreement.

In cases not falling under the first subparagraph, the obligation of secrecy does not exist with regard to the entities in charge of the provision of outsourced services and with regard to employees and other persons working for such entities, insofar as the policyholder has accepted, in accordance with the law or with the information arrangements agreed between the parties, the outsourcing of the outsourced services, the kind of information transmitted in the context of the outsourcing and the country of establishment of the entities providing the outsourced services. Persons having access in that respect to the information referred to in paragraph 1 must be subject by law to an obligation of professional secrecy or be bound by a confidentiality agreement. »[234]

"(3) The obligation of secrecy does not exist in regard to national and foreign authorities responsible for the prudential supervision of insurance undertakings acting within the scope of their legal powers for the purpose of such supervision and if the information communicated is covered by the professional secrecy of the supervisory authority receiving it. The transmission of the information necessary to a foreign authority for prudential supervision must be made through the parent company or the shareholder or partner included in the same supervision. However, the transmission of the necessary information to EIOPA, EBA, the European Securities and Markets Authority, or the ECB for the purpose of prudential supervision may be made directly to the aforementioned institution or agency of the European Union in cases where the legislation applicable in Luxembourg authorises it to request the relevant information directly from the person established in Luxembourg." The insurance undertaking, the reinsurance undertaking, the PSA or the brokerage firm forming part of a financial group shall guarantee access, where necessary, to information concerning specific business relationships to the internal supervisory bodies of the group, to the extent

[232] law of 27 February 2018
[233] law of 27 February 2018
[234] law of 27 February 2018

necessary for the overall management of legal and reputational risks relating to money laundering or terrorist financing within the meaning of Luxembourg law."[235]

"(4) The obligation of secrecy does not exist in regard to shareholders or partners whose fitness is a condition for approval of the undertaking concerned, insofar as the information communicated to such shareholders or partners is necessary for the assessment of consolidated risks or the calculation of consolidated prudential ratios or for the sound and prudent management of the undertaking.

The insurance undertaking, the reinsurance undertaking, the PSA or the brokerage firm forming part of a financial group shall guarantee access, where necessary, to information concerning specific business relationships to the internal supervisory bodies of the group, to the extent necessary for the overall management of legal and reputational risks relating to money laundering or terrorist financing within the meaning of Luxembourg law."[236]

(5) The obligation of secrecy does not exist in regard to the reinsurers and co-insurers of the undertaking concerned insofar as precise knowledge of details relating to individual files is needed for them to make a correct assessment of the risk and to enable them to make and execute their commitments.

(6) The obligation of professional secrecy does not exist between entities which belong to a financial conglomerate in respect of the information that such entities shall communicate among themselves or to the European supervisory authorities, or where applicable through the Joint Committee of European Supervisory Authorities, in accordance with Article 35 of Regulation (EU) No. 1093/2010, Regulation (EU) No. 1094/2010 and Regulation (EU) 1095/2010 respectively, insofar as such information is required for the performance of supplementary supervision referred to in Subtitle IV of Title II of Part II of this law.

(7) (subparagraph 1 repealed by the law of 27 February 2018)

The obligation of secrecy for Luxembourg insurance undertakings does not exist in regard to Luxembourg insurance brokers and Luxembourg brokerage firms insofar as this relates to confidential information concerning contracts in respect of which such brokers have acted as intermediaries. Policyholders concerned may nevertheless at any time object to the communication of contract-related information to their broker.

(8) Subject to the rules applicable in penal matters, "once any information of the kind referred to in paragraph 1 has been disclosed"[237], it may not be used for any purposes other than those for which its disclosure is permitted by law.

(9) No person bound by the obligation of secrecy referred to in paragraph 1 of this Article who lawfully discloses any information covered by that obligation shall, by reason of that disclosure alone, incur any criminal responsibility or civil liability.

"(10) Breach of confidentiality remains punishable even after the office, mandate, employment or practice of the profession has ended. » [238]

"(11) This Article is without prejudice to the amended law of 2 August 2002 on the protection of individuals with regard to the processing of personal data. »[239]

[235] law of 27 February 2018
[236] law of 27 February 2018
[237] law of 27 February 2018
[238] law of 27 February 2018
[239] law of 27 February 2018

Chapter 2 – The fight against money-laundering and financing of terrorism

Art. 301 – *Persons subject to obligations concerning the fight against money laundering and financing of terrorism*

(1) The following provisions of this Chapter shall apply to:

a) insurance undertakings approved or authorised in the Grand Duchy of Luxembourg for transactions governed by Annex II of this law;

b) pension funds under the prudential supervision of the CAA;

c) PSA's referred to in Chapter 1 of Title III of this law;

d) Insurance intermediaries approved or authorised to conduct their business in Luxembourg when they deal with life insurance and other investment-related services.

e) insurance and reinsurance undertakings as well as insurance intermediaries approved or authorised in the Grand Duchy of Luxembourg when they engage in credit or surety operations.

(2) The natural and legal persons referred to above shall be obliged to ensure compliance with the professional obligations defined in this Section by their branches and subsidiaries in Luxembourg and abroad within which they possess the legal means to enable them to impose their will on the running of the business, provided that such branches and subsidiaries themselves are not subject to equivalent professional obligations applicable in their place of establishment.

Art. 302 – *Professional obligations*

The natural and legal persons referred to in Article 301 are subject to the (...)[240] professional obligations as defined by "title I of "[241] the amended law of 12 November 2004 on the fight against money laundering and the financing of terrorism " and the measures taken for its implementation "[242].

(points a) to c) removed by the law of 13 February 2018)

Title V

Sanctions, coercive measures and appeals

Art. 303 – *"Sanctions and other administrative measures"*[243]

"(1) Legal persons subject to the supervision of the CAA and the members of the governing body, the effective managers or other persons responsible for an infringement of these legal persons and natural persons subject to such supervision, may be sanctioned by the CAA by:

(i) an administrative fine of 250,000 euros for insurance and reinsurance undertakings, and

[240] removed by the law of 13 February 2018
[241] law of 13 February 2018
[242] law of 13 February 2018
[243] law of 10 August 2018

(ii) an administrative fine of 50,000 euros for other natural or legal persons subject to the supervision of the CAA

for:"[244]

a) any violation of this law and its implementing regulations;

b) any violation of the Law of 27 July 1997 on the insurance contract, as amended, and its implementing regulations;

c) any violation of the Law on annual accounts and its implementing regulations;

d) any violation of the Law of 16 April 2003 regarding compulsory motor civil liability insurance, as amended, and its implementing regulations;

e) *(removed by the law of 13 February 2018)*

f) any violation of instructions issued by the CAA;

g) any refusal to supply accounting documents or other information requested;

h) any provision of documents or information which prove to be incomplete, inaccurate or false;

i) any violation of the rules governing the publication of balance sheets and accounting situations;

j) any obstruction to the exercise of the CAA's supervisory, inspection and investigatory powers;

k) any behaviour that may jeopardise the sound and prudent management of the establishment concerned.

The maximum amount of the administrative fine may be doubled should the offence be repeated within five years from the date on which the last sanction became final.

(2) The CAA may impose one of the following sanctions in place of, or in addition to, the administrative fine:

a) a warning;

b) a reprimand;

c) a prohibition on carrying out certain transactions and any other limitation on the conduct of business;

d) the temporary suspension of one or more of the "executives of the legal person under the supervision of the CAA"[245].

"e) the removal from the register of distributors of an ancillary insurance intermediary."[246]

"(2a) The sanctions and other administrative measures set out in paragraphs 1 and 2 shall also apply:

(i) to non-Luxembourg intermediaries operating in the territory of the Grand Duchy of Luxembourg under the right of establishment in the event of an infringement of the provisions of Chapters V and VI of Directive (EU) 2016/97;

(ii) to non-Luxembourg intermediaries operating in the territory of the Grand Duchy of Luxembourg either under the freedom to provide services or under the freedom of

[244] law of 10 August 2018
[245] law of 10 August 2018
[246] law of 10 August 2018

establishment in the event of infringements of the provisions referred to in Article 295-4."[247]

(3) If, after several warnings, "a person approved under this law"[248] does not remedy the problems or does not meet or no longer meets the conditions governing the taking-up and exercise of insurance or reinsurance business or if there are particularly serious shortcomings, the "CAA"[249] may impose one of the following sanctions in place of, or in addition to, the administrative fine:

a) withdrawal of the executive's authorisation;

b) total or partial withdrawal of the insurance or reinsurance undertaking's approval pursuant to Article 131;

"c) the withdrawal of the authorisation of an insurance or reinsurance intermediary or a PSA."[250]

The "CAA"[251] may also ",after preliminary investigation"[252] withdraw the authorisation granted to persons falling under this Article, if the authorisation has been obtained by making false statements or by any other irregular means or if such persons have seriously infringed the provisions of Luxembourg criminal law.

(…)[253]

(4) In the cases referred to in this Article, *(…)*[254] the CAA shall rule after the person has been given the opportunity of being heard through its defence submissions or duly summoned by registered letter. That person may be assisted or represented.

***"Art. 304* - Sanctions applicable to manufacturing or distribution of IBIP**

Without prejudice to Article 303, in the event of infringement of the conduct of business requirements set out in Articles 295-7 to 295-20 by insurance undertakings and intermediaries in the context of the distribution of IBIPs, persons subject to CAA supervision may be imposed by the CAA:

a) in the case of a legal person, an administrative fine amounting to:

(i) 5,000,000 euros or up to 5% of its total annual turnover according to the latest available accounts approved by the management body, where the legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total turnover shall be the total annual turnover as shown according to the latest available consolidated accounts approved by the management body of the ultimate parent undertaking; or

(ii) up to twice the amount of profits gained or losses avoided as a result of the infringement, where those can be determined;

b) in the case of a natural person, an administrative fine amounting to:

(i) 700,000 euros; or

(ii) up to twice the amount of profits gained or losses avoided as a result of the infringement, where those can be determined.

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[247] law of 10 August 2018
[248] law of 10 August 2018
[249] law of 21 July 2021 (1)
[250] law of 10 August 2018
[251] law of 21 July 2021 (1)
[252] law of 21 July 2021 (1)
[253] removed by the law of 21 July 2021 (1)
[254] removed by the law of 21 July 2021 (1)

Art. 304-1 - Effective application of sanctions and other measures

When determining the type of administrative sanctions or other measures and the level of administrative pecuniary sanctions, the CAA shall take into account all relevant circumstances, including, where appropriate:

a) the gravity and duration of the infringement;

b) the degree of responsibility of the natural or legal person concerned;

c) the financial strength of the natural or legal person concerned, as indicated either by the annual income of the natural person concerned or the total turnover of the legal person concerned;

d) the importance of profits gained or losses avoided by the natural or legal person concerned, in so far as they can be determined;

e) the losses caused to customers or third parties by the infringement, in so far as they can be determined;

f) the level of cooperation of the natural or legal person concerned with the competent authority;

g) measures taken by the natural or legal person concerned to prevent a recurrence of the infringement; and

h) any previous infringements committed by the natural or legal person concerned."[255]

Art. 305 – *Coercive fine*

In fulfilment of the responsibilities defined in Article 2, “paragraph 1, points b), d), e), f) and g),”[256] of this law, the CAA may impose a coercive fine upon the persons under its supervision, in order to compel these persons to act upon the injunctions issued by the CAA. The amount of this coercive fine, on the grounds of an observed failure to perform, may not exceed 1,250 euros per day, on the basis that the total amount imposed due to an observed failure to perform may not exceed 25,000 euros.

“Art. 306 – *Publication of sanctions*

The CAA shall publish, without delay, any sanctions and other measures imposed under Articles 303 and 304, including information on the type and nature of the offence and the identity of the persons responsible.

In the event of an appeal within the time limits set, publication shall be postponed until the appeal has been evacuated.

However, where the publication of the identity of legal persons, or the identity or personal data of natural persons, is considered disproportionate by the CAA following a case-by-case assessment of the proportionality of the publication of such data, or where the publication compromises the stability of financial markets or an ongoing investigation, the CAA may decide to postpone publication, not to publish sanctions or to publish them anonymously.”[257]

[255] law of 10 August 2018
[256] law of 15 December 2019
[257] law of 10 August 2018

Art. 307 – *Appeals*

Decisions taken by *(…)*[258] the CAA, relating to refusal or withdrawal of authorisation and decisions taken pursuant to Articles 303, 304 and 305 shall be reasoned and, unless the delay entails risks, they shall only occur after proceedings at which the parties are able to state their case. They shall be notified by registered letter or served on the person concerned by bailiff with indication of the paths of appeal.

Such decisions may be referred to the administrative court which shall rule as a court of first instance. Unless the appeal is lodged within one month of the date of notification or service of the appealed decision, it may be penalised by foreclosure.

In the event of the "CAA"[259] not having reached a decision on an application for approval of an insurance or reinsurance undertaking, the three-month time limit referred to in Article 4 of the law of 7 November 1996 on the organisation of the administrative courts shall be extended to six months.

Art. 308 – *The undertaking of insurance or reinsurance activity without prior authorisation*

Anyone who has contravened Article 44 of this law shall incur a term of imprisonment of between two months and one year and a fine of between "25,000"[260] and "5,000,000"[261] euros, or only one of these penalties.

Attempting to do so shall incur a term of imprisonment of between one and six months and a fine of between "12,500"[262] and "2,500,000"[263] euros, or only one of these penalties.

Art. 309 – *The undertaking of insurance or reinsurance intermediation "and ancillary insurance intermediation"[264] activity without prior authorisation or "registration"[265]*

"Shall incur a term of imprisonment of between eight days to three months and a fine of between 2,500 and 500,000 euros, or only one of these penalties, agents, brokers, managers of brokerage firms, sub-brokers and in general any person who carries out, in or from the Grand Duchy of Luxembourg, on behalf of a third party:

(i) insurance or reinsurance mediation activities; or

(ii) insurance mediation activities on an ancillary basis, with the exception of those referred to in Article 281-1, paragraph 1,

or who participates in such transactions without having obtained the approval *(…)*[266] provided for in Articles 272 and 280, paragraph 1, point a), or without having been registered in the register of distributors in accordance with Article 280, paragraph 1, point b).

Attempting to do so shall incur a term of imprisonment of between eight days and two months and a fine of between 1,250 to 250,000 euros, or only one of these penalties."[267]

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[258] removed by the law of 21 July 2021 (1)
[259] law of 21 July 2021 (1)
[260] law of 10 August 2018
[261] law of 10 August 2018
[262] law of 10 August 2018
[263] law of 10 August 2018
[264] law of 19 August 2018
[265] law of 10 August 2018
[266] removed by the law of 21 July 2021 (1)
[267] law of 10 August 2018

Title VI

Other provisions

Art. 310 – *Cooperation with Member States and the Commission*

(1) The CAA shall closely cooperate with the Commission for the purpose of facilitating the supervision of insurance and reinsurance within the EEA and of examining any difficulties which may arise in the application of Directive 2009/138/EC.

(2) The CAA shall inform the Commission of any major difficulties to which the application of Directive 2009/138/EC gives rise.

The CAA shall cooperate with the Commission and the other supervisory authorities to examine those difficulties as quickly as possible in order to find an appropriate solution.

"(3) The CAA shall work closely with the Commission and the other Member States to facilitate the supervision of institutions for occupational retirement provision.

The CAA shall inform the Commission and EIOPA of any major difficulties arising from the application of Directive 2016/2341.

The CAA shall cooperate with the Commission, EIOPA and other supervisory authorities to examine these difficulties as soon as possible in order to find an appropriate solution."[268]

Art. 311 – *The obligation to conclude an insurance contract with an insurance undertaking authorised in the Grand Duchy of Luxembourg*

In any case where Luxembourg legislation or regulation imposes, for whatever reason, the conclusion of an insurance contract with an insurance undertaking authorised in the Grand Duchy of Luxembourg, such obligation shall be deemed as fulfilled where the contract is concluded with an insurance undertaking of the EEA other than a Luxembourg undertaking, but authorised to operate on the territory of the Grand Duchy of Luxembourg under the right of establishment or under the right of freedom to provide services.

Title VII

Transitional and final provisions

Art. 312 – *Acquired rights of authorised persons under the law of 6 December 1991 on the insurance sector, as amended*

Any natural and legal persons authorised under the law of 6 December 1991 on the insurance sector, as amended, shall be deemed to be authorised in accordance with this law.

Any notification of a right of establishment or freedom to provide services made to or received by the CAA according to Articles 68, 71, 100-11, 109 and 109-2 of the law of 6 December 1991 on the insurance sector, as amended, shall be deemed as having been validly made or received in accordance with this law.

Art. 313 – *Former supervisory returns*

[268] law of 15 December 2019

The CAA shall be entitled to request the persons under its supervision to provide any supervisory return relating to any accounting exercise preceding the entry into force of this law.

Art. 314 – *Progressive introduction*

(repealed by the law of 21 July 2021 (1))

Art. 315 – *Transitional measures relating to insurance or reinsurance undertakings in run-off under the supervision of the CAA*

(1) Without prejudice to Article 42, CAA-supervised insurance undertakings which, before 1 January 2016, or CAA-supervised reinsurance undertakings which, after 10 December 2007 and before 1 January 2016, cease to underwrite new insurance or reinsurance contracts and only administer their existing portfolio in order to run-off their activity, shall not be subject to Subtitles I, II and III of Titles I and II of Part 2 of this law until the dates set out in paragraph 2 where either:

a) the undertaking has undertaken itself to the CAA that it will terminate its activity before 1 January 2019; or

b) the undertaking is subject to reorganisation measures set out in Title I, Subtitle IV and an administrator has been appointed.

Subject to the application of paragraphs 2 and 3, insurance and reinsurance undertakings under subparagraph 1 shall remain subject to the provisions of the law of 6 December 1991 on the insurance sector, as amended, and its implementing regulations.

(2) Insurance or reinsurance undertakings subject to the supervision of the CAA falling under:

a) paragraph 1, point a), shall be subject to Subtitles I, II and III of Titles I and II of Part 2 from 1 January 2019 or from an earlier date where the CAA is not satisfied with the progress that has been made towards running-off the undertaking's activity;

b) paragraph 1, point b), shall be subject to Subtitles I, II and III of Titles I and II of Part 2 from 1 January 2021 or from an earlier date where the CAA is not satisfied with the progress that has been made towards running-off the undertaking's activity.

(3) Insurance and reinsurance undertakings under the supervision of the CAA shall be subject to the transitional measures in paragraphs 1 and 2 only if the following conditions are met:

a) the undertaking is not part of a group, or if it is, all undertakings that are part of the group cease to underwrite new insurance or reinsurance contracts;

b) the undertaking shall provide the CAA with an annual report setting out what progress has been made in running-off its activity;

c) the undertaking has notified the CAA that it is applying the transitional measures.

Paragraphs 1 and 2 shall not prevent any undertaking from operating in accordance with Subtitles I, II and III of Titles I and II of Part 2.

(4) The CAA shall draw up a list of the regulated insurance and reinsurance undertakings concerned and communicate that list to all the other Member States.

Art. 316 – ***Transitional measures relating to the information to be provided for the purposes of supervision and publication to be made by Luxembourg insurance or reinsurance undertakings under the supervision of the CAA***

(1) For a period not exceeding four years from 1 January 2016, the deadline for insurance and reinsurance undertakings under the supervision of the CAA to submit the information referred to in paragraphs 1 to 4 of Article 62 on an annual or less frequent basis shall decrease by two weeks each financial year, starting from no later than twenty weeks after the undertaking's financial year end in relation to its financial year ending on or after 30 June 2016 but before 1 January 2017, to no later than fourteen weeks after the undertaking's financial year end in relation to its financial years ending on or after 30 June 2019 but before 1 January 2020.

(2) For a period not exceeding four years from 1 January 2016, the deadline for insurance and reinsurance undertakings under the supervision of the CAA to disclose the information referred to in Article 82 shall decrease by two weeks each financial year, starting from no later than twenty weeks after the undertaking's financial year end in relation to its financial year ending on or after 30 June 2016 but before 1 January 2017, to no later than fourteen weeks after the undertaking's financial year end in relation to its financial years ending on or after 30 June 2019 but before 1 January 2020.

(3) For a period not exceeding four years from 1 January 2016, the deadline for insurance and reinsurance undertakings under the supervision of the CAA to submit the information referred to in paragraphs 1 to 4 of Article 62 on a quarterly basis shall decrease by one week each financial year, starting from no later than eight weeks related to any quarter ending on or after 1 January 2016 but before 1 January 2017, to five weeks related to any quarter ending on or after 1 January 2019 but before 1 January 2020.

(4) Paragraphs 1, 2 and 3 of this Article shall apply to participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies at the level of the group pursuant to Articles 198 and 200, whereby the deadlines referred to in paragraphs 1, 2 and 3 shall be extended by six weeks respectively.

Art. 317 - ***Transitional measures relating to items included in basic own funds***

(1) Basic own-fund items not otherwise classified in Tier 1 in accordance with paragraph 4 of Article 102 shall nonetheless be included in Tier 1 basic own funds for up to 10 years after 1 January 2016, provided that those items:

a) were issued before 18 January 2015;

b) are part of the coverage items of the solvency margin available on 31 December 2015, which could have been used for up to 50 % of that solvency margin.

(2) Notwithstanding the classification criteria fixed in accordance with paragraph 4 of Article 102, basic own-fund items shall be included in Tier 2 basic own funds for up to 10 years after 1 January 2016, provided that those items:

a) were issued before 18 January 2015;

b) are part of the coverage items of the solvency margin available on 31 December 2015, which could have been used for up to 50 % of that solvency margin.

Art. 318 - ***Transitional measures relating to certain investments in tradable securities or other financial instruments***

With respect to insurance and reinsurance undertakings under the supervision of the CAA investing in tradable securities or other financial instruments based on repackaged loans that were issued before 1 January 2011, the requirements fixed by the delegated acts adopted by the Commission in accordance with paragraph 2 of Article 135 of Directive 2009/138/EC shall apply only in circumstances where new underlying exposures were added or substituted after 31 December 2014.

Art. 319 - ***Transitional measures concerning Luxembourg insurance and reinsurance undertakings which do not meet the solvency requirements at 31 December 2015***

Notwithstanding Article 124, paragraph 3 and without prejudice to paragraph 4 of that Article, where insurance and reinsurance undertakings under the supervision of the CAA comply with the Required Solvency Margin in accordance with the law of 6 December 1991 on the insurance sector, as amended, but do not comply with the Solvency Capital Requirement in the first year of application of Directive 2009/138/EC, the CAA shall require the insurance or reinsurance undertaking concerned to take the necessary measures to achieve the establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile, in order to ensure compliance with the Solvency Capital Requirement at 31 December 2017.

The insurance or reinsurance undertaking concerned shall, every three months, submit a progress report to the CAA setting out the measures taken and the progress made to establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile, in order to ensure compliance with the Solvency Capital Requirement.

The extension referred to in subparagraph 1 shall be withdrawn where that progress report shows that there was no significant progress in achieving the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of the risk profile, in order to ensure compliance with the Solvency Capital Requirement between the date of the observation of non-compliance of the Solvency Capital Requirement and the date of the submission of the progress report.

Art. 320 – ***Transitional measures relating to internal group models***

Where the CAA assumes the function of group supervisor, the ultimate parent undertaking may, during a period until 31 March 2022, apply to the CAA for the approval of an internal group model applicable to a part of a group only, where both the insurance or reinsurance undertaking and the ultimate parent undertaking are located in the same Member State and if this part forms a distinct part having an appreciably different risk profile from the rest of the group.

Art. 321 - ***Transitional measures concerning Luxembourg insurance and reinsurance undertakings which do not meet the solvency requirements at group level at 31 December 2015***

(1) Notwithstanding Article 190, paragraphs 2 and 3, the transitional provisions as referred to in Articles 316, 317, 318 and 320 and those referring to risk-free interest rates and to technical provisions as well as the provisions referring to the progressive implementation plan of the transitional measures relating to risk-free interest rates and to technical provisions shall equally apply at group level.

(2) Notwithstanding Article 190, paragraphs 2, 3 and 4, the transitional provisions as referred to in Article 319 shall equally apply at group level, where the participating insurance or reinsurance undertakings or the insurance and reinsurance undertakings belonging to a group comply with the Adjusted Solvency Margin Requirement referred to in the law of 6 December 1991 on the insurance sector, as amended, but do not comply with the group Solvency Capital Requirement according to this law.

"Art. 321-1 - ***Approval of existing pension funds***

Pension funds approved on the date of entry into force of this law and previously subject to the Law of 6 December 1991 on the insurance sector, as amended, and the regulations made pursuant to Article 26, paragraph 3, thereof, and the Law of 7 December 2015 on the insurance sector, as amended, and the regulations made pursuant to Article 35, paragraph 2, thereof shall be deemed to have been approved in accordance with the provisions of this law."[269]

Art. 322 – ***Specific provisions***

Reinsurance undertakings referred to in Article 42, paragraph 1 and pension funds referred to in Article 32, paragraph 1, point 14 shall remain subject to the legislation and regulations applicable to them before the entry into force of this law.

Art. 323 – ***Provision concerning repeal***

The law of 6 December 1991 on the insurance sector, as amended, shall be repealed from 1st January 2016, subject to the provisions of Articles 183, paragraph 3, 315, paragraph 1, 319 and 321 of this law, and until the dates set out therein.

Art. 324 – ***Entry into force***

This law shall enter into force on 1st January 2016 with the exception of the provisions of Articles 193, paragraph 3, 203, 205 paragraph 2, 206 subparagraph 2, 218, paragraph 2, and 314.

[269] law of 15 December 2019

ANNEX I

CLASSES OF NON-LIFE INSURANCE

A. Classification of risks according to classes of insurance

1. Accident (including industrial injury and occupational diseases):
   - fixed pecuniary benefits,
   - benefits in the nature of indemnity,
   - combinations of the two,
   - injury to passengers.

2. Sickness:
   - fixed pecuniary benefits,
   - benefits in the nature of indemnity,
   - combinations of the two.

3. Land vehicles (other than railway rolling stock)

   All damage to or loss of:
   - land motor vehicles,
   - 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:
   - river and canal vessels,
   - lake vessels,
   - sea vessels.

7. Goods in transit (including merchandise, baggage, and all other goods)

   All damage to or loss of goods in transit or baggage, irrespective of the form of transport.

8. Fire and natural forces

All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to:

- fire,
- explosion,
- storm,
- natural forces other than storm,
- nuclear energy,
- land subsidence,

9. Other damage to property

All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to hail or frost, and any event such as theft, other than that included in class 8.

10. Motor vehicle liability

All liability arising out of the use of motor vehicles operating on the land (including carrier's liability).

11. Aircraft liability

All liability arising out of the use of aircraft (including carrier's liability).

12. Liability for ships (sea, lake and river and canal vessels)

All 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 liability other than those referred to in classes 10, 11 and 12.

14. Credit:

- insolvency (general),
- export credit,
- instalment credit,
- mortgages,
- agricultural credit.

15. Suretyship:

- suretyship (direct),
- suretyship (indirect).

16. Miscellaneous financial loss:

- employment risks,
- insufficiency of income (general),
- bad weather,
- loss of benefits,
- continuing general expenses,
- unforeseen trading expenses,
- loss of market value,
- loss of rent or revenue,
- other indirect trading loss,
- other non-trading financial loss,
- other forms of financial loss.

17. Legal expenses

Legal expenses and costs of litigation.

18. Assistance

Assistance for persons who get into difficulties while travelling, while away from their home or their habitual residence.

B. Description of authorisations granted for more than one class of insurance

The following names shall be given to authorisations which simultaneously cover the following classes:

a) Classes 1 and 2: ‘Accident and Health Insurance’;

b) Classes 1 (fourth indent), 3, 7 and 10: ‘Motor Insurance’;

c) Classes 1 (fourth indent), 4, 6, 7 and 12: ‘Marine and Transport Insurance’;

d) Classes 1 (fourth indent), 5, 7 and 11: ‘Aviation Insurance’;

e) Classes 8 and 9: ‘Insurance against Fire and other Damage to Property’;

f) Classes 10, 11, 12 and 13: ‘Liability Insurance’;

g) Classes 14 and 15: ‘Credit and Suretyship Insurance’;

h) For all classes: “All Classes”.

ANNEX II

CLASSES OF LIFE INSURANCE

I. Life, death and mixed insurance, annuity insurance - other than marriage and birth assurance - not linked to investment funds, as well as ancillary insurances to such insurances;

II. Marriage assurance, birth assurance;

III. Life, death and mixed insurance, annuity insurance linked to investment funds;

IV. Permanent health insurance;

V. Tontines;

VI. Capital redemption operations;

VII. Management of group pension funds.

ANNEX III

List of directives, regulations and decisions issued from the European Union and referred to in various places in the law above

(Please note that, for practical reasons, the following list is shown in its original French text)

Directives

« Directive 85/611/CEE » : Directive 85/611/CEE du Conseil du 20 décembre 1985 portant coordination des dispositions législatives, réglementaires et administratives concernant certains organismes de placement collectif en valeurs mobilières (OPCVM)

« Directive 91/674/CEE » : Directive 91/674/CEE du Conseil, du 19 décembre 1991, concernant les comptes annuels et les comptes consolidés des entreprises d'assurance

« Directive 93/6/CEE » : Directive 93/6/CEE du Conseil, du 15 mars 1993, sur l'adéquation des fonds propres des entreprises d'investissement et des établissements de crédit

« Directive 2000/12/CE » : Directive 2000/12/CE du Parlement européen et du Conseil du 20 mars 2000 concernant l'accès à l'activité des établissements de crédit et son exercice

« Directive 2000/26/CE » : Directive 2000/26/CE du Parlement européen et du Conseil du 16 mai 2000 concernant le rapprochement des législations des États membres relatives à l'assurance de la responsabilité civile résultant de la circulation des véhicules automoteurs et modifiant les directives 73/239/CEE et 88/357/CEE du Conseil (Quatrième directive sur l'assurance automobile)

« Directive 2002/87/CE » : Directive 2002/87/CE du Parlement européen et du Conseil du 16 décembre 2002 relative à la surveillance complémentaire des établissements de crédit, des entreprises d'assurance et des entreprises d'investissement appartenant à un conglomérat financier, et modifiant les directives 73/239/CEE, 79/267/CEE, 92/49/CEE, 92/96/CEE, 93/6/CEE et 93/22/CEE du Conseil et les directives 98/78/CE et 2000/12/CE du Parlement européen et du Conseil

(the reference to Directive 2002/92/EC has been removed by the law of 10 August 2018)

(the reference to Directive 2003/41/EC has been removed by the law of 15 December 2019)

« Directive 2004/39/CE » : Directive 2004/39/CE du Parlement européen et du Conseil du 21 avril 2004 concernant les marchés d'instruments financiers, modifiant les directives 85/611/CEE et 93/6/CEE du Conseil et la directive 2000/12/CE du Parlement européen et du Conseil et abrogeant la directive 93/22/CEE du Conseil

« Directive 2004/109/CE » : Directive 2004/109/CE du Parlement européen et du Conseil du 15 décembre 2004 sur l'harmonisation des obligations de transparence concernant l'information sur les émetteurs dont les valeurs mobilières sont admises à la négociation sur un marché réglementé

« « Directive 2005/29/CE » : Directive 2005/29/CE du Parlement européen et du Conseil du 11 mai 2005 relative aux pratiques commerciales déloyales des entreprises vis-à-vis des consommateurs dans le marché intérieur et modifiant la directive 84/450/CEE du Conseil et les directives 97/7/CE, 98/27/CE et 2002/65/CE du Parlement européen et du Conseil et le règlement (CE) n° 2006/2004 du Parlement européen et du Conseil (« directive sur les pratiques commerciales déloyales »)»[270]

« Directive 2009/65/CE » : Directive 2009/65/CE du Parlement européen et du Conseil du 13 juillet 2009 portant coordination des dispositions législatives, réglementaires et

[270] law of 10 August 2018

administratives concernant certains organismes de placement collectif en valeurs mobilières (OPCVM)

« Directive 2009/138/CE » : Directive 2009/138/CE du Parlement européen et du Conseil du 25 novembre 2009 sur l'accès aux activités de l'assurance et de la réassurance et leur exercice (solvabilité II)

« Directive 2011/61/UE » : Directive 2011/61/UE du Parlement européen et du Conseil du 8 juin 2011 sur les gestionnaires de fonds d'investissement alternatifs et modifiant les directives 2003/41/CE et 2009/65/CE ainsi que les règlements (CE) n° 1060/2009 et (UE) n° 1095/2010

« Directive 2013/34/UE » : Directive 2013/34/UE du Parlement européen et du Conseil du 26 juin 2013 relative aux états financiers annuels, aux états financiers consolidés et aux rapports y afférents de certaines formes d'entreprises, modifiant la directive 2006/43/CE du Parlement européen et du Conseil et abrogeant les directives 78/660/CEE et 83/349/CEE du Conseil

« Directive 2013/36/UE » : Directive 2013/36/UE du Parlement européen et du Conseil du 26 juin 2013 concernant l'accès à l'activité des établissements de crédit et la surveillance prudentielle des établissements de crédit et des entreprises d'investissement, modifiant la directive 2002/87/CE et abrogeant les directives 2006/48/CE et 2006/49/CE

« Directive 2014/51/UE » : Directive 2014/51/UE du Parlement européen et du Conseil du 16 avril 2014 modifiant les directives 2003/71/CE et 2009/138/CE et les règlements (CE) n° 1060/2009, (UE) n° 1094/2010 et (UE) n°1095/2010 en ce qui concerne les compétences de l'Autorité européenne de surveillance (Autorité européenne des assurances et des pensions professionnelles) et de l'Autorité européenne de surveillance (Autorité européenne des marchés financiers.

« « Directive 2014/65/UE » : Directive 2014/65/UE du Parlement européen et du Conseil du 15 mai 2014 concernant les marchés d'instruments financiers et modifiant la directive 2002/92/CE et la directive 2011/61/UE »[271]

«« Directive (UE) 2016/97 » : Directive (UE) 2016/97 du Parlement européen et du Conseil du 20 janvier 2016 sur la distribution d'assurances »[272]

« Directive (UE) 2016/2341 » : Directive (UE) 2016/2341 du Parlement européen et du Conseil du 14 décembre 2016 concernant les activités et la surveillance des institutions de retraite professionnelle (IRP) »[273]

« « Directive (UE) 2019/2034 » : Directive (UE) 2019/2034 du Parlement européen et du Conseil du 27 novembre 2019 concernant la surveillance prudentielle des entreprises d'investissement et modifiant les directives 2002/87/CE, 2009/65/CE, 2011/61/UE, 2013/36/UE, 2014/59/UE et 2014/65/UE »[274].

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Regulations

« Règlement (CE) n° 1346/2000 » : Règlement (CE) n° 1346/2000 du Conseil du 29 mai 2000 relatif aux procédures d'insolvabilité

« Règlement (CE) n° 1435/2003 » : Règlement (CE) n° 1435/2003 du Conseil du 22 juillet 2003 relatif au statut de la société coopérative européenne

[271] law of 15 December 2019
[272] law of 10 August 2018
[273] law of 15 December 2019
[274] law of 21 July 2021 (2)

(référence au Règlement (CE) n° 2006/2004 supprimée par la loi du 6 avril 2024)

« Règlement (CE) n° 593/2008 » : Règlement (CE) n° 593/2008 du Parlement européen et du Conseil du 17 juin 2008 sur la loi applicable aux obligations contractuelles (Rome I)

« « Règlement (CE) n° 1060/2009 » : Règlement (CE) n° 1060/2009 du Parlement européen et du Conseil du 16 septembre 2009 sur les agences de notation de crédit »[275]

« Règlement (UE) n° 1092/2010 » : Règlement (UE) n° 1092/2010 du Parlement européen et du Conseil du 24 novembre 2010 relatif à la surveillance macroprudentielle du système financier dans l'Union européenne et instituant un Comité européen du risque systémique

« Règlement (UE) n° 1093/2010 » : Règlement (UE) n° 1093/2010 du Parlement européen et du Conseil du 24 novembre 2010 instituant une Autorité européenne de surveillance (Autorité bancaire européenne), modifiant la décision n° 716/2009/CE et abrogeant la décision 2009/78/CE de la Commission

« Règlement (UE) n° 1094/2010 » : Règlement (UE) n° 1094/2010 du Parlement européen et du Conseil du 24 novembre 2010 instituant une Autorité européenne de surveillance (Autorité européenne des assurances et des pensions professionnelles), modifiant la décision n° 716/2009/CE et abrogeant la décision n° 2009/79/CE de la Commission

« Règlement (UE) n° 1095/2010 » : Règlement (UE) n° 1095/2010 du Parlement européen et du Conseil du 24 novembre 2010 instituant une Autorité européenne de surveillance (Autorité européenne des marchés financiers), modifiant la décision n° 716/2009/CE et abrogeant la décision 2009/77/CE de la Commission

« Règlement (UE) n° 575/2013 » Règlement (UE) n° 575/2013 du Parlement européen et du Conseil du 26 juin 2013 concernant les exigences prudentielles applicables aux établissements de crédit et aux entreprises d'investissement et modifiant le règlement (UE) n° 648/2012

« « Règlement (UE) 2017/2394 » : Règlement (UE) 2017/2394 du Parlement européen et du Conseil du 12 décembre 2017 sur la coopération entre les autorités nationales chargées de veiller à l'application de la législation en matière de protection des consommateurs et abrogeant le règlement (CE) n° 2006/2004

« Règlement (UE) 2022/2554 » : Règlement (UE) 2022/2554 du Parlement européen et du Conseil du 14 décembre 2022 sur la résilience opérationnelle numérique du secteur financier et modifiant les règlements (CE) n° 1060/2009, (UE) n° 648/2012, (UE) n° 600/2014, (UE) n° 909/2014 et (UE) 2016/1011 »[276]

« « Règlement (UE) 2016/679 » : Règlement (UE) 2016/679 du Parlement européen et du Conseil du 27 avril 2016 relatif à la protection des personnes physiques à l'égard du traitement des données à caractère personnel et à la libre circulation de ces données, et abrogeant la directive 95/46/CE (règlement général sur la protection des données) »[277]

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Decisions

« Décision 2009/79/CE » : Décision 2009/79/CE de la Commission du 23 janvier 2009 instituant le comité européen des contrôleurs des assurances et des pensions professionnelles

[275] law of 15 December 2019
[276] law of 29 March 2024
[277] law of 6 February 2025 (1)

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"ANNEX IV

Definition of pension fund industries

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[278] law of 15 December 2019

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