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# Insurance Activities Act<sup>1</sup>

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RT I, 07.07.2015, 1

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Amended by the following acts

Passed	Published	Entry into force
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08.02.2017	RT I, 22.02.2017, 1	01.01.2018
05.04.2017	RT I, 20.04.2017, 1	15.01.2018
07.06.2017	RT I, 26.06.2017, 1	06.07.2017
14.06.2017	RT I, 30.06.2017, 1	01.07.2017
26.10.2017	RT I, 17.11.2017, 3	23.02.2018, partially 27.11.2017 and 03.01.2018. Date of entry into force of 23.02.2018 changed - enters into force on the date of implementation of Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (OJ L 26, 02.02.2016, p. 19–59), [RT I, 30.12.2017, 3] – Directive (EU) 2018/411 of the European Parliament and of the Council of 14 March 2018 amending Directive (EU) 2016/97 as regards the date of application of Member States' transposition measures (OJ L 76, 19.03.2018, p. 28-29) – 01.10.2018
13.12.2017	RT I, 30.12.2017, 3	03.01.2018
12.12.2018	RT I, 28.12.2018, 1	13.01.2019
19.12.2018	RT I, 10.01.2019, 1	20.01.2019
30.01.2019	RT I, 20.02.2019, 2	02.03.2019

## Chapter 1 General Provisions

### § 1. Scope of application of Act

(1) This Act regulates insurance activities, insurance distribution and supervision thereof.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2) The provisions of the Administrative Procedure Act apply to the administrative proceedings of the Financial Supervision Authority prescribed in this Act, taking account of the specifications provided by this Act and the Financial Supervision Authority Act.

(3) This Act does not apply to compulsory insurance for the purposes of § 422<sup>1</sup> of the Law of Obligations Act, unless otherwise provided for in the Act establishing compulsory insurance.

(4) This Act does not apply to the operations specified in Articles 5 and 9 of Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1–155).  
[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

## **§ 2. Insurance activities and insurance undertaking**

(1) Insurance activities shall mean the acceptance of the risks of a policyholder or insured person on the basis of an insurance contract and, upon the occurrence of the insured event, the compensation for damage, payment of agreed sums of money or performance of the contract as otherwise agreed.

(2) The insurance activities are divided into life insurance, non-life insurance and reinsurance. The classes and subclasses of insurance activities are provided for in §§ 12–14 of this Act.

(3) An insurance undertaking shall mean a company whose main permanent activity is insurance activities.

## **§ 3. Reinsurance activities and reinsurance undertaking**

(1) Reinsurance activities shall mean insurance activities, where the underwriting risks transferred to an insurance undertaking are accepted on the basis of a reinsurance contract with the objective to pay the insurance undertaking indemnities in an agreed amount in connection with the insured event specified in an insurance contract entered into between the insurance undertaking and a policyholder.

(2) A reinsurance undertaking shall mean an insurance undertaking whose main permanent activity is reinsurance activities.

(3) A reinsurance undertaking may accept, based on a reinsurance contract, also the underwriting risk transferred to another reinsurance undertaking (hereinafter *retrocession*) or the risks related to obligations assumed with respect to persons protected by a scheme of an occupational retirement provision specified in Directive (EU) 2016/2341 of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision (OJ L 354, 23.12.2016, p. 37–85).  
[RT I, 28.12.2018, 1 – entry into force 13.01.2019]

(4) A special purpose vehicle shall mean an undertaking, which is not an insurance undertaking, but which is engaged in reinsurance activities by financing the underwriting risks accepted on the basis of a reinsurance contract through issuing debt securities or some other such financial instruments and which has no refund obligations before an obligation under the reinsurance contract arises.

## **§ 4. Ancillary activities of insurance undertakings**

(1) An insurance undertaking may engage in ancillary activities as an agent of an insurance undertaking, credit institution, management company or investment firm if it does not threaten the financial situation and reliability of the insurance undertaking, and the interests of policyholders, insured persons, beneficiaries or other persons to whom the insurance undertaking provides services.

(2) An insurance undertaking shall notify the persons to whom the insurance undertaking provides services of its mandator and perform as an agent the obligations related to the provision of the service to the client arising from this Act, the Credit Institutions Act, the Investment Funds Act, the Funded Pensions Act, the Securities Market Act, the Law of Obligations Act and the legislation established on the basis thereof, including the duty of notifying clients.

(3) The mandator in whose name and on whose account an insurance undertaking acts shall be liable to third parties for the ancillary activities of the insurance undertaking. An agreement deviating from the provisions of this subsection shall be permitted only in case an insurance undertaking acts as an insurance agent and has entered into a liability insurance contract or guarantee contract which meets the requirements provided for in subsections 179 (1) and (2) of this Act to ensure compensation for damage caused by violation of an obligation arising from insurance distribution by the insurance undertaking.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(3<sup>1</sup>) If an insurance undertaking offers an insurance contract bundled with another product or service which is not an insurance service, the provisions of § 182<sup>1</sup> shall be applied to the insurance undertaking.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(4) The Financial Supervision Authority may prohibit, by a precept, the ancillary activities of an insurance undertaking if:

- 1) the ancillary activities do not meet the requirements provided for in this section;
- 2) the organisational structure, administration or competence of the employees of an insurance undertaking do not meet the requirements established for the provision of such service.

(5) Acting as an insurance agent shall be governed by the provisions of Chapter 10 of this Act and acting as an investment agent by the provisions of Chapter 13<sup>1</sup> of the Securities Market Act.

## **§ 5. Insurance distribution and distributor**

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(1) Insurance distribution means advising on, proposing, preparing, and entering into insurance contracts, and assisting in the administration and performance of such contracts. Insurance distribution includes also the provision of information concerning one or more insurance contracts in accordance with the criteria selected by clients through a website, application or other such environment, and the compilation of an insurance service ranking list, including price and service comparison, and providing information on price discounts, while the client is able to directly or indirectly enter into an insurance contract using a website, application or other such environment as a result of the aforesaid process.

(2) Reinsurance distribution means the distribution of insurance related to a reinsurance contract.

(3) An insurance distributor (hereinafter *distributor*) means the insurance undertaking and the insurance broker and insurance agent specified in § 174 of this Act.

(4) The following activities shall not be considered to constitute insurance distribution:

1) the provision of information on an incidental basis in the context of another professional activity which is not the activity of the insurance distributor, where the provider of information does not take any additional steps to assist in entering into or performing an insurance or reinsurance contract, and the entry into or performance of the contract is not the purpose of that activity;

2) the management of claims, and loss adjusting and expert appraisal of claims in the name of an insurance undertaking in relation to an economic or professional activity which is not the activity of the insurance distributor;

3) the mere provision of data and information on clients to insurance distributors where the provider of information does not take any additional steps to assist the parties in the entry into an insurance contract;

4) the mere provision of information about insurance or reinsurance services or insurance distributors to clients where the provider of information does not take any additional steps to assist the parties in the conclusion of an insurance contract.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

## **§ 6. Qualifying holding, company controlled by person, holding of voting rights and close links**

The provisions of §§ 8<sup>2</sup>, 9, 10 and 72<sup>1</sup> of the Securities Market Act shall be followed in determining of qualifying holding, company controlled by a person, holding of voting rights and close links in this Act.

## **§ 7. Parent undertaking, subsidiary and consolidation group**

(1) For the purposes of this Act, a parent undertaking is a person who controls at least one company or other legal person (hereinafter *subsidiary*) pursuant to subsections 10 (1) and (2) of the Securities Market Act. For the purposes of this Act, subsidiaries of subsidiaries of parent undertakings are deemed to be subsidiaries of the same parent undertaking.

(2) For the purposes of this Act, consolidation group is formed by:

1) parent undertaking together with subsidiaries;

2) parent undertaking and its subsidiaries together with related undertakings for the purposes of subsection 87 (5) of this Act;

3) companies or other legal persons under a common management pursuant to the provisions of a contract entered into, the memorandum of association or the articles of association or whose majority of the membership of the managing bodies is formed by the same persons until the consolidated annual financial report is approved.

## **§ 8. Captive insurance undertaking and captive reinsurance undertaking**

(1) A captive insurance undertaking shall mean an insurance undertaking where no other insurance undertaking or undertaking belonging to the same consolidation group with this insurance undertaking holds a participation and which accepts on the basis of an insurance contract only the risks of an undertaking holding a participation in the captive insurance undertaking or an undertaking belonging to the same consolidation group with the captive insurance undertaking.

(2) A captive reinsurance undertaking shall mean a reinsurance undertaking where no other insurance undertaking or undertaking belonging to the same consolidation group with this insurance undertaking holds a participation and which accepts on the basis of a reinsurance contract only the risks of an undertaking holding a participation in the captive insurance undertaking or an undertaking belonging to the same consolidation group with the captive insurance undertaking.

## § 9. Country of location of underwriting risk

(1) For the purposes of this Act, the country of location of the underwriting risk shall be considered a country:

- 1) in which the insured immovable or construction works or construction works and their contents are located, in so far as the contents are covered by the same insurance policy;
- 2) in which a vehicle is entered in the register, or
- 3) in which an insurance contract covering risks related to travel services for a duration of four months or less has been entered into.

(2) In addition to the provisions of clause (1) 2) of this section, the country of location of the underwriting risk shall also be considered the state where a land vehicle is to be dispatched or was dispatched pursuant to Article 15(1) of the codified version of Directive 2009/103/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ L 263, 07.10.2009, p. 11–31).

(3) In all cases not provided for in subsection (1) of this section, the country of location of the underwriting risk shall be considered the state which, relying on the policyholder's data, at the moment of entry into the contract:

- 1) is the residence of the policyholder who is a natural person, or
- 2) is the place of business related to the insurance contract of a policyholder who is legal person.

## § 10. Business name and trade mark of insurance undertaking

(1) The business name of an insurance undertaking shall include the word "*kindlustus*" [insurance] in Estonian or a foreign language.

(2) The word "*kindlustus*" both as a simple word or part of compound word and its foreign language equivalents may be used in its business name or trade mark only by an insurance undertaking or insurance agent which is a company, unless otherwise provided for in this Act.

(3) The provisions of subsection (2) of this section do not extend to non-profit associations the members of which are only insurance undertakings or insurance agents and the objective of the activities of which is only the protection of the rights of policyholders, insured persons or beneficiaries.

## § 11. Operating as insurance undertaking and reinsurance undertaking

(1) An Estonian insurance undertaking may operate only as *aktsiaselts* [public limited company], European company, commercial association or European cooperative society.  
[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

(2) The provisions of the Commercial Code, Commercial Associations Act, Council Regulation (EC) No 2157/2001 on the Statute for a European company (SE) Implementation Act and Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society (SCE) Implementation Act with the specifications arising from this Act apply to insurance undertakings.  
[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

(3) An insurance undertaking may only engage as commercial activities in insurance activities and reinsurance activities and conduct other transactions and acts directly related to the aforementioned activities, if these are directly ancillary or supplementary to its principal activity, and engage in the ancillary activities specified in § 4 of this Act.

(4) The provisions of subsection (3) of this section do not affect the validity of the transactions and acts of insurance undertakings.

(5) A reinsurance undertaking may only engage in reinsurance activities and conduct other transactions and acts directly arising from the aforementioned activities, if these are directly ancillary or supplementary to its principal activity, and engage in the ancillary activities specified in § 4 of this Act. In addition, a reinsurance undertaking may perform the same duties and engage in the same activities as an insurance holding company specified in subsection 87 (6) of this Act.

(6) The provisions of subsection (5) of this section do not affect the validity of the transactions and acts of reinsurance undertakings.

## § 11<sup>1</sup>. Specifications applied to insurance associations

(1) An insurance undertaking operating as a commercial association (hereinafter *insurance association*) is founded for an unspecified term.

(2) If the activities planned by an insurance association involve offering obligatory liability insurance provided for in § 520 of the Law of Obligations Act, the articles of association of the insurance association shall not provide for terms restricting the rights of a policyholder to enter into an insurance contract with the insurance association if the policyholder complies with the conditions specified in the standard terms.

(3) In addition to what is specified in subsection 7 (1) of the Commercial Associations Act, an insurance association shall submit a notice of a credit institution or payment institution concerning the payment of the share capital together with the petition to the commercial register.

(4) In addition to the data specified in § 8 of the Commercial Associations Act, the amount of the share capital of the insurance association shall be entered in the commercial register.

(5) An insurance association shall publish the articles of association of the insurance association on its website.

(6) The provisions concerning the liability of members provided for in the third sentence of subsection 1 (2) and in § 34, 36 and 37 of the Commercial Associations Act shall not apply to an insurance association.

(7) A member of an insurance association has the right to leave the insurance association if he or she does not have any outstanding obligations to the insurance association.

(8) An insurance association shall prescribe in its articles of association that no compensation shall be paid or that the term for making the payment provided for in subsection 33 (3) of the Commercial Associations Act shall be extended upon termination of membership if after making these payments the own funds and basic own funds of the insurance undertaking would not be sufficient for compliance with the requirements provided for by this Act and legislation established on the basis thereof.

(9) The legal reserve of an insurance association shall be at least one-tenth of the share capital, unless a larger amount is prescribed by the articles of association. At least one-twentieth of the net profit shall be entered in the legal reserve each year until the legal reserve reaches the prescribed amount.

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

## **§ 12. Classes and subclasses of non-life insurance**

(1) The classes of non-life insurance are:

- 1) accidents insurance;
- 2) sickness insurance;
- 3) land vehicles insurance;
- 4) railway rolling stock insurance;
- 5) aircraft insurance;
- 6) water craft insurance;
- 7) goods in transit insurance;
- 8) fire and natural forces insurance;
- 9) other property damage insurance;
- 10) motor vehicle liability, including motor third party liability insurance;
- 11) aircraft liability insurance;
- 12) water craft liability insurance;
- 13) general liability insurance;
- 14) credit insurance;
- 15) suretyship insurance;
- 16) miscellaneous financial loss insurance;
- 17) legal expenses insurance;
- 18) assistance insurance.

(2) The fire and natural forces insurance shall not comprise the insurance of property specified in clauses (1) 3)–7) of this section.

(3) The other property damage insurance shall comprise the insurance of property not specified in clauses (1) 3)–7) of this section against frost and hail damage, theft and other risks not specified in clause 8).

(4) The general liability insurance shall not comprise the insurance of vehicles specified in clauses (1) 10)–12) of this section.

(5) The assistance insurance shall comprise immediately making available the assistance to persons who, in the cases and under the conditions provided for in the insurance contract, encounter difficulties while travelling or being away from their home or permanent residence. The provision of assistance shall comprise monetary or non-monetary compensation, but it shall not comprise the routine maintenance of a vehicle, including after-sales technical maintenance, indication or provision of aid as an intermediary.

[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

(6) This Act shall not apply to assistance services which comply with the terms and conditions provided for in Article 6 of Directive 2009/138/EC of the European Parliament and of the Council.

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

(7) The classes of non-life insurance shall be divided into subclasses provided for in the Annex to this Act.

### § 13. Classes of life insurance

(1) The classes of life insurance are:

- 1) term and whole life insurance;
- 2) insurance on survival to a stipulated age;
- 3) term and whole life insurance and on survival to a stipulated age;
- 4) annuities;
- 5) accidents insurance as supplementary insurance;
- 6) sickness insurance as supplementary insurance;
- 7) birth insurance and marriage insurance;
- 8) unit-linked life insurance;
- 9) long-term sickness insurance not subject to cancellation;
- 10) tontines;
- 11) capital redemption operations;
- 12) management of an occupational pension fund;
- 13) activities specified in Article 2(3)(b)(v) of Directive 2009/138/EC of the European Parliament and of the Council.

(2) Annuities shall mean a life insurance where the periodic payment of indemnities is agreed upon the entry into the insurance contract. The insurance activities which comprise the entry into insurance contracts for mandatory funded pension specified in Division 8 of Chapter 2 of the Funded Pensions Act (hereinafter *pension contract*) shall be considered the insurance activities specified in Article 3 of Directive 2009/138/EC of the European Parliament and of the Council.

(3) Unit-linked life insurance shall mean the life insurance specified in clauses (1) 1)–4) and 7) of this section where the insurance indemnity depends on the value of the underlying assets.

(4) Tontines shall mean a life insurance where the insurance indemnity is formed from the contributions jointly made by the policyholders and the indemnity is distributed upon disbursement among the policyholders who are alive after the expiry of the contract or among the beneficiaries.

(5) Capital redemption operations shall mean capital redemption based on actuarial calculation where an insurance undertaking undertakes commitments of specified duration and amount to the policyholder or the beneficiary in return for a single insurance premium or regular insurance premiums agreed upon in the life insurance contract.

(6) Management of occupational pension funds shall comprise management of a guaranteed occupational pension fund, a defined-benefit occupational pension fund and an occupational pension fund covering mortality, survival and incapacity for work risks, which are offered to employees, public servants and members of managing and controlling bodies of an employer whose place of residence or registered office is in a State party to the Agreement on the European Economic Area (hereinafter *Contracting State*). The provisions of the Investment Funds Act concerning defined-benefit occupational pension funds shall not apply with regard to management of occupational pension funds.

[RT I, 31.12.2016, 3 - entry into force 10.01.2017]

### § 14. Classes of reinsurance

The classes of reinsurance are:

- 1) reinsurance of non-life insurance;
- 2) reinsurance of life insurance.

## Chapter 2 Right to Operate as Insurance Undertaking

### Division 1 Authorisation

#### § 15. Authorisation

(1) In order to engage in insurance activities, a company shall hold an authorisation.

(2) The Financial Supervision Authority shall grant authorisations to companies founded in Estonia. The registered office and head office of an insurance undertaking who has obtained an authorisation from the Financial Supervision Authority shall be in Estonia.

[RT I, 20.04.2017, 1 - entry into force 15.01.2018]

(3) Authorisations shall be valid in all the Contracting States based on the terms and conditions provided for in this Act.

(4) Authorisations shall be granted for an unspecified term.

(5) Authorisations shall not be transferable, and the use thereof by other persons shall be prohibited.

#### **§ 16. Scope of authorisations**

(1) An authorisation shall be granted for engaging in one or several classes or subclasses of insurance activities. An authorisation for engaging in a class of insurance activities shall also comprise an authorisation for engaging the subclasses of this class.

(2) An insurance undertaking may engage in the classes and subclasses of insurance activities for which the insurance undertaking holds an authorisation.

(3) In addition to the provisions of subsection (2) of this section, an insurance undertaking engaging in non-life insurance may engage in classes or subclasses of insurance activities without an additional authorisation if the risk additionally insured by the insurance undertaking is related to the object or person insured on the basis of the class or subclass of insurance activities indicated in the authorisation, and the specified risk and object or person are insured on the basis of the same insurance contract, and in this respect the additionally underwriting risk shall not significantly exceed the main risk insured on the basis of the same insurance contract.

(4) The provisions of subsection (3) of this section do not apply to credit insurance, suretyship insurance and legal expenses insurance, unless the legal expenses insurance is an additional insurance of assistance insurance, water craft insurance or water craft liability insurance.

(5) An insurance undertaking shall not simultaneously be engaged in life insurance and non-life insurance, except in the case specified in subsection (6) of this section.

(6) An insurance undertaking engaged in life insurance may be simultaneously engaged in life insurance and the classes of non-life insurance specified in clauses 12 (1) 1) and 2) of this Act.

(7) An insurance undertaking may be simultaneously engaged either in life insurance and the reinsurance of life insurance or non-life insurance and the reinsurance of non-life insurance.

(8) A reinsurance undertaking may be engaged in reinsurance of non-life insurance and reinsurance of life insurance.

#### **§ 17. Application for authorisation**

(1) Upon application for an authorisation, the member of the management board shall submit to the Financial Supervision Authority a written application together with the following information and documents:

1) a copy of the effective articles of association and, in the case of an operating company, also the resolution of the general meeting on amendment of the articles of association and the amended text of the articles of association;

2) upon foundation of a company, a notarised copy of the memorandum of association or foundation resolution and a notice issued by a credit institution regarding the payment of share capital;

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

3) the opening balance of the applicant and the latest balance, income statement and the three last annual reports, if such documents exist;

4) a scheme of operations in conformity to the requirements provided for in § 18 of this Act;

5) a confirmation concerning the availability of own funds and basic own funds pursuant to subsection 58 (2) of this Act;

6) in the case provided for in subsection 16 (6) of this Act, a confirmation concerning the availability of eligible basic own funds required to cover the floor of the Minimum Capital Requirement provided for in clause 82 (7) 4) and concerning the compliance with the requirements provided for in subsection 58 (3);

7) information on the members of the management board and supervisory board and responsible persons specified in subsection 96 (5) of this Act which includes each person's name, personal identification code or date of birth in the absence thereof, residence, educational background, a complete list of places of employment and positions and, in the case of members of the management board, a description of the area of responsibility of the specified persons, and documents in proof of their conformity to the requirements of this Act which the applicant deems necessary to submit;

8) the name and registry code of an audit firm;

9) a list of the shareholders which sets out the name, the registry code or personal identification code of each shareholder, or the date of birth in the absence thereof, and information on the amount of contribution, number of shares and votes acquired or owned by each shareholder;

- 10) the information specified in subsection 118 (4) of this Act on persons having a qualifying holding in the applicant and exercising control over the applicant;
- 11) information on companies in which the share of the applicant or any member of its management board or supervisory board exceeds 20 per cent or which are controlled by the applicant, which also sets out the amount of share capital of the company, a list of the areas of activity and the size of the holding of the applicant and the members of its management board or supervisory board or the circumstances of exercising the control;
- 12) the description of the system of governance compliant with the requirements provided for in §§ 96–104 of this Act and the internal rules specified in § 105 of this Act or a draft thereof;
- 13) if the application is submitted for engagement in motor third party liability insurance, the confirmation of the Motor Insurance Fund specified in § 10 of the Motor Third Party Liability Insurance Act regarding the applicant's membership in the Fund and the name and address of a settler of cross-border claims for each contracting state to be appointed by the applicant on the basis of subsection 51 (1) of the Motor Third Party Liability Insurance Act;
- 14) if the planned insurance activities envisage the entry into pension contracts, the applicant's confirmation that the applicant assumes the obligation to pay the single contribution to the Pension Contracts Sectoral Fund prescribed in the Guarantee Fund Act;
- 15) if the planned insurance activities envisage the entry into pension contracts, the standard terms of pension contracts;
- 16) a certificate concerning payment of the processing fee provided for in § 45<sup>1</sup> of the Financial Supervision Authority Act.

(1<sup>1</sup>) The partnership agreement or articles of association of an insurance undertaking must set forth that the registered office and head office of an insurance undertaking is in Estonia.  
[RT I, 20.04.2017, 1 - entry into force 15.01.2018]

(2) The information and documents specified in clauses (1) 1)–3) and 7)–12) of this section need not be submitted upon application for an authorisation, if the applicant already holds an authorisation and the applicant wishes to extend its business for engaging in some class or subclass of insurance activities for which the applicant does not hold an authorisation.

(3) The accuracy of information and documents submitted with regard to persons specified in clauses (1) 7) and 10) of this section shall be confirmed by such persons by their signatures.

(4) The application for an authorisation of a special purpose vehicle shall be governed by the provisions of Article 318 of Commission Delegated Regulation (EU) No. 2015/35 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (text with EEA relevance) (OJ L 12, 17.01.2015, p. 1–797).

## § 18. Scheme of operations

(1) A scheme of operations shall set out:

- 1) a list of the planned classes and subclasses of insurance activities and a description of the nature of the risks to be covered and the commitments to be undertaken;
- 2) the planned amount of reinsurance and the principles of reinsurance for each class and subclass of insurance specified in subsection (1) of this section;
- 3) a description and amount of eligible basic own funds corresponding to the floor of the Minimum Capital Requirement;
- 4) the estimated costs of commencement of insurance activities and a description of the financial resources intended to meet these costs.

(2) In addition to the items specified in subsection (1) of this section, a scheme of operations shall contain the following with regard to the first three years of activity of the insurance undertaking:

- 1) the estimated balance sheet;
- 2) an estimate of the future Solvency Capital Requirement based on the estimated balance sheet pursuant to Subdivision 1 of Division 4 of this Chapter 3 of this Act and the actuarial principles to be used in making the estimate;
- 3) an estimate of the future Minimum Capital Requirement based on the estimated balance sheet pursuant to Subdivision 4 of Division 4 of this Chapter 3 of this Act and the actuarial principles to be used in making the estimate;
- 4) estimates of the technical provisions and the financial resources intended to meet the Solvency Capital Requirement and the Minimum Capital Requirement;
- 5) in case of engaging in non-life insurance and reinsurance, the estimated volume of insurance premiums, claims and operating expenses, excluding the founding costs;
- 6) in case of engaging in life insurance, a plan setting out a description of the income and expenditure arising from insurance activities, including the insurance premiums to be transferred to reinsurance undertakings and the indemnities to be received from reinsurance undertakings.

(3) If an application is submitted for engaging in assistance insurance, a scheme of operations shall also contain a description of the means necessary for the provision of assistance in addition to that provided for in subsections (1) and (2) of this section.



(4) A reinsurance undertaking shall submit instead of the information specified in clause (1) 2) of this section the principles and volume of retrocession planned with regard to each class of reinsurance.

(5) If the planned insurance activities of an insurance undertaking envisage the entry into pension contracts, the insurance undertaking is required to submit to the Financial Supervision Authority in addition to the information provided for in subsections (1) and (2) of this section the technical business plan, which shall contain at least the following descriptions:

- 1) calculation of the pension payment;
- 2) calculation of the technical provision;
- 3) calculation of the surrender value;
- 4) distribution of the profit of the pension contracts.

[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

(6) During three years after granting the authorisation, an insurance undertaking shall submit, at the request of the Financial Supervision Authority, a report on the implementation of the scheme of operations within four months after the end of the corresponding financial year.

## **§ 19. Review of applications for authorisations**

(1) The Financial Supervision Authority may refuse to review an application for an authorisation if the application contains essential deficiencies.

(2) If, during the processing of an application for an authorisation, amendments are made to the information or documents specified in subsection 17 (1) of this Act, the applicant shall promptly submit the corresponding amended information and documents to the Financial Supervision Authority. If an amendment is essential, the Financial Supervision Authority may consider as the beginning of the term in the proceeding the day of receipt of information concerning this essential amendment. In such case, the Financial Supervision Authority shall notify the applicant of a new term in the proceeding.

(3) The Financial Supervision Authority may request the submission of additional information and documents within a reasonable term determined by the Financial Supervision Authority, if it is not convinced on the basis of the information and documents specified in § 17 of this Act as to whether the applicant for an authorisation has adequate facilities for the insurance activities or whether the applicant meets the requirements for insurance undertakings prescribed by law or other legislation or if other circumstances relating to the applicant need to be verified.

(4) In order to verify the information submitted by an applicant, the Financial Supervision Authority may make inquiries from databases, perform on-site inspections, order an expert assessment or special audit, request information from the acquirers of qualifying holding and shareholders, obtain oral explanations from the members of applicant's management board and supervisory board, audit firms, internal auditors, representatives thereof and, if necessary, from third parties concerning the content of documents and facts which are relevant in making a decision on the granting of an authorisation.

(5) Upon processing of an application for an authorisation, the Financial Supervision Authority shall cooperate with the financial supervision authority of the respective Contracting State if:

- 1) the applicant is a parent undertaking or subsidiary of an insurance undertaking, investment firm, investment fund, credit institution, management company or another subject of financial supervision founded in another Contracting State;
- 2) a subsidiary of the parent undertaking of the applicant is an insurance undertaking, investment firm, investment fund, credit institution, management company or another subject of financial supervision founded in another Contracting State;
- 3) the applicant and an insurance undertaking, credit institution, management company, investment fund, investment firm or another subject of financial supervision founded in another Contracting State are all companies being supervised by the same person.

(6) The Financial Supervisory Authority shall consult with the financial supervision authorities of another Contracting State in the framework of the cooperation specified in subsection (5) of this section in order to assess the suitability of the shareholders and the fit and proper requirements of the manager of the other undertaking of the consolidation group and the responsible persons specified in subsection 96 (5) of this Act, exchanging information which is essential in the granting of an authorisation.

## **§ 20. Decision to grant authorisation and decision to refuse from granting authorisation**

(1) An authorisation shall be granted if the submitted information and documents comply with the requirements, and if it is possible to verify on the basis of the submitted information and documents that the applicant for the authorisation has the sufficient facilities and organisational capacity to carry out insurance activities, and that the interests of policyholders, insured persons and beneficiaries are sufficiently protected.

(2) The Financial Supervision Authority shall make a decision to grant or refuse from granting an authorisation within three months after the receipt of all the relevant information and documents, but not later than within six months after submission of the application for an authorisation. The applicant may grant the Financial Supervision Authority an irrevocable written consent for the extension of the term for making a decision to grant or refuse from granting an authorisation.

(3) If the Financial Supervision Authority has a reasonable doubt that the applicant does not comply with all the requirements arising from this Act or other legislation, it shall notify thereof the applicant who is required to submit to the Financial Supervision Authority the information necessary for the elimination of the doubt on its own initiative.

(4) Upon granting of an authorisation, the Financial Supervision Authority may establish obligatory secondary conditions for the applicant based on the circumstances specified in § 21 of this Act.

(5) The term specified in subsection 250 (4) of the Commercial Code and in subsection 7 (3) of the Commercial Associations Act shall be calculated as of the date of delivery of a decision to grant an authorisation to the applicant.

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

(6) The Financial Supervision Authority shall grant an authorisation to a special purpose vehicle, if the special purpose vehicle meets the terms and conditions provided for in Article 318 of Commission Delegated Regulation (EU) No. 2015/35.

### **§ 21. Bases for refusal to grant authorisation**

(1) The Financial Supervision Authority may refuse to grant an authorisation if:

- 1) the applicant does not comply with the requirements provided for insurance undertakings by this Act or other legislation;
- 2) the applicant does not have the sufficient facilities or experience, which are necessary for sustainable and proper operation as an insurance undertaking;
- 3) the member of the management board or supervisory board, audit firm, the responsible person of the applicant specified in subsection 96 (5) of this Act, a person with a qualifying holding in the applicant or a shareholder does not meet the requirements provided for in this Act or other legislation;
- 4) close links between the applicant and another person prevent sufficient supervision over the applicant, or the requirements arising from legislation or the implementation of legislation of the state where the persons with whom the applicant has close links is established prevent sufficient supervision over the insurance undertaking;
- 5) the internal rules of an insurance undertaking specified in § 105 of this Act are not sufficient or unambiguous for regulation of the activities of the insurance undertaking;
- 6) the applicant does not have impeccable business reputation, for example, a punishment has been imposed on the applicant for an offence and the applicant's information concerning the punishment has not been expunged from the criminal records database pursuant to the Criminal Records Database Act.

(2) Among other matters, the following shall be considered upon assessment of that provided for in clause (1) of this section:

- 1) the level of the organisational and technical administration of the activities of the applicant;
- 2) the education, work experience, business contacts, trustworthiness and reputation of the persons related to the management and responsible persons of the applicant;
- 3) the adequacy and sufficiency of the scheme of operations provided for in § 18 of this Act;
- 4) the activities, financial situation, reputation and experience of the applicant, its parent undertaking and persons belonging to the same consolidation group as the applicant.

### **§ 22. Expiry of authorisation**

(1) An authorisation expires:

- 1) in the event of revocation of an authorisation, upon revocation of the authorisation;
- 2) in the event of a merger of insurance undertakings on the basis of the second sentence of subsection 140 (5) of this Act, the authorisations of the merging insurance undertakings expire upon entry of the new insurance undertaking in the commercial register;
- 3) in the event of a merger of insurance undertakings on the basis of the first sentence of subsection 140 (5) of this Act, the authorisation of an insurance undertaking being acquired expires upon entry of the merger on the registry card of the acquiring insurance undertaking;
- 4) in the event of the transfer of an entire insurance portfolio, the authorisation of the insurance undertaking transferring the insurance portfolio expires upon receipt of an authorisation for the transfer of the insurance portfolio from the Financial Supervision Authority;
- 5) in the event of the voluntary dissolution of an insurance undertaking, upon the receipt of authorisation for dissolution from the Financial Supervision Authority;
- 6) in the event of the bankruptcy of the insurance undertaking, by a bankruptcy ruling or a court ruling upon termination of bankruptcy proceedings due to abatement.

(2) Upon expiry of an authorisation, an insurance undertaking shall lose the right to engage in insurance activities also in a foreign state.

## § 23. Revocation of authorisation

(1) The Financial Supervision Authority may revoke an authorisation if:

- 1) an insurance undertaking has not commenced or notifies that it will not commence engaging in a class or subclass of insurance activities within twelve months as of the grant of an authorisation;
- 2) the activities of an insurance undertaking are suspended for more than six consecutive months;
- 3) false information or documents have been submitted upon application for an authorisation which were of significant importance in the decision to grant the authorisation, and also in other cases when an insurance undertaking has submitted misleading information and documents or false information and documents to the Financial Supervision Authority;
- 4) an insurance undertaking does not meet the requirements in force with regard to the grant of authorisations or has failed to comply with the secondary conditions established upon the grant of authorisation;
- 5) the circumstances specified in subsection 21 (1) of this Act become evident;
- 6) an insurance undertaking has repeatedly or materially violated the provisions of the legislation regulating its activities or the activities or omissions of the insurance undertaking are not in compliance with good business practices;
- 7) an insurance undertaking belongs to a consolidation group the structure of which prevents the receipt of information necessary for supervision on a consolidated basis, or if a company which belongs to the same consolidation group as the insurance undertaking operates on the basis of legislation of a foreign state, which prevents the exercise of sufficient supervision;
- 8) elements become evident in the activities of an insurance undertaking, which, based on the reasonable doubt of the Financial Supervision Authority, might be an indication of money laundering, or an insurance undertaking violates the procedure for preventing money laundering and terrorist financing established by legislation;
- 9) an insurance undertaking has violated, pursuant to information submitted to the Financial Supervision Authority by a financial supervision authority of a Contracting State, the provisions of legislation of the Contracting State, or fails to meet the conditions set by a financial supervision authority of a Contracting State specified in subsection 26 (5) of this Act;
- 10) an insurance undertaking is unable to adhere to the commitments it has undertaken or its activities significantly damage the interests of the policyholders, insured persons or beneficiaries due to any other reason;
- 11) the technical provisions or assets corresponding to the technical provisions (hereinafter *assets covering technical provisions*) of an insurance undertaking do not meet the requirements provided for in this Act;
- 12) an insurance undertaking engaged in motor third party liability insurance fails to perform the obligations arising from membership in the Motor Insurance Fund specified in § 10 of the Motor Third Party Liability Insurance Act;
- 13) an insurance undertaking which enters into pension contracts has failed to pay contributions to the Pension Contracts Sectoral Fund prescribed in the Guarantee Fund Act within the specified term or in full.

(2) The Financial Supervision Authority may revoke an authorisation completely or by individual classes or subclasses of insurance activities, whereupon the rights of which the holder of the authorisation is deprived are specified.

(3) The Financial Supervision Authority shall revoke an authorisation in full if according to the opinion of the Financial Supervision Authority the short-term finance scheme provided on the basis of subsection 93 (5) of this Act is insufficient or an insurance undertaking is unable to implement the scheme within the prescribed term and to bring the eligible basic own funds in compliance with the requirements provided for in this Act.

## Division 2

### Activities of Estonian Insurance Undertakings in Foreign States

#### § 24. Activities of insurance undertakings in foreign states

(1) An insurance undertaking may engage in insurance activities in a foreign state on the basis of an authorisation and within the scope specified therein by establishing a branch or engaging in cross-border insurance activities.

(2) Upon engaging in insurance activities in a foreign state, an insurance undertaking shall comply with the requirements provided for in this Act, legislation issued on the basis thereof and legislation of the foreign state.

(3) The provisions of §§ 25–27 and 32–34 of this Act apply to the provision of services in another Contracting State.

(4) The provisions of §§ 28–31 and 35 of this Act apply to the provision of services in a third country. A third country is a foreign state which is not a Contracting State.

(5) The provisions of §§ 32–35 of this Act do not apply to Estonian reinsurance undertakings who wish to engage in cross-border insurance activities in foreign states. Estonian reinsurance undertakings who wish to engage in cross-border insurance activities in foreign states notify the Financial Supervision Authority thereof. [RT I, 17.11.2017, 3 - entry into force 27.11.2017]

(6) If a person permanently authorised to represent an insurance undertaking is permanently engaged in activities of insurance agent or insurance activities in a foreign state, the activities of the authorised person shall be deemed to be the activities of a foreign branch of the Estonian insurance undertaking and for the continuation of such activities the insurance undertaking shall found a branch pursuant to §§ 25–31 of this Act.

(7) For the purposes of this Division, cross-border insurance activities are the insurance activities of an Estonian insurance undertaking which relate to underwriting risks situated in a foreign state.

(8) For the purposes of this Division, cross-border reinsurance activities are the reinsurance activities of Estonian reinsurance undertakings, in the framework of which the Estonian reinsurance undertakings provide reinsurance to insurance undertakings founded in foreign states.

## **§ 25. Foundation of branch of insurance undertaking in another Contracting State**

(1) An insurance undertaking which wishes to found a branch in another Contracting State shall inform the Financial Supervision Authority thereof and shall submit the following information and documents to the Financial Supervision Authority:

- 1) the name of the Contracting State where the insurance undertaking wishes to found the branch;
- 2) the scheme of operations of the branch compliant with the requirements provided for in § 18 of this Act and the detailed description of the branch structure;
- 3) the address of the registered office of the branch in the Contracting State;
- 4) the name, personal identification code or date of birth in the absence thereof, residence and educational background, a complete list of places of employment and positions and a document certifying the right of representation of the director of the branch who has sufficient right of representation for operating in the name of the insurance undertaking;
- 5) if the planned insurance activities of the branch to be founded foresee entry into motor third party liability insurance contracts, the confirmation that the insurance undertaking has become a member of the Contracting State motor third party liability insurance bureau and the guarantee fund specified in Article 1(3) of Directive 2009/103/EC of the European Parliament and of the Council in the Contracting State of the location of the branch.

(2) The information and documents specified in clauses (1) 3–5) of this Act, the detailed description of the structure of the branch and a list of planned insurance activities by class and subclass shall be submitted together with a translation made by a sworn translator or certified by a notary into a language suitable for communication between the Financial Supervision Authority and the financial supervision authority of the Contracting State of the location of the branch.

(3) The Financial Supervision Authority may request from an insurance undertaking by the set due date additional information or documents in order to specify or verify the information specified in subsection (1) of this section.

(4) The Financial Supervision Authority may refuse to review the information or documents specified in subsections (1) and (3) of this section, if:

- 1) the information or documents submitted for forwarding do not comply with the requirements provided for in this Act or legislation established on the basis thereof;
- 2) the information or documents submitted for forwarding are incorrect, misleading or incomplete and the information or documents additionally required by the Financial Supervision Authority have not been submitted within the prescribed term.

## **§ 26. Processing of application for authorisation for foundation of Contracting State branch and decision on grant of authorisation**

(1) The Financial Supervision Authority shall forward to the financial supervision authority of a Contracting State the information and documents specified in subsection 25 (2) of this Act within three months after receipt of the information and documents and shall notify an insurance undertaking thereof.

(2) The Financial Supervision Authority may make a decision to refuse to forward the information and documents specified in subsection 25 (2) of this Act if:

- 1) the information or documents submitted do not meet the requirements provided for in this Act or are inaccurate, misleading or incomplete;
- 2) the financial condition and organisational structure of an insurance undertaking are insufficient for engaging in insurance activities described in the scheme of operations in the Contracting State of the location of the branch;
- 3) the director of the branch does not meet the requirements provided for in § 106 of the this Act;
- 4) the foundation of the branch or implementation of the scheme of operations submitted by the insurance undertaking may damage the interests of the policyholders, insured persons or beneficiaries, the financial

condition of the insurance undertaking or the reliability of its activities in Estonia or the Contracting State of the location of the branch.

(3) The Financial Supervision Authority shall promptly deliver to the insurance undertaking a decision on forwarding the information and documents or refusal to forward these.

(4) Upon forwarding the information and documents specified in subsection 25 (2) of this Act, the Financial Supervision Authority shall also provide the financial supervision authority of the Contracting State of the location of the branch with certification that the insurance undertaking has the own funds meeting the requirements provided for in this Act to comply with the Solvency Capital Requirement and the basic own funds to comply with the Minimum Capital Requirement.

(5) An insurance undertaking may found a branch in another Contracting State after receiving, through the Financial Supervision Authority, the conditions set by the financial supervision authority of the Contracting State of the location of the branch for engaging in insurance activities in that Contracting State. If the financial supervision authority of the Contracting State of the location of the branch has not provided its conditions within two months after the receipt of the information and documents specified in subsection 25 (2) of this Act from the Financial Supervision Authority, the insurance undertaking may found a branch in the Contracting State.

(6) An insurance undertaking shall notify the Financial Supervision Authority and the financial supervision authority of the Contracting State of the location of the branch of changes in information or amendment of the documents specified in subsection 25 (2) of this Act at least one month in advance.

(7) The provisions of subsection (5) of this section do not apply to reinsurance undertakings. A reinsurance undertaking may found a branch in a Contracting State after the receipt from the Financial Supervision Authority of a decision to forward the information and documents specified in subsection (3).

#### **§ 27. Precept to terminate insurance activities through branch**

The Financial Supervision Authority may prohibit, by way of precept, an insurance undertaking to engage in insurance activities through a branch founded in a Contracting State, if:

- 1) the circumstances specified in subsection 26 (2) of this Act exist;
- 2) the financial supervision authority of the Contracting State of the location of the branch has informed the Financial Supervision Authority of a violation by the insurance undertaking of legislation of the Contracting State or the conditions set by the financial supervision authority of the Contracting State for engaging in insurance activities on the basis of subsection 26 (5) of this Act.

#### **§ 28. Foundation of branch of insurance undertaking in third country**

(1) An insurance undertaking who wishes to found a branch in a third country shall apply for an authorisation for the foundation of a third country branch from the Financial Supervision Authority.

(2) Upon application for an authorisation for the foundation of a third country branch, an insurance undertaking shall submit to the Financial Supervision Authority a written application together with the following information and documents:

- 1) the name of the third country where the insurance undertaking wishes to found a branch together with a confirmation by the financial supervision authority of a third country that pursuant to the legislation of this country the foundation of the branch of the insurance undertaking is permitted in this country;
- 2) the address of the registered office of the branch in the third country;
- 3) a scheme of operations of the branch concerning insurance activities in the third country, which complies with the requirements provided for in § 18 of this Act, together with a detailed description of the planned insurance activities and the organisational structure;
- 4) the name, personal identification code or date of birth in the absence thereof, and a document certifying the right of representation of the director of the branch who has sufficient right of representation for operating in the name of the insurance undertaking.

(3) An insurance undertaking shall promptly notify the Financial Supervision Authority of any changes to the information or amendment of the documents specified in clauses (2) 2)–4) of this section.

#### **§ 29. Processing of application for authorisation for foundation of branch in third country and decision on grant of authorisation**

(1) The provisions of § 19 of this Act apply upon the processing of applications for an authorisation for the foundation of a third country branch, verification of the submitted information and verification of the financial situation, organisational structure and technical systems of the applicant and existence of sufficient resources for the foundation of a branch.

(2) The Financial Supervision Authority shall make a decision to grant or refuse to grant an authorisation for the foundation of a branch in a third country within two months after receipt of all the relevant information and documents, but not later than within three months after submission of the corresponding application.

### **§ 30. Refusal to issue authorisation for foundation of branch in third country**

The Financial Supervision Authority may refuse to grant an authorisation for the foundation of a branch in a third country if:

- 1) the information or documents submitted upon application for the authorisation for the foundation of a branch in a third country do not meet the requirements provided for in this Act or legislation established on the basis thereof, or are inaccurate, misleading or incomplete;
- 2) the director of the branch does not meet the requirements provided for in § 106 of the this Act;
- 3) the financial condition and organisational structure of an insurance undertaking are insufficient for engaging in insurance activities described in the scheme of operations in a third country;
- 4) the foundation of the branch in a third country or implementation of the scheme of operations submitted by the insurance undertaking may damage the interests of the policyholders, insured persons or beneficiaries, the financial condition of the insurance undertaking or the reliability of its activities in Estonia, a Contracting State or a third country;
- 5) the financial supervision authority of a third country has no legal basis or possibilities for cooperation with the Financial Supervision Authority and therefore the Financial Supervision Authority cannot exercise sufficient supervision over the branch;
- 6) the insurance undertaking has repeatedly or significantly violated the provisions of legislation regulating its activities;
- 7) the activities or omissions of the insurance undertaking are not in compliance with good business practices or a punishment has been imposed on the insurance undertaking for an offence and the information of the insurance undertaking concerning the punishment has not been expunged from the criminal records database pursuant to the Criminal Records Database Act.

### **§ 31. Revocation of authorisation for foundation of branch in third country**

(1) The Financial Supervision Authority may revoke an authorisation for the foundation of a branch in a third country if:

- 1) the insurance undertaking has submitted upon application for an authorisation for the foundation of a third country branch false information or documents which were of significant importance in the decision to grant an authorisation for the foundation of a branch, as well as in other cases when false information or documents have been submitted to the Financial Supervision Authority regarding a branch;
- 2) the insurance undertaking has repeatedly or materially violated the requirements provided for in the legislation of the third country, and this may damage the interests of policyholders, insured persons or beneficiaries;
- 3) the insurance undertaking or its branch does not meet the valid requirements for the granting of authorisations for the foundation of a branch;
- 4) the insurance undertaking fails to submit reports on its branch as required;
- 5) the insurance undertaking has failed to implement a precept of the Financial Supervision Authority concerning the operation of the branch by the prescribed due date or to the extent prescribed;
- 6) the risks arising from the activities of the branch are significantly greater than risks arising from the activities of the insurance undertaking;
- 7) the circumstances specified in § 30 of this Act become evident.

(2) The Financial Supervision Authority shall deliver a decision to revoke an authorisation for the foundation of a branch in addition to the insurance undertaking to the financial supervision authority of a third country.

### **§ 32. Cross-border insurance activities in another Contracting State**

(1) An insurance undertaking who wishes to engage in cross-border insurance activities in another Contracting State shall notify the Financial Supervision Authority of its intention and submit the following information and documents to the Financial Supervision Authority:

- 1) the name of the Contracting State where the insurance undertaking wishes to engage in cross-border insurance activities;
- 2) a description of the planned cross-border insurance activities;
- 3) in the case provided for in subsection 33 (2) of this Act, the information provided for in the same subsection.

(2) The documents specified in subsection (1) of this section shall be submitted together with a translation made by a sworn translator or certified by a notary into a language suitable for communication between the Financial Supervision Authority and the financial supervision authority of the Contracting State where the insurance undertaking intends to engage in cross-border insurance activities.

(3) The Financial Supervision Authority may refuse to review the information and documents specified in subsection (1) of this section if these do not comply with the requirements provided for in this Act or legislation established on the basis thereof or these are incorrect, misleading or incomplete.

(4) If insurance undertakings wish to engage in European Economic Area co-insurance insurance specified in § 51 of this Act, only the leading insurance undertaking shall have the obligation of notifying the Financial Supervision Authority provided for in this section.

### **§ 33. Permission of cross-border insurance activities in another Contracting State**

(1) The Financial Supervision Authority shall inform the financial supervision authority of another Contracting State receipt of the notification and the information and documents specified in subsection 31 (1) of this Act and shall forward within one month the following information and documents:

- 1) a list of the classes of insurance in which the insurance undertaking has the right to engage;
- 2) information concerning the own funds of the insurance undertaking and certification that the insurance undertaking has the own funds meeting the requirements provided for in this Act to comply with the Solvency Capital Requirement and the basic own funds to comply with the Minimum Capital Requirement;
- 3) a description of the planned cross-border insurance activities.

(2) If the cross-border insurance activities planned by an insurance undertaking in another Contracting State foresee entry into motor third party liability insurance contracts, the Financial Supervision Authority shall, in addition to that provided for in subsection (1) of this section, forward the following to the financial supervision authority of the Contracting State:

- 1) the confirmation that the insurance undertaking has become a member of the Contracting State motor third party liability insurance bureau and the guarantee fund specified in Article 1(3) of Directive 2009/103/EC of the European Parliament and of the Council in the corresponding Contracting State;
- 2) the name and address of the representative who is designated to a Contracting State by the insurance undertaking and has a permanent residence or place of business in the Contracting State, taking into consideration that this person, based on motor third party liability insurance contracts, must have the right to operate in the name of the insurance undertaking for adjustment of losses and compensation of traffic damage caused to victims.

(3) The Financial Supervision Authority may make a decision to refuse to forward the information and documents specified in subsections (1) and (2) of this section if:

- 1) the information or documents submitted do not meet the requirements provided for in this Act or are inaccurate, misleading or incomplete;
- 2) the financial condition and organisational structure of an insurance undertaking are insufficient for engaging in insurance activities in the Contracting State;
- 3) the cross-border insurance activities may damage the interests of the policyholders, insured persons or beneficiaries, the financial condition of the insurance undertaking or the reliability of its activities in Estonia or the Contracting State of the location of the branch.

(4) The Financial Supervision Authority shall promptly deliver to the insurance undertaking a decision on forwarding or refusal to forward the information and documents.

(5) The settler of the claims specified in subsection 51 (1) of the Motor Third Party Liability Insurance Act may act as the representative specified in clause (2) 2) of this section with the approval of the Financial Supervision Authority.

(6) Differently from the provisions of subsection 24 (6) of this Act, the activities of a settler of claims specified in clause (2) 2) and subsection (5) of this section shall be considered the foundation neither of a branch of an Estonian insurance undertaking nor of an insurance undertaking in a Contracting State.

(7) An insurance undertaking may commence cross-border insurance activities in a Contracting State after the receipt of the decision to forward the information and documents specified in subsection (4) of this section.

(8) An insurance undertaking shall notify the Financial Supervision Authority of changes in information or amendment of the documents specified in clause 32 (1) 2) of this Act and subsection (2) of this section at least one month in advance. The Financial Supervision Authority shall forward the received information to the financial supervision authority of the Contracting State.

### **§ 34. Precept to terminate cross-border insurance activities in Contracting State**

The Financial Supervision Authority may prohibit, by way of precept, an insurance undertaking to engage in cross-border insurance activities, if:

- 1) the circumstances specified in subsection 33 (3) of this Act exist;
- 2) the financial supervision authority of the Contracting State has informed the Financial Supervision Authority of a violation by the insurance undertaking of legislation of the Contracting State.

### **§ 35. Cross-border insurance activities in third countries**

(1) An Estonian insurance undertaking who wishes to engage in cross-border insurance activities in a third country shall apply for an authorisation for cross-border insurance activities from the Financial Supervision Authority.

(2) Upon application for an authorisation for cross-border insurance activities, an insurance undertaking shall submit to the Financial Supervision Authority a written application together with the following information and documents:

- 1) name of the third country where the insurance undertaking wishes to engage in cross-border insurance activities together with reference to the provisions of the legislation of the country, pursuant to which the cross-border insurance activities of the insurance undertaking are permitted in this country;
- 2) a description of the planned cross-border insurance activities.

(3) An insurance undertaking shall promptly notify the Financial Supervision Authority of any changes in the circumstances specified in clause (2) 2) of this section.

(4) The provisions of subsections 19 (1)–(4) and subsection 20 (1) of this Act apply to the processing of applications for an authorisation for cross-border insurance activities.

(5) The Financial Supervision Authority shall make a decision to grant or refuse to grant an authorisation for cross-border insurance activities within two months after receipt of all conforming information and documents, but not later than within three months after the submission of an application for an authorisation for cross-border insurance activities.

(6) The Financial Supervision Authority may refuse to grant an authorisation for cross-border insurance activities if:

- 1) the insurance undertaking has submitted misleading information or documents, false information or falsified documents to the Financial Supervision Authority;
- 2) the financial situation and organisational structure of the insurance undertaking are insufficient for engaging in cross-border activities described upon application for the authorisation for cross-border insurance activities;
- 3) the activities of the insurance undertaking in a third country may damage the interests of the policyholders, insured persons or beneficiaries, the financial condition of the insurance undertaking or the reliability of its activities;
- 4) the financial supervision authority of a third country has no legal basis, possibilities or readiness for sufficient and efficient cooperation with the Financial Supervision Authority, and therefore the Financial Supervision Authority cannot exercise sufficient supervision over the activities of the insurance undertaking.
- 5) a punishment has been imposed on the insurance undertaking for an offence and the information of the insurance undertaking concerning the punishment has not been expunged from the criminal records database pursuant to the Criminal Records Database Act.

(7) The Financial Supervision Authority may revoke an authorisation for cross-border insurance activities if:

- 1) the insurance undertaking has submitted misleading information or documents, false information or falsified documents to the Financial Supervision Authority;
- 2) the insurance undertaking has failed to notify the Financial Supervision Authority of the change to the circumstances related to cross-border activities;
- 3) the insurance undertaking has repeatedly or significantly violated the provisions of legislation regulating its activities;
- 4) the insurance undertaking does not meet the valid requirements for the granting of authorisations for cross-border insurance activities;
- 5) the insurance undertaking has failed to implement a precept of the Financial Supervision Authority concerning the cross-border insurance activities by the prescribed due date or to the extent prescribed;
- 6) the risks arising from the cross-border insurance activities the insurance undertaking are significantly greater than risks arising from other activities of the insurance undertaking.

(8) The Financial Supervision Authority shall deliver a decision to revoke an authorisation for cross-border insurance activities in addition to the insurance undertaking to the financial supervision authority of a third country.

## **Division 3 Activities of Foreign Insurance Undertakings in Estonia**

### **§ 36. Activities of foreign insurance undertakings in Estonia**

(1) Only a person who has the right to engage in insurance activities according to the legislation of the state where it is founded and where a right to engage in insurance activities was granted thereto (hereinafter *home country*) may found a branch or engage in cross-border insurance activities for engaging in insurance activities in Estonia.



(2) If a person permanently authorised to represent a foreign insurance undertaking is permanently engaged in activities of insurance agent or insurance activities in Estonia, the activities of the authorised person shall be deemed to be the activities of an Estonian branch of the foreign insurance undertaking and for the continuation of such activities the insurance undertaking shall found a branch pursuant to §§ 37–40 of this Act.

(3) Upon engaging in insurance activities in Estonia, a foreign insurance undertaking shall comply with the requirements provided for insurance activities in this Act, legislation issued on the basis thereof and other requirements for provision of services arising from Estonian law.

(4) The provisions of §§ 37, 46 and 41 of this Act apply to persons specified in subsection (1) of this section whose home country is another Contracting State (hereinafter *insurance undertaking of another Contracting State*).

(5) The provisions of §§ 39, 40 and 42 of this Act apply to persons specified in subsection (1) of this section whose home country is a third country (hereinafter *third country insurance undertaking*). Third country insurance undertakings are not permitted to enter into pension contracts.

(6) The provisions of §§ 41 and 42 of this Act do not apply to foreign reinsurance undertakings who wish to engage in cross-border reinsurance activities in Estonia.

[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

(7) For the purposes of this Division, cross-border insurance activities are the insurance activities of a foreign insurance undertaking which relate to underwriting risks situated in Estonia.

(8) It is prohibited to enter into pension contracts in the framework of cross-border insurance activities.

(9) The contents, format and procedure for submission of reports concerning insurance activities of the Estonian branch of an insurance undertaking of another Contracting State shall be established by a regulation of the minister responsible for the area.

(10) For the purposes of this Division, cross-border reinsurance activities are the reinsurance activities of foreign reinsurance undertakings, in the framework of which the foreign reinsurance undertakings provide reinsurance to Estonian insurance undertakings.

### **§ 37. Branch of insurance undertaking of another Contracting State in Estonia**

(1) An insurance undertaking of another Contracting State who wishes to found a branch in Estonia shall notify thereof the Financial Supervision Authority through the financial supervision authority of the Contracting State and submit to the Financial Supervision Authority the following information and documents:

1) the business name, address of registered office and other contact details of the branch;

2) a detailed description of the structure of the branch and a list the classes and subclasses of planned insurance activities;

3) the name of the director of the branch if he or she is entitled to act in the name of the insurance undertaking and the confirmation of the financial supervision authority of the Contracting State regarding the suitability and conformity of the director of the branch;

3<sup>1</sup>) in case of Lloyd's, the name of the person who is authorised to represent Lloyd's and all of its members in Estonia;

[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

4) the confirmation of the Motor Insurance Fund specified in § 10 of the Motor Third Party Liability Insurance Act regarding the fact that the Contracting State insurance undertaking the planned insurance activities of whose branch founded in Estonia foresee entry into motor third party liability insurance contracts has become member of the Motor Insurance Fund through this branch;

5) the confirmation of the financial supervision authority of the Contracting State that the Contracting State insurance undertaking has eligible own funds to comply with the Solvency Capital Requirement and the Minimum Capital Requirement;

6) the technical business plan of pension contracts and the standard terms of pension contracts if the planned insurance activities envisage the entry into pension contracts;

7) a written confirmation that the single contribution to the Pension Contracts Sectoral Fund prescribed in the Guarantee Fund Act will be paid in due time in case the planned insurance activities of the branch envisage the entry into pension contracts.

(2) The Financial Supervision Authority shall promptly notify the financial supervision authority of the Contracting State of receipt of the information and documents specified in subsection (1) of this section.

(3) The Financial Supervision Authority shall notify within two months following the receipt of the information and documents specified in subsection (1) of this section the financial supervision authority of the Contracting State of the terms and conditions which the insurance undertaking must comply with in Estonia.

(4) A Contracting State insurance undertaking may found a branch and commence insurance activities after receipt of the information decision specified in subsection (2) of this section from the financial supervision authority of its home country or two months after the date on which the documents and information specified in subsection (1) of this section were received by the Financial Supervision Authority.

(5) A Contracting State insurance undertaking shall notify the Financial Supervision Authority of any changes to the information or amendment of the documents specified in subsection (1) of this section at least one month in advance.

(6) An insurance undertaking of another Contracting State shall submit a confirmation of the Financial Supervision Authority regarding the receipt of the information and documents specified in subsection (1) of this section for the entry of the branch in the commercial register.

(7) The financial supervision authority of a Contracting State shall submit the information and documents specified in this section, at the request of the Financial Supervision Authority, together with translations into Estonian made by a sworn translator or certified by a notary.

(8) The provisions of subsections (3) and (4) of this section shall not apply to reinsurance undertakings of another Contracting State who may found a branch in Estonia if they have received from the financial supervision authority of the Contracting State of their location a notice on forwarding to the Financial Supervision Authority the information and documents specified in subsection (1).

### **§ 38. Branch of insurance undertaking of third country in Estonia**

(1) A third country insurance undertaking who wishes to found a branch in Estonia shall apply for an authorisation for the foundation of a branch from the Financial Supervision Authority.

(2) Upon application for an authorisation for foundation of a branch, a third country insurance undertaking shall submit to the Financial Supervision Authority a written application together with the following information and documents:

- 1) the business name, address of registered office and other contact details of the insurance undertaking;
- 2) the scope of the authorisation issued to the insurance undertaking in the third country and information concerning the agency which issued the authorisation;
- 3) the business name and address of the branch in Estonia;
- 4) the name, personal identification code or date of birth in the absence thereof, and a document certifying the right of representation of the director of the branch who has sufficient right of representation for operating in the name of the insurance undertaking;
- 5) the information and documents specified in clauses 386 (2) 1), 4) and 5) of the Commercial Code;
- 6) the audited annual reports of the insurance undertaking for the past three financial years;
- 7) a scheme of operations of the branch concerning insurance activities in Estonia, which complies with the requirements provided for in § 18 of this Act, together with a detailed description of the planned insurance activities and the organisational structure;
- 8) the confirmation of the Motor Insurance Fund specified in § 10 of the Motor Third Party Liability Insurance Act that a third country insurance undertaking who founds the branch in Estonia the planned insurance activities of which foresee entry into motor third party liability insurance contracts has become member of the Motor Insurance Fund, and the name and address of a settler of cross-border claims for each Contracting State to be appointed by the applicant on the basis of subsection 51 (1) of the Motor Third Party Liability Insurance Act;
- 9) a certificate from an Estonian credit institution regarding the fact that the person who applies for an authorisation for the foundation of a branch has deposited at least 25 per cent of the floor of the Minimum Capital Requirement provided for in subsection 82 (7) of this Act in the Estonian credit institution, and that according to the deposit agreement the deposited amount may be encumbered, disbursed or transferred only with the written permission of the Financial Supervision Authority.

(3) The requirement provided for in clause (2) 9) of this section does not apply to:

- 1) Estonian branches of insurance undertakings of the Swiss Confederation who have the right to engage in non-life insurance;
- 2) Estonian branches of third country insurance undertakings who use more favourable terms provided for in subsection 86 (1) of this Act and the supervision over whose solvency is not exercised by the Financial Supervision Authority.

(4) In addition to the information and documents specified in subsection (2) of this section, third country insurance undertakings shall provide the Financial Supervision Authority with the following from the financial supervision authority of the home country:

- 1) the permission to found a branch in Estonia;
- 2) the confirmation that the insurance undertaking holds a valid authorisation in its home country and that it pursues its activities in a correct manner and in accordance with public interest;
- 3) the information concerning the amount and tier of own funds, the solvency of the insurance undertaking, the actuarial principles and methods of the technical provisions and the requirements for the assets covering technical provisions in force in the home country.

(5) The third country insurance undertaking shall submit the information and documents specified in this section, at the request of the Financial Supervision Authority, together with translations into Estonian made by a sworn translator or certified by a notary.

### **§ 39. Processing of application for authorisation for foundation of third country branch and revocation of authorisation**

(1) The provisions of §§ 19–21 and 23 of this Act apply to the processing of applications for an authorisation for the foundation of a branch, verification of information and to the grant and revocation of authorisations, unless otherwise provided for in this section.

(2) In addition to the bases provided for in § 21 of this Act, the Financial Supervision Authority may refuse to grant an authorisation for the foundation of a branch if the financial supervision authority of the third country does not ensure sufficient supervision over the applicant, or the financial supervision authority of the third country has no legal basis or possibility for cooperation with the Financial Supervision Authority, and also if the branch of a third country insurance undertaking does not comply with the requirements provided for in § 85 of this Act.

(3) The Financial Supervision Authority may revoke an authorisation for the foundation of a branch if circumstances specified in § 23 of this Act, subsection (2) of this section, or subsection 86 (10) of this Act become evident.

(4) The Financial Supervision Authority may revoke an authorisation for the foundation of a branch of an insurance undertaking of the Swiss Confederation engaging in non-life insurance on the bases provided for in subsection (3) of this section and before doing so, seek the opinion of the financial supervision authority of the Swiss Confederation.

(5) Until an opinion concerning revocation of an authorisation for the foundation of a branch is obtained from the financial supervision authority of the Swiss Confederation, the Financial Supervision Authority may prohibit the branch of the insurance undertaking of the Swiss Confederation specified in subsection (4) of this section from concluding new contracts. The Financial Supervision Authority shall notify the financial supervision authority of the Swiss Confederation of such prohibition.

(6) The Financial Supervision Authority may refuse to revoke an authorisation for the foundation of a branch if the policyholders, insured persons or beneficiaries of the branch have claims against the branch or the third country insurance undertaking who founded the branch, or if revocation of the authorisation would damage the interests of the policyholders, insured persons or beneficiaries.

### **§ 40. Amendment of authorisation for foundation of third country branch**

(1) A third country insurance undertaking who wishes to engage in Estonia in a class or subclass of insurance activities which is not specified in the scheme of operations submitted upon application for authorisation for the foundation of a branch, shall apply for amendment of the authorisation from the Financial Supervision Authority. For amendment of an authorisation for the foundation of a branch, a third country insurance undertaking shall submit an application together with the information and documents specified in clauses 38 (2) 1–4 and 7) of this Act to the Financial Supervision Authority and also add the information and documents specified in clause 38 (2) 8) if the amendment of authorisation is applied for in order to commence engaging in motor third party liability insurance.

(2) The provisions of §§ 19–21 of this Act apply to the processing of applications for the amendment of authorisations for the foundation of a branch, verification of information and deciding on amendment of the authorisations.

### **§ 41. Cross-border insurance activities of insurance undertaking of another Contracting State in Estonia**

(1) An insurance undertaking of another Contracting State who wishes to engage in cross-border insurance activities in Estonia shall notify thereof the Financial Supervision Authority through the financial supervision authority of the Contracting State and submit to the Financial Supervision Authority the following information and documents:

- 1) a list of the classes of insurance in which the insurance undertaking has the right to engage;
- 2) information on the own funds of the insurance undertaking, and a confirmation provided by the financial supervision authority of the Contracting State that the insurance undertaking meets capital requirements pursuant to the requirements in force in the Contracting State;
- 3) a description of the planned cross-border insurance activities.

(2) If the cross-border insurance activities planned by an insurance undertaking in Estonia foresee entry into motor third party liability insurance contracts, then in addition to that provided for in subsection (1) of this section, the following shall be submitted to the Financial Supervision Authority:

1) the confirmation of the Motor Insurance Fund specified in § 10 of the Motor Third Party Liability Insurance Act that the insurance undertaking has become member of the Motor Insurance Fund;

2) the name and address of the representative who is designated to Estonia by the insurance undertaking and has a permanent residence or place of business in Estonia, taking into consideration that this person, based on motor third party liability insurance contracts, must have the right to operate in the name of the insurance undertaking for adjustment of losses and compensation of traffic damage caused to victims.

(3) Differently from the provisions of subsection 36 (2) of this Act, the activities of a representative specified in clause (2) 2) of this section shall not be considered the foundation of a branch of another Contracting State insurance undertaking in Estonia, and such activities shall also not be considered the foundation of an insurance undertaking in Estonia.

(4) After the information and documents specified in subsections (1) and (2) of this section are forwarded to the Financial Supervision Authority, the insurance undertaking of another Contracting State may commence cross-border insurance activities in Estonia.

(5) The financial supervision authority of a Contracting State shall notify the Financial Supervision Authority of any changes to the information or amendment of the documents specified in subsections (1) and (2) of this section.

(6) The financial supervision authority of a Contracting State shall submit the information and documents specified in this section, at the request of the Financial Supervision Authority, together with translations into Estonian made by a sworn translator or certified by a notary.

(7) If the insurance undertakings of a Contracting State wish to engage in European Economic Area co-insurance insurance specified in § 51 of this Act, only the leading insurance undertaking shall have the obligation of notifying the Financial Supervision Authority and submitting information thereto through the financial supervision authority of the Contracting State provided for in this section.

#### **§ 42. Cross-border insurance activities of third country insurance undertaking in Estonia**

(1) A third country insurance undertaking who wishes to engage in cross-border insurance activities in Estonia shall apply for an authorisation (hereinafter in this Division *authorisation for cross-border insurance activities*) therefor from the Financial Supervision Authority.

(2) Upon application for an authorisation for cross-border insurance activities, a third country insurance undertaking shall submit to the Financial Supervision Authority a written application together with the following information and documents:

- 1) the business name and address of the insurance undertaking;
- 2) confirmation provided by the authority exercising financial supervision over the insurance undertaking that the insurance undertaking is entitled to engage in insurance activities in the country of location and cross-border together with the list of the classes of insurance activities in which the insurance undertaking has the right to engage;
- 3) a description of the planned cross-border insurance activities;
- 4) information concerning the amount of own funds of the insurance undertaking and the principles of calculation thereof and a confirmation by the financial supervision authority of a third country that the own funds of the insurance undertaking meet the requirements applicable in the third country, together with the description of the aforementioned requirements;
- 5) the audited annual reports of the insurance undertaking for the past three financial years.

(3) If the cross-border insurance activities planned by a third country insurance undertaking in Estonia foresee entry into motor third party liability insurance contracts, the information and documents specified in subsection 41 (2) of this Act shall be submitted to the Financial Supervision Authority in addition to the items provided in subsection (2) of this section and the provisions of subsection 41 (3) shall apply.

(4) A third country insurance undertaking shall promptly notify the Financial Supervision Authority of any changes to the information or amendment of the documents specified in clauses (2) 1)–4) and subsection (3) of this section.

(5) The provisions of subsections 19 (1)–(5), subsections 20 (1) and (4) and 23 (2) of this Act apply to the processing of applications for authorisation for cross-border insurance activities, verification of information and revocation of authorisation for cross-border insurance activities.

(6) The Financial Supervision Authority shall make a decision to grant or refuse to grant an authorisation for cross-border insurance activities within two months after receipt of all conforming information and documents, but not later than within three months after the submission of an application for an authorisation for cross-border insurance activities.

(7) The Financial Supervision Authority shall be entitled to refuse to grant an authorisation for cross-border insurance activities if:

- 1) the insurance undertaking has submitted misleading information or documents, false information or falsified documents to the Financial Supervision Authority;

- 2) the insurance undertaking is unable to adhere to the commitments it has assumed or its activities significantly damage the interests of the policyholders, insured persons or beneficiaries in any other way;
- 3) the requirements applicable with regard to own funds of the insurance undertaking, the amount of own funds or the principles of calculation thereof are insufficient taking into consideration the volume of the cross-border activities planned by the insurance undertaking in Estonia and the risks related thereto;
- 4) the financial supervision authority of a third country has no legal basis, possibilities or readiness for sufficient and efficient cooperation with the Financial Supervision Authority, and therefore the Financial Supervision Authority cannot exercise sufficient supervision over the activities of the insurance undertaking.

(8) The Financial Supervision Authority shall be entitled to revoke an authorisation for cross-border insurance activities if:

- 1) the insurance undertaking has submitted misleading information or documents, false information or falsified documents to the Financial Supervision Authority;
- 2) the insurance undertaking has failed to notify the Financial Supervision Authority of the change to the circumstances related to cross-border insurance activities;
- 3) the insurance undertaking has failed to implement a precept of the Financial Supervision Authority concerning the cross-border insurance activities by the prescribed due date or to the extent prescribed;
- 4) the insurance undertaking does not meet the valid requirements for the granting of authorisations for cross-border insurance activities;
- 5) the insurance undertaking fails to meet the secondary conditions established on the basis of subsection 20 (4) of this Act;
- 6) the insurance undertaking has repeatedly or significantly violated the provisions of legislation regulating its activities;
- 7) an insurance undertaking engaged in motor third party liability insurance fails to perform the obligations of a member of the Motor Insurance Fund specified in § 10 of the Motor Third Party Liability Insurance Act.

(9) The Financial Supervision Authority shall be entitled to revoke an authorisation for cross-border insurance activities in full or in part also in case it is requested by the insurance undertaking. The Financial Supervision Authority shall not revoke the authorisation for cross-border insurance activities if the policyholders, insured persons or beneficiaries have claims against the insurance undertaking or if the revocation of the authorisation for cross-border insurance activities would damage the interests of the policyholders, insured persons or beneficiaries.

(10) The third country insurance undertaking shall submit all the information and documents specified in this section, at the request of the Financial Supervision Authority, together with translations into Estonian made by a sworn translator or certified by a notary.

## **Chapter 3**

### **Prudential Requirements Set For Insurance Undertakings**

#### **Division 1**

#### **Assets and obligations of insurance undertaking**

##### **§ 43. Valuation of assets and liabilities**

(1) An insurance undertaking is required to value its assets and liabilities at an amount for which the assets could be exchanged or obligations could be settled or transferred between knowledgeable and willing parties in an arm's length transaction.

(2) In the recognition and valuation of assets and liabilities, except for the technical provisions, an insurance undertaking shall be guided by the principles established in Articles 7–16 of Commission Delegated Regulation (EU) No. 2015/35.

##### **§ 44. Technical provisions**

(1) An insurance undertaking shall establish the technical provisions to cover the insurance obligations assumed with respect to the policyholders, beneficiaries or insured persons.

(2) The technical provisions are the insurance obligations at an amount for which these obligations could be immediately transferred to another insurance undertaking.

(3) The provisions of Article 7 of Commission Delegated Regulation (EU) No. 2015/35 shall be taken into account in the recognition and derecognition of insurance obligations and the provisions of Article 18 of the same Regulation shall be taken into account in determining the boundaries of insurance contracts.

(4) An insurance undertaking shall follow the information submitted in financial markets and the available data characterising the underwriting risks in the calculation of the amount of the technical provisions. The methodology used in the calculation of the technical provisions shall be reliable and objective.

(5) The principles of proportionality and simplifications provided for in Articles 56–61 of Commission Delegated Regulation (EU) No. 2015/35 shall be applied in the calculation of the amount of the technical provisions.

(6) In the calculation of the amount of the technical provisions, an insurance undertaking shall classify the insurance obligations into homogeneous risk groups or at least lines of business specified in Annex I to Commission Delegated Regulation (EU) No. 2015/35, taking into consideration the provisions of Article 55 of the same Regulation.

(7) The amount of the technical provisions shall equal the sum of the best estimate of the insurance obligations of an insurance undertaking provided for in § 45 of this Act and the risk margin provided for in § 48 of this Act. The best estimate and the risk margin shall be valued separately, unless otherwise provided for in this Act.

(8) If the cash flows arising from insurance contracts can be replicated using financial instruments for which a market value can be determined reliably, an insurance undertaking may determine the market value of the respective financial instruments as the amount of the technical provisions. In this case, an insurance undertaking is not required to separately calculate the best estimate and the risk margin.

(9) In the case specified in subsection (8) of this section, an insurance undertaking shall follow the circumstances provided for in Article 40 of Commission Delegated Regulation (EU) No. 2015/35.

(10) An insurance undertaking shall take the following into account in the calculation of the amount of the technical provisions:

- 1) all expenses pursuant to Article 31 of Commission Delegated Regulation (EU) No. 2015/35;
- 2) inflation, including its effect on expenses and claims arising from insurance contracts;
- 3) all payments to the policyholders and beneficiaries, including payments provided for in Article 24 of Commission Delegated Regulation (EU) No. 2015/35 (hereinafter *future discretionary benefits*), which an insurance undertaking is expected to make, irrespective of whether such payments are guaranteed or not pursuant to the terms and conditions of an insurance contract;
- 4) all financial guarantees granted in insurance contracts and values of options included in the contracts.

(11) Any assumptions with respect to the likelihood that the policyholders will use the options included in the contracts, including lapses and surrenders, shall be realistic and based on the moment of assessment and credible information. The assumptions shall take into account the realisation of the options which arises from future changes in financial and other conditions.

(12) Articles 339 and 340 Commission Delegated Regulation (EU) No. 2015/35 shall apply to determining the technical provisions at group level.

(13) The assets covering technical provisions shall not at any time be less than the amount of the technical provisions.

#### **§ 45. Best estimate**

(1) The best estimate means the weighted average of future cash flows where the value of future cash flows is taken into account using the risk-free interest rate term structure. An insurance undertaking may apply the adjustments of a risk-free interest rate term structure in the calculation of the best estimate pursuant to §§ 46 and 47 of this Act. An insurance undertaking uses the unadjusted risk-free interest rate term structure established by the European Commission or the technical information in the implementation of the matching or volatility adjustment, if the European Commission has established a relevant implementing regulation.  
[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

(2) If the risk-free interest rate term structure specified in the first sentence of subsection (1) of this section does not represent the interest rates with the duration necessary for the calculation of the best estimate, the risk-free interest rate term structure should be extrapolated on the basis of the market inputs. The basis for the extrapolated risk-free interest rate term structure are the forward rates which converge from a single forward rate or a set of forward rates into one ultimate forward rate.

(3) An insurance undertaking shall follow in the use of the risk-free interest rate term structure the provisions of Articles 43–54 of Commission Delegated Regulation (EU) No. 2015/35.

(4) In finding the best estimate, an insurance undertaking shall take into account all the cash flows associated with the insurance and reinsurance obligations, follow the updated and reliable and information and use as the basis the assumptions, actuarial and statistical methods and principles provided for in Articles 22–36 of Commission Delegated Regulation (EU) No. 2015/35.

(5) If finding the best estimate, the share of a reinsurance undertaking and special purpose vehicle shall be deducted from the technical provisions. The share of a reinsurance undertaking and special purpose vehicle shall

be calculated separately in compliance with the provisions of this section, § 49 of this Act and Article 41 of Commission Delegated Regulation (EU) No. 2015/35.

(6) An insurance undertaking shall establish the processes and procedures to compare the best estimates and the assumptions used as the basis for finding these against experience on a regular basis.

(7) Where the comparison identifies consistent deviation between the best estimate and experience, an insurance undertaking shall appropriately adjust the actuarial methods or assumptions.

#### **§ 46. Matching adjustment for risk-free interest rate term structure**

(1) With the consent of the Financial Supervision Authority, an insurance undertaking may apply a matching adjustment provided for in subsection (7) of this section to the relevant risk-free interest rate term structure to calculate the best estimate of life insurance obligations and annuity payments stemming from non-life insurance contracts (hereinafter *assigned obligations*) if the following conditions are met:

1) an insurance undertaking has determined suitable bonds or other assets with cash flows similar to the cash flows of the assigned obligations (hereinafter *assigned assets*) as the assets covering technical provisions of such obligations until the end of the obligations, excluding the case when the cash flows have significantly changed and it is necessary to preserve as precise expression of the expected cash flows associated with the assigned obligations and the assigned assets as possible;

2) the assigned obligations and the assigned assets shall be treated and managed separately from other obligations and assets of an insurance undertaking, and the assigned assets shall not be used for covering the loss created by other obligations;

3) the expected cash flow associated with the assigned assets shall replicate as precisely as possible the expected cash flow associated with the obligations in the same currency, and the extent of the mismatch of cash flows of the assets and obligations shall not give rise to any risks which are significant for the insurance activities with regard to which the matching adjustment is applied;

4) no future insurance premiums shall be paid to an insurance undertaking based on insurance contracts constituting the basis for the assigned obligations and the only underwriting risks arising for an insurance undertaking from these contracts shall be the longevity risk, expense risk, revision risk and mortality risk;

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5) as a result of the mortality risk stress calibrated pursuant to § 61 of this Act and specified in Article 52 of Commission Delegated Regulation (EU) No. 2015/35, the best estimate of the assigned obligations accounted for the mortality risk shall not increase more than five per cent;

6) the insurance contracts shall not contain the policyholder's options, excluding the surrender option where the surrender value does not exceed the value of the assets, which is valued pursuant to § 43 of this Act, and the assets cover the assigned obligations at the time the surrender option is exercised;

7) the cash flows associated with the assigned assets are fixed, and the issuers of the assets and third parties cannot change these, excluding the case when these cash flows associated with the assets replicate as precisely as possible the inflation-dependent cash flows of the assigned obligations;

8) all obligations arising from one insurance contract shall be treated together.

(2) If an issuer or third party is entitled to change the cash flows associated with the assets in such way that an investor receives a sufficient amount of compensation, which allows to obtain similar cash flows, reinvesting into assets of equivalent or improved credit quality, then such right of changing the cash flow provides an opportunity to employ assets as the assigned assets.

(3) If an insurance undertaking has received from the Financial Supervision Authority a consent to apply the matching adjustment provided for in this section, the insurance undertaking shall not use in the calculation of the best estimate of the same assigned obligations the unadjusted risk-free interest rate term structure.

(4) If an insurance undertaking fails to comply with the conditions provided for in subsection (1) of this section, the insurance undertaking shall promptly notify the Financial Supervision Authority and take all necessary steps to apply the appropriate measures to comply with the conditions.

(5) If an insurance undertaking is unable to meet the conditions provided for in subsection (1) of this section within two months after non-compliance therewith is established, the insurance undertaking may not for the following 24 months implement the matching adjustment in the calculation of the best estimate of any of its insurance obligations.

(6) An insurance undertaking cannot implement the matching adjustment in the calculation of the best estimate of such insurance obligations with regard to which the insurance undertaking already implements the volatility adjustment provided for in § 47 of this Act and the transitional adjustment provided for in § 267 of this Act.

(7) The matching adjustment shall be found for each currency as the difference between the following amounts:

1) annual actual interest rate calculated as single discount rate which is applied for cash flows associated with the assigned obligations and which is recorded in the value of the assigned assets, which is valued pursuant to the provisions of § 43 of this Act;

2) annual actual interest rate calculated as single discount rate which is applied for cash flows associated with the assigned obligations and which is recorded in the value of the best estimate of the assigned obligations where the basic risk-free interest rate term structure is taken into account at the time value.

(8) The matching adjustment shall not contain fundamental spread which comprises the risks arising from the assigned assets and obligations, which remain for an insurance undertaking.

(9) The fundamental spread shall be increased in such way that it would be ensured that the matching adjustment of speculative assigned assets with similar duration and belonging to the same class of assets would not exceed the matching adjustment of assets with an investment grade credit quality.

(10) The fundamental spread is found as the sum of the credit spread corresponding to the probability of default of the assets and the credit spread corresponding to the expected loss resulting from downgrading of the assets.

(11) As regards exposures to Member States' central governments and central banks, the fundamental spread shall be at least 30 per cent and as regards exposures to other assets at least 35 per cent of their long-term average interest rate in the part which exceeds the long-term average interest rate of risk-free assets of similar duration and credit quality and belonging to the same class of assets.

(12) In finding the probability of default associated with the assets provided for in subsection (10) of this section, the long-term default statistics of the corresponding class of assets and the assets of similar duration and credit quality shall be used as the basis.

(13) If no reliable credit spread can be derived from the default statistics, the long-term average of the spread over the risk-free interest rate of the assets of similar duration and credit quality and belonging to the same class of assets shall be used as the fundamental spread.

(14) An insurance undertaking may use in the calculation of the matching adjustment an external credit assessment in accordance with the provisions of Commission Delegated Regulation (EU) No. 2015/35.

#### **§ 47. Volatility adjustment for risk-free interest rate term structure**

(1) An insurance undertaking may apply in the calculation of the best estimate the volatility adjustment for the risk-free interest rate term structure (hereinafter *the volatility adjustment*), notifying the Financial Supervision Authority thereof in advance and submitting thereto for obtaining the consent the risk management strategy containing the volatility adjustment criteria. The consent shall be considered to be granted if the insurance undertaking is not notified of the consent or refusal to grant the consent within 30 working days as of the submission of the risk management strategy to the Financial Supervision Authority.

(2) An insurance undertaking cannot apply the volatility adjustment for the extrapolated risk-free interest rate term structure. Already adjusted risk-free interest rates shall be used as the basis in the extrapolation of the interest rate term structure.

(3) An insurance undertaking cannot implement the volatility adjustment in the calculation of the best estimate of such insurance obligations with regard to which the insurance undertaking already implements the matching adjustment provided for in § 46 of this Act.

#### **§ 48. Risk margin**

(1) An insurance undertaking shall follow in the calculation of the risk margin the provisions of Articles 37 and 38 of Commission Delegated Regulation (EU) No. 2015/35.

(2) An insurance undertaking shall use in the calculation of the risk margin the Cost-of-Capital rate provided for in Article 39 of Commission Delegated Regulation (EU) No. 2015/35.

(3) The risk margin shall ensure that the value of the technical provisions equals the sum which another insurance undertaking needs for the transfer of insurance portfolio and performance of obligations arising from insurance contracts.

(4) If the Financial Supervision Authority has imposed a capital add-on on an insurance undertaking pursuant to subsection 234 (1) of this Act, the insurance undertaking shall not take the capital add-on into account in the calculation of the risk margin.

#### **§ 49. Recoverable amounts from reinsurance undertaking and special purpose vehicle**

(1) In the calculation of the recoverable amounts from a reinsurance undertaking and special purpose vehicle, an insurance undertaking shall take into account the time difference which arises between the payment of the insurance indemnity by the insurance undertaking and the receipt of the recoverable amount from a reinsurance undertaking and special purpose vehicle.

(2) In the calculation of the recoverable amounts from a reinsurance undertaking and special purpose vehicle, an insurance undertaking shall take into account the expected losses due to default of the counterparty and make



the corresponding adjustments based on the provisions of Article 42 of Commission Delegated Regulation (EU) No. 2015/35.

#### **§ 50. Data quality and approximations in calculation of technical provisions**

(1) An insurance undertaking shall establish the internal procedures to ensure the appropriateness, completeness and accuracy of data used in the calculation of the amount of the technical provisions. The requirements for the use of the data are provided for in Articles 19 and 20 of Commission Delegated Regulation (EU) No. 2015/35.

(2) If due to inappropriate or missing data it is impossible to apply a reliable actuarial method for finding the best estimate, an insurance undertaking may use approximations, including case-by-case approximations, in finding the best estimate of the technical provisions. In the use of approximations, an insurance undertaking shall follow the provisions of Article 21 of Commission Delegated Regulation (EU) No. 2015/35.

#### **§ 51. Requirements for technical provisions of insurance undertakings engaged in European Economic Area co-insurance**

(1) The provisions of this section apply to Estonian insurance undertakings who engage in European Economic Area co-insurance in conformity to the requirements provided in subsection (2) of this section.

(2) Co-insurance operations shall conform to the provisions of §§ 484 and 485 of the Law of Obligations Act with the following specifications:

- 1) co-insurance undertakings enter into an insurance contract specified in subsections 427 (2) or (3) of the Law of Obligations Act;
- 2) the home country of at least one of the co-insurance undertakings or, if the insurance contract is entered into by a branch, the country of location of the branch of at least one of the co-insurance undertakings shall be other than that of the leading insurance undertaking;
- 3) the leading insurance undertaking in particular shall be entitled to determine the terms and conditions of insurance and rate of insurance premium;
- 4) the risk is situated within Estonia or a Contracting State pursuant to the insurance contract entered into between the co-insurance undertakings.

(3) An Estonian co-insurance undertaking shall establish the technical provisions for co-insurance practice based on the provisions of this Act and other legislation.

(4) The technical provisions must comply at least with the amount calculated pursuant to the procedure for calculation of the technical provisions in force on the home country of the leading insurance undertaking.

(5) An Estonian co-insurance undertaking is required to collect and store information concerning the co-insurance operations, including information concerning other co-insurance undertakings.

(6) The provisions of this section do not apply to reinsurance undertakings.

## **Division 2 Investments**

#### **§ 52. Investment principles**

(1) In investment of the assets, an insurance undertaking shall be guided by the prudent person principle pursuant to the provisions of this section and subsections 54 (3)–(5) of this Act.

(2) An insurance undertaking shall invest only in such assets and such instruments whose risks the insurance undertaking can identify, measure, monitor, manage, control and report, and take into account in the assessment of the overall solvency provided for in clause 100 1) 1) of this Act.

(3) The security, quality, profitability and liquidity of investments portfolio shall be ensured in the investments of assets. The location of the assets shall be such that ensures the availability of the assets.

(4) In the event of conflict of interest, an insurance undertaking guarantees that the investment is made in the interests of the policyholders, insured persons and beneficiaries.

(5) In investment of the assets covering technical provisions, the nature and duration of obligations arising from insurance activities and insurance contracts shall be taken into consideration in addition to the provisions of subsections (1)–(4) of this section. In investment of the assets covering technical provisions, an insurance undertaking shall proceed from the best interests of the policyholders, insured persons and beneficiaries and take into consideration the objectives set in all disclosed policies.

(6) An insurance undertaking may perform transactions with derivative instruments exclusively for hedging purposes or more efficient management of risks of an insurance undertaking.

(7) Investments in securities that are not traded on regulated securities markets shall be kept at a reasonable level.

(8) Investments shall be diversified in such way, which provides the opportunity to avoid excessive exposure to one specific asset or type of assets, issuer, group of undertakings or geographic region, and the excessive accumulation of risks in the investment portfolio as a whole.

(9) Investments in the securities issued by the same issuer or issuers belonging to the same consolidation group shall not bring about an excessive risk concentration for an insurance undertaking.

(10) An insurance undertaking may, under the terms and conditions provided for in Articles 254–257 of Commission Delegated Regulation (EU) No. 2015/35, invest in ‘repackage’ loans into tradable securities and other financial instruments.

#### **§ 53. Investment of assets covering technical provisions of pension contracts**

(1) A life insurance undertaking, who enters into pension contracts, is required to invest the assets covering technical provisions of pension contracts separately from the assets covering technical provisions of other insurance contracts and other assets of an insurance undertaking and keep the money and securities constituting the assets covering technical provisions of pension contracts in separate accounts.

(2) The amount of the assets covering technical provisions of pension contracts shall constantly at least equal the amount of the technical provisions for the pension contracts of an insurance undertaking and the insurance undertaking is required to observe the investment principles established in § 52 of this Act in separate investments of the assets covering technical provisions of pension contracts.

(3) The provisions of this section shall also apply to an insurance undertaking whose Estonian branch enters into pension contracts.

#### **§ 54. Investment of assets covering technical provisions of unit-linked life insurance contracts**

(1) An insurance undertaking is required to keep the underlying assets of unit-linked life insurance contracts in separate account and invest these separately from the remaining assets covering technical provisions and other assets of an insurance undertaking.

(2) The provisions of subsections 52 (6)–(9) of this Act do not apply to investment of the underlying assets of unit-linked life insurance contracts.

(3) If the amount of payment under a unit-linked life insurance contract depends on the value of the underlying assets, the technical provision of this contract shall be covered by the respective assets as precisely as possible.

(4) If the amount of payment under a unit-linked life insurance contract depends on a share index or other reference value, the technical provision of this contract shall be covered as precisely as possible by the assets constituting the basis for this reference value.

(5) If unit-linked life insurance contracts specified in subsections (3) and (4) of this section include collaterals or other guaranteed payments, the provisions of subsections 52 (6)–(9) of this Act apply to the assets covering technical provisions of these contracts.

## **Division 3 Own Funds of Insurance Undertakings**

#### **§ 55. Basic own funds and ancillary own funds**

(1) The own funds of an insurance undertaking shall comprise basic own funds and ancillary own funds.

(2) The amount of the basic own funds shall equal the sum of the following components:

1) the amount by which the assets of an insurance undertaking exceed the liabilities and which is reduced by the amount of own shares held by the insurance undertaking;

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

2) subordinated liabilities.

(3) The assets and liabilities specified in clause (2) 1) of this section shall be valued pursuant to the provisions of Division 1 of this Chapter.

(4) The ancillary own funds mean the own funds which are not included among the basic own funds, but which can be called up to cover losses.

(5) The ancillary own funds mean the unpaid share capital, letters of credit and guarantees and all other legally binding commitments received by an insurance undertaking.  
[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

(5<sup>1</sup>) The ancillary own funds include any future claims which the insurance association may have against its members by way of a call for supplementary contribution within the following 12 months.  
[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

(6) The ancillary own funds that have been paid in or called up are the assets of an insurance undertaking and these form part of the basic own funds.

#### **§ 56. Inclusion of ancillary own funds in own funds**

(1) The ancillary own funds may be included in the own funds exclusively with the permission of the Financial Supervision Authority.

(2) The Financial Supervision Authority shall approve:

1) the value of each item of the ancillary own funds or  
2) a method used in determining the value of each item of the ancillary own funds and the period of the use of the method.

(3) The Financial Supervision Authority shall follow in granting the permission the procedure provided for in Articles 62–67 of Commission Delegated Regulation (EU) No. 2015/35.

(4) The ancillary own funds shall be included in the own funds in a value to the extent of which these can be used for covering losses using the estimates based on prudent and realistic assumptions.

(5) The ancillary own funds can be included in the own funds in fixed nominal value in case these can be used for covering losses in the corresponding value.

#### **§ 57. Classification of own funds into tiers**

(1) The own funds of an insurance undertaking are classified into Tier 1, Tier 2 and Tier 3 own funds.

(2) In classification of the own funds into tiers, an insurance undertaking shall proceed from compliance of the own funds with the following characteristics:

1) it is possible to use the own funds or call up the own funds to cover losses at any moment on a going-concern basis or in case of termination of an insurance undertaking;  
2) upon termination of the activities of an insurance undertaking, it is possible to use the own funds to cover losses and the obligations associated therewith are performed after the performance of all the obligations of an insurance undertaking, including after the performance of the obligations arising from insurance contracts with respect to the policyholders and beneficiaries;  
3) the term and relative duration of the own funds is consistent with the duration of the insurance obligations of an insurance undertaking;  
4) the own funds contain no terms and conditions which would serve as an incentive for the prior redemption of the own funds by an insurance undertaking;  
5) the insurance undertaking may cancel or postpone the payment obligation of the expenses accompanying the own funds;  
6) the own funds have no encumbrances.

(3) Tier 1 own funds mean the basic own funds specified in Articles 69 and 70 of Commission Delegated Regulation (EU) No. 2015/35, which comply with the terms and conditions provided for in Article 71 of the same Regulation and which substantially possess the characteristics provided for in subsection (2) of this section.

(4) Tier 2 own funds mean:

1) the basic own funds specified in Article 72 of Commission Delegated Regulation (EU) No. 2015/35, which comply with the terms and conditions provided for in Article 73 of the same Regulation and which substantially possess the characteristics provided for in clauses (2) 2)–6) of this section;  
2) the ancillary own funds specified in Article 74 of Commission Delegated Regulation (EU) No. 2015/35, which comply with the terms and conditions provided for in Article 75 of the same Regulation and which substantially possess the characteristics provided for in subsection (2) of this section.

(5) Tier 3 own funds mean:

1) the basic own funds specified in Article 76 of Commission Delegated Regulation (EU) No. 2015/35, which comply with the terms and conditions provided for in Article 77 of the same Regulation;  
2) the ancillary own funds pursuant to Article 78 of Commission Delegated Regulation (EU) No. 2015/35.

(6) If an insurance undertaking evaluates the compliance of the own funds not specified in subsections (3)–(5) of this section with the provisions of subsection (2) and Articles 71, 73, 75 and 77 of Commission Delegated Regulation (EU) No. 2015/35, the permission of the Financial Supervision Authority shall be required for the classification thereof.

(7) In granting the permission for classification of the own funds specified in subsection (6) of this section, the Financial Supervision Authority shall follow the procedure provided for in Article 79 of Commission Delegated Regulation (EU) No. 2015/35.

#### **§ 58. Requirements and limits for amount of own funds**

(1) An insurance undertaking shall ensure the eligibility of the own funds to comply with the Solvency Capital Requirement and the Minimum Capital Requirement, following the quantitative limits provided for in Article 82 of Commission Delegated Regulation (EU) No. 2015/35.

(1<sup>1</sup>) The amount of the eligible own funds to meet the Solvency Capital Requirement equals the sum of Tier 1 own funds and Tier 2 and 3 eligible own funds.  
[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

(1<sup>2</sup>) The amount of the eligible basic own funds to meet the Minimum Capital Requirement equals the sum of Tier 1 own funds and Tier 2 eligible basic own funds.  
[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

(2) An insurance undertaking is required to hold at all times the eligible own funds at least to the extent of the Solvency Capital Requirement and the eligible basic own funds to the extent of the Minimum Capital Requirement provided for in Division 4 of this Chapter.

(3) An insurance undertaking specified in subsection 16 (6) of this Act shall hold the basic own funds at least to the extent of the Minimum Capital Requirements provided for in subsection 82 (3), whereas the basic own funds corresponding to the notional Minimum Capital Requirement for life insurance provided for in the same subsection may not be used for compliance with the notional Minimum Capital Requirement for non-life insurance, and the basic own funds corresponding to the notional Minimum Capital Requirement for non-life insurance may not be used for compliance with the notional Minimum Capital Requirement for life insurance.

(4) An insurance undertaking shall prepare on the basis of the accounting provided for in subsections 128 (6)–(8) of this Act a report indicating the eligible basic own funds, which correspond pursuant to subsection (3) of this section to the notional Minimum Capital Requirement for life insurance and the notional Minimum Capital Requirement for non-life insurance.

(5) An insurance undertaking may use the eligible basic own funds which exceed the notional Minimum Capital Requirements specified in subsection (3) of this section to comply with its Solvency Capital Requirement, previously notifying thereof the Financial Supervision Authority.

#### **§ 59. Adjustment of own funds and accounting of participation**

(1) If the use of the own funds of an insurance undertaking is limited pursuant to the provisions of Article 80 of Commission Delegated Regulation (EU) No. 2015/35 and these can be used exclusively for covering the loss arising from certain obligations or certain risks, an insurance undertaking shall make adjustments to the own funds in order to recognise the lack of transferability of these own funds.

(2) An insurance undertaking shall follow in the making of adjustments the provisions of Article 81 of Commission Delegated Regulation (EU) No. 2015/35.

(3) In calculation of the amount of the own funds, the provisions of Article 68 of Commission Delegated Regulation (EU) No. 2015/35 shall apply in the accounting of participation.

#### **§ 60. Taking of loan**

(1) An insurance undertaking may include a subordinated liability among the basic own funds pursuant to the provisions of Commission Delegated Regulation (EU) No. 2015/35.

(2) An insurance undertaking may take a loan with a term of up to six months if the loan is needed for ensuring sufficient liquidity of the insurance undertaking.

(3) The loans specified in subsection (2) of this section shall be taken only with the prior permission of the Financial Supervision Authority. In order to be granted the permission, an insurance undertaking shall submit to the Financial Supervision Authority an application together with the draft of the loan agreement, an overview of the assets covering technical provisions, a calculation of the Solvency Capital Requirement, and other information and documents required by the Financial Supervision Authority.

(4) The Financial Supervision Authority shall make a decision to grant or refuse to grant the permission specified in subsection (3) of this section within ten working days after the submission of the application to this effect and all requisite documents and information to the Financial Supervision Authority.

(5) The Financial Supervision Authority shall be entitled to refuse to grant the permission specified in subsection (3) of this section if, in the opinion of the Financial Supervision Authority, the provisions of subsection (2) of this section are not the grounds for taking of the loan.

## **Division 4**

### **Capital Requirements of Insurance Undertakings**

#### **Subdivision 1**

### **General Principles of Solvency Capital Requirement**

#### **§ 61. General provisions**

(1) An insurance undertaking shall calculate the Solvency Capital Requirement at least once a year based on the standard formula, internal model or partial internal model on a going-concern and submit the calculation results to the Financial Supervision Authority.

(2) The Solvency Capital Requirement shall correspond to the amount of the own funds of an insurance undertaking, which provides an insurance undertaking with an opportunity to perform with 99.5% probability the obligations assumed under an insurance contract within the next 12 month.

(3) The Solvency Capital Requirement shall take into consideration the quantifiable risks arising from the existing business, as well as the new business expected to be written over the following 12 months to which an insurance undertaking is exposed in the course of the insurance activities (hereinafter *risk profile of insurance undertaking*), including at least the non-life underwriting risk, life underwriting risk, health underwriting risk, market risk, credit risk and operational risk. The Solvency Capital Requirement shall cover the measured risks arising from the previous activities of an insurance undertaking exclusively to the extent of unexpected damage.

(4) An insurance undertaking shall take into consideration in the calculation of the Solvency Capital Requirement the risk mitigation techniques provided that the risks arising from the use of the techniques, including the credit risk, are taken into consideration in the calculation of the Solvency Capital Requirement. The risk mitigation techniques include all techniques that enable an insurance undertaking to transfer part of the risks or all the risk to the other party.

[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

(5) The risk mitigation techniques of an insurance undertaking shall comply with the terms and conditions provided for in Articles 208–215 of Commission Delegated Regulation (EU) No. 2015/35.

(6) If the risk profile of an insurance undertaking significantly differs from the assumptions which were used in the calculation of the last Solvency Capital Requirement submitted to the Financial Supervision Authority, the insurance undertaking shall be required to promptly recalculate the Solvency Capital Requirement and submit the received result to the Financial Supervision Authority.

(7) If in the opinion of the Financial Supervision Authority the risk profile of an insurance undertaking has significantly changed after the last notification of the calculation of the Solvency Capital Requirement, it may require recalculation of an insurance undertaking.

(8) If the risk profile of an insurance undertaking does not comply with the prerequisites for the use of the standard formula provided for in Subdivision 2 of this Division, the Financial Supervision Authority may require the use of an internal model for the calculation of the Solvency Capital Requirement or capital requirement against certain risk.

(9) If an insurance undertaking implements the volatility adjustment provided for in § 47 of this Act, the Solvency Capital Requirement need not cover the risk of the reduction of the basic own funds arising from the changes in the volatility adjustment.

(10) The general principles of the Solvency Capital Requirement which an insurance undertaking shall follow in addition to the provisions of this section are provided for in Articles 83–86 of Commission Delegated Regulation (EU) No. 2015/35.

(11) The credit risk means the risk of loss or of deterioration of the financial condition of an insurance undertaking due to changes in the credit quality of an issuer, counterparty or all other debtors with whom the insurance undertaking comes into contact in connection with the default risk, spread risk or market risk concentration.

[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

(12) The liquidity risk specified in Commission Delegated Regulation (EU) No. 2015/35 means the risk that an insurance undertaking is unable to realise investments or other assets for the performance of financial obligations in a timely manner.

[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

(13) An External Credit Assessment Institution specified in Commission Delegated Regulation (EU) No. 2015/35 means a credit rating agency registered or certified pursuant to Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 302, 17.11.2009, p. 1–31), or a central bank issuing credit ratings to which Regulation (EC) No 1060/2009 does not apply.

[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

## **Subdivision 2**

### **Solvency Capital Requirement Calculated on Basis of Standard Formula**

#### **§ 62. Standard formula structure of Solvency Capital Requirement**

The Solvency Capital Requirement calculated on the basis of the standard formula shall comprise the sum of the Basic Solvency Capital Requirement, the capital requirement for operational risk and the adjustment of the Solvency Capital Requirement provided for in § 70 of this Act.

#### **§ 63. Calculation of Basic Solvency Capital Requirement**

(1) An insurance undertaking shall follow in determining the Basic Solvency Capital Requirement the provisions of Article 87 of Commission Delegated Regulation (EU) No. 2015/35.

(2) The scope of the non-life underwriting risk, life underwriting risk and health underwriting risk modules is provided for in Article 113 of Commission Delegated Regulation (EU) No. 2015/35.

(3) The probable loss margin shall be used as the risk measure in the calibration of the risks, which evaluates the loss distribution for a one-year period with a 99.5% confidence level. The risk measure means a mathematical function providing monetary value to the probability distribution forecast and growing in proportion to the level of risk constituting the basis for forecasting the probability.

[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

(3<sup>1</sup>) An insurance undertaking may take into account the diversification effect in the structure of each risk module and sub-module. The diversification effect means risk mitigation, offsetting the adverse effect of one exposure against the favourable effect of another exposure, if the coefficient of correlation of such risks is less than 1.

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(4) An insurance undertaking may replace in the calculation of the capital requirements for life and non-life underwriting risk and health underwriting risk a subset of the standard parameters in the formula by parameters specific to the risk profile of the insurance undertaking concerned (hereinafter *undertaking-specific parameters*), having previously received the permission of the Financial Supervision Authority.

(5) The standard parameters which may be replaced by an insurance undertaking are provided for in Article 218 of Commission Delegated Regulation (EU) No. 2015/35. The specific parameters of an insurance undertaking shall be found on the basis of the methods provided for in Article 220 of Commission Delegated Regulation (EU) No. 2015/35.

(6) The Financial Supervision Authority shall grant the permission for the use of undertaking-specific parameters if the methods used in finding these parameters are relevant and the data are complete and accurate and these comply with the criteria provided for in Article 219 of Commission Delegated Regulation (EU) No. 2015/35.

(7) The Financial Supervision Authority may require an insurance undertaking to use the undertaking-specific parameters if the risk profile of an insurance undertaking deviates from the assumptions underlying the standard formula and the use of the standard formula is irrelevant. An insurance undertaking shall calculate the corresponding parameters in such way as to comply with the provisions of subsection 61 (2) of this Act.

(8) If the insurance portfolio of an insurance undertaking includes a ring-fenced fund, a capital requirement corresponding to these funds pursuant to the provisions of Articles 216 and 217 of Commission Delegated

Regulation (EU) No. 2015/35 shall be found for the accounting of a smaller diversification in the calculation of the Solvency Capital Requirement.

(9) An insurance undertaking may use the simplifications provided for in Articles 88–112 of Commission Delegated Regulation (EU) No. 2015/35 in the calculation of the capital requirements for certain risks where the nature, scale and complexity of the risk justifies it and where it would be disproportionate to require the standardised calculations.

(10) In the calibration of simplified calculations, the risk measure of the probable loss margin shall be used for a one-year period with a 99.5% confidence level.

#### **§ 64. Capital requirement for non-life underwriting risk**

(1) The non-life underwriting risk shall reflect the risks arising from non-life insurance obligations, which are related to the underwriting risks covered by the contracts and the processes of the insurance activities.

(2) The sub-modules of the non-life underwriting risk module of the standard formula are formed by at least the following sub-risks:

- 1) non-life premium and reserve risk;
- 2) non-life catastrophe risk;
- 3) non-life lapse risk.

(3) The non-life premium and reserve risk means the risk of loss or of adverse change in the value of insurance obligations the reason for which is the variability of the temporal occurrence and frequency of the insured events and of the amount of loss, and the variability of the timing and amount of the insurance indemnity payments.

(4) The non-life catastrophe risk means the risk of loss or of adverse change in the value of insurance obligations the reason for which is unclarity in the pricing of extreme and exceptional events and the assumptions for formation of the technical provisions.

(5) In determining the capital requirements for the non-life underwriting risk and its sub-risks, the provisions of Articles 114–135 of Commission Delegated Regulation (EU) No. 2015/35 shall be used as the basis.

#### **§ 65. Capital requirement for life underwriting risk**

(1) The life underwriting risk shall reflect the risks arising from life insurance obligations, which are related to the risks covered by the contracts and the processes of the insurance activities.

(2) The sub-modules of the life underwriting risk module of the standard formula are formed by at least the following sub-risks:

- 1) mortality risk;
- 2) longevity risk;
- 3) health disability-morbidity risk;
- 4) life-expense risk;
- 5) revision risk;
- 6) life lapse risk;
- 7) life-catastrophe risk.

(3) The mortality risk means the risk of loss or of adverse change in the value of insurance obligations the reason for which is change in the mortality rate, the trend or volatility of this rate, in which case the increase of the mortality rate causes the growth of the value of insurance obligations.

(4) The longevity risk means the risk of loss or of adverse change in the value of insurance obligations the reason for which is change in the mortality rate, the trend or volatility of this rate, in which case the increase of the mortality rate causes the decline of the value of insurance obligations.

(5) The health disability-morbidity risk means the risk of loss or of adverse change in the value of insurance obligations the reason for which is change in the health disability and morbidity rate, the trend or dispersion of this rate.

(6) The life-expense risk means the risk of loss or of adverse change in the value of insurance obligations the reason for which is change in the cost rates and dispersion of expenses related to insurance contracts.

(7) The revision risk means the risk of loss or of adverse change in the value of insurance obligations the reason for which is change in the revision rate applied to annuity payments, the trend or dispersion of this rate based on the change in regulatory environment or the state of health of an insured person.

(8) The life lapse risk means the risk of loss or of adverse change in the value of insurance obligations the reason for which is change in the cancellation, amendment, termination or extension rate of insurance contracts.

(9) The life catastrophe risk means the risk of loss or of adverse change in the value of insurance obligations the reason for which is unclarity in the pricing of extreme and exceptional events and the assumptions for formation of the technical provisions.

(10) In determining the capital requirements for the life underwriting risk and its sub-risks, the provisions of Articles 136–143 of Commission Delegated Regulation (EU) No. 2015/35 shall be used as the basis.

#### **§ 66. Capital requirement for health underwriting risk**

(1) The health underwriting risk shall reflect all the risks arising from health insurance obligations, which are related to the underwriting risks covered by the contracts and the processes of the insurance activities.

(2) The sub-modules of the health underwriting risk module of the standard formula are formed by at least the following sub-risks:

- 1) health expense risk;
- 2) health reserve risk;
- 3) epidemic risk.

(3) The epidemic risk means the risk of loss or of adverse change in the value of insurance obligations the reason for which is the uncertainty of pricing and provisioning assumptions in case of outbreaks of epidemics and unusual accumulation of risks under such exceptional circumstances.

(4) In determining the capital requirements for the health underwriting risk and its sub-risks, the provisions of Articles 144–163 of Commission Delegated Regulation (EU) No. 2015/35 shall be used as the basis.

(5) Subsections (1)–(4) of this section shall also apply in case health insurance is offered on a similar basis to that of life insurance.

#### **§ 67. Capital requirement for market risk**

(1) The market risk shall reflect the risks arising from the level or volatility of market prices of financial instruments which have an impact upon the value of the assets and liabilities of an insurance undertaking. The market risk of the standard formula shall correctly reflect the structural mismatch between assets and liabilities, including various duration of assets and obligations.

(2) The sub-modules of the market risk module of the standard formula are formed by at least the following sub-risks:

- 1) equity risk which arises from changes in the level or in the volatility of market prices of equities;
- 2) spread risk which arises from changes in interest rate term structure or fluctuations of interest rates;
- 3) interest rate risk which arises from changes in the level or in the volatility of market prices;
- 4) property risk which arises from changes in the level or in the volatility of market prices of real estate;
- 5) currency risk which arises from changes in the level or in the volatility of currency exchange rates;
- 6) market risk concentration which arises from deterioration in the financial situation of an insurance undertaking the reason for which is lack of diversification of the assets of an insurance undertaking or large exposure to default risk by a single issuer of securities or a group of related issuers.

(3) In determining the capital requirements for the market risk and its sub-risks, the provisions of Articles 164–188 of Commission Delegated Regulation (EU) No. 2015/35 shall be used as the basis.

(4) The sub-module of the equity risk of the standard formula shall include a symmetric adjustment which is applied to cover the risk arising from changes in the level of equity prices and which shall include the increase or reduction of the capital requirement pursuant to the function of the current level of the equity index and weighted average level of the corresponding equity index provided for in Article 172 of Commission Delegated Regulation (EU) No. 2015/35.

(5) In the calibration of a symmetric adjustment, the risk measure of the probable loss margin shall be used for a one-year period with a 99.5% confidence level.

(6) The rate of the capital requirement for equity risk obtained as a result of a symmetric adjustment shall not differ from the rate of unadjusted capital requirement for equity risk by more than ten percentage points.

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#### **§ 68. Capital requirement for counterparty default risk**

(1) The counterparty default risk means the risk of loss or of deterioration of the financial condition of an insurance undertaking due to unexpected deterioration in the solvency or potential default of a counterparty or debtor of an insurance undertaking within the next 12 months.



(2) The counterparty default risk module shall include the risk-mitigation contracts, receivables from intermediaries and all other credit risks which are not included in the spread risk sub-module provided for in Article 175 of Commission Delegated Regulation (EU) No. 2015/35. It shall take appropriate account of collateral or other security held by or for the account of the insurance or reinsurance undertaking and the risks associated therewith.

(3) In calculating the capital requirement for the counterparty default risk, the provisions of Articles 189–202 of Commission Delegated Regulation (EU) No. 2015/35 shall be used as the basis.

(4) In case of the counterparty default risk, an insurance undertaking shall take into consideration the effect of all the risks related to the counterparty regardless of the legal form of the contractual obligations of an insurance undertaking.

#### **§ 69. Capital requirement for operational risk**

(1) The operational risk means the risk of loss or of deterioration of the financial condition of an insurance undertaking due to failure of internal processes, personnel or systems, or from external events.

(2) The operational risk shall include legal risks, but not include risks arising from strategic decisions, as well as reputation risks.

(3) The capital requirement for operational risk shall reflect the operational risks to the extent these are already not included in the risk modules provided for in §§ 64–68 of this Act.

(4) In the calibration of the capital requirement for operational risk, the risk measure of the probable loss margin shall be used for a one-year period with a 99.5% confidence level.

(5) In case of life insurance contracts where the investment risk is borne by the policyholder, the calculation of the capital requirement for operational risk shall take into account the annual expenses in respect of insurance obligations.

(6) In case of insurance contracts not specified in subsection (5) of this section, the calculation of the capital requirement for operational risk shall take into account the amount of the earned insurance premiums and the technical provisions for these contracts.

(7) In the case specified in subsection (6) of this section, the capital requirement for operational risk shall not exceed 30 per cent of the Basic Solvency Capital Requirement associated with the insurance activities.

(8) In determining the capital requirement arising from the operational risk, the provisions of Article 204 of Commission Delegated Regulation (EU) No. 2015/35 shall be used as the basis.

#### **§ 70. Adjustment of Solvency Capital Requirement**

(1) In case it is possible to cover unexpected losses on account of the future discretionary benefits of the technical provisions or deferred taxes of an insurance undertaking or both of these, the Solvency Capital Requirement may be reduced on account of this possibility of covering the losses (hereinafter *adjustment of the Solvency Capital Requirement*).

(2) Upon adjustment of the Solvency Capital Requirement, the effect on the Basic Solvency Capital Requirement of the future discretionary benefits of insurance contracts used for the mitigation of risks shall be taken into account if an insurance undertaking is entitled to reduce such benefits in order to cover the incurred losses on account thereof.

(3) In the application of the provisions of subsection (2) of this section, the value of the future discretionary benefits which is found on the assumptions used as the basis in the calculation of the best estimate shall be compared with the value of the benefits upon realisation of adverse scenarios.

(4) The effect of the future discretionary benefits upon the adjustment of the Solvency Capital Requirement shall not exceed the sum of the technical provisions and deferred taxes corresponding to the future discretionary benefits.

(5) An insurance undertaking shall follow in the calculation of the adjustment of the Solvency Capital Requirement the provisions of Articles 205–207 of Commission Delegated Regulation (EU) No. 2015/35.

### **Subdivision 3**

# Internal Model

## § 71. Use of internal model

(1) An insurance undertaking may use, with the permission of the Financial Supervision Authority, in the calculation of the Solvency Capital Requirement the internal model or the partial internal model.

(2) The internal model shall include the risks specified in subsection 61 (3) of this Act and all other material risks which can be ascertained pursuant to Article 233 of Commission Delegated Regulation (EU) No. 2015/35.

(3) An insurance undertaking may use the partial internal model:

- 1) in the calculation of the capital requirement for one or several risks or sub-risks provided for in §§ 64–68 of this Act;
- 2) in the calculation of the capital requirement for operational risk provided for in § 69 of this Act;
- 3) in the calculation of the adjustment of the Solvency Capital Requirement provided for in § 70 of this Act;

(4) In addition to the provisions of subsection (3) of this section, an insurance undertaking may use a partial internal model with regard to the activities of the entire enterprise or several major business units.

(5) The internal model of an insurance undertaking shall meet the requirements provided for in §§ 76–81 of this Act.

(6) The requirements provided for in §§ 76–81 shall be applied to the use of the partial internal model, taking into consideration the limited scope of application of the partial internal model.

(7) An insurance undertaking may use models or data obtained from a third party pursuant to the provisions of Article 247 of Commission Delegated Regulation (EU) No. 2015/35 provided that the requirements provided for in §§ 76–81 of this Act have been met.

## § 72. Permission for use of internal model

(1) When applying for the permission for the use of the internal model, an insurance undertaking shall submit to the Financial Supervision Authority an application for the use of the internal model together with the information and documents, which certify that the internal model complies with the requirements provided for in §§ 76–81 of this Act.

(2) The Financial Supervision Authority may request additional information and documents for reviewing an application for the use of the internal model.

(3) The Financial Supervision Authority shall make a decision to grant or refuse to grant the permission for the use of the internal model within six months as of the receipt of an application for the use of the internal model and all the information and documents.

(4) The Financial Supervision Authority shall grant the permission for the use of the internal model in case the procedure for identifying, measuring, monitoring, managing and reporting risk of an insurance undertaking is adequate and meets the requirements provided for in this Division.

(5) The Financial Supervision Authority shall grant the permission for the use of a partial internal model if in addition to the provisions of this Subdivision the following conditions have been met:

- 1) the limited scope of application of the internal model is sufficiently justified;
- 2) a partial internal model better reflects the risk profile of an insurance undertaking and the Solvency Capital Requirement arising therefrom, the model complies with the principles provided for in § 61 of this Act and it can be integrated into the standard formula pursuant to Article 239 of Commission Delegated Regulation (EU) No. 2015/35.

(6) If the Financial Supervision Authority assesses an application for the use of a partial internal model which only covers the sub-risks of a specific risk or several business units with respect to a specific risk or partially both, the Financial Supervision Authority may require an insurance undertaking to submit a realistic transitional plan to extend the scope of application of the internal model.

(7) The transitional plan shall contain an overview how an insurance undertaking intends to extend the area of application of the internal model to other risks or business units in order to ensure that the internal model covers a predominant part of the insurance activities of an insurance undertaking with respect to that specific risk.

(8) If an insurance undertaking has received from the Financial Supervision Authority the permission for the use of the internal model, the Financial Supervision Authority may require an insurance undertaking to calculate the Solvency Capital Requirement also using the standard formula.

### **§ 73. Changes to internal model**

(1) An insurance undertaking may change the internal model pursuant to the procedure for changing the internal model.

(2) The procedure for changing the internal model shall cover the description of major and minor changes and it must be submitted to the Financial Supervision Authority together with an application for the use of the internal model specified in subsection 72 (1) of this Act.

(3) The proceedings of the permission for the use of the internal model provided for in § 72 of this Act shall include the approval of the procedure for changing the internal model.

(4) Any major changes to the internal model and any amendments to the procedure for changing the internal model must be approved in advance by the Financial Supervision Authority.

(5) The permission of the Financial Supervision Authority is not required for any minor changes to the internal model if the changes are carried out pursuant to the procedure for changing the internal model specified in subsection (1) of this section.

### **§ 74. Transition from internal model to standard formula**

If an insurance undertaking has received from the Financial Supervision Authority the permission for the use of the internal model or a partial internal model, an insurance undertaking may only in justified circumstances and with the permission of the Financial Supervision Authority use the standard formula for the calculation of the Solvency Capital Requirement.

### **§ 75. Non-compliance of internal model**

(1) If, after the permission for the use of the internal model has been granted, it becomes evident that an insurance undertaking fails to perform the requirements provided for in §§ 76–81 of this Act, an insurance undertaking shall promptly submit to the Financial Supervision Authority a plan to restore compliance or demonstrate that the effect of non-compliance is immaterial.

(2) If an insurance undertaking fails to comply with the plan specified in subsection (1) of this section, the Financial Supervision Authority may require that the insurance undertaking shall hereinafter use the standard formula in the calculation of the Solvency Capital Requirement.

### **§ 76. Internal model use test**

(1) An insurance undertaking shall demonstrate that the internal model is widely used in and plays an important role in the system of governance, in particular:

- 1) in the risk-management system and decision-making processes provided for in § 97 of this Act;
- 2) in the assessment and allocation of the economic and solvency capital of an insurance undertaking, including the assessment of the own risk and solvency of an insurance undertaking provided for in § 100.

(2) In case of the use of the internal model, the frequency of calculation of the Solvency Capital Requirement and the frequency of the use of the internal model shall be consistent in the system of governance.

(3) The management board of an insurance undertaking shall be responsible for ensuring the ongoing appropriateness of the structure and operations of the internal model and for reflecting the risk profile of an insurance undertaking in the internal model.

(4) An insurance undertaking shall observe the principles of use of the internal model pursuant to the provisions of Articles 223–227 of Commission Delegated Regulation (EU) No. 2015/35.

### **§ 77. Requirements for data and statistical methods**

(1) In case of the internal model and in particular in forecasting the probability distribution underlying it, an insurance undertaking shall follow the requirements provided for in this section.

(1<sup>1</sup>) The probability distribution forecast means a mathematical function providing the probability of occurrence to a complete set of mutually exclusive future events.

[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

(2) In forecasting the probability distribution, an insurance undertaking shall use as the basis the relevant actuarial and statistical methods, which are based on credible information and realistic assumptions, which comply with the provisions of Articles 229 and 230 of Commission Delegated Regulation (EU) No. 2015/35 and which are consistent with the assumptions underlying the calculation of the technical provisions.

(3) Data used in the internal model shall be accurate, complete and appropriate and these shall meet the requirements provided for in Article 231 of Commission Delegated Regulation (EU) No. 2015/35. Data used in forecasting the probability distribution shall be updated at least once a year.

(4) Regardless of the method used in forecasting the probability distribution, the internal model shall provide an insurance undertaking with an opportunity to determine the significance of the risks arising from its activities pursuant to the provisions of Article 232 of Commission Delegated Regulation (EU) No. 2015/35. An insurance undertaking shall take the significance of the risks into account in its system of governance, in particular in risk management, decision-making processes and capital allocation.

(5) If, in the opinion of the Financial Supervision Authority, the diversification effects have been adequately assessed pursuant to the provisions of Article 234 of Commission Delegated Regulation (EU) No. 2015/35, an insurance undertaking may take diversification into account in the calculation of different risks in the internal model.

(6) An insurance undertaking may take into account in the internal model the effect of risk mitigation techniques if the credit and other risks arising from the use of these techniques are adequately reflected in the internal model and the insurance undertaking meets the requirements provided for in Article 235 of Commission Delegated Regulation (EU) No. 2015/35.

(7) An insurance undertaking shall assess the risks associated with the financial guarantees and options included in insurance contracts, including the options of both the policyholder and the insurance undertaking, if such risks are significant. The effect of various events on the use of the options of the policyholder and the insurance undertaking must be taken into account in risk assessment.

(8) An insurance undertaking may take into account in the internal model the future management actions if such actions can be reasonably assumed, taking into consideration the provisions of Article 236 of Commission Delegated Regulation (EU) No. 2015/35. Assessments of the effect of the management actions shall take account of the time spent on the implementation thereof.

(9) The internal model shall take into account all payments to be made on the basis of insurance contracts, regardless of the fact whether the making of such payments is guaranteed or not pursuant to the terms and conditions of an insurance contract.

(10) The provisions of Article 237 of Commission Delegated Regulation (EU) No. 2015/35 shall apply to the appropriateness of third-party models or data.

#### **§ 78. Calibration standards**

(1) An insurance undertaking may use for the internal model a different time period and risk measure than that provided for in subsection 63 (3) of this Act if the Solvency Capital Requirement found on the basis of the internal model provides the policyholders, insured persons and beneficiaries with the protection equivalent to that provided for in subsection 61 (2).

(2) If possible, an insurance undertaking shall derive the Solvency Capital Requirement directly from the probability distribution forecast found with the help of the internal model, using the risk measure of the probable loss margin for a one-year period with a 99.5% confidence level.

(3) If, in the opinion of an insurance undertaking, the calculation of the Solvency Capital Requirement pursuant to the provisions of subsection (2) of this section is irrelevant, an insurance undertaking may use approximations in the calculation of the Solvency Capital Requirement with the permission of the Financial Supervision Authority on the condition that the protection equivalent to that provided for in § 61 of this Act is ensured for the policyholders, insured persons and beneficiaries.

(4) An insurance undertaking shall follow the provisions of Article 238 of Commission Delegated Regulation (EU) No. 2015/35 in the implementation of the time period and risk measure, and the approximations provided for in subsections (1) and (3) of this section.

(5) The Financial Supervision Authority may require that an insurance undertaking tests the suitability of the internal model with the help of relevant benchmark portfolios and use assumptions based mainly on external data in order to verify the calibration of the internal model and to check that its specification is in line with generally accepted market practice.

#### **§ 79. Profit and loss attribution**

(1) An insurance undertaking must at least once a year analyse the causes and attribution of profit and loss for each major business unit and certify that the risk ratios determined pursuant to subsection 77 (4) of this Act reflect the actual profit and loss attribution.

(2) An insurance undertaking shall follow in the implementation of this section the provisions of Article 240 of Commission Delegated Regulation (EU) No. 2015/35.

## **§ 80. Validation standards**

- (1) An insurance undertaking must validate its internal model on a regular basis in order to assess the performance of the internal model and the appropriateness of the technical description of the model, and to compare the results against experience.
- (2) The validation process shall provide the insurance undertaking with an opportunity to prove to the Financial Supervision Authority that the capital requirements found on the basis of the internal model are appropriate.
- (3) The validation process shall comprise an analysis of the stability of the internal model, including the testing of the sensitivity of the results of the internal model to changes in key underlying assumptions of the model. It shall also include an assessment of the accuracy, completeness and appropriateness of the data used in the internal model.
- (4) An insurance undertaking must, *inter alia*, assess the appropriateness of the probability distribution forecast with the help of the statistical methods used in the validation of the internal model, taking into account in addition to the history of losses of the insurance undertaking also all material new data and new information.
- (5) An insurance undertaking shall establish the validation process and apply the respective measures based on the provisions of Articles 241 and 242 of Commission Delegated Regulation (EU) No. 2015/35.

## **§ 81. Requirements for documentation**

- (1) An insurance undertaking must document the design and operational details of the internal model based on the provisions of Article 243 of Commission Delegated Regulation (EU) No. 2015/35. The documentation must reflect the provisions of §§ 76–80 of this Act.
- (2) The documentation must include at least the information provided for in Article 244 of Commission Delegated Regulation (EU) No. 2015/35 and pursuant to the provisions of Article 246 all the changes to the internal model.
- (3) Based on Article 245 of Commission Delegated Regulation (EU) No. 2015/35, the documentation must specify all cases when the internal model actually does not work.

# **Subdivision 4 Minimum Capital Requirement of Insurance Undertaking**

## **§ 82. Minimum Capital Requirement**

- (1) The Minimum Capital Requirement shall correspond to the amount of the eligible basic own funds where the availability of the eligible basic own funds in a lesser sum would result, upon continuation of the activities of an insurance undertaking, in extremely great risk that the obligations assumed with respect to the policyholders, insured persons and beneficiaries remain unperformed.
- (2) The Minimum Capital Requirement shall be calculated on the basis of the actuarial principles provided for in Articles 248–252 of Commission Delegated Regulation (EU) No. 2015/35. The calculation must be clearly and easily monitored and controlled.
- (3) A life insurance undertaking specified in subsection 16 (6) of this Act shall calculate the notional Minimum Capital Requirement for life insurance, as if it were engaged exclusively in life insurance, and the notional Minimum Capital Requirement for non-life insurance, as if it were engaged exclusively in non-life insurance, taking into consideration the provisions of subsections 128 (6)–(8) of this Act and Article 252 of Commission Delegated Regulation (EU) No. 2015/35.
- (4) The Minimum Capital Requirement shall be calculated as a linear function of the following variables net of reinsurance cessions:
  - 1) technical provisions of insurance undertaking;
  - 2) insurance premiums;
  - 3) capital at risk;
  - 4) deferred taxes;
  - 5) administrative expenses.
- (5) In the calibration of the linear function, the risk measure of the probable loss margin shall be used for a one-year period with an 85% confidence level.

(6) The Minimum Capital Requirement of an insurance undertaking shall not be smaller than the floor of the Minimum Capital Requirement.

(7) The floor of the Minimum Capital Requirement shall amount to:

- 1) 3.7 million euros if an insurance undertaking has the right to engage in life insurance, the classes of non-life insurance specified in clauses 12 (1) 10–15) of this Act or reinsurance;
- 2) 2.5 million euros if an insurance undertaking has the right to engage in the classes of non-life insurance not specified in clause 1) of this subsection;
- 3) 1.2 million euros in the case of a captive reinsurance undertaking specified in subsection 8 (2) of this Act;
- 4) 6.2 million euros pursuant to Article 253 of Commission Delegated Regulation (EU) No. 2015/35 in the case of an insurance undertaking specified in subsection 16 (6) of this Act.

(8) If an insurance undertaking receives in the calculation of the Minimum Capital Requirement as a result an amount which is below 25 per cent or above 45 per cent of the Solvency Capital Requirement of an insurance undertaking with the inclusion of the capital add-on, if necessary, the Minimum Capital Requirement of an insurance undertaking shall be respectively 25 per cent or 45 per cent of this Solvency Capital Requirement if the received amount is not smaller than the floor of the Minimum Capital Requirement.

(9) An insurance undertaking shall calculate the Minimum Capital Requirement at least once a quarter and submit the received calculation to the Financial Supervision Authority. An insurance undertaking is required, in the case provided for in subsection (8) of this section, to explain the reasons for the result received in the calculation of the Minimum Capital Requirement.

(10) The provisions of subsection (8) of this section do not require calculation of the Solvency Capital Requirement once a quarter.

## **Division 5**

### **Requirements for Reinsurance and Prudential Requirements for Special Purpose Vehicle**

#### **§ 83. Requirements for reinsurance**

(1) Insurance undertakings shall not enter into reinsurance contracts in non-life insurance if the period of insurance providing the basis for the calculation of the reinsurance premium is longer than one year or if the instalments of reinsurance premiums which are paid to the reinsurance undertaking and intended for the fulfilment of commitments arising from the probability of the insured event occurring are not based on generally recognised actuarial principles of calculation or if such principles of calculation differ significantly in different years.

2) Insurance undertakings shall not enter into reinsurance contracts in life insurance if commitments arising from the probability of the insured event occurring or from insured sums and surrender values are divided between the parties in a manner not based on generally recognised actuarial principles of calculation or if such principles of calculation differ significantly in different years.

(3) The provisions of Commission Delegated Regulation (EU) No. 2015/35 shall apply with regard to entry into finite reinsurance contracts for the purposes of Article 210(3) of Directive 2009/138/EC of the European Parliament and of the Council.

(4) Reinsurance contracts with third country reinsurance undertakings shall be treated in the same manner as the insurance contracts of reinsurance undertakings of the Member States if under Article 172 of Directive 2009/138/EC of the European Parliament and of the Council the solvency regime of the third country is equivalent or temporarily equivalent to that laid out in Title I of the Directive in accordance with the decision of the European Commission.

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#### **§ 84. Prudential requirements for special purpose vehicle**

The provisions of Articles 326 and 327 of Commission Delegated Regulation (EU) No. 2015/35 apply to prudential requirements for special purpose vehicle.

## **Division 6**

### **Prudential Requirements for Estonian Branch of Third Country Insurance Undertaking**

#### **§ 85. Prudential requirements for Estonian branch of third country insurance undertaking**

An Estonian branch of a third country insurance undertaking is required to:

- 1) calculate the capital requirements of the branch pursuant to the actuarial principles provided for in §§ 61–82 of this Act, taking into account only the activities of the branch;
- 2) hold the eligible own funds to comply with the Solvency Capital Requirement pursuant to the provisions of § 58 of this Act;
- 3) hold the eligible basic own funds to comply with the Minimum Capital Requirement or the floor of the Minimum Capital Requirement pursuant to the provisions of subsection 58 (2) of this Act;
- 4) ensure that the eligible amount of the basic own funds is not smaller than one-half of the floor of the Minimum Capital Requirement provided for in subsection 82 (7) of this Act;
- 5) value the assets and liabilities and the technical provisions pursuant to the principles provided for in Division 1 of the Chapter and to establish the technical provisions for the performance of the obligations arising from insurance contracts entered into through the Estonian branch;
- 6) possess assets in Estonia to comply with the Solvency Capital Requirement, which value is equal at least to the Minimum Capital Requirement, but is not smaller than one-half of the floor of the Minimum Capital Requirement provided for in subsection 82 (7) of this Act, including to hold the deposit provided for in clause 38 (2) 9) of this Act;
- 7) possess, in addition to clause 6) of this section, the necessary assets in other Contracting States to comply with the Solvency Capital Requirement;
- 8) organise accounting concerning operations in Estonia pursuant to subsection 17 (2) of the Accounting Act, and to store in Estonia all documents related to operations in Estonia.

### **§ 86. Specifications of prudential requirements for Contracting State branches of third country insurance undertaking**

(1) If a third country insurance undertaking has, in addition to Estonia, a branch in another Contracting State, the following conditions that are more favourable than the conditions provided for in § 85 of this Act shall apply to such branch at the request of a third country insurance undertaking and with the permission of the financial supervision authorities of all the relevant Contracting States:

- 1) the insurance contracts entered into the branches of all the Contracting States must be taken into account in the calculation of the Solvency Capital Requirement;
- 2) possession of the deposit specified in subsection 39 (2) 9) of this Act in Estonia is required only in the case where pursuant to subsection (3) of this section, the Financial Supervision Authority exercises supervision over the solvency of the Contracting State branches of the third country insurance undertaking;
- 3) assets corresponding to the Minimum Capital Requirement may be localised in any Contracting State where the third country insurance undertaking has established a branch.

(2) A third country insurance undertaking who wishes to operate under the preferential conditions specified in subsection (1) of this section shall submit a request to the Financial Supervision Authority and the documents certifying that a similar request has been submitted to the financial supervision authorities of all the Contracting States in which the third country insurance undertaking has established a branch.

(3) In the request specified in subsection (2) of this section, a third country insurance undertaking shall indicate the financial supervision authorities selected thereby to exercise supervision over the solvency of the Contracting State branches, and shall provide the reasoning underlying such choice. Such financial supervision authority may only be the Financial Supervision Authority or the financial supervision authority of the Contracting State in which the third country insurance undertaking has established a branch.

(4) If a third country insurance undertaking has selected the financial supervision authority of another Contracting State as the body which is to engage in the supervision specified in subsection (3) of this section, the Financial Supervision Authority shall forward information to the specified financial supervision authority concerning the Estonian branch of the third country insurance undertaking needed to exercise supervision over the solvency of the branch.

(5) The preferential conditions specified in subsection (1) of this section shall enter into force at the time the selected financial supervision authority informs the other financial supervision authorities that the financial supervision authority shall exercise supervision over the solvency of the Contracting State branches of a third country insurance undertaking.

(6) If the Financial Supervision Authority or the financial supervision authority of a Contracting State in which a third country insurance undertaking has a branch decides to cease the grant of the preferential conditions specified in subsection (1) of this section, the preferential conditions with respect to all the Contracting State branches of the third country insurance undertaking shall cease simultaneously.

(7) If a third country insurance undertaking has selected the Financial Supervision Authority as the body which is to engage in the supervision, the Financial Supervision Authority may apply the measures provided for in § 95 of this Act if the own funds of the Estonian branch of a third country insurance undertaking are reduced below the Minimum Capital Requirement. In case of further deterioration of the solvency of the Estonian branch of a third country insurance undertaking, the Financial Supervision Authority may apply all measures which

are necessary to safeguard the interests of the policyholders, insured persons and beneficiaries arising from insurance contracts or to perform of the obligations arising from reinsurance contracts.

(8) If a third country insurance undertaking has selected the financial supervision authority of a Contracting State as the body which is to engage in the supervision, the financial supervision authority of the corresponding Contracting State shall have the right to apply the measures described in subsection (7) of this section with regard to the Estonian branch of a third country insurance undertaking.

(9) In cases where pursuant to subsection (3) of this section, the Financial Supervision Authority exercises supervision over the solvency of the Contracting State branches of a third country insurance undertaking, the Financial Supervision Authority is required to notify the financial supervision authorities of the other relevant Contracting States if the authorisation granted to the third country insurance undertaking for establishment of a branch in Estonia is revoked.

(10) If the financial supervision authority of a Contracting State informs the Financial Supervision Authority that the former has revoked an authorisation granted to a third country insurance undertaking for establishment of a branch on the grounds that the own funds of the third country insurance undertaking does not comply with the Solvency Capital Requirement which has been calculated on the basis of insurance contracts entered into in the Contracting States, the Financial Supervision Authority is required to revoke the authorisation granted to the third country insurance undertaking for establishment of its Estonian branch.

## **Division 7**

### **Insurance Group Solvency**

#### **§ 87. Definitions**

(1) An insurance group for the purposes of this Act shall mean a consolidation group which leading undertaking is a participating insurance undertaking, insurance holding company or mixed financial holding company.

(2) A relevant financial supervision authority for the purposes of this Act shall mean a financial supervision authority which has granted an authorisation to a Contracting State insurance undertaking belonging to the insurance group, a financial supervision authority of the location of a Contracting State insurance holding company belonging to the insurance group or a financial supervision authority of the location of a mixed financial holding company.

(3) An insurance group supervisor pursuant to § 241 of this Act shall mean a financial supervision authority responsible for exercising and coordination of supervision over an insurance group.

(4) A participating undertaking, including an insurance undertaking, for the purposes of this Act shall mean a parent undertaking or an undertaking which holds a participation at least in one insurance undertaking.

(5) A related undertaking, including an insurance undertaking, shall mean a subsidiary or an undertaking in which a participating undertaking holds participation.

(6) An insurance holding company shall mean a parent undertaking which is not a mixed financial holding company, but which subsidiaries or the majority of these are insurance undertakings.

(7) A mixed-activity insurance holding company shall mean a parent undertaking which is not an insurance undertaking, insurance holding company or mixed financial holding company, and which has at least one subsidiary which is an insurance undertaking.

(8) A mixed financial holding company shall mean a parent undertaking which is not an insurance undertaking, special purpose vehicle, credit institution, investment firm or management company, but which has at least one subsidiary which is an insurance undertaking, special purpose vehicle, credit institution, investment firm or management company of a Contracting State and which, together with its subsidiaries and other undertakings, forms a financial conglomerate.

#### **§ 88. General provisions of insurance group solvency**

(1) A participating insurance undertaking is required to ensure that the insurance group at all times has available at least the eligible own funds to the extent of the Solvency Capital Requirement of the insurance group provided for in § 89 of this Act.

(2) Calculation of the insurance group solvency shall take into account all the related insurance undertakings of an insurance undertaking.

(3) If the parent undertaking of an insurance undertaking is a Contracting State insurance holding company or mixed financial holding company, this insurance undertaking is required to ensure that the insurance group at all times has available at least the eligible own funds to the extent of the Solvency Capital Requirement of the insurance group provided for in § 89 of this Act.



(31) The insurance group shall establish a procedure for identification of deterioration of the financial condition of the insurance group and notification of the financial supervisor of the insurance group thereof.  
[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

(32) If the insurance group has no own funds for meeting the Solvency Capital Requirement of the insurance group provided for in § 89 of this Act or such threat may arise within the next three months, an insurance undertaking specified in subsection (1) or (3) of this section must promptly notify thereof the insurance group supervisor. The provisions of subsections 93 (2)–(4) and § 94 of this Act concerning an insurance undertaking and the Financial Supervision Authority shall apply respectively with regard to the insurance group and the insurance group supervisor.  
[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

(4) A participating insurance undertaking shall submit to the insurance group supervisor the calculation of the Solvency Capital Requirement of the insurance group and the relevant data at least once a year. If the insurance group is not managed by an insurance undertaking, the calculation and the respective information shall be submitted by an insurance holding company or a mixed financial holding company or an insurance undertaking appointed by the insurance group supervisor after consulting the other relevant financial supervision authorities and the insurance group.

(5) The internal model may be used in the calculation of the Solvency Capital Requirement of an insurance undertaking belonging to the insurance group and the Solvency Capital Requirement of the insurance group, if the insurance group has been granted the permission for the use of the internal model pursuant to the provisions of § 243 of this Act.

(6) If the risk profile of the insurance group deviates from the assumptions used in the last calculation of the Solvency Capital Requirement of the insurance group the submitted to insurance group supervisor, the Solvency Capital Requirement shall be immediately recalculated and the calculation shall be submitted to the insurance group supervisor.

(7) If the Financial Supervision Authority is the insurance group supervisor and, in the opinion of the Financial Supervision Authority, the risk profile of the insurance group has significantly changed after the last calculation of the Solvency Capital Requirement of the insurance group, the Financial Supervision Authority may require recalculation of the Solvency Capital Requirement by the insurance group.

(8) The Financial Supervision Authority and the other relevant financial supervision authorities shall evaluate whether the aggregated Solvency Capital Requirement of the insurance group provided for in subsection 89 (8) of this Act corresponds to the risk profile of the insurance group, primarily taking into consideration the risks arising at the insurance group level.

(9) If the actual risk profile of the insurance group differs significantly from the assumptions used in the calculation of the aggregated Solvency Capital Requirement of the insurance group, the insurance group supervisor shall be entitled to establish the capital add-on pursuant to the procedure provided for in § 244 of this Act 244.

### **§ 89. Calculation of insurance group solvency**

(1) A participating insurance undertaking shall calculate the insurance group solvency based on consolidated data and following the method provided for in subsections (3)–(5) of this section.

(2) If the Financial Supervision Authority is the insurance group supervisor, the Financial Supervision Authority may require, after consulting the other relevant financial supervision authorities and the insurance group, the calculation of the insurance group solvency pursuant to the deduction and aggregation method provided for in subsections (6)–(9) of this section or as a combination of the methods specified in this subsection and subsection (1), basing the decision on the criteria provided for in Article 328 of Commission Delegated Regulation (EU) No. 2015/35.

(3) The insurance group solvency based on consolidated data shall be the difference between the following amounts:

1) the eligible own funds of the insurance group which are determined applying the provisions of Articles 331–334 of Commission Delegated Regulation (EU) No. 2015/35;

2) the Solvency Capital Requirement of the insurance group based on consolidated data (hereinafter *the Solvency Capital Requirement of the insurance group*) which is calculated applying the provisions of Articles 335–338 of Commission Delegated Regulation (EU) No. 2015/35.

(4) The minimum Solvency Capital Requirement of the insurance group shall be the sum of the following amounts:

1) the Minimum Capital Requirement of a participating insurance undertaking;

2) the proportionate share of a participating insurance undertaking in the Minimum Capital Requirement of an insurance undertaking.

(5) The requirements provided for in Article 82 of Commission Delegated Regulation (EU) No. 2015/35 shall apply with regard to the eligible basic own funds to ensure compliance with the minimum Solvency Capital Requirement of the insurance group.

(6) Pursuant to the deduction and aggregation method, the insurance group solvency shall be the difference between the following amounts:

- 1) the aggregated eligible own funds of the insurance group;
- 2) the value in the participating insurance undertaking of the related insurance undertaking and the sum of the aggregated Solvency Capital Requirement of the insurance group.

(7) The aggregated eligible own funds of the insurance group shall be the sum of the following own funds:

- 1) the own funds compliant with the Solvency Capital Requirement of a participating insurance undertaking;
- 2) the proportionate share of a participating insurance undertaking in the own funds of a related insurance undertaking compliant with the Solvency Capital Requirement.

(8) The aggregated Solvency Capital Requirement of the insurance group shall be the sum of the following amounts:

- 1) the Solvency Capital Requirement of a participating insurance undertaking;
- 2) the proportionate share of a participating insurance undertaking in the Solvency Capital Requirement of an insurance undertaking.

(9) If a participating insurance undertaking has an indirect holding in a related insurance undertaking, successive holdings and interests shall be taken into account in determining the value of the indirect holding.

(10) If a participating insurance undertaking calculates the insurance group solvency using a combination of the methods provided for in subsections (3)–(9) of this section, the insurance undertaking must take into account the provisions of Article 341 of Commission Delegated Regulation (EU) No. 2015/35.

(11) If an insurance undertaking is the subsidiary of an insurance holding company or mixed financial holding company, the insurance group supervisor shall ensure that the insurance group solvency is calculated at the level of the insurance holding company or mixed financial holding company, and this respect the insurance holding company or mixed financial holding company is regarded the parent undertaking of an insurance undertaking and the provisions of this Act concerning the own funds and the Solvency Capital Requirement of an insurance undertaking shall apply thereto.

(12) If a participating insurance undertaking holds a participation, through an insurance holding company or mixed financial holding company, in a related insurance undertaking or third country insurance undertaking, upon calculation of its insurance group solvency, the financial condition of the specified insurance holding company or mixed financial holding company shall also be taken into account, whereas the insurance holding company or mixed financial holding company is deemed to be an insurance undertaking and the provisions of this Act concerning the own funds and the Solvency Capital Requirement of an insurance undertaking shall apply thereto.

(13) If an insurance holding company or mixed financial holding company specified in subsection (12) of this section has the eligible own funds, these are considered up to the amount found according to the limits provided for in 58 (1) of this Act as the eligible own funds of the insurance group. The ancillary own funds of an insurance holding company or mixed financial holding company may be taken into account in the calculation of the insurance group solvency if the consent of the insurance group supervisor has been received therefor.

(14) If the information necessary in the calculation of the insurance group solvency regarding a related undertaking of an insurance undertaking established in a foreign state is unavailable to the Financial Supervision Authority and other relevant financial supervision authorities, the book value of such related undertaking shall be deducted from the own funds of the insurance group, and any unrealised profit related to such participation shall also not be included in the own funds.

(15) In addition to the provisions of this section, the provisions of Article 329 of Commission Delegated Regulation (EU) No. 2015/35 shall apply with regard to related undertakings specified in the same article.

(16) If the Financial Supervision Authority is the insurance group supervisor, it may deduct at the request of a participating insurance undertaking or on its own initiative from the own funds eligible for the insurance group solvency any holding of a credit institution, investment firm or financial institution related to the insurance undertaking.

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## **§ 90. Proportionate share of participating insurance undertaking in related insurance undertaking**

(1) The proportionate share of a participating insurance undertaking in a related insurance undertaking for the purposes of this Division shall reflect the percentages used in the preparation of consolidated statements if the method provided for in subsections 89 (3)–(5) of this Act is applied and the proportion of the subscribed

capital that is held, directly or indirectly, by the participating insurance undertaking if method provided for in subsections (6)–(11) of the specified section is applied.

(2) The provisions of subsection (1) of this section shall not apply if a related insurance undertaking does not have sufficient own funds for compliance with its Solvency Capital Requirement. In the case provided for in this subsection, the entire solvency deficit of this related insurance undertaking shall be taken into account.

(3) If, in the opinion of the Financial Supervision Authority, the responsibility of a participating insurance undertaking is limited only to certain share of the capital in a related insurance undertaking, the insurance group supervisor may permit to take into account the solvency deficit of the related insurance undertaking in proportion to the holding in this insurance undertaking.

(4) If the Financial Supervision Authority is the insurance group supervisor and, in the opinion of a relevant financial supervision authority, the responsibility of a participating insurance undertaking is limited only to certain share of the capital in a related insurance undertaking, the Financial Supervision Authority may permit to take into account the solvency deficit of the related insurance undertaking in proportion to the holding in this insurance undertaking.

(5) The insurance group supervisor shall determine, after consulting the other relevant financial supervision authorities and the insurance group, the proportionate share, which cannot be determined pursuant to subsection (1) of this section, only in the following cases:

- 1) the insurance group includes insurance undertaking who are not interconnected through direct holding;
- 2) the Financial Supervision Authority has assessed that voting right or having direct or indirect holding is deemed a participation because of control over a related insurance undertaking;
- 3) an insurance undertaking, in the opinion of the Financial Supervision Authority, is the parent undertaking because of control over an insurance undertaking of the insurance group.

#### **§ 91. Reciprocal financing and elimination of double use of own funds**

(1) Assets obtained through reciprocal financing shall not be included in the eligible own funds for compliance with the Solvency Capital Requirement of the insurance group in the calculation of the insurance group solvency.

(2) For the purposes of this section, reciprocal financing shall mean the following cases:

- 1) an insurance undertaking or its related undertaking has a holding in an undertaking who owns, directly or indirectly, assets which are suitable for financing the own funds for compliance with the Solvency Capital Requirement of such insurance undertaking or related undertaking;
- 2) an insurance undertaking or its related undertaking grants a loan to an undertaking who owns, directly or indirectly, assets which are suitable for financing the own funds for compliance with the Solvency Capital Requirement of such insurance undertaking or related undertaking;

(3) The following amounts shall be excluded in the calculation of the insurance group solvency:

- 1) the value of the assets of a participating insurance undertaking which are used for financing the own funds to comply with the Solvency Capital Requirement of a related insurance undertaking;
- 2) the value of the assets of a related undertaking which are used for financing the own funds to comply with the Solvency Capital Requirement of an insurance undertaking that has a holding in this insurance undertaking or of a related insurance undertaking.

(4) The calculation of the insurance group solvency may take into account the retained profits of a related insurance undertaking engaged in life insurance and reinsurance and the subscribed but not paid-up capital of a related insurance undertaking, if these are suitable for covering the Solvency Capital Requirement of the related insurance undertaking.

(5) The provisions of subsection (4) of this section do not apply if:

- 1) any subscribed but not paid-up capital does not represent a potential obligation of an insurance undertaking that has a holding;
- 2) the subscribed but not paid-up capital of a participating insurance undertaking does not represent a potential obligation of a related insurance undertaking;
- 3) the subscribed but not paid-up capital of a related insurance undertaking does not represent a potential obligation of a participating insurance undertaking and its related undertaking.

(6) If the Financial Supervision Authority finds that the own funds of a related insurance undertaking necessary for compliance with the Solvency Capital Requirement, but not specified in subsection (4) of this section cannot be used for compliance with the Solvency Capital Requirement of a participating insurance undertaking, these own funds may be taken into account in the calculation of the insurance group solvency to the extent these are suitable for compliance with the Solvency Capital Requirement of a related insurance undertaking.

(7) In addition to the provisions of this section, Articles 330 and 342 of Commission Delegated Regulation (EU) No. 2015/35 shall apply to the evaluation of the own funds, taking these into account and their adjustment.

(8) The sum of the own funds specified in subsections (4) and (6) of this section shall not be greater than the Solvency Capital Requirement of a related insurance undertaking.

(9) In the calculation of the insurance group solvency, the ancillary own funds of a related insurance undertaking may be taken into account only in case the related insurance undertaking has previously received the permission of a financial supervision authority for their inclusion in the own funds.

## **§ 92. Related third country insurance undertakings and equivalence of prudential requirements**

(1) If an insurance undertaking is participating in a third country insurance undertaking and the insurance group solvency is calculated pursuant to the calculation methods provided for in subsections 89 (6)–(9) of this Act, the specified third country insurance undertaking is deemed a related insurance undertaking.

(2) If the prudential requirements of third country insurance undertakings are equivalent to the provisions of this Act and a third country insurance undertaking holds an authorisation for engaging in insurance activities, the calculation of the insurance group solvency shall take into account the Solvency Capital Requirement of the third country related insurance undertaking and the own funds for compliance therewith, as is provided for in the third country law.

(3) If the Financial Supervision Authority is the insurance group supervisor, the Financial Supervision Authority shall assess at the request of a participating insurance undertaking or on its own initiative whether the prudential requirements established for insurance undertakings in the third country are equivalent to the prudential requirements provided for in this Act.

(4) The Financial Supervision Authority shall assess the equivalence in the case provided for in subsection (3) of this section in cooperation with the European Insurance and Occupational Pensions Authority pursuant to Article 33(2) of Regulation (EU) No 1094/2010 of the European Parliament and of the Council establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48–83).

(5) In the formation of the assessment provided for in subsection (3) of this section, the Financial Supervision Authority shall use as the basis the criteria provided for in Article 379 of Commission Delegated Regulation (EU) No. 2015/35 and consult the other relevant financial supervision authorities. The Financial Supervision Authority shall not make a decision which would be in opposition with a decision previously made with regard to this third country, excluding if it is necessary in order to take into account any significant changes which have been made in the prudential requirements of this Act or the prudential requirements for insurance undertakings established in the third country.

(6) If in the case provided for in this section the Financial Supervision Authority is a relevant financial supervision authority, but not the insurance group supervisor, and the decision of the insurance group supervisor regarding the equivalence of the prudential requirements for insurance undertakings established in a third country differs from the assessment of the Financial Supervision Authority, the Financial Supervision Authority shall be entitled, within three months after becoming aware of the decision, to address the European Insurance and Occupational Pensions Authority pursuant to Article 19 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council.

(7) Subsections (3)–(6) of this section shall not apply if a decision regarding the equivalence of the prudential requirements for insurance undertakings of a third country has been made by the European Commission in cooperation with the European Insurance and Occupational Pensions Authority.

(8) In case the European Commission has made a decision the prudential requirements for insurance undertakings established in a third country are equivalent for a specified term, the provisions of subsection (2) of this section shall apply.

## **Division 8 Deterioration of Financial Condition and Restoration Thereof**

### **§ 93. Decline of own funds of insurance undertakings**

(1) If the own funds of an insurance undertaking do not meet the requirements provided for in subsection 58 (2) of this Act or such threat may arise within the next three months, the insurance undertaking shall promptly notify the Financial Supervision Authority.

(2) If the eligible own funds decline below the Solvency Capital Requirement, the Financial Supervision Authority shall require from an insurance undertaking the application of all necessary measures in order to restore within six months as of the ascertaining of the non-compliance with the Solvency Capital Requirement

the amount of the eligible own funds or to change its risk profile in order to ensure compliance with the Solvency Capital Requirement.

(3) An insurance undertaking shall submit to the Financial Supervision Authority for approval within two months as of the ascertaining of the non-compliance with the Solvency Capital Requirement a recovery plan. The Financial Supervision Authority shall evaluate the applicability of the submitted plan.

(4) The Financial Supervision Authority may extend the term specified in subsection (2) of this section by three months.

(5) In case of decline of the basic own funds below the Minimum Capital Requirement, an insurance undertaking shall be required, within one month as of the ascertaining of the non-compliance, to submit to the Financial Supervision Authority the short-term finance scheme. The Financial Supervision Authority shall evaluate the feasibility of the submitted finance scheme.

(6) An insurance undertaking shall be required, within three month as of the ascertaining of the non-compliance with the Minimum Capital Requirement, to restore the amount of the eligible basic own funds or to change its risk profile in order to ensure compliance with the Minimum Capital Requirement.

(7) A recovery plan and finance scheme shall contain at least the following information:

- 1) estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;
- 2) forecast balance sheet of an insurance undertaking;
- 3) estimates of the technical provisions and the financial resources of an insurance undertaking intended to meet the Solvency Capital Requirement and the Minimum Capital Requirement;
- 4) reinsurance program of an insurance undertaking;
- 5) estimate of operating costs, separately current general expenses and commissions.

(8) If a recovery plan is submitted by a reinsurance undertaking, it shall include the retrocession program of the reinsurance undertaking instead of the reinsurance program.

(9) In case of further deterioration of the financial condition of an insurance undertaking, the Financial Supervision Authority may apply all measures which are necessary to safeguard the interests of the policyholders, insured persons and beneficiaries arising from insurance contracts or to perform of the obligations arising from reinsurance contracts.

(10) If the eligible basic own funds of an insurance undertaking specified in subsection 16 (6) of this Act decline below the notional Minimum Capital Requirement for life insurance or the notional Minimum Capital Requirement for non-life insurance calculated pursuant to subsection 82 (3), the Financial Supervision Authority may apply all the measures arising from this Act with regard to the respective activities of an insurance undertaking. With the consent of the Financial Supervision Authority, an insurance undertaking may use the transfer of the eligible basic own funds from one activity to another in the case provided for in this subsection.

#### **§ 94. Recovery of insurance undertaking in emergency situations**

(1) The Financial Supervision Authority may extend the term extended pursuant to subsection 93 (4) of this Act by up to seven more years, if the European Insurance and Occupational Pensions Authority has declared an exceptional adverse situation (hereinafter *emergency situation*) which affects an insurance undertaking who has a significant market share or whose line of business provided for in Annex I to Commission Delegated Regulation (EU) No. 2015/35 is affected by the emergency situation.

(2) The Financial Supervision Authority may submit to the European Insurance and Occupational Pensions Authority an application for declaring an emergency situation if an insurance undertaking specified in subsection (1) of this section is unlikely able to comply with the provisions of subsection 93 (2) of this Act.

(3) Emergency situation shall include the following circumstances which have significant effect on the financial condition of an insurance undertaking:

- 1) unforeseen, sharp and steep decline of financial markets;
- 2) low interest rate environment;
- 3) high-impact catastrophic event.

(4) The Financial Supervision Authority must take into account in the implementation of the provisions of subsection (1) of this section all relevant circumstances, including the average duration of the technical provisions of an insurance undertaking and the provisions of Article 289 of Commission Delegated Regulation (EU) No. 2015/35.

(5) In the case provided for in this section, an insurance undertaking must submit to the Financial Supervision Authority every three months an overview of the measures implemented to redress the financial condition and the progress made.

(6) If the Financial Supervision Authority ascertains on the basis of the overview that the insurance undertaking has not made any significant progress during the period between the ascertaining of the non-compliance with the Solvency Capital Requirement and the submission of the overview, the Financial Supervision Authority may waive the extension specified in subsection (1) of this section.

(7) The Financial Supervision Authority shall cooperate with the European Insurance and Occupational Pensions Authority if the relevance of an emergency situation or its termination is being evaluated.

#### **§ 95. Prohibition and restriction of transactions related to funds of insurance undertaking**

(1) If an insurance undertaking does not meet the requirements provided for in this Chapter or, in the opinion of the Financial Supervision Authority, the financial condition of an insurance undertaking may deteriorate even further regardless of a recovery plan or finance scheme, the measures provided for in subsection (2) of this section shall be applied with regard to the insurance undertaking.

(2) The Financial Supervision Authority may prohibit, by a precept, carrying out transactions or performing acts related to the assets of an insurance undertaking or restrict their volume, notifying thereof the financial supervision authorities of the Contracting States where an insurance undertaking has established a branch or is engaged in cross-border insurance activities. The Financial Supervision Authority shall determine the assets with regard to which the relevant measure is applied.

(3) If a financial supervision authority of another Contracting State informs the Financial Supervision Authority that the financial supervision authority prohibits an insurance undertaking of the Contracting State from carrying out transactions or performing acts related to the assets of the undertaking or restricts the volume thereof, then the Financial Supervision Authority is required, at the request of the financial supervision authority of the Contracting State, to apply the equivalent measures with regard to such insurance undertaking or its branch situated in Estonia by its precept.

(4) Any transaction in conflict with the precept specified in subsection (2) or (3) of this section shall be void.

## **Chapter 4 System of Governance, Shares and Shareholders of Insurance Undertakings**

### **Division 1 System of Governance of Insurance Undertaking**

#### **§ 96. General principles**

(1) To ensure the relevant and reliable governance of an insurance undertaking, the insurance undertaking shall have an efficient system of governance. The system of governance shall be in compliance with the nature, scale and complexity of the activities of an insurance undertaking.

(2) The system of governance of an insurance undertaking shall be designed in such way as to ensure the transparency of the organisational structure, the relevant segregation of duties and clear division of areas of responsibility. The system of governance of an insurance undertaking shall support the forwarding and exchange of information related to the activities of an insurance undertaking.

(3) The system of governance shall ensure the ability of an insurance undertaking to perform the functions of risk management, actuary, compliance and internal audit (hereinafter *key functions*) and other important functions and activities.

(4) An insurance undertaking shall follow in the implementation of the key functions the general principles provided for in Article 268 of Commission Delegated Regulation (EU) No. 2015/35.

(5) An insurance undertaking must appoint a person responsible for the organisation of each key function (hereinafter *responsible person*).

(6) The appointment of a responsible person and internal auditor specified in subsection 103 (2) of this Act shall not release the members of the management board from the liability of a member of the managing body of a legal person.

(7) An insurance undertaking shall ensure the consistency and regularity of its activities, including the development of plans concerning the emergency situations, implementing therefor the relevant and proportionate systems, resources and procedures.

(8) Parent insurance undertakings, insurance holding companies and mixed financial holding companies shall ensure compliance with the system of governance requirements at the insurance group level.

(9) An insurance undertaking must, in addition to the general principles of the system of governance specified in this section, follow the provisions of Article 258 of Commission Delegated Regulation (EU) No. 2015/35.

#### **§ 97. Risk management system**

(1) The risk management system of an insurance undertaking shall comprise the strategies, processes and internal reporting of an insurance undertaking provided for in Article 259 of Commission Delegated Regulation (EU) No. 2015/35, which are necessary to identify, measure, constantly monitor and manage all major risks, including the risks specified in subsection 61 (3) of this Act and risks arising from finite reinsurance contracts or activities for the purposes of Article 210(3) of Directive 2009/138/EC of the European Parliament and of the Council and organise the reporting, at an individual and at an aggregated level, taking into account the risk exposure and interdependencies.

(2) The risk management system shall comprise at least the areas of activity and activities provided for in Articles 260, 261 and 263–265 of Commission Delegated Regulation (EU) No. 2015/35.

(3) The risk management system shall be effective and integrated into the organisational structure of an insurance undertaking and the decision-making process of an insurance undertaking.

(4) As part of the risk management system, an insurance undertaking must establish a liquidity plan for forecasting such cash flows with respect to which the insurance undertaking applies the matching adjustment provided for in § 46 of this Act and the volatility adjustment provided for in § 47 of this Act.

(5) If an insurance undertaking applies the matching adjustment, the following shall be evaluated on a regular basis:

- 1) the sensitivity of the technical provisions and eligible own funds towards the assumptions made in the calculation of the matching adjustment, including the fundamental spread, and the potential effect of the forced sale of assets on the eligible own funds;
- 2) the sensitivity of the technical provisions and eligible own funds towards the change in the composition of the assigned assets specified in clause 46 (1) 1) of this Act;
- 3) the effect of waiver of its application.

(6) If an insurance undertaking applies the volatility adjustment, the following shall be evaluated on a regular basis:

- 1) the sensitivity of the technical provisions and eligible own funds towards the assumptions made in the calculation of the volatility adjustment and the potential effect of the forced sale of assets on the eligible own funds;
- 2) the effect of waiver of its application.

(7) If an insurance undertaking applies the extrapolation of the risk-free interest rate term structure provided for in subsection 45 (2) of this Act, the insurance undertaking shall evaluate on a regular basis as part of the risk management system the sensitivity of the technical provisions and eligible own funds towards the assumptions used in the extrapolation.

(8) An insurance undertaking shall submit to the Financial Supervision Authority once a year the evaluations provided for in subsections (5)–(7) of this section. If the waiver of the application of the matching adjustment or volatility adjustment should cause non-compliance with the Solvency Capital Requirement, an insurance undertaking must additionally submit the analysis of the measures which could be applied in order to restore the level of the eligible own funds or to change the risk profile in order to ensure compliance with the Solvency Capital Requirement.

#### **§ 98. Risk management function**

(1) To ensure the effective functioning of the risk management system, an insurance undertaking shall implement the risk management function.

(2) The risk management function supports the management board of an insurance undertaking and other functions to identify all material risks from the point of view of an insurance undertaking and provide an opportunity for the monitoring and measurement of these risks. Methods and procedures which are necessary to achieve the aforementioned objectives shall be applied when performing the risk management function. The activities related to risk management shall be documented.

(3) An insurance undertaking shall follow in the implementation of the risk management function the provisions of Article 269 of Commission Delegated Regulation (EU) No. 2015/35.

(4) If an insurance undertaking uses in the calculation of the Solvency Capital Requirement the internal model provided for in § 71 of this Act, the risk management shall also comprise the following aspects of the internal model:

- 1) development and implementation;
- 2) testing and validation;
- 3) documentation, including the documentation of its subsequent changes and changing the internal model, if necessary;
- 4) performance analysis and preparation of respective reports;
- 5) notification of the management board of the performance and making amendment proposals, and notification of progress if the internal model has been changed for the elimination of the previously determined deficiencies.

(5) If an insurance undertaking uses in the calculation of the technical provisions or the Solvency Capital Requirement an external credit assessment, the an external credit assessment must analyse the relevance of such assessment, using, where possible, other assessments to avoid reliance on one specific external credit assessment.

### **§ 99. Actuarial function**

(1) The actuarial function shall comprise at least:

- 1) coordination of assessment of the technical provisions;
- 2) ensuring relevance of assumptions and methods used upon calculation of technical provisions and models constituting the basis for the calculation;
- 3) assessment of sufficiency and quality of data used upon calculation of technical provisions;
- 4) comparison of the best estimate and the assumptions used in finding thereof against experience;
- 5) notification of members of the management board and the supervisory board (hereinafter jointly *managers of insurance undertaking*) of the reliability and adequacy of the calculation of the technical provisions;
- 6) verification of the calculation of the technical provisions in the cases provided for in § 50 of this Act;
- 7) giving an opinion regarding the general organisation of assessment of underwriting risks;
- 8) giving an opinion regarding the relevance of the reinsurance programs;
- 9) participation in the effective implementation of the risk management system provided for in § 97 of this Act, including the performance of the risk modelling duties constituting the basis for the capital requirements.

(2) A person carrying out the actuarial function must possess and, if necessary, be able to demonstrate the knowledge and experience in the field of insurance and financial mathematics, commensurate with the nature, scale and complexity of the risks inherent in the activities of the insurance undertaking.

(3) An insurance undertaking shall follow in the implementation of the actuarial function the provisions of Article 272 of Commission Delegated Regulation (EU) No. 2015/35.

### **§ 100. Own risk and solvency assessment of insurance undertaking**

(1) An insurance undertaking shall assess as part of the risk management system the own risk and solvency, including at least:

- 1) its overall solvency, taking into account its actual risk profile, approved risk tolerance limits and business strategy based on the provisions of Article 262 of Commission Delegated Regulation (EU) No. 2015/35;
- 2) the compliance of the own funds with the Solvency Capital Requirement and the Minimum Capital Requirement and the compliance of the technical provisions with the provisions of Division 1 and 4 of Chapter 3 of this Act at any time;

[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

- 3) whether and to what extent its actual risk profile deviates from the assumptions used in the calculation of the Solvency Capital Requirement.

(2) An insurance undertaking shall establish for the assessment of its overall solvency the procedures which are compliant with the nature, scale and complexity of the risks inherent in the operating activities of the insurance undertaking and which enable the insurance undertaking to identify and assess the risks it faces in the short and long term. An insurance undertaking shall submit the description of the methods used in its overall solvency assessment.

(3) If an insurance undertaking applies the matching adjustment provided for in § 46, the volatility adjustment provided for in § 47 or the transitional measure provided for in § 267 of this Act, the insurance undertaking must make the assessment provided for in clause (1) 2) of this section also without taking into account the corresponding adjustment or transitional measure.

(4) An insurance undertaking must assess the own risk and solvency on a regular basis and promptly after significant changes in the risk profile.

(5) If an insurance undertaking uses in the calculation of the Solvency Capital Requirement the internal model provided for in § 71 of this Act and the actual risk profile of an insurance undertaking deviates from



the assumptions used in the calculation of the Solvency Capital Requirement, the insurance undertaking must take this into consideration in the own risk and solvency assessment and recalculate the Solvency Capital Requirement.

(6) The business strategy of an insurance undertaking must take into account the conclusions of the own risk and solvency assessment of the insurance undertaking.

#### **§ 101. Internal control system**

(1) The internal control system of an insurance undertaking shall comprise at least management and accounting procedures, internal control principles, organisation of reporting at all levels of the insurance undertaking and the implementation of the compliance function.

(2) The provisions of Articles 266 and 267 of Commission Delegated Regulation (EU) No. 2015/35 shall apply to the implementation of the internal control system of an insurance undertaking.

#### **§ 102. Compliance function**

(1) The objective of compliance is to ensure conformity of an insurance undertaking and its activities to the requirements.

(2) The compliance function shall comprise the assessment of conformity of the system of governance to the legislation and assessment of potential effects of changes in the legal environment, and counselling the management board so that an insurance undertaking, its managers and employees would act in compliance with the legislation and the rules approved by the governing bodies of an insurance undertaking and good business practices.

(3) An insurance undertaking shall follow in the implementation of the compliance function the provisions of Article 270 of Commission Delegated Regulation (EU) No. 2015/35.

#### **§ 103. Internal audit function**

(1) The internal audit function comprises the assessment of the relevance and efficiency of the system of governance.

(2) The supervisory board of an insurance undertaking shall appoint an independent person in charge of performance of the internal audit function (hereinafter *internal auditor*). An internal auditor shall be governed by the requirements and the legal bases for the activities established for a certified internal auditor internal in the Auditors Activities Act. An internal auditor shall have no other duties which cause or are likely to result in a conflict of interest.

(3) An internal auditor shall report to the supervisory board of the insurance undertaking.

(4) An insurance undertaking shall follow in the implementation of the internal audit function the provisions of Article 271 of Commission Delegated Regulation (EU) No. 2015/35.

#### **§ 103<sup>1</sup>. Ensuring conformity of persons connected to insurance distribution**

(1) To ensure the conformity of the persons connected to insurance distribution, the insurance undertaking shall appoint a person who shall have the tasks of:

- 1) ensuring that the employee of the insurance undertaking who is directly engaged in insurance distribution, the manager responsible for insurance distribution and the insurance agent who is a natural person are suitable for their positions and conform to the requirements for these positions;
- 2) ensuring the implementation of the procedure specified in clause 105 (2) 10) of this Act;
- 3) maintaining and updating the documents regarding the procedures specified in clauses 1) and 2) of this subsection.

(2) An insurance undertaking shall ensure, by implementing the procedure specified in clause 105 (2) 10) of this Act, 15 hours of training in the field of insurance per year to an employee of the insurance undertaking who is directly engaged in insurance distribution, an insurance agent who is a natural person, and to a natural person directly engaged in distribution at the insurance agency whose main activity is insurance distribution. Said persons are required to participate in the training ensured by the insurance undertaking to the prescribed extent and in accordance with the prescribed procedure.

(3) If an insurance agent represents several insurance undertakings, the insurance undertaking shall ensure training to a natural person specified in subsection (2) of this section in accordance with the extent of activities of the insurance agent in relation to the given insurance undertaking provided that in total at least 15 hours of training in the field of insurance are ensured to the person per year.

(4) In the implementation of the procedure specified in clause 105 (2) 10) of this Act, the insurance undertaking shall take into account the features of the distributed insurance services, the extent of the activities of the persons specified in the procedure and the nature of work.

(5) The insurance undertaking shall inform the Financial Supervisory Authority at the request of the latter about the name of the person specified in subsection (1) of this section.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

### **§ 103<sup>2</sup>. Requirements for offering insurance service to target market**

(1) For the purposes of this Act, an insurance service means the provision of the insurance specified in § 12, 13, 14 of this Act or in the Annex thereto, or insurances in a combination, to clients.

(2) Development of an insurance service includes determination of the potential clients of the insurance service (hereinafter *target market*), assessment of the risks related to the target market, planning of the distribution strategy in accordance with the target market and taking necessary measures so that the insurance service would be offered to the target market.

(3) Every time before an insurance service is offered to the target market for the first time or before any significant changes are made in an insurance service, the insurance undertaking shall implement the procedure for the development of insurance services and making of significant changes in insurance services as specified in clause 105 (2) 11) of this Act. The insurance undertaking shall implement this procedure proportionally and in accordance with the nature of the insurance service.

(4) An insurance undertaking shall regularly monitor that the insurance service would correspond to the needs of the target market and that the distribution strategy would be appropriate, considering, inter alia, all the circumstances that may substantially affect the materialisation of the risks related to the target market.

(5) The information about the insurance service and the development of the insurance service, including the target market, shall be made available to all the distributors of the insurance service.

(6) If an insurance undertaking develops non-life insurance services, the insurance undertaking shall prepare a non-life insurance information document in conformity to the requirements set out in Commission Implementing Regulation (EU) 2017/1469 laying down a standardised presentation format for the insurance product information document, (OJ L 209, 12.08.2017, p. 19–23).

(7) The information document specified in subsection (6) of this section shall be a separate document which shall be drafted in plain language facilitating understanding and which shall not be misleading. An information document which has been originally produced in colour, shall not be less comprehensible in the event it is printed or photocopied in black and white.

(8) The provisions of this section shall not apply if an insurance contract specified in subsections 427 (2) or (3) of the Law of Obligations Act is provided as an insurance service.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

### **§ 104. Outsourcing of operations related to insurance activities**

(1) To the extent and pursuant to the procedure provided for in this section and Article 274 of Commission Delegated Regulation (EU) No. 2015/35, an insurance undertaking may outsource the operations related to insurance activities.

(2) Outsourcing does not release the insurance undertaking from the liability arising from insurance activities and the insurance undertaking shall retain jurisdiction for the exercise of supervision over such outsourced operations.

(3) An insurance undertaking may outsource a key function and other important functions or activities only in case this:

- 1) does not undermine continuous and satisfactory service;
- 2) does not materially impair the functioning of the system of governance;
- 3) does not bring about the undue increase of the operational risk;
- 4) does not prevent the exercise of supervision over the insurance undertaking at the level which is necessary.

(4) The provisions of §§ 217–220 of this Act concerning the insurance undertaking shall apply to persons from whom the insurance undertaking has outsourced the operations related to insurance activities.

(5) When outsourcing the performance of a key function, an insurance undertaking shall appoint a person who will be responsible for the organisation of the performance of this key function and who shall comply with the requirements provided for in § 106 of this Act.

(6) An insurance undertaking shall notify the Financial Supervision Authority prior to outsourcing a key function and other important functions or activities, notifying in case of outsourcing a key function of the name of the person provided for in subsection (5) of this section.

- (7) An insurance undertaking shall submit, at the request of the Financial Supervision Authority:
- 1) a copy of the contract for outsourcing of activities, which shall include, *inter alia*, the personal data processing requirements, taking into consideration the provisions of §§ 217–220 of this Act;
  - 2) the analysis of how the outsourcing complies with the provisions of subsection (3) of this section.

(8) An insurance undertaking must have the right to terminate the outsourcing giving reasonable advance notice.

### § 105. Internal rules of insurance undertaking

(1) An insurance undertaking shall establish internal rules which shall ensure compliance of the activities of the insurance undertaking and the managers and employees thereof with the legislation, articles of association and resolutions of governing bodies of the insurance undertaking. The internal rules shall be in a format which can be reproduced in writing.

(2) Among other matters, the internal rules shall set out the following:

- 1) the system of governance of an insurance undertaking, including the implementation of each key function and other important functions and activities, the own risk and solvency assessment of an insurance undertaking and the procedures for outsourcing of operations related to the insurance activities, and the requirements set for other areas in accordance with Commission Delegated Regulation (EU) No. 2015/35;
- 2) the requirements for information technology systems, ensuring information security and business continuity;
- 2<sup>1</sup>) the legal, technical and organisational measures to identify, manage and prevent a conflict of interests between an insurance undertaking, including a member of its management board and employee or a person having a control relationship, and a client of the insurance undertaking, and a conflict of interests between the clients in the provision of a unit-linked life insurance contract;  
[RT I, 17.11.2017, 3 – entry into force 03.01.2018]
- 3) the procedure for avoiding a conflict between the interests of the insurance undertaking and the personal economic interests of the managers and employees of the insurance undertaking, including the procedure for avoiding a conflict of interests within a consolidation group if the insurance undertaking belongs to such group;
- 4) the procedure for entry into insurance contracts, loss adjustment and compensation for damage, the procedure for the assessment of the suitability of a unit-linked life insurance contract and its underlying assets, and the procedure for assignment and division of supplementary profit to policyholders and beneficiaries;
- 5) the procedure for the submission of the precontractual information submitted with regard to insurance contracts and the information submitted during the term of the contract;
- 6) the internal rules of procedure for implementation of international sanctions established on the basis of the International Sanctions Act, including in a situation where circumstances with the characteristics described in the International Sanctions Act or legislation established on the basis thereof are discovered;
- 7) the principles of remuneration of the members of the management board and other employees of an insurance undertaking and the measures for management and prevention of a conflict of interests related to remuneration and the procedure for verification of compliance with these principles and measures;
- 8) the procedure for the submission of data to the Financial Supervision Authority and the publication of information;
- 9) the procedure for identification of deterioration of the financial condition of an insurance undertaking and notification of the Financial Supervision Authority thereof;
- 10) the procedure for the assessment of the knowledge and skills of a manager responsible for insurance distribution, an employee of the insurance undertaking who is directly engaged in insurance distribution, an insurance agent who is a natural person, and a member of the management board and a natural person directly engaged in insurance distribution of an insurance agency, and for ensuring training in the field of insurance for these persons;  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]
- 11) the procedure for the development of insurance services and making of significant changes in insurance services to implement the requirements set forth in § 103<sup>2</sup> of this Act.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(3) The internal rules of a life insurance undertaking shall determine, in addition to the provisions of subsection (2) of this section, the rules of procedure provided for in the Money Laundering and Terrorist Financing Prevention Act and the code of conduct for verification of compliance therewith.

(4) If an insurance undertaking applies the volatility adjustment provided for in § 47 of this Act, the insurance undertaking shall determine, *inter alia*, in the internal rules of the risk management function the criteria for the application of such adjustment.

(5) An insurance undertaking shall assess the relevance of the internal rules at least once a year and change these, if necessary.

## **§ 106. Requirements for managers and employees of insurance undertaking**

(1) The managers, responsible persons and key function holders of an insurance undertaking must comply with the fit and proper requirements pursuant to the provisions of Article 273 of Commission Delegated Regulation (EU) No. 2015/35.

(2) The following shall not be managers and responsible persons of an insurance undertaking:

- 1) persons whose activities or omissions have led to the bankruptcy or revocation of the authorisation, on the initiative of a financial supervision authority, of an insurance undertaking, insurance intermediary, credit institution, payment institution, e-money institution, management company, fund or professional securities market participant;
- 2) persons on whom a punishment for a crime in the first degree has been imposed and whose information concerning the punishment has not been expunged from the criminal records database pursuant to the Criminal Records Database Act;
- 3) persons on whom a punishment has been imposed for an economic offence, official misconduct or offence against property or offence against public trust and information concerning the punishment has not been expunged from the criminal records database pursuant to the Criminal Records Database Act;
- 4) persons who are subject to a prohibition on business, prohibition to work in a particular position or operate in a particular area of activity or prohibition to engage in enterprise prescribed by law or a court decision;
- 5) persons whose activities have shown that they are not capable of organising the activities of an insurance undertaking so that the interests of the policyholders, insured persons and beneficiaries are sufficiently protected;
- 6) persons who have submitted to the financial supervision authority false information or failed to submit essential information.

(2<sup>1</sup>) An employee of the insurance undertaking who is directly engaged in insurance distribution shall have impeccable business reputation. The reputation of a person is not impeccable in particular in the cases provided for in clauses (2) 1–4) of this section.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(3) In the case of a citizen of a foreign state, a certificate of the criminal records database or an equivalent document of a competent court or administrative authority of the country of origin of the person which has been issued less than three months earlier shall be accepted for proving the exclusion of the facts provided for in clauses (2) 1–4) of this section.

(4) If the document specified in subsection (3) of this section is not issued in the country of origin of the person, a document issued, less than three months ago, by a competent notary, court or administrative authority of the corresponding foreign state certifying the truthfulness of an oath taken by the person in front of the notary, court or administrative authority, or another competent body shall also be accepted.

(5) The manager and employees of an insurance undertaking are required to act with the prudence and competence expected of them and in accordance with the requirements for their position and in the interests of the insurance undertaking and its policyholders, insured persons and beneficiaries.

## **§ 107. Election of manager and appointment of responsible person of insurance undertaking**

(1) Upon the election of a manager and appointment of a responsible person of an insurance undertaking, the person to be elected or appointed shall present the following to the insurance undertaking:

- 1) a description of educational background and a complete list of places of employment and positions for the past five years;
- 2) confirmation that no circumstances exist which, according to this Act, would preclude his or her right to be a manager or a responsible person of the insurance undertaking.

(2) An insurance undertaking shall be entitled to request from a person specified in subsection (1) of this section the information regarding his or her economic interests to the extent provided for in the procedure for avoiding a conflict of economic interests established on the basis of clause 105 (2) 3) of this Act.

(3) An insurance undertaking shall ensure that the manager and responsible person of an insurance undertaking meet the requirements provided for in this Act and Commission Delegated Regulation (EU) No. 2015/35.

(4) An insurance undertaking shall notify the Financial Supervision Authority of the intention to elect or appoint the manager or responsible person of an insurance undertaking, submitting to the Financial Supervision Authority the information and documents specified in subsection (1) of this section and, in the case of a member of the management board, a description of his or her field of responsibility at least 30 days prior to the making of the specified decision. An insurance undertaking shall notify the Financial Supervision Authority of the intention to extend the term of office of the manager or responsible person of an insurance undertaking, submitting the information and documents specified in subsection (1) of this section at least ten days prior to the making of the specified decision.

(5) The term provided for in subsection (4) of this section shall not apply at the time of application for the authorisation.

(6) The provisions of Article 322 of Commission Delegated Regulation (EU) No. 2015/35 shall apply to the election of the manager of a special purpose vehicle.

#### **§ 108. Removal of manager and suspension of responsible person of insurance undertaking**

(1) The Financial Supervision Authority shall be entitled to issue a precept to demand the removal of a manager or suspension of a responsible person of an insurance undertaking, if:

- 1) the manager or responsible person of an insurance undertaking does not meet the requirements of this Act;
- 2) the manager or responsible person of an insurance undertaking has violated the requirements provided for in this Act or other legislation governing his or her professional activities;
- 3) misleading, incomplete or inaccurate information or documents have been submitted in the election of the manager or the appointment of the responsible person of an insurance undertaking;
- 4) the activities of the manager or responsible person of an insurance undertaking have shown that he or she is respectively not capable of organising the management or performance of the key functions of the insurance undertaking in such way that the legitimate interests of policyholders, insured persons, beneficiaries and other creditors are sufficiently protected.

(2) If an insurance undertaking fails to comply with a precept specified in subsection (1) of this section in full or within the specified term, the Financial Supervision Authority, *inter alia*, shall be entitled to demand the removal of a manager or suspension of a responsible person of the insurance undertaking by a court.

(3) The insurance undertaking shall notify the Financial Supervision Authority of the initiation of the removal of a manager or suspension of a responsible person of the insurance undertaking before the expiry of their term of office at least ten days before making a decision on the specified issue. This term shall not be applied if the prior notification is not possible for good reason. If the manager or responsible person of an insurance undertaking is replaced because they no longer meet the requirements, the Financial Supervision Authority shall also be notified of the reason therefor.

(4) An insurance undertaking shall notify the Financial Supervision Authority of the resignation of the manager or responsible person of the insurance undertaking at the earliest opportunity.

(5) The term provided for in subsection (3) of this section shall not apply at the time of application for the authorisation.

#### **§ 109. Restrictions on activities of managers and employees of insurance undertaking**

(1) The internal auditor or auditor of an insurance undertaking shall not be a member of the management board and supervisory board of the insurance undertaking.

(2) Members of the management board of an insurance undertaking shall not be members of the management board or employees of another insurance undertaking, insurance broker, lessor, credit institution, payment institution, e-money institution, management company or investment firm, except for members of the management board or employees of an undertaking belonging to the same consolidation group as the given insurance undertaking.

#### **§ 110. Principles of remuneration of members of management board and employees of insurance undertaking**

(1) An insurance undertaking shall follow in the establishment and implementation of bases and principles of determining the remuneration and other office related benefits of management board members and employees, including severance payments, pension benefits and other benefits (hereinafter *principles of remuneration*) the provisions of this section and Article 275 of Commission Delegated Regulation (EU) No. 2015/35.

(2) The principles of remuneration must be clear, transparent and consistent with the risk management principles and these must take into account the ability of an insurance undertaking to cope with the changes in the external environment; these should be based on the business strategy and values of an insurance undertaking, taking into consideration the economic performance of an insurance undertaking and the interests of the policyholders, insured persons and beneficiaries.

(3) The principles of remuneration of the employees of an insurance undertaking dealing with the entry into insurance contracts, including the objectives set for their activities and the evaluation criteria of meeting the objectives, must be designed in such way these do not endanger the employee's obligation to proceed from the clients' interests and induce him or her to recommend an insurance contract which does not correspond to the client's insurable interest and requirements.

(3<sup>1</sup>) If an insurance undertaking offers unit-linked life insurance contracts specified in subsection 222 (1) of this Act, or accessory contracts specified in subsection 182<sup>1</sup>(1) of this Act bundled therewith, the insurance

undertaking shall, in establishment of the remuneration policies and assessment of fees and other benefits offered in relation to the entry into the contract, take into account, inter alia, the provisions of the Commission delegated regulation adopted under Article 29 (4) of Directive (EU) 2016/97 of the European Parliament and of the Council on insurance distribution (recast) (OJ L 26, 02.02.2016, p. 19–59).  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(4) The principles for determining the fees payable to a member of the management board or an employee of an insurance undertaking based on the economic performance and transactions (hereinafter *performance pay*) shall be objective and reasoned and predetermine the period for which the performance pay is paid.

(5) The contract of a member of the management board or the employment contract of a responsible person of an insurance undertaking shall prescribe the right of the insurance undertaking to reduce the payable performance pay, suspend the payment of the performance pay or demand return of the paid performance pay in part or in full within three years after adopting a resolution on the performance pay.

(6) An insurance undertaking may apply the right specified in subsection (5) of this section if:

- 1) the general economic performance of the insurance undertaking has deteriorated to a significant extent as compared to the previous period;
- 2) a member of the management board of the insurance undertaking no longer meets the performance criteria or
- 3) determination of the performance pay was based on information which was inaccurate or incorrect to a material extent.

(7) The provisions of subsections 57 (2)–(5) of the Commercial Associations Act and subsections 314 (2)–(5) of the Commercial Code do not apply to the remuneration of a member of the management board of an insurance undertaking.

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

#### **§ 111. Director of branch**

The provisions of §§ 106–109 of this Act shall apply to the directors of foreign branches of Estonian insurance undertakings and directors of Estonian branches of third country insurance undertakings.

#### **§ 112. Managers of insurance holding company and mixed financial holding company**

(1) The members of the supervisory board and management board of an insurance holding company shall be the managers of an insurance holding company and mixed financial holding company.

(2) The provisions of §§ 106–109 of this Act concerning the managers of insurance undertakings shall apply to managers of insurance holding companies and mixed financial holding companies.

## **Division 2 Shares, Shareholders and Members of Insurance Undertakings**

[RT I, 20.02.2019, 2 - entry into force 02.03.2019]

#### **§ 113. Shares of insurance undertakings**

Insurance undertakings shall not issue preferred shares.

#### **§ 114. Requirements for share capital of insurance undertakings**

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

(1) The minimum share capital of an insurance undertaking shall be at least three million euros if the insurance undertaking has the right to engage in:

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

- 1) reinsurance activities;
- 2) life insurance;
- 3) the classes of non-life insurance provided for in clauses 12 (1) 10)–15) of this Act.

(2) If an insurance undertaking has the right to engage only in classes of non-life insurance which are not specified in clause (1) 3) of this section, the share capital of the insurance undertaking shall be at least two million euros.

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

(3) The share capital of a captive reinsurance undertaking shall be at least one million euros.

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

(4) Upon the foundation of an insurance undertaking, the share capital of the insurance undertaking shall be paid in as a monetary contribution.

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

### **§ 115. Increase of share capital**

**[RT I, 20.02.2019, 2 – entry into force 02.03.2019]**

(1) If the share capital is increased by a bonus issue, it may be conducted using the issue premium of the insurance undertaking, other reserves formed of net profit, retained profits from previous years or net profit.

(2) An insurance undertaking is required to notify the Financial Supervision Authority in a format which can be reproduced in writing of any intended increase of the share capital and the details of the issue at least seven days prior to the adoption of the corresponding resolutions.

(3) The provisions of § 346 of the Commercial Code do not apply to insurance undertakings.

(4) The provisions of § 192, 192<sup>1</sup>, 194 and 195, clauses 196 (1) 1)–5) and 7) and subsections (3)–(3<sup>2</sup>) and (4) and § 196<sup>1</sup> and 196<sup>2</sup> of the Commercial Code apply to increase of the share capital.

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

### **§ 116. Reduction of share capital**

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

(1) The share capital of an insurance undertaking may only be reduced on the condition that, following the adoption of the resolution to reduce the share capital, the share capital of the insurance undertaking shall meet the requirements provided for in § 114 of this Act, and the amount of the own funds and the amount of the basic own funds of the insurance undertaking shall not be smaller than provided for in subsection 58 (2) of this Act.

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

(2) An insurance undertaking is required to notify the Financial Supervision Authority in a format which can be reproduced in writing of any intended reduction of the share capital at least one month prior to the adoption of the respective resolution.

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

(3) If an insurance undertaking wishes to reduce the share capital for any other purpose than for covering a loss, the insurance undertaking may adopt a resolution on reduction of the share capital provided that the Financial Supervision Authority has granted a consent therefor. The Financial Supervision Authority shall resolve on the grant of or refusal to grant consent within 20 days as of receipt of the corresponding notice.

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

(4) The Financial Supervision Authority may refuse to grant the consent specified in subsection (3) of this section if the reduction of share capital would damage the solvency of the insurance undertaking or the interests of policyholders, insured persons, beneficiaries or other creditors of the insurance undertaking.

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

(5) Notification of creditors provided for in § 199 and 358 of the Commercial Code, the term provided for in the first sentence of subsections 200 (1) and 359 (1), and subsections 200 (2) and 359 (2) of the Commercial Code do not apply to insurance undertakings. The management board of an insurance undertaking shall publish a notice concerning the extent of the reduction and the new amount of the share capital in a national daily newspaper within 15 days as of the adoption of the reduction resolution.

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

### **§ 116<sup>1</sup>. Distribution of profit of insurance association**

(1) The profit of an insurance association shall be distributed on the basis of a resolution of the general meeting.

(2) Payments shall not be made to members if the amount of the own funds and the amount of the basic own funds of the insurance undertaking are not in compliance with the requirements provided by this Act or legislation established on the basis thereof.

(3) Payments can be made to members in money, or with the consent of a member, can be set off against the subsequent insurance premium or other payable amount.

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

## **§ 117. Requirements for persons acquiring or having qualifying holding**

(1) Qualifying holdings in an insurance undertaking may be acquired, held and increased and control over an insurance undertaking may be gained, held and increased by any person:

- 1) who has impeccable business reputation and whose activities in connection with the acquisition comply with the principles of sound and prudent management of the insurance undertaking;
- 2) who after the acquisition or increase of the holding shall elect, appoint or designate persons as managers of the insurance undertaking who comply with the requirements provided for in § 106 of this Act;
- 3) whose financial situation is sufficiently secure and sustainable to ensure regular and reliable operation of the insurance undertaking and whose financial statements allow for an adequate assessment to be made of its financial situation;
- 4) who is able to ensure that the insurance undertaking is able to meet the prudential requirements provided for in this Act, in the case of a legal person also the requirement that the consolidation group, which part the insurance undertaking will form, has a structure which enables exercise of efficient supervision, exchange of information and co-operation between the financial supervision authorities;
- 5) with regard to whom there is no justified reason to believe that the acquisition, holding or increase of a holding in or control over the insurance undertaking is related to money laundering or terrorist financing or an attempt thereof or increases such risks.

(2) The requirements provided for in Article 323 of Commission Delegated Regulation (EU) No. 2015/35 shall apply to persons having a qualifying holding in a special purpose vehicle.

## **§ 118. Notification of acquisition of holding and information to be submitted**

(1) A person who intends to acquire a qualifying holding in an insurance undertaking or to increase such holding so that the proportion of the share capital of the insurance undertaking or votes represented by shares exceeds 20, 30 or 50 per cent, or to conclude a transaction as a result of which the insurance undertaking would become a company controlled thereby (hereinafter *acquirer*) shall notify the Financial Supervision Authority prior to the acquisition and shall submit the information and documents specified in subsection (4) of this section.

(2) The provisions of this Division shall also apply in the case where a person acquires a qualifying holding or increases a qualifying holding so that the proportion of the share capital or votes in an insurance undertaking held by the person exceeds 20, 30 or 50 per cent, or the insurance undertaking becomes a controlled company of the person as a result of any other type of event or other transaction. In such case the person is required, promptly after gaining control over the insurance undertaking or becoming aware of acquisition of a qualifying holding or increase of a qualifying holding in the insurance undertaking, to promptly notify the Financial Supervision Authority of such fact.

(3) The Financial Supervision Authority shall notify the acquirer within two working days after receipt of the notice specified in subsection (1) or (2) of this section or the additional information and documents specified in subsection (8) of this section and the possible termination date of terms in proceedings provided for in § 119 of this Act.

(4) The Financial Supervision Authority shall be notified of the name of the company in which a qualifying holding is acquired or increased or which becomes controlled by the acquirer and the size of the holding to be acquired in this company, and the following information and documents shall be submitted:

- 1) a description of the company acquired which contains an extract of the share register, the information on the type of shares and number of votes acquired or owned by the acquirer and other information, if necessary;
- 2) a curriculum vitae of the acquirer who is a natural person which contains at least the acquirer's name, residence, education, work and service experience and personal identification code or date of birth in the absence thereof;
- 3) the information on the holdings of the acquirer who is a natural person in other legal persons or pools of assets and the information concerning the persons controlled by the acquirer;
- 4) the name, registered office, registry code, authenticated copy of a registration certificate and a copy of the articles of association, if these exist, of the acquirer if the acquirer is a legal person or of the legal person administering the pool of assets and the information on the holdings in other persons or pools of assets and the persons controlled by the acquirer;
- 5) a list of the owners or members of the acquirer if the acquirer is a legal person, and the information on the number of shares held by or the size of the holding and number of votes of each owner or member in legal persons or pools of assets and the information on companies controlled by them for the purposes of subsection 10 (1) of the Securities Market Act;
- 6) the information on each member of the management board and supervisory board of the acquirer if the acquirer is a legal person, including his or her name, personal identification code or date of birth in the absence thereof, education, work and service experience, and documents certifying his or her trustworthiness, experience, expertise and impeccable business reputation;
- 7) a confirmation that the acquirer of the holding or a person becoming the manager of an insurance undertaking as a result of the acquisition of the holding meets the requirements provided for in this Act or other legislation and no punishment has been imposed on him or her for an economic offence, official misconduct, offence against property or offence against public trust and information concerning his or her punishment has been expunged from the criminal records database pursuant to the Criminal Records Database Act;



- 8) a description of the business activities of the acquirer and a description of the economic and non-economic interests of persons connected with the acquirer;
  - 9) a confirmation that in the case of a person specified in clause 6 of this subsection no such circumstances have existed or exist which in accordance with law preclude his or her right to be a manager of an insurance undertaking;
  - 10) the last three annual reports of the acquirer, if these exist;
  - 11) if the acquirer is a natural person, ratings required for assessing the financial situation of the acquirer and companies connected with the acquirer and reports intended for the public, if possible; and if the acquirer is a legal person, credit ratings issued to the acquirer and the consolidation group;
  - 12) if the acquirer is a company belonging to a consolidation group, a description of the structure of the group, data relating to the sizes of the holdings of the companies belonging to the group, and the last three annual reports of the consolidation group together with sworn auditor's reports;
  - 13) if the acquirer is a natural person, documents certifying the financial status of the person during the last three years;
  - 14) information and documents concerning the sources of monetary or non-monetary resources for which it is intended to acquire a qualifying holding or increase it or gain control;
  - 15) the circumstances relating to the acquisition of holding pursuant to §§ 9, 10 and 72<sup>1</sup> of the Securities Market Act;
  - 16) the size of the qualifying holding owned by the person after acquisition of the holding and the circumstances relating to the holding pursuant to §§ 9, 10 and 72<sup>1</sup> of the Securities Market Act;
  - 17) upon gaining control over an insurance undertaking, a business plan and other circumstances related to gaining of control and exercising control;
- [RT I, 31.12.2016, 3 - entry into force 10.01.2017]
- 18) a review of the strategy applied in an insurance undertaking, provided the insurance undertaking does not become a controlled company as a result of the acquisition.

(5) In the case provided for in clause (4) 7) of this section, a certificate of the criminal records database or an equivalent document of a competent court or administrative authority of the country of origin of the person which has been issued less than three months earlier shall be accepted for a foreign person.

(6) In the case provided for in clause (4) 10) of this section, if more than nine months have passed since the end of the previous financial year, an audited interim report for the first six months of the financial year shall be submitted to the Financial Supervision Authority. A sworn auditor's report shall be added to the reports if preparation of the report is prescribed by legislation.

(7) The information and documents submitted to the Financial Supervision Authority shall be in Estonian. With the consent of the Financial Supervision Authority, the aforementioned information and documents may be submitted in another language.

(8) The Financial Supervision Authority may request additional information and documents which necessary for the assessment of compliance with the requirements provided for in § 117 of this Act. In such case it is specified which additional information shall be submitted to the Financial Supervision Authority.

(9) The Financial Supervision Authority may waive the demand for the information or documents specified in subsections (4)–(6) of this section in part or in full.

(10) If a person who wishes to acquire a qualifying holding is an insurance undertaking, credit institution, investment firm, management company, investment fund or another subject of financial supervision of a third country, then in addition to the documents specified in subsection (4) of this section, a document issued by the financial supervision authority of the third country which certifies that the person has a valid authorisation, an impeccable business reputation and no supervisory punishments in force, and a confirmation that the specified person conforms to established requirements shall be submitted to the Financial Supervision Authority.

### **§ 119. Proceeding and term in proceeding**

(1) The Financial Supervision Authority shall assess the compliance of the acquirer with the requirements provided for in § 117 of this Act and shall resolve on granting authorisation for acquisition of holding or prohibition on acquisition of holding within 60 working days (hereinafter *term in proceeding*) as of submission of the notice provided for in subsection 118 (3) of this Act concerning receipt by the Financial Supervision Authority of the information and documents required for the assessment.

(2) The Financial Supervision Authority may refuse to review the notice if the notice contains an essential deficiency, e.g. in case the notice does not contain the information required in subsection 118 (4) of this Act.

(3) The Financial Supervision Authority shall be entitled to demand the information and documents specified in subsections 118 (8) of this Act within 50 working days as of the beginning of the term in the proceeding.

(4) The term in the proceeding shall suspend for the period between the first demand by the Financial Supervision Authority for additional information and documents and receipt from the acquirer of the demanded information and documents, but the suspension shall not exceed 20 working days. In case of the next demand for additional information and documents, the term in the proceeding shall not suspend.

(5) If no financial supervision is exercised over the acquirer or a financial supervision authority of a third country exercises supervision over the acquirer, the Financial Supervision Authority may extend the term in the proceeding specified in subsection (4) of this section to up to 30 working days.

(6) Upon assessment of acquisition and increase of the qualifying holding and gaining control over an insurance undertaking, the Financial Supervision Authority shall co-operate with the financial supervision authority of another Contracting State if the acquirer is:

- 1) an insurance undertaking, credit institution, management company, investment fund, investment firm or another person subject to financial supervision having obtained an authorisation in a Contracting State;
- 2) a parent undertaking of an insurance undertaking, credit institution, management company, investment fund, investment firm or another person subject to financial supervision having obtained an authorisation in a Contracting State, or;
- 3) a person controlling an insurance undertaking, credit institution, management company, investment fund, investment firm or another person subject to financial supervision having obtained an authorisation in a Contracting State.

(7) The Financial Supervision Authority shall consult with other financial supervision authorities in the framework of the cooperation specified in subsection (6) of this section. The Financial Supervision Authority shall immediately forward to other financial supervision authorities all the information that is essential upon assessment of acquisition and increase of the qualifying holding and gaining control over the insurance undertaking.

(8) If more than one person simultaneously wish to acquire a qualifying holding in one and the same insurance undertaking, the Financial Supervision Authority shall treat these persons equally under equal circumstances.

#### **§ 120. Terms and conditions for acquisition of holding, bases for prohibition on acquisition of holding and decision on acquisition**

(1) The Financial Supervision Authority shall be entitled to set a term to the acquirer during which the acquirer shall be entitled to acquire or increase the qualifying holding or to gain control over the insurance undertaking. The Financial Supervision Authority may extend the term prescribed but the term shall not exceed 12 months in total. During such term, the acquirer is required to promptly notify the Financial Supervision Authority of the conduct of the transaction whereby the qualifying holding is acquired or increased or the insurance undertaking becomes a controlled company, or a decision not to conduct the transaction.

(2) A qualifying holding may be acquired or increased or the insurance undertaking may be turned into a controlled company if the Financial Supervision Authority does not prohibit, by a precept, acquisition or increase of a qualifying holding or turning of the insurance undertaking into a controlled company based on the provisions of § 119 of this Act and subsection (3) of this section.

(3) The Financial Supervision Authority may prohibit, by a precept, acquisition and increase of the qualifying holding and gaining control over the insurance undertaking if there is reasonable doubt that:

- 1) the acquirer does not comply with the requirements provided for in § 117 of this Act;
- 2) the acquirer has not submitted, by the prescribed due date, the information or documents required in this Act, or the information or documents required by the Financial Supervision Authority on the basis of this Act to the Financial Supervision Authority;
- 3) the information or documents submitted to the Financial Supervision Authority do not comply with the requirements provided by legislation or are incorrect, misleading or incomplete or based on the information and documents submitted the Financial Supervision Authority cannot exclude doubt with respect to unsuitability of the acquisition or with respect to that the acquisition does not comply with the requirements provided for in this Act;
- 4) the insurance undertaking would become a company controlled by a person residing or located in a third country and sufficient supervision is not exercised over the person in the country of residence or location of the person or the financial supervision authority of the third country has no legal basis or possibility to co-operate with the Financial Supervision Authority.

(4) The Financial Supervision Authority shall submit a resolution to the acquirer concerning the authorisation to acquire the qualifying holding or a prohibiting precept within two working days after adoption of the decision but prior to the expiry of the term in the proceeding. If financial supervision over the acquirer is exercised by the financial supervision authority of another Contracting State, its assessment of the acquisition or increase of the qualifying holding or upon turning an insurance undertaking into a controlled company must be also indicated in the decision.

(5) If the circumstances specified in subsection (3) of this section become evident after acquisition or increase of qualifying holding or gaining control over the insurance undertaking, the Financial Supervision Authority may issue a precept according to which acquisition of qualified holding or gaining control over the insurance undertaking is deemed to be contrary to this Act.

(6) The Financial Supervision Authority shall be entitled issue a precept to prohibit or restrict the exercise of the right to vote or any other rights entitling to control in an insurance undertaking by an acquirer or person who has a qualifying holding in an insurance undertaking or who has control over an insurance undertaking every time the circumstances provided in subsection (3) or (5) of this section exist. The Financial Supervision Authority may issue a precept specified in this subsection regardless of whether a precept provided for in subsection (3) or (5) of this section is issued.

(7) The Financial Supervision Authority may publish the precept specified in subsection (6) of this section on its website, and the acquirer may also demand publication of the precept.

(8) If the acquirer or person who has a qualifying holding in an insurance undertaking or who has control over an insurance undertaking is an insurance undertaking, credit institution, management company, investment fund, investment firm, another subject of financial supervision or person belonging to the same consolidation group as the said person registered in another Contracting State, the Financial Supervision Authority shall notify the competent financial supervision authority of the Contracting State of the precept specified in subsection (5) or (6) of this section.

(9) Compliance with the precept of the Financial Supervision Authority specified in subsection (3), (5) and (6) of this section is also mandatory for insurance undertakings, persons maintaining their share register and other persons organising the exercise of voting rights.

### **§ 121. Consequences of illegal acquisition of holding**

(1) A person shall not acquire the voting rights determined by the shares related to a transaction by which a qualifying holding is acquired or increased, and the shares shall not be included in the quorum of the general meeting, if:

- 1) the transaction is contrary to a precept issued by the Financial Supervision Authority;
- 2) the Financial Supervision Authority has issued a precept specified in subsection 120 (5) or (6) of this Act;
- 3) the Financial Supervision Authority has not been informed of the transaction in accordance with § 118 of this Act;
- 4) the transaction is conducted after the expiry of the term specified in subsection 120 (1) of this Act or before the acquisition of a qualifying holding is permitted pursuant to this Act.

(2) As a result of a transaction in the case of which any of the circumstances specified in subsection (1) of this section exist, the rights which turn an insurance undertaking into a company controlled by the person do not arise for the person.

(3) If voting rights representing a holding acquired or increased by such a transaction, in the case of which any of the circumstances specified in subsection (1) of this section exist, are included in the quorum of the general meeting and influence the adoption of a resolution of the general meeting, the resolution of the general meeting shall be void. A court may declare the nullity of a resolution of the general meeting on the basis of a petition of the Financial Supervision Authority. Nullity of a resolution cannot be relied upon if an entry has been made in the commercial register based on the resolution and two years have passed from the date making the entry.

(4) If, arising from a transaction by which an insurance undertaking is turned into a company controlled by a person and in the case of which any of the circumstances specified in subsection (1) of this section exist, rights enabling control are exercised, a court may declare the exercise of the rights void on the basis of a petition of the Financial Supervision Authority. Nullity of exercising the rights cannot be relied upon if an entry has been made in a public register with regard to exercising the rights and two years have passed from the date making the entry.

### **§ 122. Giving notification of changes in holding**

(1) If a person intends to transfer shares in an amount which would result in the person losing a qualifying holding in an insurance undertaking or if the person reduces the holding thereof such that it falls below one of the limits specified in subsection 118 (1) of this Act or foregoes control over the insurance undertaking (hereinafter *transferor*), the person is required to inform the Financial Supervision Authority of the intention immediately and indicate the number of shares which the person owns and transfers and holds after the transaction.

(2) The provisions of subsection (1) of this section also apply if a person loses control over an insurance undertaking, loses the qualifying holding in an insurance undertaking, or the qualifying holding thereof decreases below the rates specified in subsection 118 (1) of this section as a result of any other type of event or transaction. In such case, the person shall inform the Financial Supervision Authority promptly after becoming aware of the loss of qualifying holding or control or the reduction of holding.

(3) An insurance undertaking is required to notify the Financial Supervision Authority promptly after becoming aware of the conduct of the transactions specified in subsections 118 (1) and (2) of this Act and subsections (1) and (2) of this section.

(4) An insurance undertaking shall, within four months as of the beginning of the financial year, submit to the Financial Supervision Authority information concerning persons who, as at the end of the financial year, have a qualifying holding in the insurance undertaking and shall set out the size of holding owned by each person and related circumstances pursuant to §§ 9, 10 and 72<sup>1</sup> of the Securities Market Act.

#### **§ 122<sup>1</sup>. Qualifying holding in insurance association**

Upon application of § 117–122 of this Act to an insurance association, the provisions governing the share capital and shares of an insurance undertaking shall apply to the share capital and shares of the insurance association.

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

## **Chapter 5 Reporting, Disclosure and Audit**

#### **§ 123. Solvency and financial condition report and supervisory and additional reports**

(1) An insurance undertaking shall prepare the solvency and financial condition report pursuant to the provisions of Articles 290–298 of Commission Delegated Regulation (EU) No. 2015/35.

(2) An insurance undertaking shall prepare and submit to the Financial Supervision Authority the regular supervisory reports pursuant to the provisions of Articles 304–314 of Commission Delegated Regulation (EU) No. 2015/35.

(3) The leading undertaking of an insurance group shall prepare the insurance group solvency and financial condition report pursuant to the provisions of Articles 359–364 of Commission Delegated Regulation (EU) No. 2015/35.

(4) The leading undertaking of an insurance group shall prepare and submit to the insurance group supervisor the regular supervisory reports of the insurance group pursuant to the provisions of Articles 372–375 of Commission Delegated Regulation (EU) No. 2015/35.

(5) The contents, format and procedure for submission of the supervisory reports for pension contracts shall be established by a regulation of the minister responsible for the area.

(6) The minister responsible for the area may establish by a regulation for an insurance undertaking, in addition to the reports specified in subsections (1)–(5) of this section, the additional reports, and the contents, format and procedure for submission thereof.

(7) The Financial Supervision Authority shall have the right to request additional information and reports necessary for the exercise of supervision to the extent provided by this Act, as well as the information and reports concerning the services provided by an insurance undertaking, which are necessary for the proper performance of the duties of the Financial Supervision Authority on the basis of Regulation (EU) No 1094/2010 of the European Parliament and of the Council.

(8) An insurance undertaking shall submit in the reports truthful, accurate and complete information concerning the insurance undertaking and, where appropriate, the economic activities, solvency and financial condition of the insurance group.

(9) The management board of an insurance undertaking shall be liable for the accuracy of the reports disclosed and submitted to the Financial Supervision Authority by the insurance undertaking, unless otherwise provided by law.

(10) A special purpose vehicle shall submit to the Financial Supervision Authority the report pursuant to the procedure provided for in Article 325 of Commission Delegated Regulation (EU) No. 2015/35.

(11) An insurance undertaking shall disclose the solvency and financial condition report specified in subsection (1) of this section and submit to the Financial Supervision Authority the regular supervisory reports specified in subsection (2) within 14 weeks after the end of the financial year or quarterly reports within five weeks after the end of the quarter.

[RT I, 07.07.2015, 1 – entry into force 01.01.2019]

(12) The leading undertaking of the insurance group shall disclose the insurance group solvency and financial condition report specified in subsection (3) of this section and submit to the insurance group supervisor the regular supervisory reports of the insurance group specified in subsection (4) within 20 weeks after the end of the financial year.

[RT I, 07.07.2015, 1 - entry into force 01.01.2019]

#### **§ 124. Specifications for submission of regular supervisory reports**

(1) The Financial Supervision Authority may reduce the frequency of submission of the regular supervisory report submitted more frequently than once a year to at least once a year of more frequent submission of the information is unreasonably burdensome, taking into consideration the nature, scale and complexity of the activities of an insurance undertaking. This subsection shall not apply to the submission of information provided for in subsection 82 (9) of this Act.

(2) The Financial Supervision Authority may reduce the submission of the regular supervisory report or exempt an insurance undertaking from the submission of a report prepared on an item-by-item basis, if:

- 1) the submission of the information is unreasonably burdensome, taking into consideration the nature, scale and complexity of the activities of the insurance undertaking;
- 2) the information is of negligible interest with respect to the objectives of supervision and the insurance undertaking is able to submit the information at the request of the Financial Supervision Authority;
- 3) this does not damage the stability of the financial systems of the Contracting States.

(3) The specifications provided for in subsections (1) and (2) of this section shall apply to the smallest insurance undertakings ranked on the basis of the market shares whose market shares in total are below 20 per cent of either the life or non-life insurance market.

(4) The Financial Supervision Authority shall follow in determining the market share provided for in subsection (3) of this section 3 the guidelines of the European Insurance and Occupational Pensions Authority, taking into account in case of non-life insurance undertakings the total amounts of the insurance premiums and in case of life insurance undertakings the technical provisions together with the share of a reinsurance undertaking and special purpose vehicle.

(5) In the evaluation of the nature, scale and complexity of the activities of an insurance undertaking, the Financial Supervision Authority shall take into account the following circumstances regarding an insurance undertaking:

- 1) the volume of insurance premiums, technical provisions and assets;
- 2) the volatility of losses and indemnities;
- 3) the market risks arising from investments;
- 4) the level of risk concentration;
- 5) the number of classes of insurance activities for which the insurance undertaking holds an authorisation;
- 6) the potential effect of assets management on the financial stability;
- 7) the principles for submission of information to the Financial Supervision Authority, including a description of the relevant systems and structures;
- 8) the relevance of the system of governance;
- 9) the level of the eligible own funds required to cover the Solvency Capital Requirement and the Minimum Capital Requirement;
- 10) whether the insurance undertaking is a captive insurance undertaking or captive reinsurance undertaking.

(6) Subsections (1) and (2) of this section shall apply to an insurance undertaking belonging to the insurance group only in case the insurance undertaking proves that non-implementation of such specifications is not in compliance with the nature, scale and complexity of the activities of the insurance group.

(7) If the Financial Supervision Authority is the insurance group supervisor, it may apply the specifications provided for in subsections (1) and (2) of this section to the submission of the regular supervisory report of the insurance group if this benefits all the insurance undertakings belonging to the insurance group based on the nature, scale and complexity of the activities of the insurance group.

#### **§ 125. Disclosure of solvency and financial condition report of insurance undertaking**

(1) The provisions of Articles 300 and 301 of Commission Delegated Regulation (EU) No. 2015/35 shall apply to the disclosure of the solvency and financial condition report.

(2) The report shall be signed and dated by the management board of an insurance undertaking.

(3) An insurance undertaking may refer in the report with regard to the information concerning the solvency and financial condition to the information previously disclosed on the basis of the legislation. The reference shall be accurate and the referred information shall be verifiable without unreasonable efforts.

(4) An insurance undertaking shall not be required to disclose the following pursuant to the procedure provided for in Article 299 of Commission Delegated Regulation (EU) No. 2015/35:

- 1) any information which disclosure, in the opinion of the insurance undertaking, would provide the competitors of the insurance undertaking with significant undue advantage;

2) any information received from the policyholders or other persons and which the insurance undertaking, pursuant to the legislation, is required to keep confidential.

(5) An insurance undertaking shall be required to justify in the report the non-disclosure of the information on the basis of subsection (4) of this section.

(6) Subsection (4) of this section shall not apply to the disclosure of the information specified in Article 297 of Commission Delegated Regulation (EU) No. 2015/35.

(7) Based on Article 302 of Commission Delegated Regulation (EU) No. 2015/35, an insurance undertaking is required to disclose information on all major developments affecting the relevance of the information disclosed in the report. In this respect, at least the following shall be disclosed:

- 1) deficit of eligible basic own funds, the reasons of its origin, consequences and remedial measures taken if an insurance undertaking fails to comply or, in the opinion of the Financial Supervision Authority, is unable to comply with the requirement provided for in subsection 93 (5) of this Act;
- 2) deficit of eligible own funds, the reasons of its origin, consequences and remedial measures taken if an insurance undertaking fails to comply with the requirement provided for in subsection 93 (3) of this Act.

(8) If an insurance undertaking fails to restore within six months as of the ascertaining of the non-compliance with the Solvency Capital Requirement the amount of the eligible own funds or to change its risk profile, the insurance undertaking shall promptly disclose the deficit of the eligible own funds, the reasons of its origin, consequences and remedial measures taken and planned.

(9) If an insurance undertaking fails to restore within three months as of the ascertaining of the non-compliance with the Minimum Capital Requirement the amount of the eligible basic own funds or to change its risk profile, the insurance undertaking shall promptly disclose the deficit of the eligible basic own funds, the reasons of its origin, consequences and remedial measures taken and planned.

(10) An insurance undertaking may, in addition to the provisions of this section, disclose in the report other information or other explanations related to the solvency and financial condition of the insurance undertaking.

#### **§ 126. Disclosure of solvency and financial condition report and other information of insurance group**

(1) Subsections 125 (3)–(10) of this Act and Articles 360–364 of Commission Delegated Regulation (EU) No. 2015/35 shall apply to the disclosure of the solvency and financial condition report of the insurance group.

(2) The leading undertaking of the insurance group may, with the consent of the insurance group supervisor, submit a single report regarding the solvency and financial condition, which shall include:

- 1) the solvency and financial condition report of the insurance group;
- 2) the information disclosed with regard to each subsidiary belonging to the insurance group pursuant to subsections 125 (3)–(10) of this Act.

(3) If the Financial Supervision Authority is the insurance group supervisor, the Financial Supervision Authority shall consult, prior to granting the consent specified in subsection (2) of this section, the insurance group college of supervisors appointed pursuant to § 47<sup>6</sup> of the Financial Supervision Authority Act (hereinafter *insurance group college of supervisors*) and take into account the positions provided by the insurance group college of supervisors.

(4) Articles 365–371 of Commission Delegated Regulation (EU) No. 2015/35 shall apply to the preparation and submission of the single report specified in subsection (2) of this section.

(5) If, in the opinion of the Financial Supervision Authority, the solvency and financial condition report of the insurance group does not comprise sufficient information concerning an Estonian insurance undertaking belonging to the insurance group, which the Financial Supervision Authority requires equivalently from the insurance undertaking and which is significant from the point of view of supervision, the Financial Supervision Authority may require the Estonian insurance undertaking belonging to the insurance group to disclose the necessary additional information.

#### **§ 127. Disclosure of annual report and interim reports**

(1) An insurance undertaking shall be required to disclose the annual report, the proposal for and the resolution on the distribution of profit or covering of loss and the sworn auditor's report within two weeks after the approval thereof by the general meeting of shareholders or members of an association, but not later than four months after the end of a financial year on the website of the insurance undertaking and to make these available at the registered office and place of business of the insurance undertaking.  
[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

(2) The financial year of an insurance undertaking shall be the calendar year.

(3) An insurance undertaking shall prepare and disclose the interim accounts regarding 3, 6, 9 and 12 months of the financial year within two months after the end of an accounting period.

(4) The annual reports for at least the last five years and the interim accounts for at least the last three years shall be available on the website of an insurance undertaking.

(5) The Estonian branch of a foreign insurance undertaking shall disclose with regard to the foreign insurance undertaking the reports provided for in subsection (4) of this section, which are prepared in compliance with the legislation of the home country and translated into English or Estonian.

#### **§ 128. Separation in accounting of pension contracts, and life insurance and non-life insurance**

(1) An insurance undertaking who enters into pension contracts shall organise the accounting in such way as to ensure separate accounts of the assets, liabilities, income and expenses corresponding to pension contracts and other life insurance contracts, and the total net gain/loss on pension contracts.

(2) An insurance undertaking shall submit upon the preparation of the annual report in an annex to its annual accounts the pension contracts report.

(3) The format and guidelines for preparation of the report specified in subsection (2) of this section shall be established by a regulation of the minister responsible for the area.

(4) An insurance undertaking shall explain in an annex to its annual accounts the principles for the distribution of expenses between pension contracts and other insurance contracts.

(5) The provisions of subsections (1)–(4) of this section shall also apply to an insurance undertaking whose Estonian branch enters into pension contracts. The pension contracts report of the branch shall be translated into Estonian and published on the website of the branch.

(6) An insurance undertaking specified in subsection 16 (6) of this Act shall organise the accounting based on the principles of distribution approved by the Financial Supervision Authority in such way as to ensure a separate accounting of the assets, liabilities, income and expenses and financial results of life insurance and non-life insurance.

(7) The profit arising from life insurance contracts shall be distributed exclusively between life policy holders as if an insurance undertaking only pursued the activity of life insurance.

(8) The separate accounting shall ensure that the interests of the policyholders, insured persons and beneficiaries of life and non-life insurance contracts are not protected less than in case an insurance undertaking would only engage in life or non-life insurance.

#### **§ 129. Audit**

(1) The annual accounts of an insurance undertaking shall be audited by an audit firm.

(2) The minister responsible for the area may establish by a regulation the obligation and procedure for auditing the solvency and financial condition report specified in subsections 123 (1) and (3) of this Act to ensure the reliability of the compliance of the own funds and capital requirements of an insurance undertaking disclosed in these reports.

(3) An audit firm auditing an insurance undertaking shall have adequate knowledge and experience for auditing the insurance undertaking.

(4) An insurance undertaking shall promptly notify the Financial Supervision Authority of the appointment of an audit firm in a format which can be reproduced in writing, submitting the information provided for in clause 17 (1) 8) of this Act. If the audit firm, pursuant to the opinion of the Financial Supervision Authority, does not meet the requirements provided for in subsection (3) of this section, the insurance undertaking shall appoint a new audit firm.

(5) An audit firm shall involve in the audit of an insurance undertaking a person who meets the requirements provided for in subsection 99 (2) of this Act.

(6) The Financial Supervision Authority may request that a court replace the audit firm of an insurance undertaking appointed by the general meeting pursuant to the procedure provided for in § 329<sup>1</sup> of the Commercial Code or in § 66<sup>1</sup> of the Commercial Associations Act. The same application may be submitted also by the shareholders or members of an insurance undertaking who jointly represent at least five per cent of the share capital or voting rights of the insurance undertaking.

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

(7) In addition to the provisions of subsection (6) of this section, the Financial Supervision Authority may request that a court appoint an audit firm pursuant to the procedure provided for in § 329<sup>1</sup> of the Commercial Code or in § 66<sup>1</sup> of the Commercial Associations Act if:

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

- 1) the general meeting has not appointed an audit firm pursuant to the procedure provided by law;
- 2) an audit firm appointed by the general meeting refused from conducting an audit and the general meeting has not appointed a new audit firm pursuant to the procedure provided by law;
- 3) an audit firm has lost the trust of the Financial Supervision Authority.

(8) An audit firm shall promptly notify the Financial Supervision Authority, indicating the reasons, in a format which can be reproduced in writing of any facts revealed in the course of the audit of an insurance undertaking, which:

- 1) endanger or may endanger the solvency and financial soundness of the insurance undertaking;
- 2) indicate a possible or actual violation of law or violation of the conditions for granting of the authorisation;
- 3) may lead to the issue of a qualified or adverse sworn auditor's report, or a failure to give an evaluation by the sworn auditor pursuant to the Auditors Activities Act;
- 4) indicate the possibility that the insurance undertaking is unable to comply with the capital requirements or that the interests of policyholders, insured persons or beneficiaries are not sufficiently protected in another manner.

(9) An audit firm shall also promptly notify the Financial Supervision Authority in a format which can be reproduced in writing of any circumstances specified in subsection (8) of this section concerning a company closely linked to the insurance undertaking which become known to the audit firm in the performance of their duties.

(10) The provisions of subsection 65 (2) and § 67–70 of the Commercial Associations Act do not apply to an insurance association.

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

## **Chapter 6**

### **Transfer of Insurance Portfolios**

#### **§ 130. Insurance portfolio**

For the purposes of this Act, insurance portfolio shall mean a set of insurance contracts together with the rights and obligations arising therefrom.

#### **§ 131. Terms and conditions for transfer of insurance portfolio**

(1) An Estonian insurance undertaking and a third country insurance undertaking (hereinafter in this Chapter jointly *transferor*) may transfer, pursuant to the terms and conditions provided for in this Act, their insurance portfolio to another insurance undertaking (hereinafter in this Chapter *transferee*).

(1<sup>1</sup>) The transferee of an insurance portfolio cannot be an insurance association if it is prescribed in its articles of association that all policyholders shall be members of the insurance association.  
[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

(2) An Estonian insurance undertaking may transfer its entire insurance portfolio, the insurance portfolio of its branch or a part of these. A third country insurance undertaking may transfer the entire insurance portfolio of its Estonian branch or a part thereof.

(3) The provisions concerning transfer of an entire insurance portfolio of an insurance undertaking specified in this Chapter also apply to the transfer of a part of an insurance portfolio.

(4) The transferee may be a Contracting State insurance undertaking. Upon the transfer of the insurance portfolio of a reinsurance undertaking, the transferee may be a Contracting State reinsurance undertaking or insurance undertaking.

(5) The insurance portfolio of the Estonian branch of a third country insurance undertaking or a part thereof may also be transferred to a branch of this third country insurance undertaking in another Contracting State.

(6) The insurance portfolio of a branch of a third country insurance undertaking in another Contracting State or a part thereof may also be transferred to the Estonian branch of this third country insurance undertaking.

(7) The transferee shall hold an authorisation, which is necessary for entering into contracts of such type as in the insurance portfolio to be taken over.

(8) An insurance portfolio may also be transferred during a special regime or compulsory dissolution of the transferor.



(9) An insurance portfolio shall be transferred on the basis of a contract for transfer of an insurance portfolio provided for in § 132 of this Act, excluding the case provided for in subsections (5) and (6) of this section.

(10) An authorisation for transfer of an insurance portfolio by the Financial Supervision Authority shall be required to transfer the insurance portfolio. An authorisation for transfer of an insurance portfolio shall be applied for pursuant to the procedure provided for in § 133 of this Act and after the entry into a contract for transfer of an insurance portfolio, if the entry into the contract is required pursuant to subsection (9) of this section, but prior to the transfer of an insurance portfolio.

(11) If the transfer of an insurance portfolio is supported on the basis of the Guarantee Fund Act on account of the Pension Contracts Sectoral Fund of the Guarantee Fund, the provisions of the Guarantee Fund Act shall be taken into account in the transfer of the insurance portfolio.

(12) In case of the transfer of the insurance portfolio of a reinsurance undertaking, the second sentence of subsection 132 (1) and subsection 132 (5), the second sentence of subsection 135 (1) and subsections 135 (2)–(4), subsections 136 (2)–(6) and subsections 137 (4) and (6) of this Act shall not apply.

### **§ 132. Contract for transfer of insurance portfolio**

(1) In order to transfer an insurance portfolio, the transferor and transferee shall enter into a contract (hereinafter in this Chapter *contract*) which provides for the rights and obligations of both contracting parties. The contract shall not be entered into with a resolutive condition nor shall it damage the interests of policyholders, insured persons and beneficiaries.

(2) Where a special regime has been established or compulsory dissolution has been initiated with respect to the transferor, the contract shall be entered into by the special regime trustee or by the liquidators.

(3) The rights and obligations shall arise from the contract after the grant of an authorisation for transfer of an insurance portfolio unless a later date is provided for in the contract or authorisation.

(4) Upon the transfer of an insurance portfolio, the rights and obligations of the transferor arising from insurance contracts included therein, including the rights arising from the recourse, shall transfer to the transferee. The consent of the policyholder, insured person or beneficiary is not required for the transfer of an insurance contract or obligation.

(5) The second sentence of subsection (1) of this section does not apply to transfer of an insurance portfolio during the time a special regime is in force with respect to an insurance undertaking.

### **§ 133. Application for authorisation for transfer of insurance portfolio**

(1) In order to apply for an authorisation for the transfer of an insurance portfolio, the transferor and transferee shall submit a joint written application and the following information and documents to the Financial Supervision Authority:

- 1) the business name and address of the registered office of the transferor and transferee;
- 2) the name of the branch of an insurance undertaking if the matter concerns the transfer of the insurance portfolio of a foreign branch of an Estonian insurance undertaking or the Estonian branch of an insurance undertaking of another Contracting State;
- 3) the class or subclass of insurance activities corresponding to the part of the insurance portfolio which is to be transferred or the list of insurance contracts which are to be transferred, if only a part of the portfolio is to be transferred;
- 4) a list and size of the technical provisions corresponding to the insurance portfolio to be transferred;
- 5) the list and amount of the technical provisions corresponding to insurance contracts remaining to the transferor after the partial transfer of an insurance portfolio by classes or subclasses of insurance activities corresponding to the insurance contracts to be transferred upon the partial transfer of the insurance portfolio;
- 6) the contract compliant with the terms and conditions provided for in § 132 of this Act if the entry into the contract is required pursuant to subsection 131 (9) of this Act;
- 7) the calculation of the Solvency Capital Requirement of the transferee.

(2) The applicants are required to promptly notify the Financial Supervision Authority of any changes to the information and documents specified in subsection (1) of this section.

### **§ 134. Processing of application for authorisation for transfer of insurance portfolio and decision on granting of authorisation**

(1) The Financial Supervision Authority shall make a decision to grant or refuse to grant an authorisation for the transfer of an insurance portfolio within one month after receipt of all conforming information and documents, but not later than within three months after the submission of an application for authorisation.

(2) The Financial Supervision Authority may refuse to review an application if the application contains essential deficiencies.

(3) The Financial Supervision Authority may refuse to grant authorisation for the transfer of an insurance portfolio if:

- 1) the information or documents submitted upon application for authorisation do not meet the requirements provided for in this Act or legislation established on the basis thereof or are inaccurate, misleading or incomplete;
- 2) the transfer of the insurance portfolio may damage the interests of policyholders, insured persons or beneficiaries;
- 3) the transfer of the insurance portfolio may damage the financial condition of the transferor or transferee;
- 4) after transfer of the insurance portfolio, the own funds or assets covering technical provisions of the transferee no longer meet the requirements provided by this Act;
- 5) the financial supervision authority of another Contracting State specified in §§ 136 or 137 of this Act does not give consent for grant of authorisation for the transfer of the insurance portfolio;
- 6) the transferee does not hold an authorisation specified in subsection 131 (7) of this Act.

(4) The Financial Supervision Authority shall refuse to grant authorisation for the transfer of an insurance portfolio if the Competition Authority has prohibited concentration and the transfer of the insurance portfolio is considered concentration for the purposes of the Competition Act.

(5) The Financial Supervision Authority may establish obligatory secondary conditions for the transferor and transferee upon granting of authorisation for the transfer of an insurance portfolio based on the circumstances provided for in subsections (3) and (4) of this section.

(6) Only the transferor and transferee shall have an opportunity to provide an opinion and objections with respect to granting of authorisation for the transfer of an insurance portfolio for the purposes of the Administrative Procedure Act.

(7) The financial Supervision Authority shall promptly deliver a decision to grant or refuse to grant authorisation for the transfer of an insurance portfolio to the transferor and transferee.

#### **§ 135. Notification of transfer of insurance portfolio**

(1) After the receipt of authorisation for the transfer of an insurance portfolio, the transferor shall be required to publish a notice regarding the transfer of the insurance portfolio in at least one national daily newspaper and on its website. The Financial Supervision Authority may request the notice to be published again if, in the opinion of the Financial Supervision Authority, the place or manner of publication or the content of the notice do not ensure accurate and sufficient notification.

(2) With the consent of the Financial Supervision Authority, the notice specified in subsection (1) of this section may be published in another way.

(3) If a part of the insurance portfolio is transferred, the transferor shall be required, after the receipt of authorisation for the transfer of an insurance portfolio, to forward to the policyholders and other persons to whom an insurance undertaking performs the insurance contract a notice on the transfer of the insurance portfolio in a format which can be reproduced in writing. The first sentence of this subsection shall not apply if all insurance contracts corresponding to the same class or subclass of insurance activities are transferred.

(4) The notice specified in subsection (1) of this section shall be published in addition to Estonia also in other Contracting States where the risks of the insurance contracts to be transferred are located.

#### **§ 136. Obligation to co-operate with financial supervision authorities of Contracting States**

(1) Where an insurance portfolio to be transferred includes insurance contracts entered into by a branch of an Estonian insurance undertaking in another Contracting State or contracts entered into in the course of cross-border insurance activities of an Estonian insurance undertaking, and the transferee is an insurance undertaking of another Contracting State, the Financial Supervision Authority shall grant the authorisation for transfer of the insurance portfolio only after receiving confirmation of the financial supervision authority of the relevant Contracting State that after acceptance of the insurance portfolio the accepting insurance undertaking has the eligible own funds necessary for compliance with the Solvency Capital Requirement.

(2) Where an insurance portfolio to be transferred includes insurance contracts entered into by a branch of an Estonian insurance undertaking in another Contracting State, the Financial Supervision Authority shall grant the authorisation for transfer of the insurance portfolio only after the financial supervision authority of the Contracting State of the location of the branch agrees to the transfer of the insurance portfolio.

(3) The Financial Supervision Authority shall grant the authorisation for transfer of an insurance portfolio only if the financial supervision authorities of the Contracting States of the location of the underwriting risks relating to the insurance contracts agree to the transfer of the insurance portfolio.

(4) If the financial supervision authority of the Contracting State specified in this section has not informed the Financial Supervision Authority of its consent or refusal to grant the consent within three months after receipt of corresponding information from the Financial Supervision Authority, the authority is deemed to have agreed to the transfer of the insurance portfolio.

(5) Where the transferor is an insurance undertaking of another Contracting State and the insurance portfolio to be transferred includes the insurance contracts of the Estonian branch of this insurance undertaking or where the underwriting risk of the insurance contracts to be transferred is situated in Estonia, the Financial Supervision Authority shall grant its consent for the transfer of the insurance portfolio or refuse to grant such consent within three months after receiving a request from the financial supervision authority of the corresponding Contracting State. If the Financial Supervision Authority has failed to notify of granting the consent or refusal therefrom, it shall be considered that the consent for the transfer of the insurance portfolio has been granted.

(6) Subsections (1), (3) and (4) of this section also apply where the insurance portfolio to be transferred contains insurance contracts entered into in Estonia and the transferee is an insurance undertaking of another Contracting State.

(7) Subsection (5) of this section applies also in case the underwriting risk of the insurance contracts of an insurance undertaking of another Contracting State to be transferred is not situated in Estonia but the transferee is an Estonian insurance undertaking.

### **§ 137. Specifications for transfer of insurance portfolio of Estonian branch of third country insurance undertaking**

(1) The Financial Supervision Authority shall grant authorisation for the transfer of an insurance portfolio of the Estonian branch of a third country insurance undertaking (hereinafter in this section *insurance portfolio*) to an Estonian insurance undertaking only if the Financial Supervision Authority is convinced, based on the information at its disposal and, in cases where a financial supervision authority has been selected pursuant to § 86 of this Act, also on the basis of information at the disposal of such authority, that after acceptance of the insurance portfolio the accepting insurance undertaking has the eligible own funds necessary for compliance with the Solvency Capital Requirement.

(2) If the transferee of an insurance portfolio is an insurance undertaking of another Contracting State, the Financial Supervision Authority shall grant an authorisation for the transfer of an insurance portfolio only after receiving a confirmation from the financial supervision authority of the corresponding Contracting State that after acceptance of the insurance portfolio the accepting insurance undertaking has the eligible own funds necessary for compliance with the Solvency Capital Requirement.

(3) Where an insurance portfolio is transferred to a branch of a third country insurance undertaking established in another Contracting State, the Financial Supervision Authority shall grant authorisation for the transfer of the insurance only after receiving a confirmation from the financial supervision authority of the specified Contracting State or of a Contracting State selected pursuant to the procedure provided for in § 86 of this Act that:

- 1) the transfer of the insurance portfolio as described in this subsection is permitted pursuant to the legislation of such Contracting State and the relevant financial supervision authority agreed to the transfer of the insurance portfolio;
- 2) after the acceptance of the insurance portfolio, the transferee has the eligible own funds necessary for compliance with the Solvency Capital Requirement.

(4) The Financial Supervision Authority shall grant authorisation for the transfer of an insurance portfolio only if the financial supervision authority of the Contracting State of the location of the underwriting risk of the insurance contract to be transferred agrees to the transfer of the insurance portfolio.

(5) If the financial supervision authority of the Contracting State specified in this section has not informed the Financial Supervision Authority of its consent or refusal to grant the consent within three months after receipt of a request, the authority is deemed to have agreed to the transfer of the insurance portfolio.

(6) Upon the transfer of the insurance portfolio of a branch of a third country insurance undertaking in another Contracting State to an Estonian insurance undertaking or the Estonian branch of the corresponding third country insurance undertaking, or if the Financial Supervision Authority is selected the supervisor pursuant to the procedure provided for in § 86 of this Act, the Financial Supervision Authority shall grant its consent for the transfer of the insurance portfolio or refuse from granting the consent within three months after receipt of information from the financial supervision authority of another Contracting State. If the Financial Supervision Authority has failed to notify of granting the consent or refusal therefrom, it shall be considered that the consent for the transfer of the insurance portfolio has been granted.

## **Chapter 7**

# Transformation, Division and Merger of Insurance Undertakings

## § 138. Transformation of insurance undertaking

An insurance undertaking that is a public limited company or European company may be transformed into a public limited company or European company.

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

## § 139. Division of insurance undertaking

The division of an insurance undertaking is prohibited.

## § 140. Merger of insurance undertaking

(1) The merger of an insurance undertaking shall be effected pursuant to the procedure provided for in the Commercial Code, taking into account the specifications provided for in this Chapter.

(2) The provisions of subsection 393 (2) and §§ 399 and 433<sup>8</sup>, as well as the requirement for a term provided for in subsections 400 (1) and (2) of the Commercial Code shall not apply upon the merger of an insurance undertaking.

(3) An insurance undertaking that is a public limited company or European company may merge with an Estonian insurance undertaking or an insurance undertaking founded pursuant to the law of another Contracting State that is a public limited company or European company. A life insurance undertaking may merge only with another life insurance undertaking, and a non-life insurance undertaking may merge only with another non-life insurance undertaking. Insurance undertakings may also merge by founding a new insurance undertaking.

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(4) In addition to the provisions of subsection (3) of this section, an insurance undertaking may merge as an acquiring company with a Contracting State undertaking belonging to the same consolidation group therewith who is engaged in intermediation of entry into insurance contracts, adjustment of the losses arising from insurance contracts, management of information systems or other activities related to insurance activities (hereinafter in this Chapter *supporting undertaking*).

(5) Upon the merger of an acquiring insurance undertaking with an insurance undertaking or supporting undertaking that are being acquired, the activities shall be continued on the basis of the authorisation of the acquiring insurance undertaking. Upon the merger of insurance undertakings by founding a new insurance undertaking, a new authorisation shall be applied for pursuant to the procedure provided for in Chapter 2 of this Act.

(6) An application to receive an authorisation for merger provided for in § 143 of this Act shall be submitted to the Financial Supervision Authority for a merger provided for in subsections (3) and (4) of this section.

## § 141. Merger agreement, merger plan and merger report

(1) A merger agreement between insurance undertakings and between an insurance undertaking and supporting undertaking shall not be entered into with a suspensive or resolute condition unless the condition is to obtain an authorisation for merger from the Financial Supervision Authority. Rights and obligations shall arise from the merger agreement after the receipt of an authorisation for merger unless a later term is provided for in the agreement or authorisation for merger.

(2) Within three days after entry into a merger agreement, the management boards of the undertakings participating in the merger shall notify the Financial Supervision Authority thereof and submit a merger plan concerning acts related to the merger.

(3) A merger plan shall include the merger schedule, the processes and activities planned in the framework of the merger and the structure of the insurance undertaking following the merger.

## § 142. Appointment of audit firm and audit firm's report

(1) Upon the merger of insurance undertakings, the Financial Supervision Authority shall, on the proposal of the merging insurance undertakings, appoint at least one common audit firm for all the insurance undertakings participating in the merger.

(2) Upon the merger of an insurance undertaking with a supporting undertaking, the Financial Supervision Authority shall appoint for them, on the proposal of the insurance undertaking, at least one common audit firm.

(3) If the merger specified in subsection (1) or (2) of this section takes place cross-border, the audit firm appointed by the Financial Supervision Authority shall have adequate knowledge and experience for auditing a cross-border merger agreement.

(4) The Financial Supervision Authority shall establish the procedure for and amount of remuneration for the auditors appointed by the Financial Supervision Authority.

(5) The Financial Supervision Authority may not appoint a common audit firm if it has already been appointed by a court or administrative agency of the country of location of a merging Contracting State insurance undertaking.

(6) The common audit firm shall prepare a report concerning the audit of the merger agreement and merger report, providing, in addition to the provisions of § 396 of the Commercial Code, an opinion as to whether the technical provisions and assets covering technical provisions of the acquiring insurance undertaking or the insurance undertaking being founded comply with the requirements deriving from legislation.  
[RT I, 10.01.2019, 1 – entry into force 20.01.2019]

(7) The Financial Supervision Authority shall not appoint an audit firm and the audit firm need not audit the merger agreement if:

- 1) the shares of an insurance undertaking being acquired are held by an acquiring insurance undertaking and the insurance undertakings are audited by the same audit firm or
- 2) the shares of a supporting undertaking are held by an acquiring insurance undertaking and the supporting undertaking and the acquiring insurance undertaking are audited by the same audit firm.

#### **§ 143. Application for authorisation for merger**

(1) In order to obtain an authorisation for merger, the acquiring insurance undertaking and, in the case specified in the third sentence of subsection 140 (3) of this Act, the merging insurance undertakings shall jointly submit an application to the Financial Supervision Authority together with the following information and documents:

- 1) the merger agreement or a notarised transcript thereof;
- 2) the merger report;
- 3) the merger resolutions if the adoption thereof is required;
- 4) the audit firm's report;
- 5) a scheme of operations conforming to the requirements provided by § 18 of this Act for the three years following merger;
- 6) the information and documents provided in clauses 17 (1) 7) and 11) of this Act;
- 7) the resolution of the Competition Authority on granting an authorisation for concentration if the obligation to apply for such authorisation arises from the Competition Act or the confirmation of the insurance undertaking that it has applied for an authorisation for concentration from the Competition Authority and received the authorisation on the basis of subsection 27 (5) of the Competition Act.

(2) Upon the merger of an insurance undertaking with a supporting undertaking, the insurance undertaking shall submit instead of the item provided for in clause (1) 5) of this section the information specified in clauses 18 (1) 3) and 4) of this Act and the information specified in clauses (2) 1), 5) and 6) of the same section with regard to the next three years.

(3) The Financial Supervision Authority may request additional documents or information in order to specify and verify the information or documents specified in subsections (1) and (2) of this section.

(4) The Financial Supervision Authority shall be promptly notified in a format which can be reproduced in writing of all significant changes in the scheme of operations specified in clause (1) 5) of this section and the information specified in subsection (2) at the time of the merger and within one year after granting an authorisation for merger.

(5) During the year after granting an authorisation for merger, an acquiring insurance undertaking or an insurance undertaking being founded shall submit, at the request of the Financial Supervision Authority, a report on the implementation of the scheme of operations.

#### **§ 144. Decision to grant or refusal to grant authorisation for merger**

(1) The Financial Supervision Authority shall grant an authorisation for merger if the Solvency Capital Requirement and assets covering technical provisions of an insurance undertaking meet after the merger the requirements provided for in this Act and the interests of the policyholders, insured persons and beneficiaries are sufficiently protected.

(2) The Financial Supervision Authority may refuse to grant the authorisation for merger if:

- 1) the information or documents submitted upon application for authorisation for merger do not meet the requirements provided for in this Act or legislation established on the basis thereof or are inaccurate, misleading or incomplete;
- 2) the insurance undertaking fails, within the prescribed term, to submit the data, documents or information subject to submission to the Supervision Authority upon applying for authorisation for merger or other data, documents or information required by the Financial Supervision Authority;
- 3) the managers of the acquiring insurance undertaking do not comply with the requirements provided for in this Act;
- 4) the financial condition of the acquiring insurance undertaking does not comply with the requirements provided for in this Act;
- 5) the merger may damage the legitimate interests of the policyholders, insured persons or beneficiaries.

(3) The Financial Supervision Authority shall make a decision to grant or refuse to grant an authorisation for merger within one month after receipt of all conforming information and documents, but not later than upon expiry of three months after the submission of an application for authorisation.

#### **§ 145. Notification of merger**

An insurance undertaking participating in the merger shall promptly publish a notice concerning the receipt of an authorisation for merger in at least one national daily newspaper and on its website.

## **Chapter 8 Special Regime and Cross-border Reorganisation Measures of Insurance Undertakings**

#### **§ 146. Special regime**

(1) A special regime is a procedure established for the representation or activities of an Estonian insurance undertaking or an Estonian branch of a third country insurance undertaking which due to its financial condition is experiencing, or in the opinion of the Financial Supervision Authority, is likely to experience solvency problems, which differs from the usual procedure and the objective of which is to ascertain the reason and nature of the solvency problems, and the possibilities to restore solvency, and to take measures to protect the interests of the policyholders, insured persons and beneficiaries.

(2) The Financial Supervision Authority shall have the exclusive right to decide on the establishment of a special regime with respect to Estonian insurance undertakings.

(3) The establishment of a special regime with respect to an Estonian insurance undertaking shall comprise all its foreign branches.

(4) The Financial Supervision Authority shall be entitled to decide on establishment of a special regime with respect to an Estonian branch of a third country insurance undertaking unless a different agreement exists between the Financial Supervision Authority and the financial supervision authority of the third country.

#### **§ 147. Reorganisation measures**

(1) For the purposes of this Act, reorganisation measures shall mean acts by an administrative authority or court of another Contracting State taken with the objective to maintain or restore the solvency of an insurance undertaking of the corresponding Contracting State or a branch of a third country insurance undertaking established in the corresponding Contracting State, which may affect the pre-existing rights held by third parties and which may involve the suspension of payment of insurance indemnities, making of other payments or enforcement proceeding, or the reduction of claims.

(2) Competent administrative authorities or courts of the corresponding Contracting State (hereinafter in this Chapter *competent authorities of Contracting State*) shall have the exclusive right to decide on the application of reorganisation measures with respect to an insurance undertaking of another Contracting State or a branch of a third country insurance undertaking established in another Contracting State.

(3) The application of reorganisation measures with respect to an insurance undertaking of another Contracting State shall comprise all its Contracting State branches.

(4) A decision concerning application of reorganisation measures shall enter into force in Estonia on the date on which the specified decision enters into force in the Contracting State which made this decision.

(5) The decision concerning application of reorganisation measures together with its consequences shall be valid in Estonia under the same terms and conditions and to the same extent as in the Contracting State which made this decision.

#### **§ 148. Motives for establishment of special regime**

The Financial Supervision Authority may establish a special regime if:

- 1) an insurance undertaking or the Estonian branch of a third country insurance undertaking fails, due to its financial condition, to perform its obligations with respect to a policyholder, insured person, beneficiary or other entitled person in a timely manner or in compliance with the requirements;
- 2) the Financial Supervision Authority finds the financial condition of an insurance undertaking or the Estonian branch of a third country insurance undertaking to be inadequate to enable performance of its obligations at all times or in conformance to the requirements.

#### **§ 149. Decision for establishment of special regime and consequences thereof**

(1) The following shall be indicated in a decision for establishment of a special regime:

- 1) the entry into force, duration and motives for establishment of a special regime;
- 2) the procedure for performance of the obligations underwritten by an insurance undertaking or the Estonian branch of a third country insurance undertaking during the special regime;
- 3) the name and personal identification code or date of birth in the absence of a personal identification code of the special regime trustee and his or her rights and obligations, including the terms and procedure for submission of regular reports to be submitted by the special regime trustee to the Financial Supervision Authority;
- 4) other circumstances of importance upon the establishment of the special regime.

(2) The duration of a special regime shall not exceed six months.

(3) The Financial Supervision Authority shall promptly deliver the decision for establishment of a special regime to an insurance undertaking or the Estonian branch of a third country insurance undertaking.

(4) During a special regime, an insurance undertaking or the Estonian branch of a third country insurance undertaking shall be prohibited to enter into new insurance contracts and extend the existing contracts, increase the sums insured and to make payments based on an insurance contract, unless otherwise provided for in the decision for establishment of the special regime.

(5) A decision for establishment of a special regime shall not affect the validity of disposition for the exercise of rights or performance of obligations arising from a financial collateral arrangement specified in § 314<sup>1</sup> of the Law of Property Act, or the netting performed through a payment system specified in subsection 87 (2) of the Credit Institutions Act and through a securities settlement system or a linked system specified in subsection 213 (1) or 213<sup>1</sup>(1) of the Securities Market Act.

(6) Establishment of a financial guarantee or disposal of the object of the financial guarantee provided in § 3141 of the Law of Property Act carried out after establishment of a special regime remains in force if such acts were performed on the date of declaration of a special regime and the other party to the financial guarantee agreement is able to prove that the party was not nor should have been aware of the establishment of a special regime.

(7) A decision for establishment of a special regime shall enter in force on the same date in all the other Contracting States as the specified decision enters into force in Estonia.

(8) A decision for establishment of a special regime together with its consequences shall be valid in all the other Contracting States under the same conditions and to the same extent as in Estonia.

(9) The provisions of subsections (7) and (8) of this section shall also apply in third countries unless agreed otherwise between the Financial Supervision Authority and the financial supervision authority of a third country.

#### **§ 150. Notification of decision for establishment of special regime**

(1) The Financial Supervision Authority shall promptly forward a decision for establishment of a special regime for making a corresponding entry to the commercial register and to similar known registers in the Contracting States where the branches of an Estonian insurance undertaking have been established. The commercial register shall decide on making an entry without delay but not later than upon expiry of three working days after receiving the information from the Financial Supervision Authority. The entry into force and duration of a special regime and the name and personal identification code or date of birth in the absence of a personal identification code of the special regime trustee shall be entered in the commercial register.

(2) The Financial Supervision Authority shall promptly forward a decision for establishment of a special regime to the financial supervision authorities of all the other Contracting States, explaining the consequences of the decision, the competence of the special regime trustee and other circumstances which the Financial Supervision Authority deems to be relevant to the case.

(3) The Financial Supervision Authority shall publish a notice on establishment of a special regime within two working days as of the date of making the decision in at least one national daily newspaper and on its website, and at the earliest opportunity, in the Official Journal of the European Union.

(4) The notification provided for in subsection (3) of this section shall not affect the entry into force of a decision for establishment of a special regime.

#### **§ 151. Notification of application of reorganisation measures**

(1) In the case where the financial supervision authority of a Contracting State informs the Financial Supervision Authority of application of reorganisation measures with respect to an insurance undertaking of the corresponding Contracting State and the branch of a third country insurance undertaking established in the corresponding Contracting State, the Financial Supervision Authority shall publish a corresponding notice prepared in Estonian in at least one national daily newspaper and on its website within five working days after receiving the specified information.

(2) The notice specified in subsection (1) of this section shall set out, among other, the name of the competent authority of the Contracting State, law applicable to the reorganisation measures, and, in case of appointment of a person responsible for application of the reorganisation measures (hereinafter in this Chapter *administrator*), his or her personal data and contact details.

(3) The notification provided for in subsection (1) of this section shall not affect the application of reorganisation measures unless prescribed otherwise in the legislation of a Contracting State or provided otherwise by the competent authorities.

#### **§ 152. Law applicable to special regime and reorganisation measures**

(1) Unless otherwise provided by this section, a special regime shall be applied with respect to an Estonian insurance undertaking or the Estonian branch of a third country insurance undertaking pursuant to the provisions of Estonian law.

(2) Unless otherwise provided by this section, reorganisation measures shall be applied with respect to an insurance undertaking of another Contracting State or the branch of a third country insurance undertaking established in another Contracting State pursuant to the provisions of the corresponding Contracting State.

(3) The consequences of a special regime or reorganisation measures for any pending proprietary disputes in which a participant in the proceedings is an insurance undertaking or the branch of a third country insurance undertaking with regard to whom a special regime or reorganisation measures are applied, shall be determined pursuant to the provisions of the law of the state conducting the proceedings in the matter.

(4) Upon application of a special regime or reorganisation measures with respect to an employment relationship and employment contract, there shall apply the provisions of the law of the state which applies to the employment contract.

(5) Upon application of a special regime or reorganisation measures with respect to a contract based on which the right to acquire or use an immovable arises, there shall apply the provisions of the law of the state of the location of the immovable.

(6) Upon application of a special regime or reorganisation measures with respect to the rights of an insurance undertaking or a branch of a third country insurance undertaking related to an immovable, ship or aircraft to be entered in a public register, including on the validity of a disposition concerning an immovable, ship or aircraft made after the establishment of a special regime or application of reorganisation measures with respect to the insurance undertaking or the branch of the third country insurance undertaking, there shall be applied the provisions of the law of the state of the location of the immovable or the provisions of the law of the state which exercises supervision over maintaining the corresponding register.

(7) Upon application of a special regime or reorganisation measures with respect to the rights and obligations of the participants in a regulated market, there shall apply the provisions of the law of the state which are applicable to the regulated market.

(8) Upon application of a special regime or reorganisation measures with respect to the right of an insurance undertaking or a branch of a third country insurance undertaking to dispose of book-entry securities after the establishment of a special regime or application of reorganisation measures with respect to the undertaking, there shall apply the provisions of § 23<sup>1</sup> of the Private International Law Act.

(9) Establishment of a special regime or application of reorganisation measures shall not affect the right of a creditor to set off the claim thereof against the claim of an insurance undertaking or a branch of a third country insurance undertaking unless set-off is prohibited pursuant to the law applicable to the claim of the insurance undertaking or the branch of the third country insurance undertaking.

(10) Establishment of a special regime or application of reorganisation measures shall not affect the real right in rem of a creditors or third party encumbering an object owned by an insurance undertaking or a branch of a



third country insurance undertaking and located at the time of commencement of establishment of the special regime in another Contracting State or at the time of commencement of application of reorganisation measures in Estonia, including:

- 1) right of sale of an object arising from a right of security;
- 2) pre-emptive right to the satisfaction of a claim arising, for example, from a right of security or agreement to assign a security;
- 3) right to claim delivery from every person who possesses an object without legal basis;
- 4) right to the fruits of the object.

(11) The provisions of subsection (10) of this section also apply to the right to acquire the right in rem provided for in the specified section which is entered in a public register and is valid with respect to third parties.

(12) Establishment of a special regime or application of reorganisation measures with respect to an insurance undertaking or a branch of a third country insurance undertaking shall not affect the rights arising from reservation on ownership of the seller of the movable acquired by the specified insurance undertaking or the branch of the third country insurance undertaking provided that at the time of establishment of the special regime or application of reorganisation measures the movable was located in a Contracting State, and the establishment of the special regime or application of reorganisation measures was not decided in such country.

(13) Establishment of a special regime or application of reorganisation measures with respect to an insurance undertaking or a branch of a third country insurance undertaking selling a movable does not create a right to cancel or terminate the contract of sale or prevent the acquisition of the thing by the buyer provided that at the time of establishment of a special regime or application of reorganisation measures the movable was located in a Contracting State, and the establishment of a special regime or application of reorganisation measures was not decided in such country.

### **§ 153. Special regime trustee and administrator and their competence**

(1) Special regime trustees shall meet the requirements established for members of management boards of insurance undertakings by this Act.

(2) During a special regime, a special regime trustee shall be the official representative of an Estonian insurance undertaking or the Estonian branch of a third country insurance undertaking. The authority of the management board, supervisory board, general meeting, procurator and other representative or director of the branch of and Estonian insurance undertaking, or of the director and other representatives of the Estonian branch of a third country insurance undertaking are suspended during a special regime unless otherwise prescribed by the decision for establishment of a special regime. The special regime trustee shall be entitled to suspend compliance with resolutions of the management board, supervisory board, general meeting and director of the branch of an Estonian insurance undertaking, or of the director of the Estonian branch of a third country insurance undertaking.

(3) Within two days after appointment, a special regime trustee is required to:

- 1) display a notice at the registered office of an Estonian insurance undertaking and a branch thereof in a foreign state or the Estonian branch of a third country insurance undertaking and at every place of business thereof concerning the appointment of the special regime trustee, indicating in the notice the names of the persons whose authority to conclude transactions in the name of the insurance undertaking and the branch thereof in a foreign state or the Estonian branch of the third country insurance undertaking has been suspended;
- 2) publish a notice with the content provided for in clause 1) of this subsection in at least one national daily newspaper;
- 3) inform, for making a corresponding entry in the register, the registrar of the central securities depository and the pension register, the land register and the ship register as well as other known registrars of similar registers of the other Contracting States where branches of an Estonian insurance undertaking have been established of persons who are no longer authorised to dispose, in the name of the insurance undertaking, the assets of the insurance undertaking or assets administered on the basis an authorisation and of persons to whom corresponding authorisation has been granted.

[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(4) A special regime trustee may transfer the insurance portfolio of an Estonian insurance undertaking or the Estonian branch of a third country insurance undertaking or a part thereof to another insurance undertaking pursuant to the procedure provided for in Chapter 6 of this Act.

(5) A special regime trustee shall receive on account of an Estonian insurance undertaking or the Estonian branch of a third country insurance undertaking the remuneration which shall correspond to the nature and volume of his or her work, but not larger than the average remuneration received by the members of the management board of an operating insurance undertaking or the director of the Estonian branch of a third country insurance undertaking. The amount of remuneration shall be determined by the Financial Supervision Authority.

(6) A special regime trustee to act firstly pursuant to the interests of policyholders, insured persons, beneficiaries and other creditors and then pursuant to the interests of an Estonian insurance undertaking or the Estonian branch of a third country insurance undertaking.

(7) A special regime trustee is required, in addition to activity reports specified by the decision for establishment of a special regime, to submit to the Financial Supervision Authority all information and documentation requested by the latter.

(7<sup>1</sup>) A special regime trustee representing the Estonian branch of a third country insurance undertaking shall cooperate with the trustees representing the other Contracting State branches of the third country insurance undertaking.

[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

(8) The powers of an administrator in Estonia are confirmed by a certified copy of the decision to appoint the administrator, or other certificate issued by the competent authority of a Contracting State together with a translation into Estonian.

(9) An administrator shall be entitled to exercise the same powers in Estonia as he or she exercises in another Contracting State. In addition to the above, an administrator shall be entitled to appoint persons to assist or where necessary, represent him or her in application of the reorganisation measures. Upon exercise of his or her rights, selling of assets and providing of information to employees, an administrator shall adhere to the provisions of the legislation of Estonia. Upon exercise of his or her rights, an administrator shall have no right to apply coercive measures or to decide on issues which are the object of court action.

(10) Promptly after application of reorganisation measures with respect to an insurance undertaking of another Contracting State or the branch of a third country insurance undertaking established in another Contracting State, the administrator is required to request the making of a corresponding entry in the relevant public registers maintained in Estonia under the conditions and to the extent provided by Estonian law. The costs of registration shall be regarded as costs and expenses incurred in the proceedings.

[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

#### **§ 154. Termination of special regime**

(1) The Financial Supervision Authority shall make a decision on the basis of activity reports, information and documentation submitted by a special regime trustee on whether an Estonian insurance undertaking or the Estonian branch of a third country insurance undertaking is able to resume its activities or it is necessary to revoke its authorisation or authorisation to establish a branch in part or in full, to reorganise its activities or to file a bankruptcy petition with respect of an Estonian insurance undertaking.

(2) The Financial Supervision Authority shall decide on termination of a special regime at the date specified in the decision for establishment of a special regime. The special regime trustee may request termination of the special regime before the established date.

(3) The Financial Supervision Authority shall decide on the termination of a special regime and grant consent for resumption of the activities of an Estonian insurance undertaking or the Estonian branch of a third country insurance undertaking if:

1) according to the report of a special regime trustee, the solvency problems of the insurance undertaking or the branch have been eliminated and the proprietary interests of the policyholders, insured persons, beneficiaries and other entitled persons are protected, and

2) according to the opinion of the Financial Supervision Authority, no grounds exist, in the case of an Estonian insurance undertaking, to revoke the authorisation specified in § 23 of this Act or, in the case of a branch of a third country insurance undertaking, the authorisation for establishment of a branch specified in subsection 39 (3) of this Act.

(4) On the basis of a decision made pursuant to subsection (3) of this section, an Estonian insurance undertaking or the Estonian branch of a third country insurance undertaking shall reacquire the right to dispose of its assets and the authority of the members of the managing bodies are resumed.

(5) If, at the end of the term of the special regime, an Estonian insurance undertaking or the Estonian branch of a third country insurance undertaking fails to comply with the requirements provided for in this Act, the Financial Supervision Authority shall decide on the revocation of the authorisation of the Estonian insurance undertaking or the authorisation to establish the Estonian branch of the third country insurance undertaking on the bases prescribed in § 23 or subsection 39 (3) of this Act, or decide on filing of a bankruptcy petition against the Estonian insurance undertaking on the basis provided for in subsection 166 (3) of this Act.

(6) The Financial Supervision Authority shall notify the commercial register and a special regime trustee shall notify the registers specified in clause 153 (3) 3) of this Act of the termination of a special regime for the deletion of a notation entered in the register.

## **Chapter 9**

# Dissolution of Insurance Undertakings

## Division 1

### Bases for Dissolution of Insurance Undertakings and Cross-Border Winding-up Procedure

#### § 155. Bases for dissolution of Estonian insurance undertaking

An insurance undertaking shall be dissolved:

1) voluntarily pursuant to the provisions of § 161 of this Act upon the resolution of the general meeting of shareholders of an insurance undertaking or members of an insurance association on the basis provided by law and the articles of association;

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

2) under compulsory dissolution pursuant to the provisions of § 162 of this Act on the initiative of the Financial Supervision Authority, on the basis of a court ruling;

3) in case of insolvency pursuant to the provisions of Division 3 of this Chapter and the Bankruptcy Act.

#### § 156. Notification of dissolution of Estonian insurance undertaking

(1) The Financial Supervision Authority shall promptly forward a decision to grant authorisation for voluntary dissolution of an insurance undertaking or its foreign branch, a judgment on compulsory dissolution, a bankruptcy ruling or a court ruling concerning the termination of bankruptcy proceedings due to abatement to the financial supervision authorities of the other Contracting States, and explain the consequences of the decision, order or ruling, set out the competence of the liquidators, trustee in bankruptcy or interim trustee in bankruptcy, and any other matter which in the opinion of the Financial Supervision Authority has relevance to the case.

(2) In case a corresponding inquiry is made by a financial supervision authority of another Contracting State, the Financial Supervision Authority is required to provide such authority with information on the process of the winding-up procedure or bankruptcy proceedings of an insurance undertaking.

(3) The liquidators, trustee in bankruptcy or interim trustee in bankruptcy shall publish a notice concerning the dissolution of an insurance undertaking in the Official Journal of the European Union at the earliest opportunity. The notice shall set out, among other, the name and contact details of the Financial Supervision Authority, the references to the applicable law and the name and contact details of the person conducting the liquidation or bankruptcy proceedings.

(4) The liquidators, trustee in bankruptcy or interim trustee in bankruptcy shall send a written notice on the dissolution of an insurance undertaking to every known creditor whose habitual place of stay, residence or registered office is located in another Contracting State together with the following information:

1) time-limits of proceedings and consequences in the case of failure to adhere thereto;

2) the name and contact details of a person authorised to receive claims and information and documents related to the claims;

3) information on whether a creditor must file a claim even if such claim has a preferential right or is secured by a right in rem;

4) the effect of liquidation or bankruptcy proceedings to insurance contracts, including the date of termination of the insurance contracts and the rights and obligations arising from the insurance contracts to the insured persons.

(5) The title of the notice specified in subsection (4) of this section shall be 'Invitation to lodge a claim. Time-limits to be observed' and it shall be submitted in all official languages of the Contracting States. The information contained in the notice shall be provided in Estonian. If the claim of a creditor arises from an insurance contract, the information specified in subsection (4) of this section shall be provided in the official language or one of the official languages of the Contracting State of the habitual place of stay, residence or registered office of the creditor.

(6) Creditors whose habitual place of stay, residence or registered office is in another Contracting State, may submit their claims in the official language or one of the official languages of such Contracting State. In such case, the claim submitted by the creditor shall bear the Estonian title "*Nõude esitamine*" [filing of claim].

(7) The liquidators, trustee in bankruptcy or interim trustee in bankruptcy are required to regularly notify the creditors of any circumstances which become known during the liquidation or bankruptcy proceedings, and which the creditors need to be aware of in order to be able to protect their interests.

### **§ 157. Winding-up procedure of insurance undertaking of another Contracting State**

(1) For the purposes of this Act, winding-up procedure shall mean a procedure concerning the creditors of an insurance undertaking of another Contracting State or the branch of a third country insurance undertaking established in the corresponding Contracting State and requiring the involvement of a competent administrative authority or court of the corresponding Contracting State (hereinafter in this Division *competent authorities of Contracting State*).

(2) Winding-up procedure may be voluntary or compulsory, or arise from the insolvency of an insurance undertaking of another Contracting State or the branch of a third country insurance undertaking established in the corresponding Contracting State and in the process thereof transactions and acts necessary for the winding-up shall be carried out, including the making of a compromise or entry into other similar agreement.

(3) The competent authorities of the corresponding Contracting State shall have the exclusive right to decide on the commencement of winding-up procedure of an insurance undertaking of another Contracting State or the branch of a third country insurance undertaking established in the corresponding Contracting State.

(4) A decision concerning the commencement of winding-up procedure shall enter into force in Estonia immediately when the specified decision enters into force in the Contracting State which made this decision.

(5) A decision concerning the commencement of winding-up procedure together with its consequences shall be valid in Estonia under the same terms and conditions and to the same extent as in the Contracting State which made the decision.

### **§ 158. Information related to commencement of winding-up procedure of insurance undertaking of another Contracting State**

(1) In the case where the financial supervision authority of another Contracting State informs the Financial Supervision Authority of commencement of winding-up procedure with respect to an insurance undertaking or the branch of a third country insurance undertaking established in such Contracting State, the Financial Supervision Authority shall publish a corresponding notice prepared in Estonian in at least one national daily newspaper within five working days after receiving such information.

(2) The notice specified in subsection (1) of this section shall set out, among other, the name of the competent authority of the Contracting State, law applicable to the winding-up procedure, and, in case of appointment of a person responsible for carrying out the winding-up procedure (hereinafter in this Division *winding-up administrator*), his or her personal data and contact details.

### **§ 159. Winding-up administrator and competence thereof**

(1) The powers of a winding-up administrator in Estonia are confirmed by a certified copy of the decision to appoint the administrator, or other certificate issued by the competent authority of a Contracting State together with a translation into Estonian.

(2) A winding-up administrator shall be entitled to exercise the same powers in Estonia as he or she exercises in the Contracting State which made the decision concerning the winding-up procedure. In addition to the above, a winding-up administrator shall be entitled to appoint persons to assist or where necessary, represent him or her in the winding-up process. Upon exercise of his or her rights, selling of assets and providing of information to employees, a winding-up administrator shall adhere to the provisions of the legislation of Estonia. In exercising his or her rights, a winding-up administrator has no right to apply coercive measures or to decide on issues which are the object of court action.

(3) Promptly after termination of the winding-up procedure, a winding-up administrator is required to request the making of a corresponding entry with respect to an insurance undertaking of a Contracting State or a Contracting State branch of a third country insurance undertaking in the relevant public registers maintained in Estonia under the conditions and to the extent provided by Estonian law.

### **§ 160. Law applicable to dissolution of insurance undertaking and winding-up procedure**

(1) The law of the home country of an insurance undertaking shall apply upon the dissolution of an Estonian insurance undertaking and commencement of winding-up procedure with respect to an insurance undertaking of another Contracting State, unless otherwise provided by this section.

(2) The provisions of subsections 152 (3)–(13) of this Act with respect to a special regime or reorganisation measures also apply upon determining the applicable law.

(3) In the case provided for in subsections (1) and (2) of this section, the following shall be determined by the law of the relevant state:

- 1) composition of the assets of an insurance undertaking and the legal status of assets acquired after the dissolution of an insurance undertaking or the commencement of winding-up procedure;
- 2) rights and obligations of a winding-up administrator, trustee in bankruptcy, interim trustee in bankruptcy or liquidators organising the dissolution or winding-up procedure of an insurance undertaking;

- 3) terms for set-off;
- 4) effect of the dissolution or winding-up procedure of an insurance undertaking on the contracts to which the insurance undertaking is a party;
- 5) effect of the dissolution or winding-up procedure of an insurance undertaking on the proceedings initiated by creditors, except on any court proceedings currently before an Estonian court concerning assets or rights transferred from the insurance undertaking;
- 6) claims filed against an insurance undertaking and terms for carrying out proceedings in the matter of claims which arise after the dissolution or commencement of winding-up procedure of an insurance undertaking;
- 7) procedure for notification, verification and acceptance of claims;
- 8) distribution of proceeds from sale of assets, rankings of claims, and rights of creditors where their claims are satisfied only in part due to the sale or set-off of a security relating to rights in rem;
- 9) terms and effect of termination of the dissolution or winding-up procedure of an insurance undertaking, including in the case of a compromise;
- 10) rights of creditors after completion of the dissolution or winding-up procedure of an insurance undertaking;
- 11) person required to cover the costs incurred during the dissolution or winding-up procedure of an insurance undertaking;
- 12) rules for declaring legal acts which damage the interests of all debtors to be invalid or recoverable.

(4) Clause (3) 12) of this section does not apply if a person who received benefit from such legal act provides proof that the law of a state other than the state specified in subsection (1) of this section applies to the legal act, and pursuant to such law, no grounds exist for contestation of the legal act.

(5) The law of the home country of an insurance undertaking applies to the recovery of the transactions provided in subsections 152 (7), (9), (10), (12) and (13) of this Act.

(6) The provisions of this section shall also apply with respect to voluntary dissolution and compulsory dissolution of the Estonian branch of a third country insurance undertaking and winding-up procedure of a branch of a third country insurance undertaking in another Contracting State.

(7) The provisions of this section shall apply to winding-up procedure of such insurance undertaking of another Contracting State, whose Estonian branch has entered into pension contracts, taking into account the specifications arising from § 171 of this Act.

## **Division 2**

### **Voluntary Dissolution and Compulsory Dissolution of Insurance Undertakings**

#### **§ 161. Voluntary dissolution of insurance undertaking**

(1) Voluntary dissolution of an insurance undertaking is permitted only if the insurance portfolio has been transferred pursuant to the established procedure, the insurance contracts have been terminated, all commitments arising from the insurance contracts have been fulfilled and the undertaking or branch has adequate assets necessary for the complete satisfaction of the legitimate claims of all creditors.

(2) In order to make a decision, by way of general meeting, on the dissolution of an insurance undertaking, the management board shall submit to the general meeting an overview of the economic activities of the insurance undertaking during the current year and the financial situation of the insurance undertaking. The overview shall set out the term and funds for satisfaction in full by the insurance undertaking of the justified claims of all creditors.

(3) In co-ordination with the supervisory board, the management board of an insurance undertaking is required to submit, at least twenty days before the date of the general meeting, an application for authorisation for voluntary dissolution of the insurance undertaking together with the evidence that the insurance undertaking meets the conditions specified in subsection (1) of this section to the Financial Supervision Authority.

(4) The Financial Supervision Authority shall grant an authorisation for voluntary dissolution of an insurance undertaking only if the conditions provided in subsection (1) of this section are met.

(5) The provisions of § 163 and clause 164 (1) 5) of this Act shall not apply to voluntary dissolution.

(6) The provisions of this section shall also apply in the case of voluntary dissolution of a foreign branch of an Estonian insurance undertaking and the Estonian branch of a third country insurance undertaking.

## **§ 162. Compulsory dissolution of insurance undertaking**

- (1) The Financial Supervision Authority may file a petition with a court for the compulsory dissolution of an insurance undertaking if the Financial Supervision Authority has revoked in full the authorisation of the insurance undertaking.
- (2) A court shall adjudge the compulsory dissolution of an insurance undertaking without delay but not later than on the third working day after filing the petition.
- (3) A judgment on compulsory dissolution is subject to immediate execution. The filing of and proceedings regarding an appeal do not suspend the activities of liquidators.
- (4) If, during liquidation proceedings, it becomes evident that the assets of an insurance undertaking are not sufficient to satisfy the recognised claims of all creditors in full, the liquidators shall suspend their activities and file a bankruptcy petition, notifying the Financial Supervision Authority thereof in advance in a format which can be reproduced in writing.
- (5) The provisions of this section also apply in the case of compulsory dissolution of the Estonian branch of a third country insurance undertaking.

## **§ 163. Requirements for liquidators**

- (1) At least three persons who have experience in insurance, at least one of whom meets the requirements established for members of the management board of the insurance undertaking shall be elected or appointed liquidators.
- (2) Liquidators shall remain impartial upon performance of their duties.
- (3) The Financial Supervision Authority shall be entitled to intervene in the activities of liquidators and demand, through a court, the appointment of new liquidators if data exists to show that the activities of the liquidators are not in compliance with law or that the claims of creditors are not satisfied objectively.
- (4) Liquidators shall receive remuneration corresponding to their tasks on account of an insurance undertaking or the Estonian branch of a third country insurance undertaking being liquidated but not larger than the average remuneration received by the members of the management boards of an operating insurance undertaking or the director of an Estonian branch of a third country insurance undertaking. Remuneration paid to assistants to liquidators, including experts and auditors, shall not exceed the average remuneration paid by an operating insurance undertaking or an Estonian branch of a third country insurance undertaking to persons working in corresponding positions.

## **§ 164. Obligations and rights of liquidators**

- (1) Liquidators are required to:
  - 1) carry out a full inventory of all assets of an insurance undertaking or the Estonian branch of a third country insurance undertaking as at the date of entry into force of the dissolution resolution;
  - 2) publish a notice of the liquidation proceedings of an insurance undertaking or the Estonian branch of a third country insurance undertaking in at least one national daily newspaper;
  - 3) notify all known creditors of the liquidation proceedings in writing;
  - 4) submit a notice concerning the liquidation of an insurance undertaking or the Estonian branch of a third country insurance undertaking to the registrar of the central securities depository and the pension register, the land register and the ship register and, where necessary or prescribed by the legislation of another Contracting State, other registrars of similar registers of other Contracting States where branches of the Estonian insurance undertaking have been established;  
[RT I, 26.06.2017, 1 - entry into force 06.07.2017]
  - 5) transfer the insurance portfolio pursuant to the procedure established by this Act, terminate the insurance contracts and adhere to the commitments arising from insurance contracts;
  - 6) present the activity reports and final balance sheet.
- (2) The powers of a liquidator in another Contracting State are confirmed by a copy of the authorisation for voluntary dissolution or judgment on compulsory dissolution of the insurance undertaking together with a translation of such document into the official language or one of the official languages of the Contracting State.
- (3) A liquidator shall be entitled to exercise the same powers in another Contracting State as he or she exercises in Estonia. In addition to the above, a liquidator shall be entitled to appoint persons to assist or where necessary, represent him or her in the course of the liquidation proceedings. Upon exercise of his or her rights, selling of assets of the insurance undertaking and providing of information to employees, a liquidator shall adhere to the provisions of the corresponding Contracting State. In exercising his or her rights, a liquidator has no right to apply coercive measures or to decide on issues which are the object of court action.
- (3<sup>1</sup>) An appointed liquidator of the Estonian branch of a third country insurance undertaking shall cooperate with the appointed liquidators of the other Contracting State branches of the third country insurance undertaking.

[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

(4) In the case specified in § 29 of the Bankruptcy Act, the provisions of this section apply to interim trustees in bankruptcy.

## **Division 3**

### **Bankruptcy of Insurance Undertakings**

#### **§ 165. Application of Bankruptcy Act in case of bankruptcy of insurance undertaking**

The filing of and proceedings regarding a bankruptcy petition, the declaration of bankruptcy and bankruptcy proceedings with respect to an insurance undertaking shall be carried out pursuant to the procedure provided for in the Bankruptcy Act, taking into consideration the specifications provided for in this Chapter.

#### **§ 166. Filing of bankruptcy petition against insurance undertaking**

(1) Bankruptcy caution shall not be submitted to an insurance undertaking.

(2) The Financial Supervision Authority or liquidators may file a bankruptcy petition with respect to an insurance undertaking.

(3) The Financial Supervision Authority shall be entitled to file a bankruptcy petition with respect to an insurance undertaking if at least one of the following conditions occurs:

- 1) the assets of the insurance undertaking are insufficient for satisfaction of all the claims of the creditors or for covering the technical provisions;
- 2) in the opinion of the Financial Supervision Authority, the insurance undertaking has become or is becoming insolvent due to its financial condition.

(4) The provisions of § 10 of the Bankruptcy Act shall not apply to the filing of a bankruptcy petition by the Financial Supervision Authority.

(5) Liquidators shall file a bankruptcy petition against an insurance undertaking on the terms and conditions provided for in subsection 162 (4) of this Act.

#### **§ 167. Proceedings regarding bankruptcy petition and declaration of bankruptcy**

(1) A court shall accept and hear a bankruptcy petition filed by the Financial Supervision Authority against an insurance undertaking and declare the bankruptcy or dismiss a bankruptcy petition within three working days as of the receipt of the petition.

(2) A court shall refuse, by a ruling, to accept a bankruptcy petition filed by the Financial Supervision Authority if the bankruptcy petition does not substantiate the condition provided for in subsection 166 (3) of this Act. The grounds for refusal to accept a bankruptcy petition provided for in subsection 14 (1) of the Bankruptcy Act shall not apply to bankruptcy petition filed by the Financial Supervision Authority.

(3) The provisions of §§ 16–26, 29 and 30 of the Bankruptcy Act shall not apply and no interim trustee shall be appointed if the bankruptcy petition against an insurance undertaking is submitted by the Financial Supervision Authority.

(4) Upon the filing of a bankruptcy petition against an insurance undertaking by the liquidators, the court shall hold a preliminary hearing in order to decide on the appointment of an interim trustee, and the Financial Supervision Authority and the liquidators shall be summoned to the hearing. At the preliminary hearing, the Financial Supervision Authority shall provide an opinion regarding the bankruptcy petition filed against the insurance undertaking.

(5) The court shall decide on the time of the preliminary hearing specified in subsection (4) of this section within seven working days as of the receipt of the bankruptcy petition and shall deliver the summonses to the Financial Supervision Authority and the liquidators.

(6) The court shall hear the bankruptcy petition filed by the liquidators against the insurance undertaking and declare the bankruptcy, dismiss the petition or terminate the proceedings by abatement on the grounds specified in § 29 of the Bankruptcy Act within five working days as of the appointment of an interim trustee.

(7) If the bankruptcy petition has been filed by the Financial Supervision Authority, subsection 31 (3) of the Bankruptcy Act shall apply.

## **§ 168. Appointment and release of interim trustee and trustee in bankruptcy**

(1) If a bankruptcy petition is filed by liquidators, a court shall appoint an interim trustee on the proposal of the Financial Supervision Authority.

(2) A court shall appoint the trustee in bankruptcy of an insurance undertaking on the proposal of the Financial Supervision Authority. The provisions of § 61 of the Bankruptcy Act shall not apply to the trustee in bankruptcy of an insurance undertaking.

(3) In addition to the provisions of subsection 22 (5) and 68 (1) of the Bankruptcy Act, the written report and opinion of an interim trustee and the written notice and activity report of a trustee in bankruptcy shall also be submitted to the Financial Supervision Authority.

(4) In addition to the provisions of § 68 of the Bankruptcy Act, a court shall release a trustee in bankruptcy on the proposal of the Financial Supervision Authority.

(5) If a trustee in bankruptcy is released, a new trustee in bankruptcy shall be appointed pursuant to the procedure provided for in subsection (2) of this section.

## **§ 169. Obligations and rights of trustee in bankruptcy**

(1) In addition to the provisions of § 55 of the Bankruptcy Act, a trustee in bankruptcy shall:

1) publish a bankruptcy notice with regard to an insurance undertaking in at least one national daily newspaper and on the website of an insurance undertaking;

2) provide the Financial Supervision Authority, the Motor Insurance Fund specified in § 10 of the Motor Third Party Liability Insurance Act and the Guarantee Fund with an opportunity to examine the documentation concerning the bankruptcy proceedings of the insurance undertaking;

3) where necessary or prescribed by the legislation of another Contracting State, notify the registrar of the commercial register, the registrar of the land register or other registrars of similar registers of the Contracting State where the branch of an Estonian insurance undertaking has been established of the bankruptcy ruling concerning an insurance undertaking.

(2) The provisions of subsection 34 (2) of the Bankruptcy Act shall not apply to notification of the known creditors of an insurance undertaking.

(3) The powers of a trustee in bankruptcy of another Contracting State in Estonia are confirmed by a certified copy of the decision to appoint the administrator, or other certificate issued by the competent authority of a Contracting State together with a translation into Estonian.

(4) A trustee in bankruptcy of another Contracting State shall be entitled to exercise the same powers in Estonia as he or she exercises in the Contracting State which made the decision concerning the declaration of bankruptcy. In addition to the above, a trustee in bankruptcy shall be entitled to appoint persons to assist or where necessary, represent him or her in the course of the bankruptcy proceedings. Upon exercise of his or her rights, selling of assets of the insurance undertaking and providing of information to employees, a trustee in bankruptcy shall adhere to the provisions of the Estonian legislation. In exercising his or her rights, a trustee in bankruptcy has no right to apply coercive measures or to decide on issues which are the object of court action.

## **§ 170. Bankruptcy committee**

(1) The bankruptcy committee of an insurance undertaking shall comprise five members, three of whom shall be appointed by the Financial Supervision Authority.

(2) The provisions of subsection 74 (7) of the Bankruptcy Act shall not apply to the bankruptcy proceedings of an insurance undertaking.

## **§ 171. Claims arising from insurance contracts**

(1) Claims arising from insurance contracts which are not submitted to the trustee in bankruptcy during the prescribed term shall be determined and deemed protected on the basis of the documentation of the insurance undertaking.

(1<sup>1</sup>) Claims arising from insurance contracts for the purposes of this Division mean the amount to the extent of which an insurance undertaking is required to perform its obligation pursuant to subsection 422 (1) of the Law of Obligations Act. Claims arising from insurance contracts also mean insurance premiums not repaid in case of insurance contracts that were not entered into or cancelled, if such transaction has been concluded before the commencement of winding-up procedure.

[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

(2) Claims arising from insurance contracts shall be satisfied on account of the assets covering technical provisions corresponding to these contracts as a priority before the claims specified in subsection 146 (1) and subsection 153 (1) of the Bankruptcy Act.



(3) If the assets covering technical provisions corresponding to insurance contracts are insufficient for the satisfaction of the claims arising from insurance contracts, the remaining part of these claims shall be specified on account of the other assets of an insurance undertaking before the claims specified in subsection 153 (1) of the Bankruptcy Act.

(4) The claim of a policyholder, insured person or beneficiary under a life insurance contract shall be satisfied to the extent of the technical provision corresponding to his or her insurance contract.

(5) The assets covering technical provisions corresponding to pension contracts shall not be included in the bankruptcy estate of an insurance undertaking and these shall be used to satisfy only the claims of the policyholders and beneficiaries under the pension contracts to the extent of the technical provisions corresponding to their pension contracts.

(6) If the assets covering technical provisions corresponding to pension contracts are insufficient for satisfaction of the claims specified in subsection (5) of this section, the remaining part of these claims shall be satisfied together with other claims of the policyholders, insured persons and beneficiaries under contracts on account of the bankruptcy estate of an insurance undertaking. The claims of the policyholders and beneficiaries under the pension contracts shall not be satisfied on account of the assets covering technical provisions corresponding to other life contracts of the insurance undertaking.

(7) A sum subject to payment based on a claim of a policyholder under a pension contract shall be transferred only to a new insurance undertaking chosen by the policyholder as an insurance premium of the policyholder's new pension contract.

(8) The provisions of subsections (4)–(7) of this section shall apply also in the case of bankruptcy of an insurance undertaking of another Contracting State with regard to the insurance portfolio of pension contracts entered into by its Estonian branch.

(9) The portion of the underlyings of the assets covering technical provisions corresponding to unit-linked life insurance contracts for which the investment risk lies with the policyholder shall not be included in the bankruptcy estate of an insurance undertaking and these shall be used to satisfy only the claims of the policyholders or beneficiaries under the specified unit-linked life insurance contracts.

(10) Upon termination of a non-life insurance contract, the claim of the policyholder, insured person or beneficiary shall be satisfied to the extent of the insurance indemnity payable on the basis of the insurance contract and insurance premiums with respect to which the underwriting risk remains.

(11) Subsections (1) and (3)–(9) of this section shall not apply in the case of bankruptcy of a reinsurance undertaking with regard to its reinsurance contracts.

#### **§ 172. Recovery of transaction and sales of bankruptcy estate**

(1) Transactions not subject to recovery in the course of the bankruptcy proceedings of an insurance undertaking are made:

- 1) in connection with the transfer of the insurance portfolio of the insurance undertaking prior to the declaration of bankruptcy of the insurance undertaking;
- 2) during the special regime of the insurance undertaking.

(2) With the consent of the bankruptcy committee, the trustee in bankruptcy shall be entitled to sell all the assets of an insurance undertaking at once. The bankruptcy committee shall grant its consent only in case the revenue received from the sale is sufficient for satisfaction of the claims of the all creditors.

#### **§ 173. Specifications for termination of bankruptcy proceedings of insurance undertaking**

A compromise decision may be made in the course of the bankruptcy proceedings of an insurance undertaking and the bankruptcy proceedings may be terminated with the consent of the creditors only with the consent of the Financial Supervision Authority.

## **Chapter 10 Activities of Insurance Broker and Insurance Agent**

[RT I, 17.11.2017, 3 - entry into force 01.10.2018]

### **Division 1**

# General Provisions

## § 174. Insurance broker and insurance agent

(1) An insurance broker is a person who engages, for a remuneration and based on a brokerage contract, in insurance distribution with the objective to recommend and mediate to a client, based on an independent analysis, an insurance contract which is the best match for the insurable interests and requirements of the client.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2) An insurance agent is a person who engages, for a remuneration and based on an agency contract, in insurance distribution for and in the interests of one or several insurance undertakings or who enters into insurance contracts in their name and for their account.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2<sup>1</sup>) The remuneration specified in subsections (1) and (2) of this section shall be the brokerage fee or agency fee, respectively, and any other economic benefit, including other monetary or non-monetary benefit received by the intermediary or offered to the intermediary in connection with insurance distribution.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(3) An insurance broker and insurance agent (hereinafter jointly *intermediary*) shall be entered in the list of intermediaries.

(4) [Repealed – RT I, 17.11.2017, 3 – entry into force 01.10.2018]

## § 175. Specifications for application of provisions concerning insurance distribution

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(1) Only § 5, subsections 174 (2) and (2<sup>1</sup>), § 176, subsections 177 (1) and (2), subsection 179 (4), subsection 180 (3), subsections 181 (1) and (6), subsections 182<sup>1</sup>(3) and (4), subsection 195 (1), clauses 198 (2) 1)–4), 8) and 11)–14), subsection 198 (2<sup>1</sup>) and §§ 217–220, 223–238, 254, 258 and 261–264 of this Act shall apply to the activities of an insurance agent in addition to the provisions of this section if all the following conditions are met:

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

1) insurance distribution is not the principal activity of the insurance agent;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

2) it is not a credit institution or investment firm;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

3) the insurance contract is entered into for insuring risks accompanying the products offered or service provided by the insurance agent and it covers the risks of breakdown, loss of or damage to the products or the risks of loss of or damage to the luggage in case of a travel service or other risks related to the travel service;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

4) [repealed – RT I, 17.11.2017, 3 – entry into force 01.10.2018]

5) the insurance contract does not comprise life insurance or liability insurance risks, unless these are ancillary to the main insurance cover comprising the risks related to the provided product or service;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

6) the premium of the insurance contract does not exceed pro rata 600 euros per annum, or as an exception for the service specified in clause 3) of this subsection, does not exceed 200 euros per person in case of an insurance contract entered into for up to three months.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(1<sup>1</sup>) An insurance agent who conforms to the requirements set out in subsection (1) of this section shall be subject, in addition to the requirements set out in this section, also to the obligation to inform clients within a reasonable time before entering into an insurance contract and, if necessary, before amending the concluded insurance contract about the type of remuneration or benefit received by him or her in relation to the insurance contract which is to be entered into or amended.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2) In addition to the provisions specified in subsection (1) of this section, clause 198 (2) 10) of this Act shall apply to the activities of an insurance agent who acts pursuant to the conditions specified in subsection (1) of this section and simultaneously mediates the competing insurance contracts of several insurance undertakings.

(3) A natural person directly engaged in insurance distribution on behalf of an insurance agent specified in subsection (1) of this section shall have the knowledge in the field of insurance specified in § 178 of this Act, and the insurance undertaking whose insurance contracts the natural person distributes shall be liable for enabling the acquisition of such knowledge and shall implement the procedure specified in clause 105 (2) 10) for this purpose.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

## **§ 176. Scope of insurance distribution**

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(1) When using an intermediary, an insurance undertaking may enter into insurance contracts exclusively with the mediation of an intermediary entered in the list of intermediaries.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2) An intermediary who operates in Estonia may mediate the entry into an insurance contract of an insurance undertaking who has the right for insurance activities in Estonia.

(3) An intermediary who operates in a foreign state may mediate the entry into an insurance contract of an insurance undertaking who has the right for insurance activities in the corresponding foreign state.

(4) If Estonia is not the country of location of the underwriting risk for the purposes of § 9 of this Act, an intermediary may mediate to the client an insurance contract of an insurance undertaking which holds an authorisation to engage in insurance activities in the country of location of the underwriting risk if the legislation of the specified state permits this.

## **§ 177. Diligence obligation and principles of remuneration of intermediary**

(1) An intermediary is required to act according to the client's insurable interest and the requirements provided by law, the diligence corresponding to the degree of complexity of an insurance contract and the prudence and competence expected of an intermediary.

(1<sup>1</sup>) An intermediary shall take necessary measures to have the information on insurance services specified in subsection 103<sup>2</sup>(5) of this Act. The provisions of this subsection shall not apply to insurance contracts provided for in subsections 427 (2) and (3) of the Law of Obligations Act.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2) The principles of remuneration of natural persons directly engaged in insurance distribution on behalf of an intermediary, including the objectives set for their activities and the criteria for the evaluation of meeting the objectives, must be designed in such way that these shall not endanger the intermediary's obligation to act in the interests of the client or induce the intermediary to recommend an insurance contract which does not correspond to the client's insurable interest and requirements.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(3) If an intermediary distributes unit-linked life insurance contracts specified in subsection 222 (1) of this Act, or accessory contracts specified in subsection 182<sup>1</sup>(1) of this Act bundled therewith, the intermediary shall establish the principles of remuneration and evaluate the fees provided or received in relation to the distribution of contracts, considering, inter alia, the provisions of the Commission delegated regulation adopted under Article 29 (4) of Directive (EU) 2016/97 of the European Parliament and of the Council.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

## **§ 178. Requirements for knowledge in field of insurance**

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(1) In the cases provided for in this Act, a natural person directly engaged in insurance distribution on behalf of an intermediary and a member of the management board of an intermediary shall have the knowledge in the field of insurance and financial competency corresponding to the extent of their activities.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2) The knowledge in the field of insurance for the purposes of this Chapter shall comprise the knowledge concerning:

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

1) insurance market, and in case of mediating life insurance contracts, financial services market and the principles of the Estonian pension system;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

2) the nature of the class or subclass of insurance activities being mediated;

3) the ascertaining of the client's insurable interest and requirements for insurance contract;

4) [repealed – RT I, 17.11.2017, 3 – entry into force 01.10.2018]

5) the general ethical rules related to the intermediary's activities and the principles of identification, prevention and management of a conflict of interests;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

6) the terms and conditions of the insurance contract being distributed, including the underwriting risks and the restrictions and exclusions related to the contract, and in case of life insurance contracts, the development of the amount of the guaranteed indemnities;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

7) [repealed – RT I, 17.11.2017, 3 – entry into force 01.10.2018]

8) [repealed – RT I, 17.11.2017, 3 – entry into force 01.10.2018]

9) handling of claims in the case of the occurrence of an insured event;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

9<sup>1</sup>) handling of complaints;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

10) the Acts governing insurance and distribution of insurance, including protection of personal data.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2<sup>1</sup>) If an intermediary distributes unit-linked life insurance contracts specified in subsection 222 (1) of this Act, the persons specified in subsection (1) of this section shall have, in addition to the knowledge provided for in subsection (2) of this section, also knowledge about the financial risks and investment options of the client.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(3) A natural person directly engaged in insurance distribution on behalf of an intermediary and a member of the management board of an intermediary shall continuously maintain their knowledge and skills at a level which shall ensure the compliance with the requirements for insurance distribution provided for in this Act.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(4) In order to ensure compliance with the provisions of this section, an insurance broker shall implement the procedure specified in clause 186 (2) 16) of this Act, taking into account the features of the distributed insurance services, the extent of the activities of the persons and the nature of work. An insurance broker shall document the details related to the implementation of said procedure and shall store and update these documents.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(5) A natural person engaged in insurance distribution shall participate in the training ensured by the insurance broker to the prescribed extent and in accordance with the prescribed procedure.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

### **§ 179. Obligatory liability insurance contract of intermediary**

(1) In order to ensure compensation for damage caused by violation of an obligation arising from insurance distribution, an intermediary shall enter into an obligatory liability insurance contract on the following terms and conditions:

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

1) the insured event shall mean pecuniary loss caused due to violation of an obligation arising from insurance distribution by the intermediary or a representative thereof to the policyholder, insured person or beneficiary under the distributed insurance contract;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

2) the sum insured shall be at least 1 300 380 euros for one insured event and 1 924 560 euros per year for all the submitted claims;

[RT I, 10.01.2019, 1 – entry into force 20.01.2019]

3) the insurance cover shall be valid at least within the European Economic Area;

4) the insurance cover shall apply to damage which is caused by an event or act which took place during the period of insurance or the claim for which is filed during the period of insurance if an insurance contract covers the proprietary liability of an intermediary until the expiry of the limitation period of a claim arising from the contract;

5) the insurance contract shall be governed by the Estonian law.

(2) A liability insurance contract entered into on the basis of this Act need not cover the damage, which:

1) occurs due to intentional violation of an obligation arising from insurance distribution;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

2) is usually precluded pursuant to the policy conditions of insurance undertakings entering into liability insurance contracts of an intermediary based on international insurance and reinsurance practice.

(3) In order to ensure compensation for damage provided for in subsection (1) of this section, an intermediary may, instead of a liability insurance contract, enter into a guarantee contract with an insurance undertaking or a credit or financial institution and the guarantee contract shall be equivalent to the provisions of subsection (1) of this section.

(4) An insurance agent shall not have the obligation to enter into the obligatory liability insurance contract of an intermediary. An insurance undertaking whose insurance contract was mediated by the insurance agent shall be liable to the injured party for the causing by the agent of the damage provided for in clause (1) 1) of this section.

### **§ 180. Separation of assets of intermediary**

(1) An insurance broker is required to keep the insurance premiums which are paid by the client to the intermediary and which belong to an insurance undertaking on a separate account.

(2) An insurance broker shall not use the funds in the account specified in subsection (1) of this section in the economic activities of the intermediary, these do not form a part of the bankruptcy estate of the intermediary and a claim for payment shall not be made thereon against the insurance broker in execution proceedings.

(3) The insurance premiums paid to an intermediary by the client are deemed to be paid to an insurance undertaking, regardless of whether the intermediary has forwarded the premiums to the insurance undertaking or not. If the insurance undertaking pays an insurance indemnity through an intermediary, the indemnity is deemed to be paid when the insured person or the beneficiary has received the indemnity.

(4) The provisions of subsections (1) and (2) of this section shall be applied also in case a third party has paid the insurance premium pursuant to the provisions of § 455 of the Law of Obligations Act.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

#### **§ 181. Processing of client's personal data and notification form**

(1) The provisions of §§ 217-220 of this Act concerning insurance undertakings shall apply to an insurance agent.

(2) The consent granted to an insurance broker by the client for the processing of the personal data may be included in the standard conditions of the brokerage contract entered into with the client.

(3) The provisions of subsection 43 (2) of the Law of Obligations Act shall apply to the standard condition whereby an insurance broker reserves the right to amend the standard condition specified in subsection (2) of this section. The amendment of the standard condition shall be deemed to cause unfair harm to the client primarily in case the amendment provides the insurance broker with the right to process personal data to the extent which the client could not reasonably expect taking into account the objective of the contract.

(4) The provisions of clause 218 (1) 1) of this Act concerning insurance undertakings shall apply to an insurance broker.

(5) An insurance broker shall be entitled to store personal data until the expiry of the limitation period for claims arising from the contract entered into with the client or law unless otherwise provided by law.

(6) The information specified in §§ 192 and 198 of this Act shall be submitted to the client in accordance with the provisions of § 430 of the Law of Obligations Act. Inter alia, the evaluation of the suitability of a unit-linked life insurance contract provided for in clauses 192 (2) 2) and 5<sup>1</sup>) and in clause 198 (2) 5) and subsection 198 (2<sup>1</sup>) of this Act, and the non-life insurance information document shall be submitted on a durable medium, taking into account the provisions of subsections 430 (1), (2) and (4) of the Law of Obligations Act.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(7) [Repealed – RT I, 17.11.2017, 3 – entry into force 01.10.2018]

#### **§ 182. Outsourcing and use of assistance of third party by intermediary**

(1) For the better performance of the obligations arising from this Act, an intermediary may outsource operations related to his or her activities (hereinafter *outsourcing*) if the requirements arising from this Act are complied with and if:

- 1) the client's interests are not damaged;
  - 2) this does not interfere with the intermediary's operations and performance of his or her duties at requisite level;
  - 3) this does not interfere with exercising of supervision over the intermediary;
  - 4) it is ensured that the person from whom the operations are outsourced has the necessary knowledge and skills which enable performance of the assumed obligations;
  - 5) this does not cause a situation where an intermediary is not actually engaged in insurance distribution.
- [RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2) An intermediary is required to evaluate comprehensively and thoroughly the necessity for outsourcing and the compliance with the provisions of this section.

(3) Upon outsourcing, an intermediary shall evaluate in the choice of the person from whom the operations are outsourced the competence and suitability of the person for performance of the outsourced operations.

(4) An intermediary shall be entitled to receive from the person from whom the operations of the intermediary are outsourced exhaustive information regarding the outsourced operations and give mandatory instructions to the same person in connection with the outsourced operations.

(5) An intermediary shall submit, at the request of the Financial Supervision Authority, the copy of an outsourcing contract, if available, and the analysis of how the outsourcing complies with the requirements provided for in this section.

(6) In case of outsourcing, an insurance broker shall be completely liable for the proper performance of the outsourced operations. An insurance undertaking for whom an insurance agent acts shall be liable for the compliance with the requirements provided for in this Act by the insurance agent who outsourced the operations.

(7) Insurance distribution shall not be outsourced.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(8) An insurance broker will be permitted to use the assistance of a third party in insurance distribution only in case all the following conditions are met:

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

1) the third party is an insurance broker or an expert necessary for the insurance broker's insurance distribution;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

2) the conditions provided for in subsection (1) of this section are met;

3) based on the client's instructions, the specific nature of the underwriting risk, the small number of offers of insurance undertakings or their absence, or other similar reason, it is impossible without using the assistance of the third party, by making reasonable efforts and with the diligence expected from the insurance broker, to distribute an insurance contract corresponding to the client's insurable interest and requirements.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(9) An insurance agent will be permitted to use the assistance of a third party in insurance distribution only on the following conditions:

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

1) the third party is an insurance agent or an expert necessary for the insurance agent's insurance distribution;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

2) the conditions provided for in subsection (1) of this section are met.

## **§ 182<sup>1</sup>. Requirements for offering bundled insurance contracts**

(1) If an intermediary offers another product or service bundled with an insurance contract under the same contract or under a separate contract entered into together with the insurance contract (hereinafter *bundled offer*), the intermediary shall inform the client whether he or she offers the insurance contract and the contract related to the provision of a product or service (hereinafter *accessory contract*) also separately, and in the latter case provide the client with an appropriate description of the insurance contract and accessory contract, including an overview of costs and fees.

(2) If an insurance contract and accessory contract are offered separately to a client in the case provided for in subsection (1) of this section but are not offered on the same terms and conditions as in a bundle, the intermediary shall provide the client with an explanation of how the bundled insurance contract and accessory contract affect the risks and the scope of insurance cover while compared with a separately concluded insurance contract.

(3) If an intermediary offers additionally an insurance contract bundled with a contract related to the provision of a product or service (hereinafter *principal contract*), the intermediary shall not make the offer of the principal contract dependant on the entry into the insurance contract, and the client shall have the opportunity to enter only into the principal contract.

(4) The provisions of subsection (3) of this section shall not apply if an insurance contract is offered bundled with an investment service or activity specified in subsection 43 (1) of the Securities Market Act, a consumer credit contract relating to residential immovable property specified in subsection 402 (2) of the Law of Obligations Act, or a payment account specified in subsection 709 (4) of the Law of Obligations Act.

(5) The provisions of this section shall not apply if an insurance contract is offered bundled with another insurance contract or if different insurance risks are covered by one insurance contract.

(6) The provisions of this section shall not apply to reinsurance distribution.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

## **Division 2 Insurance Brokers**

### **§ 183. Business name and trade mark of insurance broker**

(1) The business name of an insurance broker shall include the word "*kindlustusmaaker*" [insurance broker] in Estonian or a foreign language.

(2) The business name or trade mark of a legal person who is not an insurance broker shall not include the word "*kindlustusmaakler*" [insurance broker] as a simple or compound word in Estonian or a foreign language equivalent.

(3) An insurance broker may use in its trade mark the word "*kindlustus*" [insurance] provided that the use of such trade mark is not misleading and the trade mark is used together with a reference to the activities of the insurance broker.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(4) Subsection (2) of this section does not apply to a non-profit association uniting insurance brokers.

#### **§ 184. Duty of loyalty of insurance broker**

(1) Insurance brokers shall apply in their activities all measures which ensure the best protection of the client's interests.

(2) An insurance broker shall avoid any activities beyond the scope of the insurance broker's activity which are in conflict with the client's interests and, in the event a conflict of interests cannot be avoided, to act in the interests of the client.

(3) An insurance broker is prohibited to simultaneously provide insurance distribution to several clients for insuring the same object against the same risk if the conflict of interests of these clients can be reasonably presumed in connection with insuring this object.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(4) An insurance broker is prohibited to enter into agreements with an insurance undertaking or to follow the instructions of an insurance undertaking on the basis of which the insurance undertaking grants the insurance broker the right to independently determine the amount of the insurance premium depending on the amount of the insurance premiums of another insurance undertaking or other insurance undertakings.

#### **§ 185. Extent of activities of insurance broker**

(1) The principal activity of an insurance broker shall be the insurance broker's activity provided for in subsection 174 (1) of this Act. The insurance broker's activity is the principal activity if the insurance broker derives the major part of its income therefrom.

(2) An insurance broker may also engage in other activities alongside the insurance broker's activity if these:

- 1) do not damage the insurance broker's activity and there is no threat of such damage;
- 2) do not damage the clients' interests and there is no threat of damaging the interests;
- 3) are structurally and personally separated and independent from the principal activity in case of the insurance broker who is a legal person;
- 4) are in compliance with the knowledge and skills of the insurance broker, do not damage the financial condition thereof or question the independence and objectivity thereof;
- 5) are not the activities of an insurance agent.

(3) When engaging in other activities, an insurance broker shall ensure that the information collected in the insurance broker's activity is not used in other activities without the client's prior consent.

#### **§ 185<sup>1</sup>. Requirements for offering insurance service to target market**

(1) The provisions of § 103<sup>2</sup> of this Act regarding an insurance undertaking shall apply to an insurance broker if the insurance broker develops insurance services within the meaning of the Commission delegated regulation adopted under Article 25 (2) of Directive (EU) 2016/97 of the European Parliament and of the Council.

(2) In the case provided for in subsection (1) of this section, every time when an insurance service is offered to the target market for the first time or before any significant changes are made in an insurance service, the insurance broker shall implement the procedure for the development of insurance services and making of significant changes in insurance services as specified in clause 186 (2) 17) of this Act. The insurance broker shall implement this procedure proportionally and in accordance with the nature of the insurance service.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

#### **§ 186. Internal rules of insurance broker**

(1) An insurance broker is required to establish the internal rules which ensure compliance of the activities of the insurance broker and the managers and employees thereof with the legislation and articles of association.

(2) Among other matters, the internal rules of an insurance broker shall set out the following:

- 1) the procedure for entry into brokerage contract;
- 2) the procedure for ascertaining the client's insurable interest;
- 3) the procedure for submission to client of the sufficient number of insurance offers and recommendation to the client of the best insurance offer;
- 4) the procedure for management and prevention of a conflict of interests related to the remuneration of the insurance broker;
- 5) the procedure for the submission of the precontractual information submitted to clients with regard to insurance contracts and the information submitted during the term of the contract;
- 5<sup>1</sup>) the legal, technical and organisational measures to identify, manage and prevent a conflict of interests between an insurance broker, including a member of its management board and employee or a person having a control relationship, and a client of the insurance broker, and a conflict of interests between the clients in the insurance distribution, taking into account the size and structure of the insurance broker and the nature, scale and complexity of commercial activities;  
[RT I, 17.11.2017, 3 – entry into force 03.01.2018]
- 6) the procedure for avoiding a conflict between the interests of the insurance broker and the personal economic interests of the managers and employees of the insurance broker, including the procedure for avoiding a conflict of interests within a consolidation group if the insurance broker belongs to such group;
- 7) the bases for remuneration of the members of the management board and employees of the insurance broker and the measures for management and prevention of a conflict of interests related to remuneration and the procedure for verification of compliance with these principles.
- 8) the procedure for ensuring compliance with the requirements for the insurance broker in the distribution of insurance contracts pursuant to the provisions of § 192 of this Act;  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]
- 9) the procedure for compliance with the requirement for the separation of assets pursuant to the provisions of § 180 of this Act;
- 10) the procedure for outsourcing of operations related to the insurance broker's activity and the use of the assistance of a third party in the performance of a mandate of the client pursuant to the provisions of § 182 of this Act;
- 11) the procedure for ensuring separation of insurance distribution and other activities pursuant to the provisions of § 185 of this Act;  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]
- 12) the procedure for ensuring the performance of the duty of loyalty and diligence obligation to the client;
- 13) the requirements for information technology systems, ensuring information security and business continuity;
- 14) the internal rules of procedure for implementation of international sanctions established on the basis of the International Sanctions Act, including a scheme of operation in a situation where circumstances with the characteristics described in the International Sanctions Act or legislation established on the basis thereof are discovered;
- 15) the procedure for the submission of data to the Financial Supervision Authority and the publication of information;
- 16) the procedure for assessment of the knowledge and skills of a person directly engaged in insurance distribution and a member of the management board of the insurance broker, and for ensuring at least 15 hours of training in the field of insurance per year for the person directly engaged in insurance distribution;  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]
- 17) the procedure for the development of insurance services and making of significant changes in services in order to implement § 185<sup>1</sup> of this Act.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

### **§ 187. Entry of insurance broker in list of intermediaries**

(1) In order to be entered in the list of intermediaries, an insurance broker shall submit to the Financial Supervision Authority a written application and the following information and documents:

- 1) the articles of association of the insurance broker and, in the case of an operating company, also the resolution of the general meeting on amendment of the articles of association and the amended text of the articles of association;
- 2) in the case of the insurance broker which is a company being founded, a notarised transcript of the memorandum of association or foundation resolution and a notice of the credit institution concerning payment of the share capital;
- 3) a list of the shareholders, which sets out the name, registry code or personal identification code or date of birth in the absence thereof for each shareholder, and information on the amount of contribution, number of shares or units and votes of each shareholder;
- 4) the business name of the insurance undertaking in which the insurance broker has a qualifying holding and the size of the holding;
- 4<sup>1</sup>) the name, registry code or personal identification code, or date of birth in the absence thereof, of a person closely linked to the insurance broker;  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]
- 4<sup>2</sup>) information stating that the holding of at least ten percent in the insurance broker or a close link of the insurance broker to any person shall not prevent the exercise of supervision over the insurance broker at the requisite level;  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]



5) data on a member of management board who is responsible for insurance distribution, including his or her name, personal identification code, or date of birth in the absence thereof, residence, educational background and a complete list of places of employment and positions for the past five years;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

6) a confirmation that the member of the management board of the insurance broker meets the requirements provided by law and the circumstances specified in subsection 191 (2) and (4) of this Act which preclude membership in the management board do not exist;

7) a confirmation that a member of the management board of the insurance broker who is responsible for insurance distribution has experience of working in the field of insurance or other financial services and the knowledge in the field of insurance provided for in § 178 of this Act;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

8) an offer of a valid liability insurance contract of the insurance broker compliant with the conditions provided for in this Act or an offer of a guarantee contract of an insurance undertaking or a credit or financial institution;

9) the internal rules for the provision of the insurance broker's service or draft thereof;

10) regarding an applicant who is a natural person, the data set out in subsection 188 (4) of this Act;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

11) regarding an applicant which is a company, the data set out in subsection 188 (5) of this Act.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2) An applicant shall promptly notify the Financial Supervision Authority of any changes in the information and documents specified in subsection (1) of this section when becoming aware of the fact that caused the change or after changing the information and documents.

### **§ 188. Decision to enter or refuse to enter insurance broker in list of intermediaries**

(1) The Financial Supervision Authority shall enter an applicant in the list of intermediaries if the submitted data and documents comply with the requirements, and if it is possible to verify on the basis of the submitted data and documents that the insurance broker has the sufficient resources and capacity to carry out insurance distribution, and that the interests of the clients are sufficiently protected.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2) The Financial Supervision Authority shall make a decision to enter or refuse to enter an insurance broker in the list of intermediaries within three months after submission of all the required data and documents.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(3) The Financial Supervision Authority shall enter an applicant in the list of intermediaries immediately after the corresponding decision is made and the receipt of a copy of a valid liability insurance contract which meets the requirements provided for in § 179 of this Act or of a guarantee contract.

(4) The name, personal identification code or date of birth in the absence thereof and contact details, including an e-mail address, shall be entered in the list of intermediaries with regard to an applicant who is a natural person.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(5) The business name, registry code, address of the registered office, contact details, including an e-mail address and website address, if any, and the name of the member of the management board responsible for insurance distribution shall be entered in the list of intermediaries with regard to an applicant which is a company.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

### **§ 189. Bases for refusal to enter insurance broker in list of intermediaries**

The Financial Supervision Authority may refuse to enter an insurance broker in the list of intermediaries if:

1) the applicant does not meet the requirements provided by this Act;

2) a member of the management board of the applicant does not meet the requirements provided for in this Act or legislation established on the basis thereof;

3) the applicant does not have the valid offer for a liability insurance contract or a guarantee contract of an insurance undertaking or a credit or financial institution which meets the requirements of this Act;

4) the conditions set out in the offer for a liability insurance contract or a guarantee contract of an insurance undertaking or a credit or financial institution submitted by the applicant, in the opinion of the Financial Supervision Authority, do not sufficiently guarantee compensation for any proprietary damage caused by the insurance broker;

5) the requirements deriving from the legislation, or the implementation of the legislation of the third country where the person with a close link to the insurance broker is located, would prevent the exercise of supervision over the insurance broker at the requisite level.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

### **§ 190. Deletion of insurance broker from list of intermediaries**

(1) The Financial Supervision Authority shall delete an insurance broker from the list of intermediaries in the following cases:

- 1) the insurance broker submits an application to be deleted from the list of intermediaries;
- 2) in case of death of the insurance broker who is a natural person or upon dissolution of the insurance broker who is a legal person.

(2) The Financial Supervision Authority may refuse to delete an insurance broker from the list of intermediaries on the basis provided for in clause (1) 1) of this section if, in the opinion of the Financial Supervision Authority, the deletion may damage the clients' interests.

(3) The Financial Supervision Authority may delete an insurance broker from the list of intermediaries if:

- 1) the insurance broker does not meet the requirements provided for in this Act or legislation established on the basis thereof;
- 2) a member of the management board of the insurance broker does not meet the requirements provided for in this Act or legislation established on the basis thereof;
- 3) the insurance broker has repeatedly or materially violated this Act, the activities or omissions of the insurance broker are not in compliance with good business practices or the clients' interests are not sufficiently protected against the risks arising from the activities or omissions of the broker.

### **§ 191. Requirements for managers and employees of insurance broker**

(1) A member of the management board of an insurance broker and a natural person directly engaged in insurance distribution shall have an impeccable business reputation and the knowledge in the field of insurance provided for in § 178 of this Act.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2) The business reputation of a person specified in subsection (1) of this section is not impeccable primarily if:

- 1) his or her activities or omissions have led to the bankruptcy or revocation of the authorisation, on the initiative of a financial supervision authority, of an insurance undertaking, insurance intermediary, credit institution, payment institution, e-money institution, management company, investment fund or professional securities market participant;
- 2) a punishment for a crime in the first degree has been imposed on him or her and the information concerning his or her punishment has not been expunged from the criminal records database pursuant to the Criminal Records Database Act;
- 3) a punishment has been imposed on him or her for an economic offence, official misconduct or offence against property or offence against public trust and information concerning the punishment has not been expunged from the criminal records database pursuant to the Criminal Records Database Act;
- 4) he or she is subject to a prohibition on business, prohibition to work in a particular position or operate in a particular area of activity or prohibition to engage in enterprise prescribed by law or a court decision;
- 5) his or her activities have shown that he or she is not capable of organising the activities of an insurance broker so that the clients' interests are sufficiently protected;
- 6) he or she has submitted to the Financial Supervision Authority false information or failed to submit essential information.

(3) An insurance broker shall verify the impeccable business reputation of a natural person directly engaged in insurance distribution.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(4) When acting as a person specified in subsection (1) of this section, it is prohibited to simultaneously act as an insurance agent who is a natural person or a member of the management board of an insurance agent which is a company or to be an employee of an insurance agent.

(5) A member of the management board of an insurance broker who is responsible for insurance distribution shall have, in addition to the provisions of subsections (1), (2) and (4) of this section, experience of working in the field of insurance or other financial services.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(6) A person specified in subsection (1) of this section shall neither conclude transactions nor enter into agreements based on which an insurance broker is unable to perform the diligence obligation provided for in § 177 or the duty of loyalty provided for in § 184 of this Act.

### **§ 192. Requirements for insurance broker in distribution of insurance contracts**

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(1) Prior to entry into a brokerage contract, an insurance broker shall, within a reasonable time period:

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

- 1) inform the client of its business name and contact details;
- 2) inform the client that the insurance broker acts in the client's interests while distributing insurance contracts to the client on the basis of an independent analysis;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

- 3) refer to the list of intermediaries where the insurance broker is entered by the Financial Supervision Authority and to the possibility to check the entry made concerning the insurance broker;
- 4) inform the client of the name of an insurance undertaking if the insurance broker has a qualifying holding in such insurance undertaking and also of the name of an insurance undertaking or the parent undertaking of an insurance undertaking which directly or indirectly owns ten per cent or more of the insurance broker's shares or holds votes determined by shares or possesses any other right which makes it possible to exert influence over the management of the insurance broker;
- 5) disclose to the client the bases for calculation of the brokerage fee;
- 6) disclose to the client whether the insurance broker is remunerated by the client or by an insurance undertaking on account of the client;
- 7) submit to the client the business name and contact details of an insurance undertaking under the valid liability insurance contract or of a guarantor under the guarantee contract of the insurance broker;
- 8) inform the client about the procedure for filing complaints regarding the activities of the insurance broker, including the address of the competent authority exercising supervision over the activities of the insurance broker.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2) Every time before the entry into an insurance contract and, if necessary, also before the amendment of an insurance contract which has previously been entered into, an insurance broker shall, within a reasonable period of time:

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

- 1) specify, on the basis of information provided by the client, the insurable interest and requirements for the insurance contract of that client;
- 2) assess, in the distribution of a unit-linked life insurance contract, the suitability of the contract for the client to the extent and pursuant to the procedure provided for in § 222 of this Act, except in the cases provided for in subsections 222<sup>1</sup>(2) and (3) of this Act;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

- 3) submit to the client, in the case of a unit-linked life insurance contract, except for an insurance contract for a supplementary funded pension, a key information document pursuant to Articles 13 and 14 of Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 09.12.2014, p. 1–23), whereas it is not permitted to emphasise any potential benefits arising from the entry into a unit-linked life insurance contract without simultaneous clear indication of the risks related to the entry into that contract;

[RT I, 22.02.2017, 1 - entry into force 01.01.2018]

- 3<sup>1</sup>) submit to the client, in the case of a unit-linked insurance contract for a supplementary funded pension, information concerning the nature of the underlying assets of the insurance contract and the risks related thereto which provide the policyholder with an opportunity to make a carefully considered investment decision, whereas it is not permitted to emphasise any potential benefits arising from the entry into a unit-linked life insurance without simultaneous clear indication of the risks related to the entry into that contract;

[RT I, 22.02.2017, 1 - entry into force 01.01.2018]

- 4) in the distribution of pension contracts, notify the client of the data and principles provided for in § 50 of the Funded Pensions Act;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

- 5) submit to the client from among offers of a sufficient number of insurance undertakings the offers of at least three insurance undertakings, except if, based on the client's instructions, the specific nature of the underwriting risk, the small number of offers of insurance undertakings or other similar reason, it is impossible by making reasonable efforts and with the diligence expected from the insurance broker;

- 5<sup>1</sup>) in case of non-life insurance, submit to the client the information document specified in subsection 103<sup>2</sup>(6) of this Act with every offer specified in clause 5) of this subsection;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

- 6) recommend to the client, on the basis of the offers specified in clause 5) of this subsection, an insurance contract which corresponds to the insurable interest and requirements thereof best of all;
- 7) justify the advice and recommendations provided to the client with thoroughness corresponding to the complexity of the insurance contract and the type of the client, including to justify to the client in the case specified in clause 5) of this subsection the submission of the offers of less than three insurance undertakings, so that the client would be able to make an informed decision regarding the entry into the insurance contract;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

- 8) introduce to the client the conditions of the insurance contract to be entered into, including the size of the insurance premiums and the restrictions and exclusions relating to the contract;
- 9) inform the client of the principles of compensation in the event of the occurrence of an insured event and refer where the client may file a claim on the basis of the insurance contract;

- 9<sup>1</sup>) submit to the client the types and amounts of fees payable by the client together with the insurance premiums and of all the other fees affecting the amounts payable by the insurance undertaking;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

9<sup>2</sup>) in the distribution of a life insurance contract, notify the client of the information specified in clauses 428 (2) 1)–3), 4<sup>3</sup>), 5) and 6) and subsection 428 (2<sup>1</sup>) of the Law of Obligations Act;  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

9<sup>3</sup>) in the distribution of an insurance contract of an insurance association, notify the client of the circumstances related to the membership of the insurance association, including if pursuant to the articles of association of the insurance association the client has to be a member of the insurance association, then ascertain the membership of the client, and inform the client that an insurance contract can be entered into only after becoming a member of the insurance association;

[RT I, 20.02.2019, 2 – entry into force 02.03.2019]

10) inform the client of the amount of the brokerage fee, including the brokerage fee received from the insurance undertaking, for each distributed insurance contract separately;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

11) in the situation of a conflict of interests, disclose to the client the general nature of a potential conflict of interests and the source of the conflict;

12) [Repealed – RT I, 20.02.2019, 2 – entry into force 02.03.2019]

13) inform the client about the alternative dispute resolution entities which can be contacted by the client for the settlement of disputes related to the insurance contract;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

14) advise the client on other issues relating to the insurance contract;

(2<sup>1</sup>) The information specified in subsection (2) of this section need not be submitted to the client if it is already included in the information document specified in clause 5<sup>1</sup>) of the same subsection.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2<sup>2</sup>) In the distribution of unit-linked life insurance contracts, the insurance broker shall not submit only the offers of the insurance undertakings closely linked to the insurance broker, and in case of the underlying assets of unit-linked life insurance contracts, the insurance broker shall not submit only offers of such securities which have been issued by undertakings closely linked to the insurance broker.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(3) Subsections (1)– (2<sup>1</sup>) of this section shall not apply to distribution of insurance contracts specified in subsections 427 (2) and (3) of the Law of Obligations Act.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

### **§ 193. Reporting by insurance broker**

(1) An insurance broker and the Estonian branch of a foreign insurance broker shall submit reports to the Financial Supervision Authority.

(2) The contents, format and procedure for submission of reports of an insurance broker and the Estonian branch of a foreign insurance broker shall be established by a regulation of the minister responsible for the area.

(3) The Financial Supervision Authority shall have the right to request additional reports and information necessary for the exercise of supervision to the extent provided by this Act, as well as reports and information concerning the services provided by an insurance broker, which are necessary for the performance of the duties of the Financial Supervision Authority on the basis of Regulation (EU) No 1094/2010 of the European Parliament and of the Council.

(4) The members of the management board of an insurance broker shall be responsible for the accuracy and timely submission of the information disclosed and submitted to the Financial Supervision Authority with regard to the economic activities and financial condition of an insurance broker.

(5) An insurance broker shall make the annual report available at the registered office and on the website, if any, within two weeks after the approval at the general meeting, but not later than on 1 May of the next year.

## **Division 3 Insurance Agents**

### **§ 194. Business name and trade mark of insurance agent**

(1) The business name of an insurance agent which is a company (hereinafter *insurance agency*) shall include the word "*kindlustus*" [insurance] in Estonian or a foreign language.

(2) The provisions of subsection (1) of this section shall not apply to an insurance agency which engages in insurance distribution as an ancillary activity.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(3) An insurance agent may use in its trade mark the word “*kindlustus*” [insurance] provided that the use of such trade mark is not misleading and the trade mark is used together with a reference to the activities of the insurance agent.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

#### **§ 195. Entry of and refusal to enter insurance agent in list of intermediaries**

(1) An insurance agent shall be entered in the list of intermediaries by an insurance undertaking whom the agent represents or, in the cases provided by law, by the Financial Supervision Authority.

(2) An insurance undertaking may enter in the list of intermediaries only an insurance agent who has not already been entered in the list of intermediaries as the insurance agent of another insurance undertaking in the distribution of insurance contracts of the same class or subclass of insurance activities and who meets the requirements provided for insurance agents by this Act.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(3) An insurance undertaking shall enter an insurance agent in the list of intermediaries promptly after entry into an agency contract.

(4) An insurance agent is required, prior to entry into an agency contract, to inform an insurance undertaking of the following:

- 1) the name, registry code or personal identification code, or date of birth in the absence thereof, of a shareholder with at least ten percent holding in the insurance agent, and the amount of the contribution and the number of shares and votes of each shareholder;
- 2) the business name of the insurance undertaking in which the insurance agent has a qualifying holding and the amount of the holding;
- 3) the name, registry code or personal identification code, or date of birth in the absence thereof, of the person closely linked to the insurance agent;
- 4) information stating that the holding of at least ten percent in the insurance agent or a close link to the insurance agent shall not prevent the exercise of supervision over the insurance agent at the requisite level;
- 5) the data specified in subsection (5) of this section regarding an insurance agent who is a natural person;
- 6) the data specified in subsection (6) of this section regarding an insurance agency.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(5) The name, personal identification code or date of birth in the absence thereof and contact details, including an e-mail address, shall be entered in the list of intermediaries with regard to an insurance agent who is a natural person.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(6) The business name, registry code, address of the registered office, contact details, including an e-mail address and website address, if any, and the name of the member of the management board responsible for insurance distribution shall be entered in the list of intermediaries with regard to an insurance agency.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

#### **§ 196. Change of data of insurance agent entered in list of intermediaries and deletion of insurance agent from list of intermediaries**

(1) An insurance undertaking is required to promptly change the incorrect data entered in the list of intermediaries or delete the data after the receipt of information constituting the basis for the change or deletion of the data. An insurance undertaking who makes an entry is responsible for the correctness of the entry made in the list of intermediaries.

(2) An insurance undertaking which is represented by an insurance agent shall delete the insurance agent from the list of intermediaries in the following cases:

- 1) in case of expiry of the agency contract;
- 2) upon the death of an insurance agent who is a natural person or upon dissolution of an insurance agency.

(3) The Financial Supervision Authority may delete an insurance agent from the list of intermediaries if:

- 1) the insurance agent does not meet the requirements for insurance agents provided for in this Act or legislation issued on the basis thereof;
- 2) a member of the management board of the insurance agency does not meet the requirements established in this Act or legislation issued on the basis thereof concerning a member of the management board of an insurance agency;
- 3) the insurance agent has repeatedly or materially violated this Act, the activities or omissions of the insurance broker are not in compliance with good business practices or the interests of the clients, insured persons or beneficiaries are not sufficiently protected;

4) the person with a close link to the insurance agent has been founded in such a third country, where the requirements deriving from its legislation or the implementation of the legislation prevent the exercise of supervision over the insurance agent at the requisite level.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(4) If the Financial Supervision Authority deletes an insurance agent from the list of intermediaries based on subsection (3) of this section, the agency contract shall expire as of the deletion of the entry.

### **§ 197. Requirements for managers and employees of insurance agent**

(1) An insurance agent who is a natural person, a member of the management board of an insurance agency and a natural person directly engaged in insurance distribution shall have an impeccable business reputation and the knowledge in the field of insurance provided for in § 178 of this Act.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2) If the principal activity of an insurance agency is insurance distribution, the member of the management board of the insurance agency who is responsible for distribution shall have, in addition to the provisions of subsection (1) of this section, experience of working in the field of insurance or other financial services.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(3) The business reputation of a person specified in subsection (1) of this section is not impeccable primarily if:

1) his or her activities or omissions have led to the bankruptcy or revocation of the authorisation, on the initiative of a financial supervision authority, of an insurance undertaking, insurance intermediary, credit institution, payment institution, e-money institution, management company, investment fund or professional securities market participant;

2) a punishment for a crime in the first degree has been imposed on him or her and the information concerning his or her punishment has not been expunged from the criminal records database pursuant to the Criminal Records Database Act;

3) a punishment has been imposed on him or her for an economic offence, official misconduct or offence against property or offence against public trust and information concerning the punishment has not been expunged from the criminal records database pursuant to the Criminal Records Database Act;

4) he or she is subject to a prohibition on business, prohibition to work in a particular position or operate in a particular area of activity or prohibition to engage in enterprise prescribed by law or a court decision;

5) his or her activities have shown that he or she is not capable of organising the activities of an insurance agency so that the interests of the clients, insured persons and beneficiaries are sufficiently protected;

6) he or she has submitted to the Financial Supervision Authority false information or failed to submit essential information.

(4) An insurance agency shall have the obligation to verify the impeccable business reputation of a member of the management board of the insurance agency and a natural person directly engaged in insurance distribution.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(5) A person specified in subsection (1) of this section is prohibited to simultaneously act as an insurance broker who is a natural person or as a member of the management board of an insurance broker which is a company or to be an employee of an insurance broker.

(6) If insurance distribution is an ancillary activity of an insurance agency, a member of the management board who is responsible for insurance distribution shall meet the requirements provided for in subsections (1), (3) and (5) of this section.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(7) The opportunity to acquire the knowledge in the field of insurance provided for in § 178 of this Act shall be ensured for persons specified in this section by an insurance undertaking whose insurance contracts are mediated by these persons.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

### **§ 198. Requirements for insurance agent in distribution of insurance contracts**

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(1) An insurance agent is permitted to act simultaneously in the interests of several insurance or reinsurance undertakings or represent the undertakings provided only that the distributed insurance contracts are not competing. It is presumed that the insurance contracts are not competing if these are entered into in different classes or subclasses of insurance activities.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2) Each time before the entry into an insurance contract and, if necessary, also before the amendment of an insurance contract which has previously been entered into, an insurance agent shall, within a reasonable period of time:

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

1) inform the client of its business name and contact details;

2) inform the client that the insurance agent acts as a representative of an insurance undertaking and refer to the list of intermediaries in which the insurance agent is entered by the insurance undertaking and the possibility to check the entry made concerning the insurance agent;

3) inform the client of the types of the insurance contracts distributed and the extent of the authorisation granted by an insurance undertaking represented by the insurance agent;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

4) specify, on the basis of the information provided by the client, the insurable interest and requirements for the insurance contract of the client and recommend, from among the insurance contracts offered by him or her, an insurance contract which is the best match for the insurable interests and requirements of the client, and provide the client with sufficient explanations corresponding to the complexity of the insurance contract and the type of the client so that the client would be able to make an informed decision regarding the entry into the insurance contract;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

5) assess, in the distribution of unit-linked life insurance contracts, the suitability of the contract or its appropriateness for the client to the extent and pursuant to the procedure provided for in § 222 of this Act, except in the cases provided for in § 222<sup>1</sup>, and inform the client of whether the insurance agent will make use of the opportunity provided for in subsection § 222 (3);

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

6) [repealed – RT I, 17.11.2017, 3 – entry into force 01.10.2018]

6<sup>1</sup>) [repealed – RT I, 17.11.2017, 3 – entry into force 01.10.2018]

7) in the distribution of pension contracts, notify the client of the data and principles specified in § 50 of the Funded Pensions Act;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

8) provide the client with the information specified in clauses 428 (1) 3)–9) of the Law of Obligations Act, and in the distribution of a life insurance contract the information specified in clauses 428 (2) 1)–4<sup>1</sup>), 4<sup>3</sup>), 5) and 6) and in subsection 428 (2<sup>1</sup>) of the same Act;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

9) [repealed – RT I, 17.11.2017, 3 – entry into force 01.10.2018]

10) inform the client of the amount of the agency fee, including the agency fee received from the insurance undertaking, and the bases for remuneration for each distributed insurance contract separately;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

11) refer to the insurance undertaking who has assumed full liability for the activities of the insurance agent;

12) inform the client about the procedure for filing complaints regarding the activities of the insurance agent, including the address of the competent authority exercising supervision over the activities of the insurance agent;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

13) in the situation of a conflict of interests, disclose to the client the general nature of a potential conflict of interests and the source of the conflict;

14) advise the client on other issues relating to the insurance contract;

(2<sup>1</sup>) In case of non-life insurance, the insurance agent shall, in addition to the provisions of subsection (2) of this section, submit to the client the information document specified in subsection 103<sup>2</sup>(6) of this Act. The information specified in subsection (2) need not be submitted to the client as far as it is already included in the information document.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(3) An insurance agency whose principal activity is insurance distribution is required to establish internal rules which ensure the suitability of the activities of the insurance agent and its managers and employees for the performance of the obligations specified in subsections (2) and (2<sup>1</sup>) of this section.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(3<sup>1</sup>) The internal rules specified in subsection (3) of this section shall specify, inter alia, the legal, technical and organisational measures to identify, manage and prevent a conflict of interests between the insurance agency, including a member of its management board and employee or a person having a control relationship, and a client of the insurance agency, and a conflict of interests between the clients in the provision of an insurance contract, taking into account the size and structure of the insurance agency and the nature, scale and complexity of commercial activities.

[RT I, 17.11.2017, 3 – entry into force 03.01.2018]

(4) Subsections (2)–(3<sup>1</sup>) of this section shall not apply in the distribution of insurance contracts specified in subsection 427 (2) or (3) of the Law of Obligations Act.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

## Division 4

# Activities of Estonian Intermediaries in Foreign States

## § 199. Bases of activities of intermediary in foreign state

(1) An intermediary entered in the list of intermediaries in Estonia may engage in insurance distribution in a foreign state (hereinafter in this Division *mediation*) by founding a branch or engaging in cross-border mediation.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2) For the purposes of this Division, cross-border mediation means mediation activities by an Estonian intermediary in a foreign state without founding a branch therefor.

(3) Upon engaging in mediation in a foreign state, an intermediary shall comply with the requirements provided for in this Act, legislation issued on the basis thereof and legislation of the foreign state.

(4) The provisions of §§ 200, 205, 206 and 208 of this Act apply to the mediation activities of intermediaries in a Contracting State.

(5) The provisions of §§ 201-204 and 207 of this Act apply to the mediation activities of intermediaries in a third country.

(6) The provisions of § 191 or 197 of this Act regarding a member of the management board shall apply to a director of a foreign branch of an Estonian intermediary.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(7) If a person permanently authorised to represent an intermediary is permanently engaged in mediation in a foreign state, the activities of the authorised person shall be deemed to be the activities of a foreign branch of the Estonian intermediary and for the continuation of such activities the intermediary shall found a branch pursuant to §§ 200 and 201 of this Act, except in case the intermediary lawfully chooses another legal form for a permanent business establishment.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

## § 200. Branch of intermediary which is Estonian company in Contracting State

(1) An intermediary which is a company and wishes to found its branch in a Contracting State shall submit to the Financial Supervision Authority the following data and documents:

- 1) the business name of the intermediary, its address in Estonia and an indication whether it is an insurance broker or insurance agent;
- 2) the name of the Contracting State where the intermediary wishes to found the branch;
- 3) the address of the registered office of the branch;
- 4) the information specified in clause 187 (1) 5) of this Act concerning the director of the branch who has a sufficient right of representation for acting in the name of the intermediary, the correctness of which is certified by the signature of the said director of the branch;
- 5) a list of the types of insurance contracts which the intermediary plans to mediate in the Contracting State;
- 6) with regard to an insurance agent, the names of the insurance undertakings represented by the insurance agent.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(1<sup>1</sup>) The data and documents specified in clauses (1) 1)–5) of this section shall be submitted together with a translation made by a sworn translator or certified by a notary into a language suitable for communication between the Financial Supervision Authority and the financial supervision authority of the Contracting State of the location of the branch.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2) The Financial Supervision Authority shall forward within one month as of the receipt of the information and documents specified in subsection (1) of this section to the financial supervision authority of the Contracting State where an intermediary which is a company wishes to found the branch the information and documents specified in subsection (1) of this section, including the information on entry of the intermediary in the list.

(3) The Financial Supervision Authority shall notify an intermediary when the financial supervision authority of the Contracting State has confirmed the receipt of the data and documents.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(4) An intermediary which is a company may found a branch in another Contracting State after receipt of the address of a website which contains information regarding the general requirements that the intermediary has to adhere to in order to engage in mediation in the given Contracting State from a financial supervision authority of the Contracting State of the location of the branch via the Financial Supervision Authority, or one month after the date of receipt of a notice from the Financial Supervision Authority regarding the confirmation of the receipt of the data and documents specified in subsection (3) of this section.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]



(5) [Repealed – RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(5<sup>1</sup>) The Financial Supervision Authority may make a decision to refuse to forward the data and documents specified in subsection (1) of this section to a financial supervision authority of a Contracting State if:

- 1) the information or documents submitted do not meet the requirements provided for in this Act or are inaccurate, misleading or incomplete;
- 2) the financial condition and organisational structure of the intermediary are insufficient for engaging in mediation in the Contracting State;
- 3) the director of the branch does not meet the requirements provided for in § 191 or § 197 of this Act;
- 4) the insurance undertaking represented by the insurance agent has not founded a branch in the Contracting State and it is not the home country of the given insurance undertaking.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(5<sup>2</sup>) The Financial Supervision Authority shall, within one month after receipt of the data and documents specified in subsection (1) of this section, deliver the decision on refusal to forward the data and documents to the intermediary which is a company.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(6) An intermediary which is a company shall notify the Financial Supervision Authority of changes in the information or amendment of the documents specified in clauses (1) 1) and 3)–6) of this section at least one month in advance before the changes or amendments take effect, and the Financial Supervision Authority shall forward this information to the financial supervision authority of the Contracting State within one month after receipt of the notice from the intermediary.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(7) The Financial Supervision Authority shall inform the financial supervision authority of the Contracting State of deletion of an intermediary which is a company from the list of intermediaries and of the coercive measures and sanctions imposed on the intermediary.

#### **§ 201. Branch of intermediary which is Estonian company in third country**

(1) An intermediary which is an Estonian company and wishes to found a branch in a third country shall submit to the Financial Supervision Authority a written application to this effect and the following information and documents:

- 1) the name of the state where the intermediary wishes to found a branch together with a reference to the legislation of the corresponding state, according to which foundation of the branch of the intermediary is permitted;
- 2) the address of the registered office of the branch;
- 3) the information specified in clause 187 (1) 5) of this Act concerning the director of the branch who has sufficient right of representation for acting in the name of the intermediary, the correctness of which is certified by the signature of the said director of the branch;
- 4) a list of the types of insurance contracts which the intermediary plans to mediate in the third country.

(2) An insurance broker which is a company and wishes to found a branch in a third country shall submit to the Financial Supervision Authority a copy of the valid liability insurance contract of the intermediary specified in § 179 of this Act or of a guarantee contract of an insurance undertaking or a credit or financial institution. The insurance cover or guarantee must be valid in a third country where the insurance broker wishes to found a branch.

(3) An intermediary which is a company is required to promptly inform the Financial Supervision Authority of any changes to the information or amendment of the documents specified in subsections (1) and (2) of this section.

#### **§ 202. Processing of application for authorisation for foundation of branch and decision to grant authorisation**

(1) The provisions of §§ 179, 191 and 197 of this Act apply to the processing of applications for an authorisation for the foundation of a branch, verification of the submitted information and verification of the financial situation, organisational structure and technical systems of the applicant and the sufficiency of resources for the foundation of a branch.

(2) The Financial Supervision Authority shall make a decision to grant or refuse to grant an authorisation for the foundation of a branch within two months after submission of all the conforming information and documents, but not later than upon expiry of three months as of the receipt of a corresponding application.

(3) The Financial Supervision Authority shall add the name of the third country where an intermediary has founded a branch to the information presented in the list of intermediaries concerning the intermediary.

### **§ 203. Refusal to grant authorisation for foundation of branch**

The Financial Supervision Authority may refuse to grant an authorisation for the foundation of a branch if:

- 1) the information or documents submitted upon application for the authorisation do not meet the requirements provided for in this Act or legislation established on the basis thereof, or are inaccurate, misleading or incomplete;
- 2) the director of the branch does not comply with the requirements for a member of the management board established in § 191 of this Act in case of a branch of an insurance broker and in § 191 of this Act in case of a branch of an insurance agency;
- 3) the financial condition and organisational structure of an intermediary are insufficient for engaging in mediation in a third country;
- 4) the foundation of the branch may damage the interests of the clients, insured persons or beneficiaries, the financial condition of the intermediary which is a company or the reliability of its activities;
- 5) an insurance broker does not have a contract specified in § 179 of this Act or the contract does not comply with the requirements provided for in this Act;
- 6) the financial supervision authority of a third country has no legal basis or possibilities for cooperation with the Financial Supervision Authority and therefore the Financial Supervision Authority cannot exercise sufficient supervision over the branch;
- 7) an intermediary has repeatedly or materially violated this Act, the activities or omissions of the intermediary are not in compliance with good business practices or a punishment has been imposed on the intermediary for an economic offence, official misconduct or offence against property or offence against public trust and information concerning the punishment has not been expunged from the criminal records database pursuant to the Criminal Records Database Act.

### **§ 204. Revocation of authorisation for foundation of branch and deletion of intermediary from list**

(1) The Financial Supervision Authority may revoke an authorisation for the foundation of a branch and delete an intermediary from the list of intermediaries if the intermediary:

- 1) has submitted false information upon application for the authorisation for the foundation of a branch which was of material importance in the decision to grant the authorisation, and also in the case where false information has been submitted to the Financial Supervision Authority;
- 2) has repeatedly or materially violated the requirements provided for in the legislation of a third country which may damage the clients' interests;
- 3) has a branch which does not meet the valid conditions for the granting of an authorisation for the foundation of a branch;
- 4) fails to submit reports on its branch as required;
- 5) has failed to implement a precept of the Financial Supervision Authority relating to the activities of the branch within the term or to the extent prescribed;
- 6) has been deleted from the list of intermediaries.

(2) The Financial Supervision Authority shall deliver a decision to revoke an authorisation for the foundation of a branch and to delete an intermediary from the list of intermediaries, in addition to the intermediary which is a company, to the financial supervision authority of a third country immediately after making the corresponding decision.

(3) After becoming aware of revocation of an authorisation for the foundation of a branch and deletion of an intermediary from the list of intermediaries, the intermediary which is a company shall terminate mediation activities by the due date specified by the Financial Supervision Authority.

(4) The Financial Supervision Authority is required to inform the financial supervision authority of a third country of the coercive measures and sanctions imposed on the intermediary which is a company.

### **§ 205. Precept for termination of mediation in Contracting State through branch**

(1) In addition to a prohibition on operation through a branch upon deletion from the list of intermediaries provided for in §§ 190 and 196 of this Act, the Financial Supervision Authority may prohibit, by its precept, operation of an intermediary which is a company through a branch if the financial supervision authority of the Contracting State has informed the Financial Supervision Authority of a violation of legislation of the Contracting State by the intermediary which is a company.

(2) The Financial Supervision Authority shall promptly deliver the precept specified in subsection (1) of this section to the intermediary which is a company.

### **§ 206. Cross-border mediation in Contracting State**

(1) An intermediary which wishes to engage in cross-border mediation in one or several Contracting States for the first time shall submit an application to this effect and the following information to the Financial Supervision Authority:

- 1) the business name of the intermediary, its address and an indication whether it is an insurance broker or insurance agent;
- 2) the name of the Contracting State where the intermediary wishes to engage in cross-border mediation;
- 3) a list of the types of insurance contracts which the intermediary plans to mediate in the Contracting State;

4) with regard to an insurance agent, the names of the insurance undertakings represented by the insurance agent.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2) The Financial Supervision Authority shall notify within one month as of the receipt of the application and information specified in subsection (1) of this section the financial supervision authority of the Contracting State of the intention of an intermediary to engage in cross-border mediation and forward to the authority the information specified in subsection (1) of this section and the information on entry of the intermediary in the list of intermediaries.

(3) The Financial Supervision Authority shall notify an intermediary when the financial supervision authority of the Contracting State has confirmed the receipt of the information specified in subsection (1) of this section, and after that the intermediary may start cross-border mediation in the given Contracting State.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]]

(4) The Financial Supervision Authority shall notify the intermediary, simultaneously with the notification provided for in subsection (3) of this section, also of the address of the website of the financial supervision authority of the Contracting State which contains information regarding the general requirements for engaging in cross-border mediation in the given Contracting State, and of the obligation to adhere to these requirements.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(5) [Repealed – RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(6) An intermediary shall notify the Financial Supervision Authority of changes in the information specified in clauses (1) 1), 3) and 4) of this section at least one month in advance before the changes take effect, and the Financial Supervision Authority shall forward this information to the financial supervision authority of the Contracting State within one month after receipt of the notice from the intermediary.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(7) The Financial Supervision Authority is required to inform the financial supervision authority of the Contracting State of the deletion of an intermediary from the list of intermediaries and of the sanctions imposed on the intermediary.

(8) The Financial Supervision Authority shall add the name of the Contracting State where an intermediary engages in cross-border mediation to the information presented in the list of intermediaries concerning the intermediary.

## **§ 207. Cross-border mediation in third countries**

(1) An Estonian intermediary who wishes to engage in cross-border mediation in a third country shall submit to the Financial Supervision Authority a written application to this effect and the following information and documents:

- 1) name of the third country where the intermediary wishes to engage in cross-border mediation together with reference to the provisions of the legislation of the third country, pursuant to which the cross-border mediation of the intermediary is permitted in this state;
- 2) a list of the types of insurance contracts which the intermediary plans to mediate in the third country;
- 3) in case of obligation to enter into the contract provided for in § 179 of this Act, a copy of the contract which states that the contract is also effective in the third country.

(2) The Financial Supervision Authority shall make a decision to grant or refuse to grant an authorisation for cross-border mediation within two months after receipt of all conforming information and documents, but not later than within three months after the receipt of an application.

(3) The Financial Supervision Authority shall add the name of the third country where an intermediary has the right to engage in cross-border mediation to the information presented in the list of intermediaries concerning the intermediary.

(4) The Financial Supervision Authority may refuse to grant authorisation for cross-border mediation if:

- 1) the information and documents submitted upon application for authorisation for cross-border mediation do not conform to the requirements provided for in this Act or legislation established on the basis thereof and the applicant has failed to eliminate the deficiencies within an additional term;
- 2) the information or documents submitted upon application for authorisation for cross-border mediation are incorrect or misleading;
- 3) the activities of the intermediary in the third country may significantly damage the clients' interests or the reliability of the intermediary;
- 4) the liability insurance contract of the intermediary or a guarantee contract of an insurance undertaking or a credit or financial institution does not comply with the requirements provided for in § 179 of this Act or is not effective in this third country;

5) the financial supervision authority of a third country has no legal basis, possibilities or readiness for sufficient and efficient cooperation with the Financial Supervision Authority, and therefore the Financial Supervision Authority cannot exercise sufficient supervision over the intermediary;

6) a punishment has been imposed on the intermediary for an economic offence, official misconduct or offence against property or offence against public trust and information concerning the punishment has not been expunged from the criminal records database pursuant to the Criminal Records Database Act.

(5) An intermediary is required to promptly notify the Financial Supervision Authority of any changes to the circumstances specified in clauses (1) 2) and 3) of this section.

(6) The Financial Supervision Authority may revoke an authorisation for cross-border mediation if:

1) the intermediary has submitted false information upon application therefor, which was of material importance in the decision to grant the authorisation for cross-border mediation;

2) the intermediary has failed to notify the Financial Supervision Authority of the change to the circumstances related to cross-border mediation;

3) the intermediary has repeatedly or significantly violated the provisions of legislation regulating its activities;

4) the intermediary does not meet the conditions for the granting of authorisations for cross-border mediation;

5) the intermediary has failed to implement a precept of the Financial Supervision Authority concerning the cross-border mediation by the prescribed due date or to the extent prescribed;

6) the intermediary has been deleted from the list of intermediaries.

(7) The Financial Supervision Authority shall deliver a decision to revoke an authorisation for cross-border mediation, in addition to the intermediary, to the financial supervision authority of a third country.

#### **§ 208. Precept for termination of cross-border mediation in Contracting State**

(1) In addition to a prohibition on engagement in cross-border mediation upon deletion from the list of intermediaries provided for in §§ 190 and 196 of this Act, the Financial Supervision Authority may, by its precept, prohibit an intermediary to engage in cross-border mediation if the financial supervision authority of the Contracting State has informed the Financial Supervision Authority of a violation of legislation of the Contracting State by the intermediary.

(2) The Financial Supervision Authority shall promptly deliver a precept specified in subsection (1) of this section to the intermediary.

## **Division 5 Activities of Foreign Intermediaries in Estonia**

#### **§ 209. Bases for activities of foreign intermediaries in Estonia**

(1) A person who pursuant to the legislation of the home country has the right to engage in insurance distribution (hereinafter in this Division *mediation*) may engage in mediation also in Estonia by founding a branch or engaging in cross-border mediation.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2) For the purposes of this Division, cross-border mediation means mediation activities by a foreign intermediary in Estonia without founding a branch.

(3) Upon engagement in mediation in Estonia, a foreign intermediary shall comply with the requirements provided for in this Act, legislation established on the basis thereof and legislation of the foreign state.

(4) The provisions of §§ 193 and 214 of this Act apply to the mediation activities of intermediaries of Contracting States in Estonia.

(5) The provisions of §§ 193, 210–213 and 215 of this Act apply to the mediation activities of intermediaries of third countries in Estonia.

(6) The provisions of § 191 or § 197 of this Act regarding a member of the management board apply to a director of the Estonian branch of an intermediary of a third country.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

#### **§ 210. Branch of third country intermediary which is company in Estonia**

(1) A third country intermediary which is a company and wishes to found a branch in Estonia shall submit to the Financial Supervision Authority a written application and the following information and documents:

1) the business name and address of the intermediary;

2) the business name and address of the branch in Estonia;

3) the information specified in clause 187 (1) 5) of this Act concerning the director of the branch who has sufficient right of representation for acting in the name of the intermediary, the correctness of which is certified by the signature of the said director of the branch;

- 4) the information and documents provided for in clauses 386 (2) 1) and 3)–5) of the Commercial Code;
- 5) the audited annual reports of the intermediary for the past two financial years;
- 6) a list of the types of insurance contracts which a person applying for an authorisation for a branch in Estonia plans to mediate;
- 7) a copy of the valid obligatory liability insurance contract provided of the intermediary for in § 179 of this Act or of a guarantee contract of an insurance undertaking or a credit or financial institution.

(2) In addition to the information specified in subsection (1) of this section, an intermediary which is company of a third country shall submit the following to the Financial Supervision Authority:

- 1) the permission of the financial supervision authority of the home country to found a branch in Estonia;
- 2) the confirmation of the financial supervision authority of the home country to the effect that the intermediary has the right to engage in mediation in its home country and that it pursues its activities in a correct manner and in accordance with the public interest.

(3) A third country intermediary who is a company shall submit the information and documents specified in this section which are in a foreign language together with translations into Estonian made by a sworn translator or certified by a notary.

(4) A third country intermediary which is a company shall notify the Financial Supervision Authority of any changes in the information or amendment of the documents specified in clauses (1) 1)–4), 6) and 7) of this section at least one month in advance.

### **§ 211. Processing of application for authorisation for foundation of branch and decision to grant authorisation**

(1) The provisions of §§ 179, 191 and 197 of this Act apply to the processing of applications for an authorisation for the foundation of a branch, verification of the submitted information and verification of the financial situation, organisational structure and technical systems of the applicant and the sufficiency of resources for the foundation of a branch.

(2) The Financial Supervision Authority shall make a decision to grant or refuse to grant an authorisation for the foundation of a branch within two months after receipt of all the necessary information and documents, but not later than within three months after submission of the application.

(3) The Financial Supervision Authority shall enter in the list of intermediaries the business name and commercial registry code of a branch of a third country intermediary in Estonia, the address of its registered office in Estonia and the name of the director of the branch responsible for mediation.

### **§ 212. Refusal to grant authorisation for foundation of branch**

The Financial Supervision Authority may refuse to grant an authorisation for the foundation of a branch if:

- 1) the information or documents submitted upon application for the authorisation do not meet the requirements provided for in this Act or legislation established on the basis thereof, or are inaccurate, misleading or incomplete;
- 2) the director of the branch does not comply with the requirements for a member of the management board established in § 191 of this Act in case of a branch of an insurance broker and in § 191 of this Act in case of a branch of an insurance agency;
- 3) the financial condition and organisational structure of the intermediary which is a company are insufficient for engaging in mediation in Estonia or do not allow compliance with the provisions of legislation or to act in the clients' interests;
- 4) the foundation of the branch may damage the clients' interests;
- 5) the intermediary does not have a contract specified in clause 210 (1) 7) of this Act or does not comply with the requirements provided for in this Act;
- 6) the financial supervision authority of a third country has no legal basis, possibilities or readiness for sufficient and efficient cooperation with the Financial Supervision Authority, and therefore the Financial Supervision Authority cannot exercise sufficient supervision over the branch.

### **§ 213. Revocation of authorisation for foundation of branch**

(1) The Financial Supervision Authority may revoke an authorisation for the foundation of a branch and delete an intermediary from the list of intermediaries if the intermediary which is a company:

- 1) has submitted false information upon the foundation of the branch, which was of material importance in the decision to grant the authorisation;
- 2) has repeatedly or materially violated the requirements provided for in the Estonian legislation which may damage the clients' interests;
- 3) has a branch which does not meet the valid requirements for the granting of an authorisation for the foundation of a branch;
- 4) fails to submit reports on its branch as required;

5) has failed to implement a precept of the Financial Supervision Authority relating to the activities of the branch within the term or to the extent prescribed.

(2) The Financial Supervision Authority shall promptly deliver a decision to revoke an authorisation for the foundation of a branch and to delete an intermediary from the list of intermediaries, in addition to the intermediary which is a company, to the financial supervision authority of the third country.

(3) After becoming aware of revocation of an authorisation for the foundation of a branch and deletion of an intermediary's branch from the list of intermediaries, the intermediary which is a company shall terminate mediation activities in Estonia not later than by the due date specified by the Financial Supervision Authority.

(4) The Financial Supervision Authority is required to inform the financial supervision authority of a third country of the coercive measures and sanctions imposed on a branch.

(5) The Financial Supervision Authority may refuse to revoke an authorisation for the foundation of a branch if the clients of the branch have claims against the branch or the intermediary of a third country who founded the branch.

#### **§ 214. Foundation of branch of intermediary which is company of Contracting State in Estonia**

(1) An intermediary which is a company registered in a Contracting State who wishes to found a branch in Estonia shall inform the Financial Supervision Authority thereof through the financial supervision authority of the home country, submitting an application to this effect and the following data:

- 1) the business name and address of the registered office of the branch in Estonia;
- 2) the name of the director of the branch who has sufficient right of representation for operating in the name of the intermediary;
- 3) a list of the types of insurance contracts the mediation of which is planned through the branch.

(1<sup>1</sup>) The Financial Supervision Authority shall confirm to the financial supervision authority of a Contracting State immediately when it has received the data and documents specified in subsection (1) of this section.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2) Within one month after the receipt of the application and information specified in subsection (1) of this section, the Financial Supervision Authority shall inform the intermediary through the financial supervision authority of the home country about the address of the website which contains information on the general requirements that the intermediary of a Contracting State shall adhere to in order to engage in mediation in Estonia.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(3) An intermediary of a Contracting State may found a branch in Estonia after the receipt of the information specified in subsection (2) of this section or one month after the receipt of the notice regarding the confirmation specified in subsection (1<sup>1</sup>) of this section from the financial supervisory authority of the Contracting State.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(4) The Financial Supervision Authority shall enter in the list of intermediaries the business name and commercial registry code of a branch of an intermediary of a Contracting State in Estonia, the address of its registered office in Estonia and the name of the director of the branch responsible for mediation.

(5) An intermediary which is a company of a Contracting State shall notify the Financial Supervision Authority of any changes to the data or amendment of the documents specified in subsection (1) of this section at least one month in advance through the financial supervision authority of the Contracting State. Within one month as of becoming aware of the changes or amendments, the Financial Supervision Authority may amend the conditions specified in subsection (2) of this section or establish the conditions unless it has been made earlier.

#### **§ 215. Cross-border mediation of third country intermediary in Estonia**

(1) A third country intermediary who wishes to engage in cross-border mediation in Estonia shall submit to the Financial Supervision Authority a written application and the following information and documents:

- 1) the business name and address of the intermediary;
- 2) the audited annual reports of the intermediary for the past two financial years;
- 3) a list of the types of insurance contracts which the intermediary plans to mediate in Estonia;
- 4) a liability insurance contract which complies with the conditions provided for in § 179 of this Act and which is effective in Estonia or a guarantee contract of an insurance undertaking or a credit or financial institution.

(2) In addition to the information and documents specified in subsection (1) of this section, a third country intermediary shall submit to the Financial Supervision Authority the consent of the financial supervision authority of the home state for engaging of the intermediary in cross-border activities in Estonia and a confirmation that the intermediary has the right to engage in mediation activities in its home country.

(3) The Financial Supervision Authority may refuse to grant authorisation for cross-border mediation if:  
1) the information and documents submitted upon application for authorisation for cross-border mediation do not conform to the requirements provided for in this Act or legislation established on the basis thereof and the

applicant has failed to eliminate the deficiencies within an additional term provided by the Financial Supervision Authority;

2) the information or documents submitted upon application for authorisation for cross-border mediation are incorrect or misleading;

3) the financial condition and organisational structure of the intermediary are insufficient to meet the requirements applicable in Estonia with regard to mediation or do not allow compliance with the provisions of legislation or to act in the clients' interests;

4) the activities of the intermediary in Estonia may damage the clients' interests;

5) the liability insurance contract of the intermediary or a guarantee contract of an insurance undertaking or a credit or financial institution does not comply with the conditions provided for in § 179 of this Act or is not effective in Estonia;

6) the financial supervision authority of a third country has no legal basis, possibilities or readiness for sufficient and efficient cooperation with the Financial Supervision Authority, and therefore the Financial Supervision Authority cannot exercise sufficient supervision over the intermediary.

(4) The Financial Supervision Authority shall make a decision to grant or refuse to grant an authorisation for cross-border mediation within two months after receipt of all necessary and conforming information and documents, but not later than within three months after the submission of an application for an authorisation for cross-border mediation.

(5) The Financial Supervision Authority shall enter the business name and the address of the location of a third country intermediary in the home state in the list of intermediaries.

(6) An intermediary is required to promptly notify the Financial Supervision Authority of any changes to the information specified in clauses (1) 1), 3) and 4) and subsection (2) of this section.

(7) The Financial Supervision Authority may revoke an authorisation for cross-border mediation and delete an intermediary from the list of intermediaries if the intermediary:

1) has submitted false information upon application for the authorisation for cross-border mediation, which was of material importance in the decision to grant the authorisation;

2) has failed to notify the Financial Supervision Authority of the change to the information;

3) has failed to implement a precept of the Financial Supervision Authority concerning the cross-border mediation by the prescribed due date or to the extent prescribed;

4) has repeatedly or significantly violated the provisions of legislation regulating its activities;

5) does not meet the requirements for the granting of authorisations for cross-border mediation;

6) applies for revocation of the authorisation for cross-border mediation granted thereto.

(8) The Financial Supervision Authority shall promptly deliver a decision to revoke an authorisation for cross-border mediation and to delete an intermediary from the list of intermediaries, in addition to the intermediary, to the financial supervision authority of the third country.

(9) After becoming aware of revocation of an authorisation for cross-border mediation and deletion of an intermediary from the list of intermediaries, the intermediary shall terminate mediation activities in Estonia not later than by the due date specified by the Financial Supervision Authority.

(10) The Financial Supervision Authority may refuse to revoke the authorisation for cross-border mediation at the request of the intermediary if the clients have claims against the intermediary or if the revocation of the authorisation for cross-border mediation would damage the clients' interests.

(11) A third country intermediary shall submit all the information and documents specified in this section which are in a foreign language together with translations into Estonian made by a sworn translator or certified by a notary.

## **§ 215<sup>1</sup>. Cross-border mediation of intermediary of Contracting State in Estonia**

If a financial supervisory authority of another Contracting State has submitted a notice regarding the intention of an intermediary of the Contracting State to engage in cross-border mediation in Estonia including other prescribed information to the Financial Supervisory Authority, the Financial Supervisory Authority shall immediately confirm to the financial supervision authority of the Contracting State that it has received the information.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

## **Chapter 11**

# Obligations of Insurance Undertakings in Relation to Protection of Clients

## § 216. Gender factor in assessment of underwriting risk

(1) The differences between the insurance premiums and insurance indemnities of females and males shall not be caused by the use of the gender factor in the assessment of the underwriting risks.

(2) Neither pregnancy nor maternity shall affect the size of the insurance premiums and insurance indemnities.

## § 217. Data subject and consent of data subject for processing of personal data

(1) This section and § 218–220 of this Act shall apply to such data subjects to whom an insurance undertaking provides a service relating to the insurance activities, including the policyholder, a person equivalent to the policyholder in an insurance contract, the insured person, beneficiary, injured party or a person with whom an insurance undertaking conducts negotiations for the entry into an insurance contract as well as perpetrators and witnesses of an insured event.

(2) The consent of the data subject for processing of personal data for the purposes of § 12 of the Personal Data Protection Act may be included in the standard conditions of an insurance contract.

(3) The provisions of subsection 43 (2) of the Law of Obligations Act shall apply to the standard condition whereby an insurance undertaking reserves the right to amend the standard condition specified in subsection (2) of this section. The amendment of the standard condition shall be deemed to cause unfair harm to the data subject primarily in case the amendment provides the insurance undertaking with the right to process personal data to the extent which the data subject could not reasonably expect taking into account the objective of the contract.

## § 218. Processing of personal data without consent of data subject

(1) Processing of personal data, excluding sensitive personal data, shall be permitted without the consent of the data subject, in addition to the provisions of the Personal Data Protection Act, in the insurance activities:

- 1) in the course of precontractual negotiations for the assessment of the underwriting risk and performance of the acts necessary for the entry into an insurance contract;
- 2) for the performance of a contract entered into in favour of the data subject or for ensuring the performance of a contract, unless otherwise provided for in this Act;
- 3) for exercising the right of recourse.

(2) Processing of sensitive personal data shall be permitted without the consent of the data subject in the following cases:

- 1) processing of sensitive personal data specified in clause 4 (2) 3) of the Personal Data Protection Act for determining the obligation to perform an insurance contract by an insurance undertaking and the scope thereof and for exercising the right of recourse if the insured event is the death of the data subject or if determining the obligation to perform the insurance contract and the scope thereof and exercising the right of recourse requires processing of data on the state of health or disability of the data subject;
- 2) processing of sensitive personal data specified in clause 4 (2) 8) of the Personal Data Protection Act for determining the obligation to perform an insurance contract by an insurance undertaking and the scope thereof and for exercising the right of recourse.

## § 219. Transmission of personal data

(1) A state or local government authority, health care provider or other third party shall transmit without the consent of the data subject, at the request of an insurance undertaking, personal data or grant access thereto if the personal data are necessary to the insurance undertaking for the performance of an insurance contract and ensuring the performance thereof or for exercising the right of recourse. The transmission of personal data to the insurance undertaking or granting access thereto for the such purpose shall not be permitted if these are sensitive personal data, excluding the case when the insurance undertaking requires sensitive personal data in the case provided for in subsection 218 (2) of this Act.

(2) An insurance undertaking shall be entitled to transmit to its reinsurance undertaking without the consent of the data subject personal data related to the insured event for determining the obligation to perform a reinsurance contract and the scope thereof. The transmission of personal data to the reinsurance undertaking or granting access thereto for the such purpose shall not be permitted if these are sensitive personal data, excluding the case provided for in subsection 218 (2) of this Act.

(3) In case the conditions provided for in clauses 11 (6) 1) and 2) of the Personal Data Protection Act are met, an insurance undertaking shall be entitled, in addition to assessing the creditworthiness provided for in subsection 11 (6) of the Personal Data Protection Act, to transmit to another insurance undertaking at the request of the latter without the consent of the data subject personal data for the assessment of the underwriting risk and



determining the obligation to perform an insurance contract and the scope thereof regarding the data subject who:

- 1) has submitted in the course of precontractual negotiations incorrect information with regard to material circumstances required by the insurance undertaking;
- 2) has intentionally caused the occurrence of the insured event or submitted incorrect information with regard to material circumstances of the insured event.

(4) Clauses 11 (7) 3) and 4) of the Personal Data Protection Act shall not apply in processing of personal data specified in subsection (3) of this section 3.

(5) Collection and transmission of data to third parties for the purposes specified in subsection (3) of this section shall not be permitted if more than five years have passed from the end of the violation of an obligation.

#### **§ 220. Term for storing personal data**

An insurance undertaking shall be entitled to store personal data until the expiry of the limitation period for claims arising from the insurance contract or law unless otherwise provided by law.

#### **§ 221. Obligations related to ascertaining of client's insurable interest and demands**

(1) Each time before the entry into an insurance contract and in case of recognisable necessity also before the amendment of an insurance contract which has previously been entered into, an insurance undertaking shall specify, on the basis of information provided by the client, the insurable interest of the client and the client's requirements for the insurance contract, recommend from among the insurance contracts offered by the insurance undertaking an insurance contract which is the best match for the insurable interests and requirements of the client and provide the client with sufficient explanations in accordance with the complexity of the insurance contract and type of the client so that the client would be able to make an informed decision regarding the entry into the insurance contract.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2) Subsection (1) of this section shall not apply upon entry into an insurance contract with the mediation of an insurance broker and upon entry into insurance contracts specified in subsections 427 (2) and (3) of the Law of Obligations Act.

#### **§ 221<sup>1</sup>. Obligations related to offering of and advising on investment products**

(1) If an insurance undertaking is the manufacturer or person selling a packaged retail and insurance-based investment product specified in Article 4(3) of Regulation (EU) No 1286/2014 of the European Parliament and of the Council for the purposes of points (4) and (5) of the same Article or if the undertaking makes recommendations regarding such product, the undertaking is required to follow the requirements provided for in the said Regulation.

(2) The provisions of subsection (1) of this section also apply to special purpose vehicles.

[RT I, 22.02.2017, 1 - entry into force 01.01.2018]

#### **§ 222. Assessment of suitability and appropriateness of unit-linked life insurance contracts**

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(1) A unit-linked life insurance contract means a contract, the amount payable under which depends fully or partially, directly or indirectly, on the value of the underlying assets or general investment performance. A unit-linked life insurance contract within the meaning of this Act does not refer to a contract, under which payments are made only in case of death, injury, illness or disability, or a contract related to the management of an occupational pension fund.

(2) An insurance undertaking shall, prior to entry into a unit-linked life insurance contract, assess the suitability of the contract and its underlying assets for a policyholder (hereinafter *assessment of suitability*) in order to recommend to the policyholder a suitable unit-linked life insurance contract which is in compliance with his or her risk tolerance and ability to bear losses. In order to assess suitability, the insurance undertaking shall obtain information regarding the knowledge and experience of the policyholder in the investment field and his or her financial means and investment objectives.

(3) The requirement for provision of a recommendation need not be adhered to in case of a unit-linked life insurance contract.

(4) In case no recommendation is provided, the insurance undertaking shall, prior to entry into a unit-linked life insurance contract, assess the appropriateness of the contract and its underlying assets for a policyholder

(hereinafter *assessment of appropriateness*). In order to assess appropriateness, the insurance undertaking shall obtain information regarding the knowledge and experience of the policyholder in the investment field.

(5) An insurance undertaking shall warn the policyholder if:

- 1) on the basis of the received information there is reason to believe that the unit-linked life insurance contract is not appropriate for the policyholder;
- 2) the information submitted by the policyholder is not sufficient or the policyholder has failed to submit information, and therefore it is not possible to assess the appropriateness of the unit-linked life insurance contract, and the interests of the policyholder would therefore be less protected.

(6) An insurance undertaking may submit the warning specified in subsection (5) of this section to a policyholder in a standardised format.

(7) An insurance undertaking must not contribute to a failure to submit information necessary for the assessment of suitability or appropriateness.

(8) An insurance undertaking will be entitled to rely on the information submitted by a policyholder upon the assessment of the suitability or appropriateness, except in case the insurance undertaking was aware or should have been aware that the respective information was outdated, inaccurate or incomplete.

(9) If an insurance undertaking offers a unit-linked insurance contract bundled with another product or service or provides recommendations regarding such a bundle in the course of providing investment advice, the insurance undertaking shall assess the appropriateness or suitability of the whole bundle in accordance with the provisions of this section.

(10) An insurance undertaking must document and store the facts related to the assessment of the suitability and appropriateness of unit-linked life insurance contracts until the expiry of the limitation period of claims arising from the insurance contracts in accordance with the provisions of the Commission delegated regulation adopted under Article 30 (6) of Directive (EU) 2016/97 of the European Parliament and of the Council.

(11) An insurance undertaking which enters into unit-linked life insurance contracts shall ensure investment of the underlying assets pursuant to the conditions agreed with the policyholder.

(12) As to pension contracts, the provisions of this section and § 222<sup>1</sup> of this Act apply only to unit-linked pension contracts within the meaning of the Funded Pensions Act.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

### **§ 222<sup>1</sup>. Failure to assess suitability and appropriateness of unit-linked life insurance contracts**

(1) An insurance undertaking does not need to assess the appropriateness of a unit-linked life insurance contract in accordance with § 222 of this Act, if the following conditions are met:

- 1) the policyholder himself or herself has approached the insurance undertaking with the request to enter into such contract and the insurance undertaking has warned the policyholder that in such case the assessment of the appropriateness of the unit-linked life insurance contract is not required and therefore the interests of the policyholder may be less protected;
- 2) the risk deriving from the underlying assets of the unit-linked life insurance contract is connected with non-complex securities within the meaning of the Securities Market Act and the structure of the unit-linked life insurance contract does not make it difficult for a policyholder to understand the risks deriving from the underlying assets or the unit-linked life insurance contract is not complex within the meaning of the Commission delegated regulation adopted under Article 30 (6) of Directive (EU) 2016/97 of the European Parliament and of the Council.

(2) An insurance undertaking does not need to assess the suitability or appropriateness of a unit-linked life insurance contract for a policyholder if this is an insurance contract for a supplementary funded pension, which has been chosen for the policyholder and on the basis of which the insurance premiums for the policyholder are only paid by his or her employer.

(3) An insurance undertaking does not need to assess the suitability or appropriateness of a unit-linked life insurance contract if the policyholder is a qualified investor within the meaning of subsections (6) 2)–22) of the Securities Market Act.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

## **Chapter 12 Supervision over Insurance Activities and Insurance Distribution**

[RT I, 17.11.2017, 3 - entry into force 01.10.2018]

### **Division 1**

# Supervision

## § 223. Bases and scope of supervision of Financial Supervision Authority

(1) The Financial Supervision Authority shall exercise supervision over the compliance of the activities of persons engaging in insurance activities and insurance distribution in Estonia, as well as persons with a qualifying holding in an insurance undertaking and third parties from whom the operations are outsourced pursuant to the conditions provided for in § 104 or 182 of this Act with the requirements established therefor in this Act and the Acts or other legislation specified in subsection 2 (1) and clause 6 (1) 7) of the Financial Supervision Authority Act.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2) The purpose of supervision is to ensure that the foundation, activities and dissolution of insurance undertakings and intermediaries comply with Acts and other legislation, taking into consideration the protection of the interests and rights of the policyholders, insured persons and beneficiaries.

(3) The Financial Supervision Authority shall exercise supervision over a branch founded in another Contracting State and over the cross-border insurance activities and insurance distribution of an Estonian insurance undertaking and intermediary.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(3<sup>1</sup>) Based on agreement between the Financial Supervision Authority and a financial supervision authority of another Contracting State, the financial supervision authority of the respective Contracting State may exercise supervision over the branch of an Estonian intermediary founded in such other Contracting State to the extent of the requirements provided for in Chapters IV to VII of Directive (EU) 2016/97 of the European Parliament and of the Council.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(3<sup>2</sup>) The Financial Supervision Authority shall notify the respective Estonian intermediary and the European Insurance and Occupational Pensions Authority of the agreement specified in subsection (3<sup>1</sup>) of this section.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(4) The Financial Supervision Authority shall exercise supervision over a branch founded in a third country or the cross-border insurance activities or insurance distribution of an Estonian insurance undertaking or intermediary unless the financial supervision authority of the third country and the Financial Supervision Authority have agreed otherwise.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(5) The financial supervision authority of another Contracting State shall exercise supervision over a branch founded in Estonia or over cross-border insurance activities or insurance distribution of an insurance undertaking or intermediary of the other Contracting State.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(5<sup>1</sup>) The Financial Supervision Authority shall exercise supervision over a branch of another Contracting State to the extent of the supervision related to providing services specified in §§ 182, 184–186, 192 and 198 of this Act.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(6) The Financial Supervision Authority shall exercise supervision over a branch founded in Estonia or cross-border insurance activities or insurance distribution of a third country insurance undertaking or intermediary unless the financial supervision authority of the third country and the Financial Supervision Authority have agreed otherwise.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(7) In order to exercise state supervision provided for in this Act, the Financial Supervision Authority may apply the specific state supervision measures provided for in § 31 of the Law Enforcement Act.

## § 224. Functions and rights of Financial Supervision Authority

(1) In the exercise of supervision, the Financial Supervision Authority shall:

- 1) decide on the grant, amendment and revocation of authorisations provided for in this Act;
- 2) verify everything relating to the acquisition, increase or reduction of holdings;
- 3) perform the registrations and approvals provided for in this Act;
- 4) verify and evaluate the internal rules established by an insurance undertaking and insurance broker;

4<sup>1</sup>) verify and evaluate the compliance of the requirements established by an insurance undertaking and intermediary for training in the field of insurance and of their procedure for the assessment of the knowledge and skills of persons with the provisions of this Act;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

5) verify and evaluate the compliance of the system of governance of an insurance undertaking with the provisions of this Act;

6) verify the organisation of accounting of an insurance undertaking and intermediary;

7) verify and evaluate the compliance of the own funds and capital requirements of an insurance undertaking with the provisions of this Act;

8) verify and evaluate, in case of use of the internal model by an insurance undertaking, the compliance thereof with the provisions of this Act;

9) verify and evaluate the compliance of the technical provisions of an insurance undertaking with the provisions of this Act;

10) verify and evaluate the performance of the investment principles of an insurance undertaking;

11) verify the existence and sufficiency of means necessary for the provision of assistance which are at the disposal of an insurance undertaking holding an authorisation for assistance insurance;

12) verify the sufficiency of the rules of procedure for the assessment of underwriting risks and adjustment of and compensation for losses;

13) verify the compliance of the reinsurance program of an insurance undertaking with the requirements established by this Act and their correspondence to the nature of underwriting risks;

14) evaluate the ability of an insurance undertaking to take into account in its estimates the changes in economic conditions;

15) if necessary, issue mandatory precepts and impose punishments for misdemeanours to an insurance undertaking and intermediary;

16) perform other duties arising from Acts or legislation issued on the basis thereof, and duties arising from protection of the interests of policyholders, insured persons and beneficiaries.

(1<sup>1</sup>) The Financial Supervision Authority has the right to implement the measures provided for in Articles 17 and 24 of Regulation (EU) No 1286/2014 of the European Parliament and of the Council. In accordance with Article 17(5) and Article 29 of the specified Regulation, the Financial Supervision Authority shall publish on its website notice of any decision made on the basis of the measures pursuant to the specified Articles.

[RT I, 22.02.2017, 1 - entry into force 01.01.2018]

(1<sup>2</sup>) The Financial Supervision Authority shall publish on its website a notice on a violation of obligations related to insurance distribution regarding:

1) a decision which has entered into force regarding a misdemeanour matter;

2) a precept requiring elimination of a violation regarding the provisions of subsection 103<sup>1</sup>(1), (2) or (3), 103<sup>2</sup>(2), (3), (4), (5), (6) or (7), clause 105 (2) 2<sup>1</sup>, 10) or 11), subsection 106 (1), (2), (2<sup>1</sup>) or (5), 110 (3) or (3<sup>1</sup>), § 175, 177, 178, 179 or 180, subsections 182<sup>1</sup>(1), (2) or (3), 184 (1) or (2), 185<sup>1</sup>(2), clause 186 (2) 5<sup>1</sup>, 16) or 17), subsection 191 (1), (2) or (3), § 192, subsection 197 (1), (3), (4) or (6), § 198 or 222 of this Act, subsection 4 (1) of the Advertising Act or subsection 54<sup>1</sup>(5) or (8), 55<sup>1</sup>(7), § 428, 429 or 430 of the Law of Obligations Act;

3) a precept suspending the authority of a member of the management board in accordance with clause 228 (2) 12<sup>1</sup>) of this Act;

4) decision to delete an insurance broker or insurance agent from the list of intermediaries.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(1<sup>3</sup>) The notice provided for in clauses (1<sup>2</sup>) 2)–4) of this section shall be published 30 days after the service of the administrative act.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(1<sup>4</sup>) The notice shall indicate at least the type and nature of the violation, data on the person responsible for the violation, and information on entry into force of a decision or administrative act. The information shall be publicly available on the website of the Financial Supervision Authority for at least five years. The provisions of this section shall not prejudice the rights of the Financial Supervision Authority to publish information, documents, decisions made on misdemeanour matters, administrative acts or contracts under public law as provided by law.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(1<sup>5</sup>) The Financial Supervision Authority will be entitled to postpone the publication of the notice provided for in subsection (1<sup>2</sup>) of this section, to publish it anonymously or refuse to publish it if:

1) the publication of the identity of the relevant person or disclosure of personal data is not proportionate in the opinion of the Financial Supervisory Authority;

2) the publication jeopardises the stability of the financial sector or an ongoing proceeding.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(1<sup>6</sup>) The Financial Supervision Authority will be entitled to warn the public if an insurance distributor has violated a conflict of interests in the distribution of a unit-linked life insurance contract, or the requirements for the assessment of the suitability or appropriateness of an insurance contract, submission of precontractual

information, bundled offer, development of an insurance service or remuneration, and indicate the person responsible for the violation and the nature of the violation.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2) The Financial Supervision Authority shall exercise the verifications and evaluations specified in subsection (1) of this section on a regular basis.

#### **§ 225. Eligibility verification**

(1) If the law grants the Financial Supervision Authority the right to evaluate the business reputation of a person (hereinafter *eligibility verification*), the Financial Supervision Authority may do this at any time.

(2) In case of eligibility verification, a participant in the proceedings shall be an insurance undertaking or insurance broker, or a person wishing to become one of the above who manages relations with a natural person with regard to whom eligibility verification is carried out.

(3) In the course of eligibility verification, an insurance undertaking or insurance broker, or a person wishing to become one of the above shall submit on time accurate, complete and appropriate answers to the questions of the Financial Supervision Authority and submit the required documents. Otherwise, the Financial Supervision Authority may declare a person with respect of whom eligibility verification was made not conforming to the requirements provided by law.

#### **§ 226. Rights and obligations of participants in proceedings upon supervisory proceedings regarding insurance undertaking**

(1) If necessary, the Financial Supervision Authority shall explain the rights and obligations of a participant in the proceedings in supervision proceedings to the participant in proceedings.

(2) A participant in the proceedings shall have the right to examine information which has been collected by the Financial Supervision Authority with regard to the participant and to copy or make extracts of such information. The Financial Supervision Authority shall be entitled to refuse to provide such information if this damages or is likely to damage the justified interests of third parties, or if examining the data damages attainment of the objectives of the supervision or ascertainment of the truth in a criminal matter.

(3) In supervisory proceedings, a participant in the proceedings shall be entitled to submit written questions to witnesses through the Financial Supervision Authority. The Financial Supervision Authority shall be entitled to refuse to forward questions to witnesses with good reason if the questions are irrelevant or in order to prevent violation of the rights or interests of witnesses.

#### **§ 227. Rights of Financial Supervision Authority upon receipt of information**

(1) In order to exercise supervision, the Financial Supervision Authority shall be entitled to demand information, documents and oral or written explanations without charge concerning facts which are relevant in the exercise of supervision from the following persons:

- 1) insurance undertakings and managers and employees of insurance undertakings;
- 2) intermediaries and managers and employees of intermediaries;
- 3) managers and employees of companies belonging to the same consolidation group as insurance undertakings or intermediaries;
- 4) internal auditors;
- 5) shareholders or members of insurance undertakings or shareholders of intermediaries;
- 6) liquidators, trustees in bankruptcy or special regime trustees of insurance undertaking or intermediaries;
- 7) state and local government authorities and controllers and processors of state databases;
- 8) persons from whom the operations are outsourced pursuant to the conditions provided for in § 104 or 182 of this Act;
- 9) in case of justified need, other persons;

(2) For the purposes of supervision activities, the Financial Supervision Authority shall be entitled to:

- 1) carry out the on-site inspection of insurance undertakings and companies belonging to the same consolidation group as the insurance undertakings, as well as intermediaries and companies belonging to the same consolidation group as the intermediaries or persons from whom the operations are outsourced pursuant to the conditions provided for in § 104 or 182 of this Act, in order to verify the information communicated to the Financial Supervision Authority and demand submission of the information and documents necessary for the exercise of supervision in the prescribed format;
- 2) ask an opinion from external experts.

(3) If necessary, the Financial Supervision Authority may, by its order, require that a person appear at the offices of the Financial Supervision Authority at the time designated by the Financial Supervision Authority in order to provide oral or written explanations concerning facts which are relevant in the exercise of supervision.

(4) For the purposes of supervision, the Financial Supervision Authority shall be entitled to receive information concerning a subject of supervision or the activities thereof without their knowledge. The Financial Supervision Authority shall be entitled to prohibit a person who was contacted for information to notify the subject of supervision of the information inquiry by the Financial Supervision Authority and provision of information to the Financial Supervision Authority.

(5) If an Estonian insurance undertaking is not involved in the insurance group supervision pursuant to clause 239 (2) 1) or 3) of this Act, the Financial Supervision Authority shall be entitled to ask the leading undertaking of the insurance group for information which is necessary for the exercise of supervision over the insurance undertaking.

(6) If an insurance undertaking is not involved in the insurance group supervision pursuant to clause 239 (2) 1) or 3) of this Act, the leading undertaking of the insurance group shall submit to the financial supervision authority which granted an authorisation to the insurance undertaking, at the request of the financial supervision authority, information which is necessary for the exercise of supervision over the insurance undertaking.

## § 228. Precept

(1) The Financial Supervision Authority shall be entitled to issue a precept if:

1) upon the exercise of supervision, violations of this Act or the Acts specified in subsection 2 (1) or clause 6 (1) 7) of the Financial Supervision Authority Act or legislation issued on the basis thereof have been discovered or there is a danger of such violations;

2) circumstances emerge which endanger or may endanger the activities of an insurance undertaking or an intermediary or the interests of policyholders, insured persons or beneficiaries or the reliability or transparency of the insurance market as a whole, as well as in case of necessity to prevent or avoid danger.

(2) The Financial Supervision Authority shall be entitled, by issuing a precept, to:

1) prohibit certain transactions or activities from being conducted or to establish restrictions on their volume;

2) demand that an insurance undertaking or intermediary operating in a foreign state terminate violation of the requirements of valid legislation;

3) demand the reduction of the performance pay of the members of the management board and responsible persons of the insurance undertaking, suspension of their payment or return of the payments made, if grounds specified in subsection 110 (6) of this Act exist;

4) demand the justification of the amount of the technical provisions of an insurance undertaking, suitability and applicability of the methods used upon calculation of the technical provisions and the adequacy of underlying data;

5) demand that an insurance undertaking increase the technical provisions;

6) demand that an insurance undertaking make a stress test or another similar sensitivity analysis;

7) demand changing the system of governance of an insurance undertaking to ensure compliance thereof with the requirements provided for in this Act;

8) impose a capital add-on on an insurance undertaking;

9) prohibit engagement in insurance activities by an insurance undertaking of another Contracting State in Estonia or by an Estonian insurance undertaking in a Contracting State;

10) prohibit an intermediary of a Contracting State in Estonia or an Estonian intermediary in a Contracting State to engage in insurance distribution;

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11) demand amendment of the internal rules, rules of procedure and principles of remuneration of an insurance undertaking and intermediary;

12) demand that the supervisory board of an insurance undertaking or an intermediary remove a member of the management board;

12<sup>1</sup>) demand that the authority of the member of the management board responsible for a violation of the requirements for the distribution of unit-linked life insurance contracts be suspended;

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

13) demand that a responsible person of an insurance undertaking be suspended from work;

14) make a proposal to the general meeting of an insurance undertaking or an intermediary for removal of a member of the supervisory board;

15) make a proposal to the general meeting of an insurance undertaking or an intermediary for changing an audit firm;

16) demand that an insurance undertaking submit a recovery plan or short-term finance scheme;

17) demand the transfer of the pension contracts insurance portfolio in compliance with the provisions of this Act if an insurance undertaking fails to comply with the requirements established in § 53 of this Act, an insurance undertaking fails to submit to the Financial Supervision Authority the reports as required or fails to comply with other requirements established by legislation regarding pension contracts and entry into these;

18) demand that an insurance broker terminate other activities if such activities violate the interests of the clients of the insurance broker or there is a danger of such violation or other conditions provided for in § 185 of this Act are violated;

19) make other demands for the implementation of legislation regulating the activities of insurance undertakings or intermediaries.

### **§ 229. Calling meeting of managing bodies**

(1) In order to protect the interests of policyholders, insured persons and beneficiaries, the Financial Supervision Authority shall be entitled to issue a precept to an insurance undertaking or an intermediary to:

- 1) call a meeting of the supervisory board or management board of the insurance undertaking or intermediary or to call the general meeting of the insurance undertaking or intermediary;
- 2) include an issue on the agenda of a meeting of the supervisory board or management board or the general meeting of the insurance undertaking or intermediary if this is necessary in the opinion of the Financial Supervision Authority.

(2) The Financial Supervision Authority shall be entitled to call a general meeting and determine the agenda of the meeting unless a precept specified in subsection (1) of this section has been complied with. The costs of organising a general meeting shall be borne by an insurance undertaking.

(3) An insurance undertaking shall notify the Financial Supervision Authority of a general meeting which is known to take place at least three weeks in advance. Notice of a special general meeting shall be given at least one week in advance.

(4) The Financial Supervision Authority shall be entitled to send its representative to a meeting of the management board or supervisory board or the general meeting of an insurance undertaking or intermediary. At the meeting, the representative of the Financial Supervision Authority shall be entitled to present positions, make proposals and demand the recording thereof in the minutes of the meeting.

### **§ 230. Supervision over outsourcing of operations related to insurance activities and operations of intermediary**

(1) A person from whom the operations related to insurance activities are outsourced by an insurance undertaking pursuant to the procedure provided for in § 104 of this Act shall cooperate with the Financial Supervision Authority and ensure that the insurance undertaking, audit firm and the Financial Supervision Authority have access to the information and documents related to the outsourced operations.

(2) A person from whom the operations are outsourced by an intermediary pursuant to the procedure provided for in § 182 of this Act shall cooperate with the Financial Supervision Authority and ensure that the outsourcing intermediary, audit firm and the Financial Supervision Authority have access to the information and documents related to the outsourced operations.

(3) The Financial Supervision Authority shall be entitled to issue a precept in order to demand termination of a contract entered into with a specific person for the outsourcing of certain operations related to insurance activities or operations of an insurance broker, or to demand termination of all contracts entered into by the insurance undertaking or insurance broker for the outsourcing of operations.

(4) The Financial Supervision Authority may issue a precept specified in subsection (3) of this section if the conditions provided for in § 104 or 182 of this Act are violated.

### **§ 231. On-site inspection**

(1) In order to exercise supervision, the Financial Supervision Authority shall be entitled to carry out the on-site inspection of insurance undertakings and companies belonging to the same consolidation group as the insurance undertakings, intermediaries and companies belonging to the same consolidation group as the intermediaries, and persons from whom the operations related to insurance activities are outsourced pursuant to § 104 of this Act or the operations of an insurance broker are outsourced pursuant to § 182 of this Act.

(2) In order to carry out an on-site inspection, the Financial Supervision Authority shall issue an order which sets out the purpose, extent, duration of the period and time of the inspection. The order shall be delivered to the person being inspected at least three working days before the on-site inspection is commenced, unless giving such notice damages attainment of the objectives of the inspection. An on-site inspection shall be carried out by an authorised person of the Financial Supervision Authority (hereinafter *inspector*), unless otherwise prescribed in this Act.

(3) During an on-site inspection, the inspector shall be entitled to:

- 1) enter all premises, in compliance with all security requirements established by the person being inspected;
- 2) request existence of necessary working conditions and use a separate room necessary for their work;
- 3) study documents and media necessary for exercising supervision, make copies, extracts and transcripts thereof and monitor the work processes without restrictions;
- 4) obtain oral and written explanations from the managers and employees of the person being inspected.

(4) If necessary or at the request of the person providing explanations, minutes shall be taken of the explanations specified in clause (3) 4) of this section.

(5) The management board of a person being inspected is required to appoint a competent representative who shall provide the inspector with documents and other information necessary for the performance of his or her duties and shall provide the necessary explanations with regard to such documents and information.

(6) If the Financial Supervision Authority carries out an on-site inspection over a person of another Contracting State from whom the operations related to insurance activities are outsourced pursuant to § 104 of this Act, the Financial Supervision Authority shall notify the supervisory authority of such person in advance. If the activities of such person are not subject to supervision, the Financial Supervision Authority shall notify the financial supervision authority of the corresponding Contracting State.

(7) The Financial Supervision Authority may permit, in the case provided for in subsection (6) of this section, the financial supervision authority of the Contracting State to carry out an on-site inspection.

(8) If the supervisory authority of another Contracting State specified in subsection (6) of this section does not provide the Financial Supervision Authority with an opportunity to carry out an on-site inspection, the Financial Supervision Authority shall be entitled to address the European Insurance and Occupational Pensions Authority pursuant to Article 19 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council.

(9) The Financial Supervision Authority shall provide the European Insurance and Occupational Pensions Authority with an opportunity to participate pursuant to the procedure provided for in Article 21 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council in an on-site inspection specified in subsection (6) of this section if the inspection is carried out in cooperation with the financial supervision authorities of the other Contracting States.

### **§ 232. Report concerning on-site inspection**

(1) An inspector is required to prepare a draft report concerning the results of an on-site inspection within two months after completion of the inspection and the Financial Supervision Authority shall promptly deliver the draft report to the person being inspected.

(2) Upon delivery of the draft report, the Financial Supervision Authority shall grant the manager or an employee of the person being inspected whom the draft report concerns the possibility to submit written explanations within fourteen days.

(3) After reviewing the written explanations of the person being inspected, but not later than within four months after the on-site inspection is completed, the Financial Supervision Authority shall prepare a report which is delivered to the person being inspected.

(4) In the event of disagreement with the facts indicated in a report, the person being inspected has the right to append a written dissenting opinion to the report.

(5) If, after the on-site inspection or the written explanations of the person being inspected, additional circumstances become evident or the Financial Supervision Authority obtains additional information, the term for preparation of a draft report of the Financial Supervision Authority or a report specified in subsection (3) of this section may be extended by up to two months, and the new term for preparation of the draft report or the report shall be immediately communicated to the person being inspected and the reason for extension of the initial term shall be indicated.

### **§ 233. Expert assessment and special audit in supervisory proceedings**

(1) The Financial Supervision Authority may involve experts in proceedings in the cases where expertise is required to ascertain facts which are relevant to the matter.

(2) The Financial Supervision Authority shall be entitled to demand the conduct of a special audit if:

1) there is reasonable doubt that the reports or information submitted to the Financial Supervision Authority or the public are misleading or inaccurate;

2) transactions have been concluded which may result or have resulted in significant damage to an insurance undertaking or a company belonging to the same consolidation group as the insurance undertaking or an intermediary or a company belonging to the same consolidation group as the intermediary or their clients, policyholders, insured persons or beneficiaries;

3) other circumstances relevant to the financial situation of an insurance undertaking or a company belonging to the same consolidation group as the insurance undertaking or an intermediary or a company belonging to the same consolidation group as the intermediary, or a third party from whom the operations related to insurance activities are outsourced pursuant to § 104 of this Act need additional clarification in the supervisory proceedings.

(3) The Financial Supervision Authority shall involve an expert or, for a special audit, an auditor on its own initiative or at the request of a participant in the proceedings. The name of the expert or auditor and the reasons for involvement of the expert or auditor shall be communicated to a participant in the proceedings before involvement of the expert or auditor, unless it is necessary to conduct expedited proceedings in the matter or communication of the information may impede attainment of the objectives of the assessment or special audit.



(4) If an expert or an auditor who performs a special audit ascertains facts relevant in the supervision proceedings which have not been referred to the expert or auditor, the expert or auditor shall also provide his or her opinion or assessment with regard to the facts.

(5) An expert or an auditor who performs a special audit shall be entitled to exercise the rights provided for in subsection 231 (3) of this Act only for the purpose of performance of the tasks assigned to him or her and make proposals to the Financial Supervision Authority and participants in the proceedings for the submission of additional information and documents. The expert or auditor who performs the special audit may exercise the right provided for in clause 231 (3) 1) of this Act only with the permission or in the presence of the person being inspected.

(6) The expert is required to maintain the confidentiality of any confidential information which becomes known to him or her in connection with performance of the duties of an expert.

(7) Costs related to the conduct of an assessment or a special audit shall be covered from the budget of the Financial Supervision Authority. If an expert or auditor is involved at the request of a participant in the proceedings, costs related to the conduct of an assessment or a special audit shall be covered by the participant in the proceedings.

### **§ 234. Imposing capital add-on**

(1) The Financial Supervision Authority may impose a capital add-on on an insurance undertaking if in the opinion of the Financial Supervision Authority:

1) the requirement to use an internal model or partial internal model provided for in subsection 61 (8) of this Act is inappropriate, the use thereof has given no results or the insurance undertaking is developing an internal model or partial internal model pursuant to subsection 61 (8);

2) the risk profile of an insurance undertaking deviates significantly from the assumptions underlying an internal model because certain quantifiable risks are captured insufficiently by the internal model and the insurance undertaking has failed to adapt the internal model according to its actual risk profile within the prescribed timeframe;

3) the system of governance of an insurance undertaking differs significantly from the system of governance corresponding to the principles provided for in Division 1 of Chapter 4 of this Act, and based on this the insurance undertaking does not have an opportunity to identify, measure, continuously monitor, manage and report current and future risks and the insurance undertaking is unable, in the opinion of the Financial Supervision Authority, to eliminate the deficiencies in the system of governance promptly enough, or

4) the risk profile of an insurance undertaking deviates significantly from the matching adjustment provided for in § 46, the volatility adjustment provided for in § 47 or the assumptions for application of the transitional measure provided for in § 267 of this Act.

(2) The Financial Supervision Authority shall follow in imposing a capital add-on the principles provided for in Articles 276–281 of Commission Delegated Regulation (EU) No. 2015/35.

(3) In cases specified in subsection (1) of this section, the Financial Supervision Authority shall calculate a capital add-on pursuant to the provisions of Articles 282–287 of Commission Delegated Regulation (EU) No. 2015/35, taking into consideration that in cases provided for in clauses (1) 1) and 2) of this section compliance with subsection 61 (2) of this Act shall be ensured.

(4) If the Financial Supervision Authority imposes a capital add-on based on clause (1) 3) of this section, the specified add-on shall be proportionate to the material risks arising from the deficiencies in the system of governance.

(5) If the Financial Supervision Authority imposes a capital add-on based on clause (1) 4) of this section, the specified add-on shall be proportionate to the material risks arising from the deviation of the risk profile of an insurance undertaking.

(6) If the Financial Supervision Authority has imposed a capital add-on on an insurance undertaking, the Solvency Capital Requirement of the insurance undertaking shall be the sum of the Solvency Capital Requirement calculated by the insurance undertaking and the capital add-on imposed thereon.

(7) The Financial Supervision Authority shall ensure that an insurance undertaking applies all measures for the elimination of deficiencies constituting the basis for imposing a capital add-on provided for in clauses (1) 2) and 3) of this section.

(8) The Financial Supervision Authority shall review the bases for imposing a capital add-on at least once a year and remove the capital add-on, if an insurance undertaking has eliminated the deficiencies constituting the bases for the establishment thereof.

(9) If, in the opinion of the Financial Supervision Authority, the risk profile of an insurance undertaking deviates significantly from the assumptions underlying the insurance group internal model and provided for in § 243 of this Act and an insurance undertaking has not adjusted its risk profile, the Financial Supervision Authority may impose a capital add-on on the insurance undertaking.

(10) If in case provided for in subsection (9) of this section imposing a capital add-on is inappropriate, the Financial Supervision Authority may request an insurance undertaking to calculate the Solvency Capital Requirement on the basis of the standard formula and in cases provided for in clauses (1) 1) and 3) of this section impose a capital add-on on an insurance undertaking, which is caused by the application of the standard formula.

### **§ 235. Obligation to inform Financial Supervision Authority**

(1) An insurance undertaking is required to immediately inform the Financial Supervision Authority of the following information and circumstances:

- 1) upon amendment of the articles of association, including the business name and address of the registered office of the insurance undertaking, amendments to the articles of association and the amended text;
- 2) upon changes in the details of the insurance undertaking, the new details;
- 3) upon amendment of the standard terms of pension contracts, the new standard terms;
- 4) upon amendments concerning pension contracts belonging to technical business plan for annuity payments, the amended technical business plan;
- 5) circumstances which affect or may materially affect the financial situation of the insurance undertaking.

(2) At the request of the Financial Supervision Authority, an insurance undertaking shall immediately disclose the information specified in clauses (1) 1) and 2) of this section on its website.

(3) An insurance undertaking is required to immediately inform the Financial Supervision Authority of any amendments to the internal rules concerning the key functions and other important functions and activities, and the establishment of the new internal rules.

### **§ 236. Supervision over activities of Estonian insurance undertakings and intermediaries in foreign states**

(1) If an Estonian insurance undertaking or intermediary who engages in cross-border insurance activities or insurance mediation in a foreign state or whose branch is founded in a foreign state violates the requirements of legislation established in the foreign state, the Financial Supervision Authority shall promptly apply measures for termination of the violation on the proposal of the financial supervision authority of the foreign state. The Financial Supervision Authority shall inform the appropriate foreign financial supervision authority of the measures to be applied.

(2) If an Estonian insurance undertaking engages in cross-border insurance activities in another Contracting State or has founded a branch in another Contracting State, the Financial Supervision Authority shall be entitled, in addition to provisions of subsection (1) of this section, to address the European Insurance and Occupational Pensions Authority pursuant to Article 19 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council.

(3) In the course of exercise of supervision, the Financial Supervision Authority may perform the on-site inspection provided for in § 231 of this Act regarding a branch of an insurance undertaking or intermediary located in a foreign state, and shall inform the financial supervision authority of the Contracting State thereof beforehand. The financial supervision authority of the Contracting State shall be entitled to participate in the on-site inspection of the branch.

(4) If the financial supervision authority of another Contracting State does not provide the Financial Supervision Authority with an opportunity to carry out an on-site inspection of the branch of an insurance undertaking located in this Contracting State, the Financial Supervision Authority shall be entitled to address the European Insurance and Occupational Pensions Authority pursuant to Article 19 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council.

(5) The Financial Supervision Authority shall promptly inform the financial supervision authority of the Contracting State where an insurance undertaking has founded a branch or where an insurance undertaking engages in cross-border insurance activities of revocation of the authorisation and of precepts specified in §§ 27 and 34 of this Act, and shall at the same time apply all measures to protect the interests of policyholders, insured persons and beneficiaries.

### **§ 237. Supervision over activities of foreign insurance undertakings and intermediaries in Estonia**

(1) A foreign insurance undertaking whose authorisation has been suspended or revoked by a foreign financial supervision authority shall not engage in insurance activities in Estonia and a foreign intermediary who has been deleted from the list of intermediaries shall not engage in insurance distribution in Estonia.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2) The Financial Supervision Authority may demand that an insurance undertaking and intermediary of another Contracting State engaging in insurance activities or insurance distribution in Estonia submit the data

and documents which must also be submitted by an insurance undertaking that has received an authorisation or an intermediary entered in the list of intermediaries in Estonia and which are necessary for the exercise of supervision over the insurance undertaking or intermediary.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(2<sup>1</sup>) If an insurance undertaking and intermediary of another Contracting State engages mainly or entirely in insurance distribution in Estonia and its objective is to avoid adherence to the requirements provided by this Act and other legislation which would apply to it if it was an insurance undertaking which has received an authorisation or an intermediary entered in the list of intermediaries in Estonia, and its activities jeopardise the protection of clients in Estonia, the Financial Supervision Authority may take necessary measures for the protection of clients, notifying the financial supervision authority of the Contracting State thereof beforehand.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(3) If a third country insurance undertaking or intermediary which engages in insurance activities or insurance distribution in Estonia violates the requirements provided for in this Act or other legislation, the Financial Supervision Authority may apply necessary measures for the termination of the violation or revoke an authorisation for the foundation of a branch or an authorisation for cross-border insurance activities or cross-border insurance distribution.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(4) The Financial Supervision Authority may demand that an insurance undertaking of another Contracting State which engages in insurance activities in Estonia terminate a violation of the requirements provided for in Acts or legislation established on the basis thereof.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(5) If the insurance undertaking of the Contracting State specified in subsection (4) of this section continues to violate the requirements provided for in legislation, the Financial Supervision Authority shall inform the financial supervision authority of the respective Contracting State thereof.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(5<sup>1</sup>) If, in the opinion of the Financial Supervision Authority, an intermediary of another Contracting State violates the requirements provided for in the laws of the other Contracting State or in legislation established on the basis thereof, and the Financial Supervision Authority does not have the obligations deriving from subsection 223 (5<sup>1</sup>) of this Act, the Financial Supervision Authority shall notify the financial supervision authority of the respective Contracting State thereof.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(6) If the measures applied by a financial supervision authority of a Contracting State are insufficient and the insurance undertaking or intermediary of the Contracting State continues to violate the requirements provided for in legislation, the Financial Supervision Authority may, by its precept, apply measures provided for in this Act for the termination of the violation or prohibit the insurance undertaking or intermediary of the Contracting State to engage in insurance activities or insurance distribution in Estonia, notifying the financial supervision authority of the Contracting State thereof beforehand.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(6<sup>1</sup>) Differently from the provisions of subsections (4)–(5<sup>1</sup>) of this section, the Financial Supervision Authority may immediately prohibit an insurance undertaking or intermediary of another Contracting State to engage in insurance activities or insurance distribution in Estonia, if such activities are contrary to the interests of clients.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(7) If an insurance undertaking or intermediary of another Contracting State engages in insurance activities or insurance distribution or has founded a branch in Estonia, the Financial Supervision Authority will be entitled, in addition to provisions of subsection (6) of this section, to address the European Insurance and Occupational Pensions Authority pursuant to Article 19 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(8) The Financial Supervision Authority shall inform the Contracting State insurance undertaking and intermediary of the measures taken.

(9) If the financial supervision authority of another Contracting State performs an on-site inspection of a branch of an insurance undertaking or intermediary located in Estonia, the Financial Supervision Authority shall be entitled to participate in the specified inspection. If the financial supervision authority of another Contracting State does not provide the Financial Supervision Authority with an opportunity to participate in an on-site inspection of a branch of an insurance undertaking located in Estonia, the Financial Supervision Authority shall be entitled to address the European Insurance and Occupational Pensions Authority pursuant to Article 19 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council.

(10) A branch of a foreign insurance undertaking and intermediary located in Estonia and a foreign insurance undertaking and intermediary engaging in cross-border insurance activities or insurance distribution in Estonia shall submit, at the request of the Financial Supervision Authority, the data and documents together with translations into Estonian made by a sworn translator or certified by a notary.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

### **§ 238. Upper limit for penalty payment for each imposition thereof**

(1) In the event of failure to comply or inappropriate compliance with a precept issued pursuant to this Act or another administrative act, the Financial Supervision Authority shall be entitled to impose a penalty payment pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act.

(2) In the event of failure to comply or inappropriate compliance with an administrative act, the upper limit for a penalty payment shall be, in the case of a natural person, up to 5000 euros for the first occasion and up to 50,000 euros for each following occasion to enforce the performance of the same obligation, but, depending on whichever is the greater, in total up to 5,000,000 euros or up to double amount of the profits gained or losses avoided as a result of the violation if such profits or losses can be determined.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(3) In the event of failure to comply or inappropriate compliance with an administrative act, the upper limit for a penalty payment shall be, in the case of a legal person, up to 32,000 euros and in total up to 100,000 euros for each following occasion to enforce the performance of the same obligation, but, depending on whichever is the greater, in total up to 5,000,000 euros, ten percent of the total annual turnover or up to double amount of the profits gained or losses avoided as a result of the violation if such profits or losses can be determined. The total turnover of a legal person is the total annual turnover in accordance with the latest available annual accounts approved by the management body. If the legal person is a parent undertaking or the subsidiary of such parent undertaking which is required to prepare consolidated annual accounts, the total annual turnover shall be calculated in accordance with the latest available consolidated annual accounts approved by the management body of the ultimate parent undertaking.  
[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

## **Division 2 Insurance Group Supervision**

### **Subdivision 1 General Principles of Insurance Group Supervision**

#### **§ 239. Application of insurance group supervision**

(1) Consolidated financial supervision shall be exercised at insurance group level (hereinafter *insurance group supervision*) over an insurance undertaking:

- 1) which is a participating undertaking in at least one insurance undertaking;
- 2) the parent undertaking of which is an insurance holding company or mixed financial holding company;
- 3) the parent undertaking of which is a third country insurance undertaking, insurance holding company or mixed financial holding company;
- 4) the parent undertaking of which is a mixed-activity insurance holding company.

(2) If the Financial Supervision Authority is the insurance group supervisor, the Financial Supervision Authority may exempt an undertaking specified in subsection (1) of this section from insurance group supervision, making a decision, if at least one of the following conditions is met:

- 1) the undertaking is insignificant with respect to the objectives of insurance group supervision;
- 2) the undertaking is located in a third country where there are legal impediments to the receipt of the necessary information from the undertaking as the financial supervision authority of the third country has no legal basis or possibilities for cooperation;
- 3) the inclusion of the undertaking would be inappropriate or misleading with respect to the objectives of insurance group supervision.

(3) The Financial Supervision Authority shall consult the other relevant financial supervision authorities prior to making the decision on the basis of clauses (2) 1) and 3) of this section.

(4) If, on the basis of clause (2) 1) of this section, more than one undertaking should be exempt from insurance group supervision, but these undertakings jointly have a significant effect, the provisions of clause (2) 1) shall not apply thereto.

(5) Insurance group supervision shall be applied in the Contracting State of the leading undertaking of the insurance group if:

- 1) a participating insurance undertaking is a subsidiary of the leading undertaking of this Contracting State;
- 2) an insurance holding company or mixed financial holding company is a subsidiary of the leading undertaking of this Contracting State.

(6) The provisions of § 248 of this Act shall apply to the organisation of financial supervision at insurance group level of an insurance holding company, mixed financial holding company and insurance undertaking which is a subsidiary of a third country parent undertaking.

(7) If the provisions concerning supplementary supervision exercised over a financial conglomerate, which are provided for in Division 2 of Chapter 9<sup>1</sup> of the Credit Institutions Act, are applied to a mixed financial holding company in addition to the provisions of this Subdivision, the Financial Supervision Authority, if it is the insurance group supervisor, may, after consulting the other relevant financial supervision authorities, make a decision that only the provisions concerning supplementary supervision shall be applied with regard to the mixed financial holding company.

(8) If the provisions concerning consolidated supervision, which are provided for in §§ 96 and 97 of the Credit Institutions Act, are applied to a mixed financial holding company in addition to the provisions of this Subdivision and the average of the ratios calculated pursuant to subsection 110<sup>3</sup>(3) of the Credit Institutions Act in case of the banking and investment services sector is larger than in case of the insurance sector, the Financial Supervision Authority, if it is the insurance group supervisor, may make a decision that only the provisions concerning consolidated supervision, which are provided for in §§ 96 and 97 of the Credit Institutions Act, shall be applied with regard to the mixed financial holding company, and if the corresponding indicator of the insurance sector is larger than that of the banking and investment services sector, the Financial Supervision Authority, if it is the insurance group supervisor, may make a decision that only the provisions concerning insurance group supervision provided for in this Division shall be applied with regard to the mixed financial holding company.

(9) The Financial Supervision Authority shall notify of the decisions specified in subsections (7) and (8) of this section the European Banking Authority and the European Insurance and Occupational Pensions Authority.

(10) If an insurance undertaking is part of a financial conglomerate for the purposes of § 110<sup>1</sup> of the Credit Institutions Act, the provisions of Chapter 9<sup>1</sup> of the Credit Institutions Act shall apply thereto.

(11) Persons subject to insurance group supervision, their related undertakings and undertakings participating therein shall exchange the information necessary for the exercise of insurance group supervision.  
[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

#### **§ 240. Specifications for application of insurance group supervision**

[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

(1) The Financial Supervision Authority may exercise insurance group supervision at the level of a participating Estonian insurance undertaking specified in clause 239 (1) 1) of this Act or at the level of an insurance holding company located in Estonia as parent undertaking or at the level of a mixed financial holding company located in Estonia as parent undertaking specified in clause (2) of the same subsection, having previously consulted the insurance group supervisor and the leading undertaking of the insurance group.

(1<sup>1</sup>) If the Financial Supervision Authority exercises insurance group supervision pursuant to subsection (1) of this section at the level of Estonia and the financial supervision authority of another Contracting State exercises insurance group supervision at the level of its Contracting State, the Financial Supervision Authority may agree with the financial supervision authority of another Contracting State that insurance group supervision will be exercised both at the level of Estonia and the Contracting State (hereafter *subgroup level*), if this is relevant pursuant to Article 358 of Commission Delegated Regulation (EU) No. 2015/35.  
[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

(1<sup>2</sup>) Subsection (1) of this section does not apply if the supervision authorities decide to exercise insurance group supervision at subgroup level pursuant to subsection (11) of this section.  
[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

(2) In case provided for in subsection (1) of this section, the provisions of this Division and Division 7 of Chapter 3 of this Act shall apply unless otherwise provided by this Act.

(3) The Financial Supervision Authority may limit at the level of Estonia or at subgroup level the scope of exercise of insurance group supervision.  
[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

(4) A method determined pursuant to § 89 of this Act must be used upon calculation of the insurance group solvency at the level of Estonia or at subgroup level and the insurance group internal model provided for in § 243 upon calculation of the Solvency Capital Requirement if the insurance group has received a corresponding authorisation.

[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

(5) If, in the opinion of the Financial Supervision Authority, the risk profile of a participating Estonian insurance undertaking specified in subsection (1) of this section deviates significantly from the assumptions underlying the insurance group internal model and an insurance undertaking has not properly adjusted its risk profile, the Financial Supervision Authority can make a decision on imposing a capital add-on. If imposing a capital add-on is inappropriate, the Financial Supervision Authority may request calculation of the Solvency Capital Requirement on the basis of the standard formula.

(6) The Financial Supervision Authority shall justify a decision provided for in subsection (1) or an agreement provided for in subsection (1<sup>1</sup>) of this section to the insurance group supervisor and the leading undertaking of the insurance group and a decision provided for in subsection (5) to the insurance group supervisor and a participating Estonian insurance undertaking.

[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

(7) This section shall not apply if a participating Estonian insurance undertaking is the subsidiary of the leading undertaking with regard to which the provisions of Subdivision 2 of this Division apply already.

#### **§ 241. Designation of insurance group supervisor**

(1) The insurance group supervisor shall be the Financial Supervision Authority or the relevant financial supervision authority of another Contracting State, respectively, of at least one of the following conditions is met:

1) the leading undertaking of the insurance group is an Estonian insurance undertaking or an insurance undertaking of another Contracting State, respectively;

2) the parent undertaking of an Estonian insurance undertaking or an insurance undertaking of another Contracting State, respectively, belonging to the insurance group is an insurance holding company or mixed financial holding company;

3) the parent undertaking of a Contracting State insurance undertaking belonging to the insurance group is an insurance holding company or mixed financial holding company located in Estonia or another Contracting State, respectively;

4) the leading undertakings of the insurance group are insurance holding companies or mixed financial holding companies located in several Contracting States, whereas insurance undertakings of the same Contracting States belong to the insurance group, and the balance sheet total of an Estonian insurance undertaking or an insurance undertaking of another Contracting State, respectively, is the highest;

5) the parent undertaking of Contracting States insurance undertakings is an insurance holding company or mixed financial holding company which registered office is in other Contracting State than specified in this clause, and the balance sheet total of an Estonian insurance undertaking or an insurance undertaking of another Contracting State, respectively, is the highest;

6) the balance sheet total of an Estonian insurance undertaking or an insurance undertaking of another Contracting State, respectively, belonging to the insurance group is the highest and the insurance group has no parent undertaking, except any of the cases specified in clauses 1)–5) of this subsection.

(2) The Financial Supervision Authority and other relevant financial supervision authorities may, based on common agreement (hereinafter *joint decision*), waive the application of the criteria provided for in subsection (1) of this section and designate as the insurance group supervisor some other financial supervision authority if this is justified by the insurance group structure or the significance of its activities in Estonia or in another Contracting State.

(3) A proposal to evaluate the appropriateness of the criteria provided for in subsection (1) of this section may be made by the Financial Supervision Authority or another relevant financial supervision authority. The appropriateness of the criteria shall not be evaluated more frequently than once a year.

(4) The Financial Supervision Authority shall make every effort in the case provided for in subsection (2) of this section to reach a joint decision in cooperation with other relevant financial supervision authorities within three months as of the submission of the proposal.

(5) Prior to making a joint decision, the insurance group shall be entitled to submit its opinion regarding the designation of the insurance group supervisor.

(6) If the Financial Supervision Authority or another relevant financial supervision authority has addressed the European Insurance and Occupational Pensions Authority within the time frame specified in subsection (4) of this section pursuant to Article 19 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council and a joint decision is not reached within the time frame specified in subsection (4) of this section, the decision of the European Insurance and Occupational Pensions Authority shall be awaited and a final decision shall be made in compliance with the decision of the European Insurance and Occupational Pensions Authority.

(7) If a joint decision is reached within the time frame specified in subsection (4) of this section, the Financial Supervision Authority shall no longer be entitled to address the European Insurance and Occupational Pensions Authority.

(8) If a joint decision is not reached within the time frame specified in subsection (4) of this section, the insurance group supervisor shall be the relevant financial supervision authority specified in subsection (1) of this section.

(9) The insurance group supervisor shall submit a joint decision, indicating the reasons, to the insurance group and the college of supervisors of the insurance group.

(10) Designation of the insurance group supervisor shall not affect the general rights and obligations of the Financial Supervision Authority related to the exercise of supervision and provided for in Division 1 of this Chapter.

## **§ 242. Functions and rights of Financial Supervision Authority as insurance group supervisor**

(1) If the Financial Supervision Authority is designated the insurance group supervisor, the Financial Supervision Authority shall perform the following functions in the exercise of supervision:

1) coordination of gathering and transmission of relevant and essential information, including transmission of essential information to another financial supervision authority for the exercise of supervision and notifying the insurance group college of supervisors of the decisions specified in subsections 240 (1) and (5) or an agreement specified in subsection 240 (11) of this Act;

[RT I, 17.11.2017, 3 - entry into force 27.11.2017]

2) assessment of the adequacy of the eligible own funds and notifying the other relevant financial supervision authorities if the Solvency Capital Requirement of the insurance group does not comply with the requirements provided for in this Act or this threat may arise within the next three months;

3) exercise of insurance group supervision and assessment of financial condition of the insurance group;

4) assessment of compliance of the risk concentration of the insurance group with the provisions of § 245 of this Act;

5) assessment of compliance of the intra-group transactions with the provisions of § 246 of this Act;

6) assessment of compliance of the insurance group solvency with the provisions of Division 7 of Chapter 3 of this Act and implementation of the provisions of subsections 93 (1)–(4) and § 94 of this Act upon deterioration of the financial condition of the insurance group;

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7) assessment of compliance of the risk management system and internal control system of the insurance group with the provisions of § 247 of this Act and of the members of management board and supervisory board of a participating undertaking with the provisions of §§ 106 and 112 of this Act;

8) taking into consideration the nature, scale and complexity of the risks arising from the insurance activities of insurance undertakings belonging to the insurance group, planning and coordination of appropriate supervisory activities in regular cooperation with the relevant financial supervision authorities through meetings held at least annually or through other appropriate means;

9) performance of other acts arising from Acts and legislation issued on the basis thereof.

(2) If a participating insurance undertaking, Contracting State insurance holding company or mixed financial holding company is a related undertaking of a regulated entity specified in subsection 110<sup>2</sup>(1) of the Credit Institutions Act and subject to supplementary supervision at financial conglomerate level or a related undertaking of a mixed financial holding company, the Financial Supervision Authority may waive the performance of the function provided for in clause (1) 4) or 5) of this section at the level of a participating insurance undertaking, insurance holding company or mixed financial holding company, having previously consulted the relevant financial supervision authorities.

(3) If a leading undertaking specified in subsection 239 (5) of this Act is a subsidiary of a regulated entity specified in subsection 1102 (1) of the Credit Institutions Act and subject to supplementary supervision at financial conglomerate level, the Financial Supervision Authority may waive the performance of the function provided for in clause (1) 4) or 5) of this section at the level of a leading undertaking, having previously consulted the relevant financial supervision authorities.

(4) If a Contracting State insurance holding company or mixed financial holding company belonging to the insurance group fails to comply with the requirement provided for in Division 7 of Chapter 3 of this Act or this Division, or if the requirement is complied with, but the insurance group solvency may nevertheless be jeopardised, or if the intra-group transactions or risk concentration threaten the financial condition of insurance undertakings belonging to the insurance group, the Financial Supervision Authority shall notify thereof the financial supervision authority of the location of the insurance holding company or mixed financial holding company. The Financial Supervision Authority shall be entitled to issue a precept and thereby require compliance with the requirement or rectifying the situation.

(5) If an Estonian insurance holding company or mixed financial holding company belonging to the insurance group fails to comply with the requirement provided for in Division 7 of Chapter 3 of this Act or this Division, or if the requirement is complied with, but the insurance group solvency may nevertheless be jeopardised, or if the intra-group transactions or risk concentration threaten the financial condition of insurance undertakings belonging to the insurance group, the Financial Supervision Authority may require, by a precept, the insurance

holding company or mixed financial holding company to terminate the violation or redress the financial condition.

(6) In the cases provided for in subsections (4) and (5) of this section, the Financial Supervision Authority may, in the event of failure to comply or inappropriate compliance with an issued precept, impose a penalty payment under the terms and conditions and pursuant to the procedure provided for in § 238 of this Act. Where appropriate, the Financial Supervision Authority shall coordinate such measure with the other relevant financial supervision authorities.

#### **§ 243. Insurance group internal model**

(1) Based on a joint decision specified in subsection (4) of this section, the insurance group internal model may be used in the calculation of the Solvency Capital Requirement of the insurance group and the Solvency Capital Requirement of insurance undertakings belonging to the insurance group.

(2) When applying for the permission for the use of the internal model, an insurance undertaking together with the related insurance undertakings shall submit or the related insurance undertakings of an insurance holding company or the related insurance undertakings of a mixed financial holding company (hereinafter in this Division *applicant*) shall jointly submit to the insurance group supervisor an application specified in Article 347 of Commission Delegated Regulation (EU) No. 2015/35 together with the information and documents.

(3) If the Financial Supervision Authority is the insurance group supervisor and an application has been submitted thereto, the Financial Supervision Authority shall promptly inform thereof all the financial supervision authorities belonging to the insurance group college of supervisors and forward the application thereto.

(4) The Financial Supervision Authority, within six months as of receiving an application, shall reach a joint decision with the other financial supervision authorities on granting the permission for the use of the internal model and, if necessary, the terms and conditions of granting the permission. The provisions of Articles 348 and 349 of Commission Delegated Regulation (EU) No. 2015/35 shall be followed in processing of the application and making the joint decision.

(5) If the Financial Supervision Authority is the insurance group supervisor and a joint decision is not reached within the time frame specified in subsection (4) of this section, a decision on granting the permission for the use of insurance group internal model and, if necessary, the terms and conditions of granting the permission shall be made by the Financial Supervision Authority. When making a final decision, the Financial Supervision Authority shall take into account the substantiated positions of the financial supervision authorities belonging to the insurance group college of supervisors, which have been submitted within the time frame specified in subsection (4).

(6) If the Financial Supervision Authority is the insurance group supervisor, the Financial Supervision Authority shall promptly deliver a decision to grant or refuse to grant the permission for the use of the internal model, indicating the reasons, to the applicant and, in the case provided for in subsection (5) of this section, to the financial supervision authorities belonging to the college.

(7) If the Financial Supervision Authority or another relevant financial supervision authority has addressed the European Insurance and Occupational Pensions Authority within the time frame specified in subsection (4) of this section pursuant to Article 19 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council and a joint decision is not reached within the time frame specified in subsection (4) of this section, the decision of the European Insurance and Occupational Pensions Authority shall be awaited. If the Financial Supervision Authority is the insurance group supervisor, the Financial Supervision Authority shall make a final decision in compliance with the decision of the European Insurance and Occupational Pensions Authority.

(8) If the decision of the panel of the European Insurance and Occupational Pensions Authority is rejected pursuant to the provisions of Article 44(1) of Regulation (EU) No 1094/2010 of the European Parliament and of the Council, the decision shall be made by the Financial Supervision Authority if it is the financial supervisor of the insurance group.

(9) If a joint decision is reached within the time frame specified in subsection (4) of this section, the Financial Supervision Authority shall no longer be entitled to address the European Insurance and Occupational Pensions Authority.

(10) If the insurance group applies for the permission for the use of the internal model only for calculation of the Solvency Capital Requirement of the insurance group, the provisions of Articles 343–345 of Commission Delegated Regulation (EU) No. 2015/35 shall apply to the application for the permission and the granting thereof and the provisions of Articles 346 shall apply to the use of the internal model.

#### **§ 244. Insurance group capital add-on**

(1) If the Solvency Capital Requirement of the insurance group does not comply with the risk profile of the insurance group, the Financial Supervision Authority, if it is the insurance group supervisor, may impose a capital add-on on the insurance group pursuant to § 234 of this Act.



(2) In the assessment of compliance between the Solvency Capital Requirement and risk profile of the insurance group, the Financial Supervision Authority, if it is the insurance group supervisor, shall take into consideration the circumstances specified in subsection 234 (1) of this Act, including whether:

- 1) some risk is difficult to assess at the insurance group level and this risk is not reflected either in the standard formula or internal model;
- 2) a capital add-on has been imposed on a related insurance undertaking pursuant to the provisions of § 234 of this Act.

#### **§ 245. Risk concentration of insurance group**

(1) The risk concentration of the insurance group shall mean a risk of loss arising from exposures related to the assets and liabilities of insurance undertakings belonging to the insurance group, which is sufficiently large to compromise the solvency and liquidity of an insurance undertaking belonging to the insurance group. Potential damage may arise from credit risk, investment risk, underwriting risk, market risk and other significant risks or a combination of these risks and their mutual effect.

(2) If an Estonian insurance undertaking is the leading undertaking of the insurance group, the insurance undertaking is required to submit, at least once a year, to the insurance group supervisor a report on significant risk concentration with regard to the insurance group as a whole. If the insurance group is not managed by an insurance undertaking, the report shall be submitted by an insurance holding company, mixed financial holding company or insurance undertaking appointed by the insurance group supervisor after consulting the other relevant financial supervision authorities and the insurance group.

(3) If the Financial Supervision Authority is the insurance group supervisor, the Financial Supervision Authority shall establish in cooperation with the other relevant financial supervision authorities the thresholds for determining significant risk concentrations pursuant to the provisions of Article 376 of Commission Delegated Regulation (EU) No. 2015/35. In the determination of the threshold, the Solvency Capital Requirements, technical provisions or both shall be used as the basis.

(4) If the Financial Supervision Authority is the insurance group supervisor, the Financial Supervision Authority shall determine, after consulting the other relevant financial supervision authorities and the insurance group, the risks with regard to which a report specified in subsection (2) of this section shall be submitted in any case. In the determination of these risks, the specific nature and risk management system of the insurance group shall be taken into account.

(5) If the Financial Supervision Authority is the insurance group supervisor, the Financial Supervision Authority shall monitor, in exercising supervision over risk concentration, primarily the scale of the exposures and the possible risk of contagion, and the risk of a conflict of interests in the insurance group.

#### **§ 246. Intra-group transactions**

(1) Intra-group transactions shall mean all transactions where an insurance undertaking belonging to the insurance group relies either directly or indirectly upon other undertaking belonging to the same insurance group or upon any natural or legal person closely linked to an undertaking belonging to that insurance group, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment.

(2) If an Estonian insurance undertaking is the leading undertaking of the insurance group, the insurance undertaking is required to submit, at least once a year, to the insurance group supervisor a report on significant intra-group transactions. If the insurance group is not managed by an insurance undertaking, the report shall be submitted by an insurance holding company, mixed financial holding company or insurance undertaking appointed by the insurance group supervisor after consulting the other relevant financial supervision authorities and the insurance group.

(3) The insurance group supervisor shall be notified of very significant intra-group transactions at the earliest opportunity.

(4) If the Financial Supervision Authority is the insurance group supervisor, the Financial Supervision Authority shall determine, after consulting the other relevant financial supervision authorities and the insurance group, pursuant to the provisions of Article 377 of Commission Delegated Regulation (EU) No. 2015/35 the transactions with regard to which a report specified in subsection (2) of this section shall be submitted in any case. In the determination of the transactions, the specific nature and risk management system of the insurance group shall be taken into account.

(5) If an undertaking participating in an Estonian insurance undertaking is a mixed-activity insurance holding company, the Financial Supervision Authority shall exercise general supervision over transactions between the Estonian insurance undertaking, mixed-activity insurance holding company and its related undertakings.

## **§ 247. Risk management system and internal control system**

(1) The risk management system and internal control system of an Estonian insurance undertaking belonging to the insurance group shall be efficient and verifiable also at the insurance group level.

(2) The internal control system shall ensure:

- 1) the establishment and assessment of risks which may affect the activities and the efficiency of the internal control system of an insurance undertaking;
- 2) linking the own funds of an insurance undertaking to the risks specified in clause 1) of this subsection;
- 3) existence of the reporting and accounting procedures necessary to establish, verify and manage intra-group transactions and risk concentration;
- 4) the existence of data and information necessary for supervision over an insurance group.

(3) The leading undertaking of the insurance group shall carry out the assessment provided for in § 100 of this Act at the insurance group level. With the consent of the insurance group supervisor, the assessment may be carried out simultaneously at the insurance group level and pursuant to the provisions of § 100 of this Act at the subsidiary level. The leading undertaking of the insurance group shall prepare a single document covering all the assessments.

(4) If the Financial Supervision Authority is the insurance group supervisor, the Financial Supervisory Authority shall consult, prior to granting of the consent specified in subsection (3) of this section, the insurance group college of supervisors and take into account its opinion and reservations.

(5) The leading undertaking of the insurance group shall submit, upon the implementation of subsection (3) of this section, a single document to all the relevant financial supervision authorities at the same time.

(6) If the method provided for in subsections 89 (3)–(5) of this Act is used in calculation of the insurance group solvency, a participating insurance undertaking, insurance holding company or mixed financial holding company shall submit to the insurance group supervisor an overview of the difference between the sum of the Solvency Capital Requirements of insurance undertakings belonging to the insurance group and the Solvency Capital Requirement of the insurance group.

## **§ 248. Insurance group supervision over subsidiary of undertaking located in third country**

(1) If insurance group supervision is not exercised on the basis of this Act over an insurance undertaking which parent undertaking is a third country insurance undertaking, third country insurance holding company or third country mixed financial holding company, the Financial Supervision Authority, as if it were the insurance group supervisor pursuant to the provisions of § 241 of this Act, shall assess, at the request of the parent undertaking of this insurance undertaking or a Contracting State insurance undertaking belonging to the insurance group or on its own initiative, the supervision exercised by the financial supervision authority of a third country and decide whether it is equivalent to the insurance group supervision compliant with the requirements provided for in this Act.

(2) In the assessment of the equivalence specified in subsection (1) of this section, the Financial Supervision Authority shall follow the criteria provided for in Article 380 of Commission Delegated Regulation (EU) No. 2015/35 and make a decision concerning equivalence after consulting the relevant financial supervision authorities of the Contracting States and in cooperation with the European Insurance and Occupational Pensions Authority.

(3) The Financial Supervision Authority shall not make a decision which is in conflict with a decision previously made with regard to this third country, excluding if it is necessary in order to take into account any significant changes which have been made in the prudential regime provided for in this Act or the prudential regime established in the third country.

(4) If in the case specified in subsection (1) of this section the Financial Supervision Authority is a relevant financial supervision authority, but not the insurance group supervisor, and the decision of the insurance group supervisor regarding the equivalence specified in subsection (1) differs from the assessment of the Financial Supervision Authority, the Financial Supervision Authority shall be entitled, within three months after becoming aware of the decision, to address the European Insurance and Occupational Pensions Authority pursuant to Article 19 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council.

(5) Subsections (1)–(4) of this section shall not apply if a decision regarding the equivalence has been made by the European Commission in cooperation with the European Insurance and Occupational Pensions Authority.

(6) If the prudential regime of a third country is equivalent to the prudential regime compliant with the requirements provided for in this Act, the insurance group supervision shall be exercised pursuant to the principles and methods established in the third country, applying the provisions of § 126, clause 227 (3) 1), §§ 241 and 242 of this Act and subsections 47<sup>1</sup>(2<sup>3</sup>) and (2<sup>4</sup>) and §§ 47<sup>6</sup> and 477 of the Financial Supervision Authority Act with regard to cooperation between the Financial Supervision Authority and the financial supervision authority of the third country.

(7) If the prudential regime of a third country at the insurance group level is not equivalent to the prudential regime compliant with the requirements provided for in this Act, one of the following shall apply:

- 1) the provisions of Division 7 of Chapter 3 of this Act and this Subdivision or
- 2) other types of supervision, taking into consideration the provisions of subsection (8) of this section.

(8) In the absence of the equivalence, the Financial Supervision Authority shall be entitled to use other methods of supervision, which ensure supervision at an insurance group level over the activities of an insurance undertaking belonging to the insurance group which complies with the objectives of such supervision, demanding in particular that an insurance holding company or mixed financial holding company be founded in a Contracting States.

(9) The method of supervision specified in subsection (8) of this section can be used if the supervisory authority of the insurance group has approved this after consulting the relevant financial supervision authorities. The Financial Supervision Authority shall notify of the use of the type of supervision the other relevant financial supervision authorities and the European Commission.

(10) In the absence of the equivalence, the requirements and methods provided for in Division 7 of Chapter 3 of this Act and this Division shall apply at the level of an insurance holding company, mixed financial holding company or third country insurance undertaking.

(11) In the absence of the equivalence, the terms and conditions provided for in Division 3 of Chapter 3 of this Act regarding the own funds of an insurance undertaking eligible for the Solvency Capital Requirement shall apply to a third country insurance undertaking in the calculation of the insurance group solvency and, in the calculation of the Solvency Capital Requirement, in case of a third country insurance holding company or third country mixed financial holding company the provisions of subsection 89 (11) of this Act and in case of a third country insurance undertaking the provisions of § 92 of this Act.

(12) If a third country insurance holding company, third country mixed financial holding company or third country insurance undertaking specified in subsection (1) of this section, in turn, is a subsidiary of a third country insurance holding company, third country mixed financial holding company or third country insurance undertaking, the assessment of the equivalence of the supervision provided for in this section shall apply exclusively according to the ultimate parent undertaking.

(13) In the absence of an equivalent prudential regime at a level provided for in subsection (12) of this section, the Financial Supervision Authority, if it is the insurance group supervisor, shall be entitled to assess the equivalence of the prudential regime of a third country at a level provided for in subsection (1) of this section. The Financial Supervision Authority shall give reasons to the insurance group for a decision on the assessment of the equivalence.

(14) The provisions of subsection (6) of this section shall also apply in case the third country supervision is equivalent for an unspecified term, excluding the case when the balance sheet total of a subsidiary insurance undertaking is larger than the balance sheet total of the third country insurance undertaking. In the latter case, the insurance group supervision shall be exercised by the Financial Supervision Authority if it is the insurance group supervisor pursuant to the provisions of § 241 of this Act.

## **Subdivision 2**

### **Supervision of Solvency of Insurance Group with Centralised Risk Management**

#### **§ 249. Application of supervision of solvency of insurance group with centralised risk management**

(1) At the request of the leading undertaking of the insurance group, a subsidiary insurance undertaking thereof may be included in the supervision of the solvency of the insurance group with centralised risk management provided for in this Subdivision in case all the following conditions are met:

- 1) the subsidiary insurance undertaking is included in the insurance group supervision;
- 2) the leading undertaking of the insurance group has received from the financial supervisor of the insurance group the consents specified in subsection 126 (2) and 247 (3) of this Act;
- 3) the subsidiary insurance undertaking is included in the risk management system and internal control system of the leading undertaking of the insurance group and, in the opinion of the financial supervision authority exercising supervision over the undertaking, these are sufficient for the sound management of the subsidiary insurance undertaking;
- 4) a joint decision has been reached regarding the application.

(2) When giving the opinion provided for in clause (1) 3) of this section, the criteria provided for in Article 351 of Commission Delegated Regulation (EU) No. 2015/35 should be taken into consideration.

(3) The leading undertaking of the insurance group shall submit an application to the financial supervision authority exercising supervision over a subsidiary insurance undertaking. If the Financial Supervision Authority receives an application, the Financial Supervision Authority shall promptly notify thereof the insurance group college of supervisors and forward the application thereto in order to reach a joint decision regarding the application.

(4) The Financial Supervision Authority and other financial supervision authorities belonging to the insurance group college of supervisors must reach a joint decision regarding the application within three months as of the receipt of the application and determine, *inter alia*, the potential terms and conditions under which the supervision of the solvency of the insurance group with centralised risk management may be applied with regard to a subsidiary insurance undertaking.

(5) If the Financial Supervision Authority is the insurance group supervisor, the Financial Supervision Authority shall promptly forward a joint decision, indicating the reasons, to the applicant and other relevant financial supervision authorities.

(6) If the Financial Supervision Authority is the insurance group supervisor and a joint decision is not reached within the time frame specified in subsection (4) of this section, the Financial Supervision Authority shall make the final decision, taking into account the positions of all the financial supervision authorities, and deliver the decision, indicating the reasons, to the applicant and the financial supervision authorities.

(7) If the Financial Supervision Authority or another relevant financial supervision authority has addressed the European Insurance and Occupational Pensions Authority within the time frame specified in subsection (4) of this section pursuant to Article 19 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council and a joint decision is not reached within the time frame specified in subsection (4) of this section, the decision of the European Insurance and Occupational Pensions Authority shall be awaited. If the Financial Supervision Authority is the insurance group supervisor, the Financial Supervision Authority shall make a decision in compliance with the decision of the European Insurance and Occupational Pensions Authority.

(8) If the decision of the panel of the European Insurance and Occupational Pensions Authority is rejected pursuant to the provisions of Article 44(1) of Regulation (EU) No 1094/2010 of the European Parliament and of the Council, the final decision shall be made by the Financial Supervision Authority if it is the financial supervisor of the insurance group.

(9) If the relevant supervisory authorities have reached a joint decision within the time frame specified in subsection (4) of this section, the Financial Supervision Authority shall no longer be entitled to address the European Insurance and Occupational Pensions Authority.

(10) If the insurance group supervision provided for in § 240 of this Act is exercised over an insurance undertaking, the insurance undertaking cannot apply with regard to any of its subsidiary insurance undertakings for inclusion in the supervision provided for in this Subdivision.

#### **§ 250. Capital add-on of subsidiary insurance undertaking**

(1) If a subsidiary Estonian insurance undertaking which is subject to the supervision of the solvency of the insurance group with centralised risk management uses in the calculation of the Solvency Capital Requirement the internal model provided for in § 243 of this Act and, in the opinion of the Financial Supervision Authority, its risk profile deviates significantly from the assumptions underlying the internal model and the insurance undertaking has not properly adjusted its risk profile, the Financial Supervision Authority may, in the cases provided for in § 234 of this Act, make a proposal to impose a capital add-on on the insurance undertaking or, if imposing a capital add-on is inappropriate, request in exceptional cases to calculate the Solvency Capital Requirement on the basis of the standard formula.

(2) If the risk profile of a subsidiary Estonian insurance undertaking deviates significantly from the assumptions underlying the standard formula and the insurance undertaking has not properly adjusted its risk profile, the Financial Supervision Authority can, in exceptional cases, make a proposal that the insurance undertaking replace in the calculation of the capital requirements for life underwriting risk, non-life underwriting risk and health underwriting risk a subset of the standard parameters in the formula by the parameters of the insurance undertaking or, in the cases provided for in § 234 of this Act, make a proposal to impose a capital add-on on the insurance undertaking.

(3) The Financial Supervision Authority shall submit a proposal specified in subsection (1) or (2) of this section to the insurance group college of supervisors for discussion and substantiate to the insurance undertaking and the insurance group college of supervisors the bases for making such a proposal. The insurance group college of supervisors must reach an agreement regarding the proposal or potential other measures within one month as of the receipt of the proposal.

(4) In the case provided for in subsection (3) of this section, the Financial Supervision Authority may, within one month after the submission of the proposal, address the European Insurance and Occupational Pensions Authority pursuant to Article 19 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council in case its assessment of the proposal differs from the assessment of the insurance group supervisor.

The Financial Supervision Authority shall make the final decision regarding the proposal in compliance with the decision of the European Insurance and Occupational Pensions Authority.

(5) The Financial Supervision Authority shall forward a decision regarding the proposal, indicating the reasons, to the subsidiary insurance undertaking and the insurance group college of supervisors.

(6) If the Financial Supervision Authority is the financial supervisor of the insurance group and the financial supervision authority of another Contracting State has submitted to the insurance group college of supervisors for discussion a proposal specified in subsection (1) or (2) of this section regarding a subsidiary insurance undertaking of this Contracting State and the assessments of the Financial Supervision Authority and the financial supervision authority of the Contracting State with respect to the proposal are different, the Financial Supervision Authority may, within one month after the receipt of the proposal, address the European Insurance and Occupational Pensions Authority pursuant to Article 19 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council.

(7) If an agreement has been reached in the insurance group college of supervisors or one month has passed after the submission of the proposal, the Financial Supervision Authority shall no longer be entitled to address the European Insurance and Occupational Pensions Authority.

#### **§ 251. Deterioration of financial condition of subsidiary insurance undertaking**

(1) If a subsidiary Estonian insurance undertaking which is subject to the supervision provided for in this Subdivision has submitted to the Financial Supervision Authority a recovery plan specified in subsection 93 (3) of this Act, the Financial Supervision Authority shall promptly forward it to the insurance group college of supervisors.

(2) The insurance group college of supervisors must approve the recovery plan within four months as of the ascertaining of the non-compliance with the requirements.

(3) If the insurance group college of supervisors fails to reach an agreement in the approval of the recovery plan, the final decision shall be made by the Financial Supervision Authority, taking into account the positions and reservations of the financial supervision authorities belonging to the insurance group college of supervisors.

(4) If any of the relevant financial supervision authorities has submitted to the insurance group college of supervisors for discussion the recovery plan of a subsidiary insurance undertaking which is subject to the provisions of this Division, the Financial Supervision Authority shall make every effort to reach an agreement in the insurance group college of supervisors with the relevant financial supervision authorities for the approval thereof.

(5) If the Financial Supervision Authority ascertains, in compliance with the procedure provided for in clause 105 (2) 9) of this Act, the deterioration of the financial condition of a subsidiary insurance undertaking which is subject to the provisions of this Subdivision, the Financial Supervision Authority shall promptly notify the insurance group college of supervisors of the planned measures.

(6) The planned measures specified in subsection of this section (5) shall be discussed in the insurance group college of supervisors, excluding in an emergency situation. The insurance group college of supervisors shall reach an agreement on the planned measures within one month as of the notification of the measures.

(7) Unless the insurance group college of supervisors reaches an agreement on the measures, the final decision regarding the planned measures shall be made by the Financial Supervision Authority, taking into consideration the positions and reservations of the financial supervision authorities belonging to the insurance group college of supervisors.

(8) If an insurance undertaking specified in subsection (1) of this section has submitted to the Financial Supervision Authority the short-term finance scheme specified in subsection 93 (5) of this Act, the Financial Supervision Authority shall forward it to the insurance group college of supervisors. The Financial Supervision Authority shall notify the insurance group college of supervisors of all measures implemented by the insurance undertaking in order to restore the proper level of the own funds.

(9) The Financial Supervision Authority shall be entitled to address, within the term provided for in subsection (2) or (6) of this section, the European Insurance and Occupational Pensions Authority pursuant to Article 19 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council if the assessments of the Financial Supervision Authority and the insurance group supervisor regarding the recovery plan, including the extension of the recovery period, or the planned measures differ. The Financial Supervision Authority shall make the final decision in compliance with the decision of the European Insurance and Occupational Pensions Authority.

(10) If the Financial Supervision Authority is the financial supervisor of the insurance group and the financial supervision authority of another Contracting State has submitted to the insurance group college of supervisors for discussion the recovery plan specified in subsection (1) of this section or the planned measures specified in subsection (5) with regard to an insurance undertaking of this Contracting State, and the Financial Supervision Authority and the financial supervision authority of the Contracting State have different assessments regarding the recovery plan or planned measures, the Financial Supervision may, within the term provided for in subsection (2) or (6) of this section, address the European Insurance and Occupational Pensions Authority pursuant to Article 19 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council.

(11) The European Insurance and Occupational Pensions Authority shall not be addressed in the following cases:

- 1) the insurance group college of supervisors has reached a joint decision;
- 2) the term specified in subsection (2) or (6) of this section has expired;
- 3) the planned measures are not discussed in the insurance group college of supervisors due to an emergency situation.

(12) The Financial Supervision Authority shall forward a decision, indicating the reasons, to the subsidiary insurance undertaking and the insurance group college of supervisors.

(13) The Financial Supervision Authority shall follow in the assessment of an emergency situation specified in this section the criteria provided for in Article 353 of Commission Delegated Regulation (EU) No. 2015/35.

#### **§ 252. Termination of application of supervision of solvency of insurance group with centralised risk management**

(1) A subsidiary insurance undertaking shall no longer be included in the supervision of the solvency of the insurance group with centralised risk management if:

- 1) at least one of the conditions provided for in clauses 249 (1) 1), 2) and 4) of this Act is not met;
- 2) the condition provided for in clause 249 (1) 3) of this Act is not met and the insurance group fails to meet the condition within a reasonable period of time.

(2) If the Financial Supervision Authority is the insurance group supervisor and decides, after consultations in the insurance group college of supervisors, not to include a subsidiary insurance undertaking in the insurance group supervision pursuant to subsection 239 (2) of this Act, the Financial Supervision Authority shall promptly notify thereof the parent undertaking of the insurance undertaking and the financial supervision authority which has granted an authorisation to the subsidiary insurance undertaking.

(3) A parent insurance undertaking must ensure that its subsidiary insurance undertaking constantly complies with the terms and conditions provided for in clauses 249 (1) 2) and 3) of this Act. Upon failure to comply with the terms and conditions, the parent insurance undertaking shall promptly notify thereof the insurance group supervisor and the financial supervision authority which has granted an authorisation to its subsidiary insurance undertaking.

(4) In the case provided for in the second sentence of subsection (3) of this section, a parent insurance undertaking must submit a plan to restore compliance within a reasonable period of time.

(5) If the Financial Supervision Authority is the insurance group supervisor, the Financial Supervision Authority shall be entitled, at least once a year, to verify compliance with the terms and conditions provided for in clauses 249 (1) 2) and 3) of this Act. The Financial Supervision Authority shall verify compliance with the terms and conditions also at the request of the financial supervision authority exercising supervision over the subsidiary insurance undertaking if such financial supervision authority has doubts concerning compliance with the terms and conditions.

(6) If the Financial Supervision Authority is the insurance group supervisor and identifies deficiencies in compliance with the terms and conditions provided for in clause 249 (1) 2) or 3) of this Act, the Financial Supervision Authority shall be entitled to request from a parent insurance undertaking a plan on how compliance will be restored within a reasonable period of time.

(7) If the Financial Supervision Authority is the insurance group supervisor and reaches, after consulting the insurance group college of supervisors, the position that the plan specified in subsection (4) or (6) of this section is insufficient or if the plan is not implemented within the agreed time frame, the Financial Supervision shall make a decision that the terms and conditions provided for in subsection 249 (1) of this Act are not complied with and promptly notify thereof the financial supervision authority exercising supervision over a subsidiary insurance undertaking.

## **Chapter 13**

# Liability

## **§ 253. Failure to disclose and submit information**

(1) Failure to disclose by the due date or submit to the Financial Supervision Authority an explanation, document, mandatory report or other information provided for in this Act, including failure to submit or disclose on a timely basis, or submission or disclosure of false, insufficient or misleading information, is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.

## **§ 254. Failure to perform obligation to submit information to person wishing to enter into insurance contract and policyholder**

(1) Failure to submit the mandatory information prior to entry into an insurance contract, which constitutes a prerequisite for the entry into the contract, or to the policyholder during the term of an insurance contract, or submission or disclosure of false or misleading information, is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.

## **§ 255. Violation of conditions for use of gender factor**

(1) Violation of the requirements established in § 216 of this Act is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.

## **§ 256. Violation of prudential requirements**

(1) Violation of the principles of calculation of the capital requirements of an insurance undertaking, Estonian branch of a third country insurance undertaking and insurance group provided for in this Act, as well as violation of the requirements for investment of the assets covering technical provisions of pension contracts provided for in § 53 of this Act is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.

## **§ 257. Violation of requirements for system of governance**

(1) Violation of the requirements for the system of governance provided for in § 96 of this Act is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.

## **§ 258. Violation of obligation related to ascertaining of client's insurable interest and requirements**

(1) Failure to perform the obligations provided for in § 221 of this Act is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.

## **§ 259. Failure to assess suitability and appropriateness of unit-linked life insurance contracts**

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(1) Failure to perform the obligation provided for in clause 192 (2) 2), clause 198 (2) 5) or § 222 of this Act is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.

## **§ 260. Violation of prohibition on interconnection between insurance contract and mandatory funded pension**

(1) Violation of the prohibition on interconnection between an insurance contract and mandatory funded pension provided for in the Funded Pensions Act is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.

### **§ 261. Jeopardising clients' interests**

(1) Violation of the obligations provided for in §§ 177 and 184 of this Act is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.

### **§ 262. Violation of restriction on use of intermediary and distribution of insurance contracts**

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(1) Violation of the requirements provided for in subsections 176 (1) and (2) of this Act is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.

### **§ 263. Violation of requirements established for intermediary in distribution of insurance contracts**

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(1) Violation of the requirements provided for in §§ 192 and 198 of this Act is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.

### **§ 264. Proceedings**

Extra-judicial proceedings concerning the misdemeanours provided for in this Act shall be conducted by the Financial Supervision Authority.

## **Chapter 14 Implementing Provisions**

### **Division 1 Transitional Provisions**

#### **§ 265. Term of authorisation of insurance undertaking and gender factor in assessment of underwriting risk**

(1) The Financial Supervision Authority shall revoke the authorisation of an insurance undertaking with regard to the classes of insurance activities specified in clauses 12 1) and 2) of the Insurance Activities Act in force until the entry into force of this Act based on which the insurance undertaking does not continue to enter into insurance contracts after the entry into force of this Act.

(2) An authorisation issued to an insurance undertaking engaged in life insurance on the basis of clause 13 (1) 2) of the Insurance Activities Act in force until the entry into force of this Act shall be considered authorisations specified in clauses 13 (1) 2) and 3) of this Act.

(3) An authorisation issued to an insurance undertaking engaged in life insurance on the basis of clause 2 (2) 1) or 2) of a regulation on the basis of subsection 11 (3) of the Insurance Activities Act in force until the entry into force of this Act shall be considered an authorisation specified in clause 13 (1) 2) or 3) of this Act respectively.

(4) The provisions of subsection 216 (1) of this Act do not apply to life insurance, accidents insurance and sickness insurance contracts entered into prior to 21 December 2012 on the precondition that the differences between the insurance premiums and insurance indemnities of persons of different gender are proportionate to the magnitude of the effect of the gender factor taken into account in the assessment of the underwriting risk.

#### **§ 266. Transitional provisions for insurance undertaking closing its activity**

(1) Only the provisions of Chapters 8 and 9 of this Act may be applied until the due date provided for in subsections (3) and (4) of this section with regard to an insurance undertaking which as of 1 January 2016 does not enter into new insurance contracts and which is closing its activity or in respect to which a special regime has been established, if the insurance undertaking:

- 1) does not belong to the insurance group or if all insurance undertakings belonging to the insurance group have terminated entry into new insurance contracts;
- 2) annually submits to the Financial Supervision Authority an overview of the steps taken in order to close its activity;
- 3) has notified the Financial Supervision Authority that the insurance undertaking implements the transitional provisions provided for in this section.



(2) In the case provided for in subsection (1) of this section, the Insurance Activities Act in force until the entry into force of this Act shall apply to an insurance undertaking, excluding Chapters 8 and 9 thereof, taking into consideration the provisions of subsections (3) and (4) of this section.

(3) With regard to an insurance undertaking provided for in subsection (1) of this section, this Act shall apply as of 1 January 2019 or an earlier date established by the Financial Supervision Authority, if the Financial Supervision Authority has estimated on the basis of an overview submitted thereto that the insurance undertaking will not close its activity by 1 January 2019.

(4) If a special regime has been established with regard to an insurance undertaking provided for in subsection (1) of this section, this Act shall apply thereto as of 1 January 2021 or an earlier date established by the Financial Supervision Authority, if, in the opinion of the Financial Supervision Authority, sufficient progress has not been made for closing the activity of the insurance undertaking.

(5) The Financial Supervision Authority shall submit to the financial supervision authorities of other Contracting States a list of insurance undertakings which are subject to this section.

### **§ 267. Transitional measures in case of technical provisions**

(1) An insurance undertaking may, with the consent of the Financial Supervision Authority, implement the transitional adjustment in the calculation of the best estimate for some insurance obligations (hereinafter in this section *permissible obligations*).

(2) The transitional adjustment may be implemented with regard to such permissible obligations which comply with the following conditions:

- 1) the obligations arise from insurance contracts entered into before 1 January 2016, excluding the contracts which were extended on that date or later;
- 2) an insurance undertaking has not implemented in the calculation of the best estimate for the permissible obligations the matching adjustment provided for in § 46 of this Act.

(3) An insurance undertaking shall calculate for the implementation of the transitional adjustment with regard to the currency of each assumed commitment the difference between the following amounts:

- 1) in the calculation of the technical provisions and financial obligations of an insurance contract, the interest rate used until 1 January 2016;
- 2) annual effective interest rate calculated as single discount rate which is applied for cash flows associated with the permissible obligations and which is recorded in the value of the best estimate of the permissible obligations where the risk-free interest rate term structure specified in subsection 45 (1) of this Act is taken into account at the current value.

(4) The transitional adjustment shall mean the amount calculated pursuant to subsection (3) of this section, which decreases on a straight-line basis at the end of each year, constituting in 2016 100 per cent and in 2031 zero per cent of the amount calculated pursuant to subsection (3).

(5) If an insurance undertaking implements the volatility adjustment provided for in § 47 of this Act, the insurance undertaking shall take into account in the implementation of clause (3) 2) of this section the adjusted risk-free interest rate term structure.

(6) If an insurance undertaking implements the transitional adjustment in the calculation of the best estimate for the permissible obligations, the insurance undertaking shall not implement with regard to such obligations the volatility adjustment provided for in § 47 of this Act and the transitional deduction provided for in subsection (7) of this section.

(7) An insurance undertaking may, with the consent of the Financial Supervision Authority, implement the transitional deduction in the calculation of the technical provisions. The transitional deduction may be implemented by homogenous risk groups specified in subsection 44 (6) of this Act.

(8) An insurance undertaking shall calculate for the implementation of the transitional deduction the difference between the following amounts (hereinafter *maximum deducted amount*):

- 1) amount of the technical provisions without the share of reinsurance and special purpose vehicle;
- 2) amount of the technical provisions without the share of reinsurance and special purpose vehicle calculated pursuant to the provisions of the Insurance Activities Act in force on 31 December 2015.

(9) The maximum deducted amount shall mean the amount, which decreases on a straight-line basis at the end of each year, constituting in 2016 100 per cent and in 2031 zero per cent of the amount calculated pursuant to subsection (8) of this section.

(10) If an insurance undertaking implements the volatility adjustment as at 1 January 2016, the insurance undertaking shall apply it in the calculation of the maximum deducted amount.

(11) If the risk profile of an insurance undertaking changes significantly, the insurance undertaking may, with the consent of the Financial Supervision Authority, recalculate the maximum deducted amount every 24 months or more frequently. The Financial Supervision Authority may require the provisions of this subsection also by its precept.

(12) The Financial Supervision Authority may restrict the transitional deduction if as a result thereof the technical provisions of an insurance undertaking become smaller than the amount of the technical provisions and financial obligations calculated pursuant to the provisions of the Insurance Activities Act in force on 31 December 2015.

(13) If an insurance undertaking would not comply with the Solvency Capital Requirement without the implementation of the transitional deduction, the insurance undertaking must annually submit to the Financial Supervision Authority an overview of the measures taken and progress made in order to comply by the end of the transitional period with the level of the eligible own funds to cover the Solvency Capital Requirement or to reduce its risk profile.

#### **§ 268. Plan for employment of own funds or reduction of risk profile upon implementation of transitional measures**

(1) If an insurance undertaking implements the transitional measures provided for in § 267 of this Act and ascertains that the upon the non-implementation of the transitional adjustment or transitional deduction the insurance undertaking would be unable to comply the Solvency Capital Requirement, the insurance undertaking shall immediately notify thereof the Financial Supervision Authority.

(2) The Financial Supervision Authority shall require in the case provided for in subsection (1) of this section an insurance undertaking to take the necessary measures which ensure compliance with the Solvency Capital Requirement by the end of the transitional period.

(3) An insurance undertaking must submit to the Financial Supervision Authority within two months after the ascertaining provided for in subsection (1) of this section a plan for the employment of the own funds or reduction of the risk profile, which sets out the measures for the achievement of the level of the eligible own funds or reduction of the risk profile.

(4) An insurance undertaking may update the plan provided for in subsection (3) of this section during the transitional period, if necessary.

(5) An insurance undertaking shall annually submit to the Financial Supervision Authority an overview of the measures implemented and progress made for the achievement of the objective provided for in subsection (3) of this section.

(6) The Financial Supervision Authority shall prohibit implementation of the transitional measure if an overview submitted by an insurance undertaking demonstrates that the insurance undertaking is unable to comply with the Solvency Capital Requirement by the end of the transitional period.

#### **§ 269. Transitional provisions for amount and classification into tiers of own funds**

(1) An insurance undertaking is required to bring its own funds in compliance with the Minimum Capital Requirement provided for in § 82 of this Act no later than by 31 December 2016. Until the due date specified in this subsection, the basic own funds of an insurance undertaking must comply with the amount of the own funds provided for in the Insurance Activities Act in force until the entry into force of this Act.

(2) Until 1 January 2025, the following own funds shall be included in Tier 1 basic own funds:

- 1) the basic own funds issued before 1 January 2016;
- 2) 50 per cent of the basic own funds which could have been used as at 31 December 2015 for covering the required solvency margin pursuant to the Insurance Activities Act in force until the entry into force of this Act;
- 3) the basic own funds which are not classified pursuant to § 57 of this Act under Tier 1 and Tier 2 own funds.

(3) Until 1 January 2025, the following own funds shall be included in Tier 2 basic own funds:

- 1) the basic own funds issued before 1 January 2016;
- 2) 25 per cent of the basic own funds which could have been used as at 31 December 2015 for covering the required solvency margin pursuant to the Insurance Activities Act in force until the entry into force of this Act.

#### **§ 270. Transitional provision upon investment in ‘repackage’ loans**

Subsection 52 (10) of this Act shall apply to an insurance undertaking who have invested in ‘repackage’ loans into tradable securities and other financial instruments before 1 January 2011 in case as at 31 December 2014 new risks arising from the underlying assets have been added.

### **§ 271. Transitional measured upon calculation of Solvency Capital Requirement and compliance with Solvency Capital Requirement**

(1) If an insurance undertaking uses the internal model in the calculation of the Solvency Capital Requirement, the Financial Supervision Authority may request the insurance undertaking to apply until 31 December 2017 in the calculation of the Minimum Capital Requirement the percentages provided for in subsection 82 (8) of this Act with regard to the Solvency Capital Requirement found on the basis of the standard formula.

(2) Until 31 December 2017, there shall be used in case of exposures to the Member States' central governments or central banks denominated or funded in any other currency of the Member State as the standard parameters used in the concentration risk sub-module and spread risk sub-module pursuant to the standard formula the same parameters that are used for exposures denominated and funded in the same currency.

(3) In 2018, in case of exposures to the Member States' central governments or central banks denominated or funded in any other currency of the Member State, the standard parameters used in the concentration risk sub-module and spread risk sub-module pursuant to the standard formula shall be reduced by 80 per cent.

(4) In 2019, in case of exposures to the Member States' central governments or central banks denominated or funded in any other currency of the Member State, the standard parameters used in the concentration risk sub-module and spread risk sub-module pursuant to the standard formula shall be reduced by 50 per cent.

(5) In 2020 and later, in case of exposures to the Member States' central governments or central banks, the standard parameters shall not be reduced.

(6) If the amount of own funds of an insurance undertaking complies with the required solvency margin pursuant to the Insurance Activities Act in force prior to the entry into force of this Act, but it does not comply with the Solvency Capital Requirement provided for in this Act in 2016, the Financial Supervision Authority shall require the insurance undertaking to take all the necessary measures to achieve the level of the eligible own funds to cover the Solvency Capital Requirement or to change its risk profile in order to ensure compliance with the Solvency Capital Requirement by 31 December 2017.

(7) In the case provided for in subsection (6) of this section, the insurance undertaking must submit every three months to the Financial Supervision Authority an overview of the measures implemented and progress made for the achievement of the objective provided for in the same subsection.

(8) If the Financial Supervision Authority ascertains on the basis of the submitted overview that the insurance undertaking has not made any significant progress during the period between the ascertaining of the non-compliance with the Solvency Capital Requirement and the submission of the overview, subsection (6) of this section shall not apply to the insurance undertaking.

(9) An insurance undertaking may use in compliance with Article 173 of Commission Delegated Regulation (EU) No. 2015/35 in the calculation of the capital requirement for equity risk the standard parameter, which shall be found as a weighted average of the following amounts:

- 1) the standard parameter pursuant to Article 170 of Commission Delegated Regulation (EU) No. 2015/35;
- 2) the standard parameter pursuant to Article 169 of Commission Delegated Regulation (EU) No. 2015/35.

(10) The weight of the standard parameter specified in clause (9) 2) of this section shall increase at least on a straight-line basis at the end of each year constituting zero per cent in 2016 and 100 per cent in 2023.

### **§ 272. Transitional provisions for insurance group**

(1) Sections 267 and 268, subsections 269 (2) and (3), § 270 and subsections 271 (2)–(5) of this Act shall apply at insurance group level.

(2) Subsections 271 (6)–(8) of this Act shall apply at insurance group level if the amount of own funds of the insurance group complies with the consolidated available solvency margin pursuant to the Insurance Activities Act in force prior to the entry into force of this Act, but it does not comply with the Solvency Capital Requirement of the insurance group provided for in this Act.

### **§ 273. Transitional terms for submission and disclosure of reports**

(1) An insurance undertaking shall submit to the Financial Supervision Authority the regular supervisory reports specified in subsection 123 (2) of this Act:

- 1) with regard to 2016, within 20 weeks after the end of the financial year and the quarterly reports for 2016 within 8 weeks as of the end of the quarter;
- 2) with regard to 2017, within 18 weeks after the end of the financial year and the quarterly reports for 2017 within 7 weeks as of the end of the quarter;

3) with regard to 2018, within 16 weeks after the end of the financial year and the quarterly reports for 2018 within 6 weeks as of the end of the quarter.

(2) An insurance undertaking shall disclose the solvency and financial condition report specified in subsection 123 (1) of this Act:

- 1) with regard to 2016, within 20 weeks after the end of the financial year;
- 2) with regard to 2017, within 18 weeks after the end of the financial year;
- 3) with regard to 2018, within 16 weeks after the end of the financial year.

(3) The leading undertaking of the insurance group shall submit to the insurance group supervisor the regular supervisory reports specified in subsection 123 (4) of this Act:

- 1) with regard to 2016, within 26 weeks after the end of the financial year;
- 2) with regard to 2017, within 24 weeks after the end of the financial year;
- 3) with regard to 2018, within 22 weeks after the end of the financial year.

(4) The leading undertaking of the insurance group shall disclose the insurance group solvency and financial condition report specified in subsection 123 (3) of this Act:

- 1) with regard to 2016, within 26 weeks after the end of the financial year;
- 2) with regard to 2017, within 24 weeks after the end of the financial year;
- 3) with regard to 2018, within 22 weeks after the end of the financial year.

### **§ 273<sup>1</sup>. Transitional term for insurance undertaking**

An insurance undertaking shall implement the procedure specified in clause 105 (2) 10) of this Act with regard to an insurance agent who has been entered in the list of intermediaries before 23 February 2018, not later than from 23 February 2019.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

### **§ 274. Transitional terms for intermediary**

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

(1) An insurance broker and insurance agency are required to bring their activities and documents into conformity with the requirements for establishment of the internal rules provided for in § 186 and subsection 198 (3) of this Act not later than by 1 July 2016.

(2) An insurance broker entered in the list of intermediaries before 23 February 2018 is required to bring his or her activities into conformity with the requirements for documentation provided for in subsection 178 (4) and with the requirements for the procedure specified in clause 186 (2) 16) of this Act not later than by 23 February 2019.

[RT I, 17.11.2017, 3 – entry into force 01.10.2018]

## **Division 2 Amendment and Repeal of Acts**

### **§ 275. - § 285. Omitted from this translation**

### **§ 286. Repeal of Insurance Activities Act**

The Insurance Activities Act (RT I 2004, 90, 616) is repealed.

## **Division 3 Entry into Force of Act**

### **§ 287. Entry into force of Act**

- (1) This Act enters into force on 1 January 2016.
- (2) Section 276 of this Act enters into force pursuant to the general procedure.
- (3) Subsections 123 (11) and 97 (12) of this Act enter into force on 1 January 2019.

<sup>1</sup>Directive (EU) 2016/97 of the European Parliament and of the Council on insurance distribution (recast) (OJ L 26, 02.02.2016, p. 19–59); Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004, p. 37–43); Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1–155); Directive 2011/89/EU of the European Parliament and of the Council amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC

and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (OJ L 326, 08.12.2011, p. 113–141); Directive 2014/51/EU of the European Parliament and of the Council amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (OJ L 153, 22.05.2014, p. 1–61); Directive (EU) 2016/2341 of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision (OJ L 354, 23.12.2016, p. 37–85). [RT I, 28.12.2018, 1 – entry into force 13.01.2019]

[Annex](#) Subclasses of non-life insurance