Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings.

State Office: «BOE» no. 168, 15 July 2015 Reference: BOE-A-2015-7897
(Spanish version original)

FELIPE VI

KING OF SPAIN

To whom saw and understood the present.

Oyez: That the Spanish General Courts have approved and I approve as follows

FOREWORD

I

The essential role in the economy played by the financial sector and, especially, the insurance sector, has historically justified a larger regulation and public action than in other sectors. Since the Law of 14 May 1908, that launched in Spain the ruling of private insurance, this order has been historically characterised by its tutelary function on the policy holders, insured persons, beneficiaries and damaged third parties of private insurance contracts. The insurance activity means the exchange of the current and certain provision, the premium, for a future and uncertain provision, the compensation. This situation requires guaranteeing that when, eventually, an accident that motivates the payment of the compensation occurs, the insurance undertaking is in a situation as to face this obligation. This justifies that the ruling and supervision of the insurance undertaking by the public powers becomes a subject of public interest, to check that they keep a situation of solvency enough to let them comply with their social object.

The rewritten text of the Law on ruling and supervision of private insurance, approved by the Royal Legislative Decree 6/2004, of 29 October, in force until now, integrated in an ordered and harmonised manner in a single text the orders included in the Law 30/1995, of 8 November, on ruling and supervision of private insurance and the changes that were later included in such rule, motivated either by the incorporation of rules of Communitarian Law, either by the need of adapting it to the constant evolution of the insurance activity.

At the same time, the rewritten text has been modified by other laws. Specially and mainly, by the Law 5/2005, of 22 April, of supervision of the financial conglomerates and that modify other laws of the financial sector; by the Law 13/2007, of 2 July, related to the supervision of reinsurance; and by Law 5/2009, of 29 June, on the reform of the regime of qualifying holding in undertakings of investment services, in credit entities and in insurance undertakings.

Finally, the modifications carried out by the fourteenth final order of the Law 2/2011, of 4 March, of Sustainable Economy, that continues the performance and consolidation line of the rules for private insurance.

The need of incorporation of the Communitarian law on insurance and the normative adaptation to the performance of the insurance sector are also the reason of being fundamental of this Law, which includes those orders of the Directive 2009/138/CE, of the European Parliament and the Council, of 25 November 2009, on life insurance, the taking-up of the insurance and reinsurance activity and its pursuit (hereinafter Directive Solvency II) that require being incorporated to a legal range, as they are significant modifications in the supervision scheme of the insurance activity. This Directive has been mainly modified by the Directive 2014/51/UE of the European Parliament and the Council, of 16 April 2014, which modifies the Directives 2003/71/CE and 2009/138/CE and the Regulations (CE) no. 1060/2009, (UE) no. 1094/2010 and (UE) no. 1095/2010 in that relative to the powers of the European Authority of Supervision (European Insurance and Occupational Pensions Authority) and of the European Authority of Supervision (European Securities and Markets Authority (Directive Omnibus II).

The magnitude of all these changes has advised to substitute the rewritten text in force for a new Law that integrates, in a comparable way to the communitarian normative rewriting carried out by the Directive Solvency II, the regulations that are still valid, the new solvency system and other rules that have been found necessary to include, considering the evolution of the insurance market.

However, the transposition of the Directive does not finish with the Law, as some of their orders will be included in the Spanish normative by a ruling, where some of the provisions included in this Law will also be developed, without prejudice of the execution measures given by the European Commission.

II

The Directive Solvency II means a remarkable exercise of harmonization that intends to ease the taking-up and pursuit of the insurance and reinsurance activity in the European Union by the elimination of the most significant differences between the legislations of the Member States and, thus, the settlement of a legal frame where the insurance and reinsurance undertakings can operate in a single internal market.

The Directive Solvency II enunciates a concept of the solvency of the insurance and reinsurance undertakings based on three pillars that mutually reinforce. The first, constituted by uniform rules on specific capital requirements depending on the risks assumed by the undertaking, in line with the developments reached on risk management and with the recent evolution of other financial sectors. Thus, the European insurance sector adopts an approach based on risk, by the introduction of specific rules on the economic capital. The second of the pillars consists of a new supervision system with the aim of encouraging the improvement of the internal management of the risks by the undertakings. The third refers to the obligations of information and disclosure towards the market on key aspects of the risks assumed by the entities and their management.

Additionally to the introduction of the new solvency system based on the risk and of the changes it implies in the related of undertaking management and in the action of the supervisory authorities, Directive Solvency II makes a consolidation, by rewriting, of the rest of the European Ruling on private insurance, except for the relative to vehicle insurance, incorporating those contents included in the directives that had already been transposed, at the precise moment, to the Spanish insurance Law, as for example, Directive 2001/17/CE, of the European Parliament and the Council, of 19 March 2001, relative to the reorganization and winding-up of insurance undertakings.

This scheme has been completed with the normative developments and the execution measures derived of the new supervision structure designed in this area in the European Union by the establishment of the European Insurance and Occupational Pensions Authority, by the

Ruling (CE) no. 1094/2010, of 24 November, of the European Parliament and the Council, which creates a European Authority of Supervision (European Insurance and Occupational Pensions Authority), modifies the Order 716/2009/CE and that abrogates Order 2009/79/CE of the Commission, that vests it with significant faculties of coordination and of decision related to the supervision and ruling of insurance and reinsurance policies, achieving higher rule harmonization and a better international and inter-sectorial coordination.

The orders included in this Law and in the ruling developing it, a result of the transposition of the Directive Solvency II, should be integrated with the normative developments and the execution measures given by the European Commission and by the European Insurance and Occupational Pensions Authority (EIOPA) in a wide range of matters like the valuation of assets and liabilities, technical provisions, own funds, the calculation of the solvency capital requirement, internal models, minimum capital requirement, investment rules, system of governance, additional capital, the information with supervision effects, the transparency of the supervision authority, the solvency of the undertaking groups as well as the establishment of the equivalence of the regimes in third countries with the orders of the Directive Solvency II.

III

The Law is structured in a preliminary chapter and eight chapters, twenty additional provisions, thirteen transitional provisions, an abrogative provision, twenty-one final provisions and an annex.

The preliminary chapter establishes its subject matter, field of application and the definitions application to the effects of this Law. The national authority of supervision is identified as the Directorate General of Insurance and Pension Funds, without prejudice of the supervisory and regulation faculties which are expressly attributed to the Minister of Economy and Competitiveness in this Law and in the rest of the legal system and of the attributions which, where appropriate, correspond to the Autonomous Governments.

Chapter I of the Law refers to the distribution of competences between the State and the Autonomous Governments. Certain functions that correspond to the Minister of Economy and Competitiveness are set and the Directorate General of Insurance and Pension Funds is vested with the normative capacity to issue circulars of obliged compliance in the field of the supervision of insurance and reinsurance policies.

With the aim of achieving the goals of better protection of the policyholders, insured and beneficiaries, and protected by article 149.1.6th, 11th and 13th of the Spanish Constitution, this Law includes the bases of the supervision of private insurance and reinsurance. This requires a certain uniformity of the ruling governing the supervision of the insurance activity to facilitate the relation of the Spanish insurance undertakings with others and of these with those based in the European Union and of all of them with the international markets. Thus, given the financial importance of the insurance sector in the economy, the Autonomous Governments that have assumed competences in the supervision of private insurance and reinsurance shall collaborate as much as possible between them and with the General State Administration.

IV

Chapter II of the Law rules the conditions to obtain the administrative authorisation as prior requirement to pursuit the insurance o reinsurance activity in similar terms to those of its legislation model.

It also rules the judicial regime of the mutual insurance undertakings, co-operative insurance societies and mutual undertakings of social benefit. However, the regime included in the rewritten text of the Law on ruling and supervision of private insurances, approved by the Royal Legislative Decree 6/2004, of 29 October, is still in force until a specific order for mutual undertakings and, in particular, of its judicial regime of dissolution, transformation, merge, demerge and global transfer of assets and liabilities is written.

Related to the conditions of the pursuit, this Law rules, in its Chapter III, the obligation of an efficient system of governance of the undertakings. This is one of the developments of the Solvency II Directive which means the recognition of some risks could only be duly considered through requirements related to the governance of the undertakings and not through quantitative requirements. The system of governance includes the fundamental duties of risk management function, compliance function and internal audit function and the actuarial function. This list of functions and its regulation, which will be further explained in regulation, does not prevent each undertaking to freely decide the manner to organise them or to decide on presenting other additional functions.

In the management of its risks, all the insurance and reinsurance undertakings shall assume as regular practice, including it in its business strategy, the internal and periodical assessment of its overall solvency needs with a view to their specific risk profile. Similarly, with purpose of transparency, the insurance and reinsurance undertakings should publicly disclose, at least once a year, essential information on their solvency and financial condition

V

The assessment of the financial situation of the insurance and reinsurance undertakings must be based on sound economic principles, including in the process the information provided by the financial markets, as well as the data available on the risks assumed. According to this scope, the capital requirements must be covered by own funds which shall be classified according to quality, security and availability criteria.

The solvency capital requirement shall be calibrated so it guarantees that all the quantifiable risks an insurance or reinsurance undertaking faces are taken into account and cover the existing activities and the new activities expected to be performed in the next twelve months. Related to the existing activity, it shall exclusively cover the unexpected losses. The solvency capital requirement shall correspond to the Value-at-Risk of the basic own funds of an insurance or reinsurance undertaking subject to a confidence level of 99.5% over a one-year period

In the scope of Solvency II, the solvency capital requirement shall include two levels of requirement. One, the solvency capital requirement, variable depending on the risk assumed by the undertaking and based on a prospective calculation; the other, the minimum capital requirement, set as a minimum level of security and the financial resource should never be below it. Both capital requirements allow establishing the gradual action of the supervisor to achieve a uniform level of protection for insured, policyholders and beneficiaries. This situation of normality is complied with when the undertaking reaches the own funds of solvency capital requirement. Not reaching the minimum capital requirement implies being expelled of the market. For the lack of solvency capital requirement, the Law establishes a suitable and progressive scale of intensity of action of the supervisory authority.

To calculate the solvency capital requirement a standard formula is established which adopts a modular scope, where first assesses the individual exposure to each risk category and later adds the resulting values taking into account, where appropriate, the effect of the existing co-relations between the different risk modules and foreseeing simplified methods for its calculation. The standard formula to calculate the solvency capital requirements intended to reflect the risk profile of most insurance and reinsurance undertakings However, there may be some cases where the standardised approach does not adequately reflect the very specific risk profile of an undertakingIn these cases, the possibility to use, prior administrative authorisation, internal, total or partial models is provided.

Additionally, the normative provides other cases of administrative authorisation such as the use of specific parameters, ancillary own funds and matching adjustments in the calculation of the technical provision. All of this means the need to strengthen the resources available of the national supervisory authority, the Directorate General of Insurance and Pension Funds.

A special solvency regime for those undertakings that do not exceed the thresholds that are agreed by law is considered. These undertakings are excluded of the general regimen Solvency II, so certain features in that relative to the solvency requirements, system of governance and duty to report to the supervisor that shall be developed by rule. Different to the undertakings submitted to the general regime, the undertakings that adhere to the special solvency regime can only pursue their activity in the national territory. Despite this previous, these undertakings can voluntarily request adhering to the general regime. Also, to this special solvency regime can adhere other insurance undertakings with very specific characteristics.

Amongst the pursuit conditions, several precepts relative to the market behaviours that should be respected by the insurance undertakings are included. These are those that discipline the premium rates, the technical bases and the services or customer service. In the contexts of the single insurance market, this Law guarantees that the insurance services offered by undertakings of other Member States can be on the market, whenever the legal provisions of general interest are met.

In application of this Law the proportionality principle is taken into account and it shall graduate the establishment of requirements and their complexity considering the risk profile of the undertakings and, especially, the nature, scale and complexity of the insurance and reinsurance operations performed by the undertakings, as well as the risks inherent to their business model.

VI

For the ultimate purpose of the protection the policy holders, insured and beneficiaries to be effective, the legal previsions on the action of the insurance and reinsurance undertakings shall be correctly supplemented by an efficient supervision. Thus, Chapter IV rules the group of authority and faculties that allow the Spanish supervisory authority care for the correct pursuit of the activity, including the outsourced functions or activities. Specially the supervision by inspection is ruled.

With the aim of guaranteeing an efficient supervision, the measures adopted should be proportional to the nature, complexity and magnitude of the risks inherent to the activity of the insurance and reinsurance undertakings.

The insurance and reinsurance undertakings individually considered constitute the essential element of the supervision. But, in difference to the previous legislation, this Law implies a more substantive character, as supervised bodies, to the groups of insurance and reinsurance undertakings, governed by Chapter V.

A significant news in this field is the possibility of creating groups without tying of capital, especially in the groups of insurance mutual.

The supervision of the group shall include the assessment of its solvency, of the risk concentration and of the intra-group operations. The insurance and reinsurance undertakings belonging to a group shall count, also individually, with an efficient system of governance that has to be bound to supervision.

The Law sets the circumstances when the Directorate General of Insurance and Pension Funds is the supervisor of an international group, as well as the faculties of coordination and decision that belong to it in this case. Likewise, the supervisor professional bodies that includes cooperation mechanisms, the Exchange of information and consultation between the supervisory authorities is ruled.

In any way, both for the supervision of the individual undertakings as of undertaking groups, the Law adopts as governing principle the convergence of the European supervisory activity in the supervisory instruments and practices, granting the European Insurance and Occupational Pensions Authority (EIOPA) and significant role in its articulation.

VII

Chapter VI of the Law includes the mechanisms the supervisory authority has to face deteriorating financial conditions of the undertakings, including special control measures, chapter VII the renewal, termination and winding-up proceedings and, lastly, chapter VIII the briefing of breaches and penalties.

Relative to the winding-up of insurance undertakings, it is clarified that rules are imperative, the concept of creditor by insurance contract with special privileges is specified and mutual members and cooperative members are vested with the same rights than the shareholders of corporate equity, especially the right of information and participation in the patrimony resulting of the winding-up.

The Law determines the possible confluence of the special control measures with the bankruptcy proceedings, establishing that the undertakings bound to the first could not ask for the adjudication of bankruptcy. Additionally, the judge, prior to accepting the bankruptcy, has to request a report from the Directorate General of Insurance and Pension Funds on the situation of the insurance undertaking.

In the winding-ups by the Insurance Compensation Consortium some modifications are introduced relative to the purchase of credits with charge to the resources of the same, especially related to the workers' claims that could anticipate, also ruling its participation in bankruptcy procedures.

Related to the regime of breaches and penalties, the penalty rates are adjusted to the new access requests and pursuit of the activity, the limits of the penalties are more precisely set in the shape of fines and includes remarks on the sanctioning proceeding.

VIII

By the use of additional provisions, it is established, amongst other subjects, that the compulsory insurance policies shall be established by a normative considered as law. It includes the possibility that the undertakings with a special commitment request the administrative authorisation to pursue its activities in Spain. The obligations of the account auditors related to the insurance and reinsurance undertakings are set. It includes rules relative to occupations related to the insurance activities such as the insurance actuaries and insurance experts, default inspectors and default liquidators. The requirements for a suretyship insurance to be admitted as guarantee in front of the Public Administrations is established. Likewise, the obligation of the insurance undertakings that operate in the field of fire and natural forces of reporting certain information with the aim of easing the winding-up and fee collection of service maintenance in fire prevention and firefighting and of the special contributions establishing or increasing the firefighting services is set. The simplified scheme applicable to funeral expenses insurances related to technical bases, provision and capital solvency requirement is included. The date when the undertakings could start presenting to the Directorate General of Insurance and Pension Funds requests on certain aspects requires the approval by the supervisor and the faculties granted to the Directorate General of Insurance and Pension Funds related to the supervision of groups of undertakings. The Insurance Compensation Consortium is granted with two new functions with information character: on one side, the management of the new register of compulsory insurance; on the other, the collection and supply of the information relative to the coverage of the branch of firefighting to the effects of improving the winding-up and collection of taxes for the provision of the service of firefighting and special contributions for the establishment or increase of the firefighting service. Last, the compulsory character of reporting to the Directorate General of Insurance and Pension Funds by electronic means could be done by mailing.

Related to the final provisions, amongst other, modifications affecting the Law of Insurance Contracts are made to specify that, in personal insurance, the policyholder or insurance do not have the duty to report the changes in the data relative to the health conditions of the insured, which, under any circumstance shall be considered an aggravation of the risk. For the first time in this rule, the funeral expenses and dependence insurance policies are ruled and the free election of the service provider of funeral insurance, health and dependence services is strengthened.

It modifies Law 13/1996, of 30 December on fiscal, administrative and of social order measures, and Law 35/2006, of 28 November, on the income tax on wages and of partial modification of the laws on the tax on undertakings, on the tax on income of non-residents and on patrimony, to fit all of them to the established in the order of the Court of Justice of the European Union, of 11 December 2014, on the subject C-678/11, which has ordered against the European normative the obligation of appointing a representative in Spain to fiscal effects for the pension funds established in another Member State of the European Union that perform in Spain occupational pension plan bound to the Spanish legislation, and of the insurance undertakings with head office in another Member State that operate in Spain under the regime of freedom to provide services.

The Law on Building Planning is introduced as alternative to the compulsory subscription of an insurance, the acquisition of a financial guarantee that allows covering that same risk. Also, the purchaser of a house against the builder is vested with more judicial security, eliminating, amongst other aspects, the current regime based on a dual system of policies (group policies and individual certificates of suretyship insurance). Also, modifications relative to receiving sums on interim prices during the construction of the Law on Building organization.

The rewritten text of the Law on Ruling of Pension Plans and Funds is modified to improve the ruling of the open pension funds, increasing its operative possibilities, to favour the economy of scale and the diversification of the investment policies and management. It faces the ruling of the control committee of the open occupation fund and, at last, it established that in the Social Welfare act as alternate system to the registration in the Special Regime of the Social Security of the Self-Employed or Freelance Workers, the economic rights of the products or insurances used for such function in the case of liquidity foreseen cannot be made effective.

In that relative to the Insurance Compensation Consortium, modifications that effect, its Legal Statute are introduced. To highlight, the extension of the additional fee for extraordinary risks insurance to the compulsory insurances of civil liability in motor vehicles, which will give place to the corresponding coverage. Likewise, the Consortium is qualified to report the credits of insurance contracts related to the processes of winding-up of insurance undertakings established in another Member State of the European Union in that exclusively affecting the insurance contracts that had been celebrated in Spain. Related to the winding-up of insurance undertakings by the Insurance Compensation Consortium modifications are made relative to the substantive rules and the proceeding to reinforce the mechanisms of administrative winding-up in benefit of the credits by insurance contract. Last, the rule on action of the Consortium in bankruptcy proceedings is updated, to make it go in line with the modifications made in Law on Bankruptcy 22/2003, of 9 July. The obligatory nature of adhering to the direct compensation agreements ruled by the Royal Legislative Decree 28/2004, of 29 October is established which approves the rewritten text of the Law on civil liability and insurance in the traffic of motor vehicles, for material damages. To speed up the assistance to traffic damaged person, the insurance undertakings could adhere to sectorial agreements of health assistance for people damaged in car accidents as well as direct compensation agreements for personal damages.

Law 26/2006, of 17 July, on mediation of private insurance and reinsurance is modified. It withdraws the register of ancillary advisors. It unifies the ancillary terminology, being now referred to as “collaborators”, eliminating the difference between ancillary advisor and external advisor and establishing the duties of the collaborator, as well as the fact of giving advice or not, is established in the contract between the shareholder and his/her collaborator. On the other side the agent, to carry out an objective analysis, shall present a sufficient number of contracts suitable for each operation.

Finally, Law 4/2014, of 1 April, Basic of the Official Chambers of Commerce, Industry, Services and Navigation, is modified to largely rule the cases of impossibility of the normal functions of the Chambers subsequent to a financial unbalance.

PRELIMINAR CHAPTER
General provisions

CHAPTER I
Subject matter and scope of application

Article 1. *Subject matter and purpose of the Law.*

This Law has the goal of ruling and supervision of private insurance and reinsurance activity including the taking-up and pursuit and the solvency regime, reorganisation and winding-up of insurance and reinsurance undertakings, with the main purpose of protecting the rights of the policy holders, insured and beneficiaries, as well as to promote the transparency and the suitable development of the insurance activity.

Article 2. *Subjective scope of application.*

To the precepts of this Law are bound:

a) The insurance and reinsurance undertakings with head office in Spain, as well as the subsidiaries located in Spain of insurance and reinsurance undertakings registered in third countries.

b) The insurance and reinsurance groups.

c) The natural and legal persons that, under any title, hold administration or management positions of the insurance and reinsurance undertakings.

d) The professionals and entities that pursue any of the activities provided in this Law or in its development ancillary rules.

e) The liquidators of the insurance and reinsurance undertakings.

f) The organizations, provided or not with a legal personality, that are created with permanent character for the distribution of risk coverage between insurance undertakings or for the provision of common services related to its activity.

g) Other persons who has been established with a prohibition or mandate in this Law.

Article 3. *Objective scope of application.*

1. To the precepts of this Law are submitted:

a) The life insurance direct activities and non-life insurance.

b) The reinsurance activities.

c) The preparatory or ancillary operations to those of insurance that pursue the insurance and reinsurance undertakings.

d) The activities of damage prevention linked to the insurance activity.

e) Whichever other activity when it is expressly established in a Law.

2. The insurance and reinsurance activity shall adhere to the agreed in this Law:

a) When it is performed by the undertakings, groups or persons foreseen in article 2.

b) When it is pursued in Spain by insurance and reinsurance undertakings established in another Member State of the European Union (hereinafter, another Member State).

Article 4. *Excluded activities.*

1. Expressly excluded of the scope of this Law are the general regimen and the special regimes that integrate the statutory Social Security System.

2. Neither are submitted to this Law the following operations and activities:

a) Those of export of credit insurance operations for the account of or guaranteed by the State, or where the State is the insurer.

b) Those reinsurance pursued or fully guaranteed by the government of a Member State, when because of substantial public interest, it acts as reinsurer of last resort, including those circumstances when this pursuit is required by such a situation in the market that it is not feasible to obtain adequate commercial cover.

c) The management of pension funds, ruled by the Rewritten Text of the Law on the ruling of pension plans and funds, approved by the Royal Legislative Decree 1/2002, of 29 November, which will be reserved to undertakings managing pension funds.

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

e) Those carried out by the bodies of prevision and of assistance that grant variable provisions depending on the resources available and that require to its members a lump sum contribution.

f) Those made by bodies different to insurance undertakings which subject is to provide the employees, either freelancers or on others' account, grouped in the frame of an undertaking or group of undertakings or of a professional or inter-professional sector, provisions in case of death, in case of life or in case of termination or reduction of activities, independently of the compromises that result of these operations being or not fully covered and always by mathematical provisions.

3. The insurance or reinsurance undertakings which winding-up has been granted to the Insurance Compensation Consortium are not bound to the Chapters I to V.

Article 5. *Forbidden operations for insurance undertakings.*

1. The following operations are forbidden for the insurance undertakings:

a) Those that lack of an actuarial technical basis.

b) Any other commercial activity and the provision of benefits in different guarantees belonging to the insurance activity. Such prohibition shall not include the cooperation with non-insurance undertakings for the distribution of the services produced by these.

c) The mediation activities in private insurances defined in their specific rule.

2. The performance by an insurance undertaking of the activities set up in this article shall determine its full right nullity.

CHAPTER II

Definitions

Article 6. *Undertakings.*

For the porpuses of this this Law and the rest of the ruling requirements of the supervision and contracting of private insurances, the following shall mean:

1. Insurance undertaking: an undertaking authorised to pursue, according to the established in this Law or by the legislation of another Member State, activities of direct life insurance or non-life insurance.

2. Captive insurance undertaking: An insurance undertaking, owned either by a non-financial undertaking, or of a financial undertaking other than an insurance or reinsurance undertaking or a group of insurance and reinsurance undertakings, defined in article 131.1.f), and which purpose is to provide insurance cover exclusively for the risks of the undertakings to which it belongs or of an undertaking or undertakings of the groups of which it is a member.

3. Third-country insurance undertaking: means an undertaking which would require

authorisation as an insurance undertaking in accordance to the rules of that State if its head office were situated in the Community.

4. Reinsurance undertaking: A undertaking that has received authorisation according to the established in this Law, or according to the legislation of another Member State, to pursue reinsurance activities.

5. Captive reinsurance undertaking: A reinsurance undertaking owned either by a non-financial undertaking, or of a financial undertaking which is not an insurance or reinsurance undertaking or of a group of insurance and reinsurance undertakings, defined in article 131.1.f), the purpose of which is to provide reinsurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the groups of which it is a member.

6. Reinsurance undertaking with head office in a third country: means an undertaking which would require authorisation as a reinsurance undertaking in accordance to the rules of that State if its head office were situated in the Community.

7. Reinsurance: The activity consisting in the acceptation of risks ceded by an insurance or by a reinsurance undertaking, including third-country reinsurance undertakings.

8. Limited reinsurance: A reinsurance where the explicit maximum potential of losses, expressed in terms of maximum transferred economic risk, derived both from a significant subscription risk as of the transfer of a temporal risk, exceeds the premium during the entire validity of the contract for a limited but significant amount, together with, at least, one of the following characteristics:

a) Explicit and material consideration of the temporal value of money.

b) Contract provisions that control the balance of the economic experience between the parties in time, with the aim of achieving the foreseen risk transfer.

9. Financial undertaking, whichever of the following:

a) A credit institution, a financial institution or an ancillary banking service, as ruled in the normative of credit undertakings.

b) An insurance undertaking, a reinsurance undertaking, or insurance holding company of those defined in article 131.1.i).

c) An investment firm or a financial institution, as ruled in the normative of investment services.

d) A mixed financial holding company according to article 2.7 of the Law 5/2005, of 22 April, on supervision of financial conglomerates that modifies other laws of the financial sector.

10. “Special purpose vehicle”: Any undertaking, whether incorporated or not, other than an existing insurance or reinsurance undertaking which assumes risks from insurance or reinsurance undertakings and which fully funds its exposure to such risks through the proceeds of a debt issuance or any other financing mechanism where the repayment rights of the providers of such debt or financing mechanism are subordinated to the reinsurance obligations of such undertaking.

11. Authorised central counterparty: A central counterparty that has been authorised by the competent authority of the Member State where it is established or, when it is established in a third country, if it has been accepted by the European Securities and Markets Authority (ESMA).

12. External credit assessment institution: An accepted credit rating agency, certified and registered as such or a central bank that issues credit assessments.

13. National bureau: Professional organization that is constituted according to the Recommendation no. 5 adopted on 25 January 1949 by the Principal Working Party on Road Transport of the Inland Transport Committee of the Economic Commission for Europe of the United Nations Organization and that clusters insurance undertakings that have achieved from

a State the authorisation to operate land motor vehicles insurance.

In Spain the national office is the Spanish Motor Insurers Bureau (OFESAUTO).

14. National guarantee fund: A body created by each Member State, in agreement with its own legal, regulatory and administrative provisions, that have the mission of repairing, at least to the limits of the insurance obligation, the material or personal injuries caused by an unidentified vehicle or which has not satisfied the obligation of insurance.

In Spain, the national guarantee fund is the Insurance Compensation Consortium.

Article 7. *National supervisory authority.*

For the purpose of this Law and in the rest of regulatory developments of the supervision and contracting of private insurance, the national supervisory authority will be considered as empowered according to the legislation of its State to supervise insurance and reinsurance undertakings.

The national supervisory authority, with faculties to supervise insurance and reinsurance undertakings in the terms of this Law, is the Directorate General of Insurance and Pension Funds, without prejudice of the faculties directly attributed to the Minister of Economy and Competitiveness, and of the competences that, where appropriate, belong to the Autonomous Communities.

Article 8. *Home member state, host Member State and activities under the freedom of establishment and freedom to provide services regime.*

To the effects of the established in this Law and in the rest of regulatory developments of the supervision and contracting of private insurances, the following definitions shall apply:

1. Home member state:

a) The Member State where the head office of the insurance undertaking covering the risk is situated, in those insurances different to life insurance or that contracts commitments, in life insurances.

b) The Member State where the head office of the reinsurance undertaking is situated, in the case of reinsurance.

2. Host Member State:

a) The Member State, other than the home Member State, where the branch covering the risk or contracting the commitment is situated.

b) The Member State, other than the home Member State, where the insurance or reinsurance undertaking provides its services; in the case of life insurance, it is construed as Member State for the provision of service that where the commitment is contracted and, in the case of non-life insurance where the risk is located.

3. Member State in which the risk is situated:

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

When the insurance refers to movable goods that are located in a real estate, to the effects of the taxes and additional fees required by law, the Member State where the real estate is situated, even if this and its contents were covered by the same insurance policy, except for goods in commercial transit.

b) The Member State of registration, when the insurance to vehicles of any type;

c) The Member State where the policy holder took out the policy in the case of policies of a duration of four months or less covering travel or holiday risks, whatever the class concerned is.

d) In all those cases not explicitly covered in the previous entries, the habitual residence of the policy holder or, if the policy holder is a legal person, that policy holder’s establishment to which the contract relates is situated.

4. Member State of the Commitment means the member state in which the habitual residence of the policy holder is, if it is a natural person, if the policy holder is a legal person, that policy holder’s establishment, to which the contract relates is situated.

5. Establishment of an undertaking means its head office or any of its subsidiaries.

6. Branch means an agency or a branch of an insurance or reinsurance undertaking which is located in the territory of a Member State other than the home Member Sate;

Similar to a branch will be any permanent presence of an insurance undertaking with head office in another Member State, even if this presence does not adopt the shape of a branch and it is pursued by an administrative office its own staff of that or by an independent person, but with powers to act permanently on behalf of the insurance undertaking as a branch would do.

7. Branches of insurance or reinsurance undertakings in third countries: Any permanent presence in the territory of a Member State of an insurance or reinsurance undertaking with head office outside the European Union, that is authorised and pursues operations of insurance and reinsurance in that Member State.

8. Freedom of establishment: The activity pursued in a Member State by a branch established in it of an insurance or reinsurance undertaking with head office in another Member State.

9. Freedom to provide services: The activity pursued by an insurance or reinsurance undertaking with head office in a Member State from its head office or from a branch of that in another Member State, covering a risk, assuming a commitment or pursuing activities of reinsurance in a different Member State.

Article 9. *Participation relationship or control between undertakings.*

To the effects of this Law and of the other regulatory developments of the supervision and contracting of private insurances, and without prejudice of the established in article 131.1, the following definitions shall apply:

1. Parent undertaking: That undertaking that holds or may hold, directly or by way of control, the control of other or others.

2. Subsidiary undertaking: That undertaking on which the parent undertaking holds or may hold control, directly or by way of control.

3. Control: The relation existing between a parent and a subsidiary undertaking or a relation of the same nature between any natural legal person and an undertaking, in the situations foreseen in article 42 of the Code of Commerce and in its regulatory development.

4. Participation: The ownership, either direct or by a control link, of 20% or more of the voting rights or of the capital of an undertaking.

5. Qualifying holding in an insurance or reinsurance undertaking: means a direct or indirect holding in an undertaking which represents 10% or more of the capital of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking

6. Close links: a situation in which two or more natural or legal persons are linked by control or participation, or a situation in which two or more natural or legal persons are permanently linked to one and the same persona by a control relationship;

7. Shares in financial and credit undertakings:

a) The shares held by insurance and reinsurance undertakings in:

1. Credit institutions and a financial institution to the effects of article 1 of the Law 10/2014, of 26 June, on organization, supervision and solvency of credit institution;
2. Investment services undertakings, to the effects of article 62 of the Law 24/1988, of 28 July, of the Stock Exchange.

b) The subordinated claims and the instruments included in the second part, section I, chapter 4, Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (1), that are held by the insurance and reinsurance undertakings against the undertakings defined in letter a) where they hold shares.

Article 10. *Regulated markets.*

For the purposes of this Law and in the rest of regulatory development of the supervision and contracting private insurances, regulated markets will be:

1. The Spanish secondary official markets defined in article 31 of the Law 24/1988, of 28 July, of the Stock Exchange, and those accepted as regulated markets by the legislation of another Member State.

2. In the case of markets located in a third country, those that meet those requirements comparable to those of the regulated markets stated in the previous paragraph, and where the negotiated financial instruments have a quality comparable to those of the negotiated instruments of the regulated markets in the European Union.

Article 11. *Large risks.*

For the purposes of this Law and in the rest of regulatory development of the supervision and contracting of private insurances, a large risk insurance contract shall be mean:

a) The Railway rolling stock, aircraft, ships (sea, lake and river and canal vessels), Goods in commercial transit ((including merchandise, baggage, and all other goods), Aircraft liability (including carrier's liability), Liability for ships (sea, lake and river and canal vessels) (including carrier's liability).

b) Those of credit and suretyship when the policyholder pursues, at professional level, an industrial, commercial or freelance activity and the risk makes reference to such activity.

c) Land vehicles (other than railway rolling stock), fire or natural forces, other damages to the goods, civil liability in motor track vehicles (including the carrier's liability), general liability miscellaneous financial loss, whenever the holder exceeds the limits of, at least, two of the three criteria below:

Balance-sheet total: 6,200.000 Euros.

Net turnover on the annual accounts: 12,800.000 Euros.

Average number of employees during the financial year: 250 employees.

If the policyholder were part of a group of undertakings which consolidated accounts are established according to the established in articles 42 to 49 of the Code of Commerce, the abovementioned criteria should apply only to the basis of the consolidated accounts.

Article 12. *Community co-insurance.*

To the effects of the established in this Law and in the rest of regulatory development of the supervision and contracting of private insurance, community co-insurance operations shall be considered as follow, whenever they meet the following conditions:

1. That they give place to the coverage of one or more risks that can be classified as large risks.

2. That they take part in the coverage of the risk of several insurance undertakings, not joint, one of them the leading insurer, as co-insurer, by a single contract, at an overall premium and for the same period.

3. That they cover risks located in the European Union.

4. For the purposes of covering the risk, the leading insurance undertaking is authorised to cover the whole risk.

5. That, at least one of the co-insurance undertakings participates in the contract through a head office or a branch located in a Member State different that the state of the leading insurance undertaking.

6. The leading insurance undertaking fully assumes the leader's role in co-insurance practice and in particular determines the terms and conditions of insurance and rating.

Article 13. *System of governance and outsourcing of functions.*

To the effects of this established in this Law and in the rest of regulatory development of the supervision of private insurance, the following terms shall be construed as:

1. Function: Within a system of governance, means the internal capacity of an insurance or reinsurance undertaking to undertake practical tasks.

2. System of governance of the undertaking: Transparent and appropriate organization structure, with a clear distribution and suitable separation of functions, an efficient system to guarantee the information flow that guarantees the healthy and prudent management of the activity and of the efficient internal control mechanisms of an insurance or reinsurance undertaking, that includes the following fundamental functions: the risk management function, the compliance control function, the internal audit function and the actuarial function.

3. Outsourcing of functions: an arrangement of any form between an insurance or reinsurance undertaking and a service provider, whether a supervised entity or not, by which that service provider performs a process, a service or an activity, whether directly or by sub-outsourcing, which would otherwise be performed by the insurance or reinsurance undertaking itself.

Article 14. *Risks.*

For the purposes of this Law and in the rest of ruling provisions of the supervision of private insurance, the following terms shall be construed as:

1. Subscription risk: means the risk of loss or of adverse change in the value of insurance liabilities, due to inadequate pricing and provisioning assumptions.
2. Market risk: means the risk of loss or of adverse change in the financial situation resulting, directly or indirectly, from fluctuations in the level and in the volatility of market prices of assets, liabilities and financial instruments;
3. Credit risk: means the risk of loss or of adverse change in the financial situation, resulting

from fluctuations in the credit standing of issuers of securities, counterparties and any debtors to which insurance and reinsurance undertakings are exposed, in the form of counterparty default risk, or spread risk, or market risk concentrations;

4. Operational risk: means the risk of loss arising from inadequate or failed internal processes, personnel or systems, or from external events;
5. Liquidity risk: means the risk that insurance and reinsurance undertakings are unable to realise investments and other assets in order to settle their financial obligations when they fall due;
6. Concentration risk: means all risk exposures with a loss potential which is large enough to threaten the solvency or the financial position of insurance and reinsurance undertakings;
7. risk-mitigation techniques' means all techniques which enable insurance and reinsurance undertakings to transfer part or all of their risks to another party;
8. Diversification effects: means the reduction in the risk exposure of insurance and reinsurance undertakings and groups related to the diversification of their business, resulting from the fact that the adverse outcome from one risk can be offset by a more favourable outcome from another risk, where those risks are not fully correlated;
9. Probability distribution forecast means a mathematical function that assigns to an exhaustive set of mutually exclusive future events a probability of realisation;
10. Risk measure: A means a mathematical function which assigns a monetary amount to a given probability distribution forecast and increases monotonically with the level of risk exposure underlying that probability distribution forecast.

Article 15. *Reorganisation and winding-up proceedings.*

For the purposes of this Law and in the rest of regulatory development of the supervision of private insurance, the following terms shall be construed as:

1. Competent authorities: The administrative or judicial authorities of the Member States competent for the purposes of the reorganisation measures or the winding-up proceedings.

2. Reorganisation measures mean those measures involving any intervention by the competent authorities which are intended to preserve or restore the financial situation of an insurance undertaking and which affect the pre-existing rights of the parties, other than the insurance undertaking itself.

3. Special control measures: Those that, involving the pursuit of the competent authorities, are directed to control and revert the situation of financial deterioration or of the undertaking management and that are necessary to protect the obligations derived from the insurance and reinsurance contracts, as well as any other interest of the undertaking that may affect its solvency and viability.

4. Winding-up proceeding: The collective proceeding involving the realisation of the assets of an insurance undertaking and the distribution of the proceeds among the creditors, shareholders or members, as appropriate, which necessarily involve any intervention by the competent authorities, whether or not they are founded on insolvency or are voluntary or compulsory.

5. Provisional administrator: means a person or body appointed by the competent authorities for the purpose of administering reorganisation measures.

6. Liquidator: means a person or body appointed by the competent authorities or by the governing bodies of an insurance undertaking for the purpose of administering winding-up proceedings.

7. Insurance claim: amount which is owed by an insurance undertaking to insured, beneficiaries or any injured party having direct right of action against the insurance undertaking and which arises from an insurance contract or from any operation provided for in Article 2(3)(b) and (c) in direct insurance business in the Annex B) letter a), paragraphs 2, 3 and 4 of this Law, in the field of direct insurance, including an amount set aside for those persons, when some elements of the debt are not yet known.

SECTION I
Supervisory bodies and competences

CHAPTER I
Competences of the State Administration

Article 16. *Supervisory competences of the State Administration.*

1. The competences of the State Administration in the supervision of insurance and reinsurance undertakings and in the correct performance of the insurance and reinsurance markets shall be pursued by the Minister of Economy and Competitiveness and by the Directorate General of Insurance and Pension Funds according to the terms established in this law and it is development rules, without prejudice of the duties corresponding to the Autonomous Communities in the field of their competences.

2. The ruling and supervision of the private insurance policies belongs to the Minister of Economy and Competitiveness:

a) To authorise the take-up of the insurance and reinsurance activity and its withdrawal.

b) To authorise the calculation of the solvency capital requirement using an internal model.

c) To authorise the constitution, modification and winding-up of mutual groups.

d) To approve the rules on transparency of the market and protection of the consumers' rights in the field of insurance.

e) To decide on the administrative winding-up of the insurance and reinsurance undertakings and, where appropriate, to grant its liquidation to the Insurance Compensation Consortium.

f) To impose penalties because of serious breach according to the terms of section VIII.

g) To authorise the transfer of portfolio, structure modifications and, where appropriate, groups and joint ventures of the insurance and reinsurance undertakings, governed by chapter VI of Section III, without prejudice of the established in the l, related to the control of economic concentrations and in the Community provisions of application.

h) The pursuit of any other faculty that are attributed by the Law and by the rest of the legal system.

Article 17. *Directorate General of Insurance and Pension Funds.*

1. The Directorate General of Insurance and Pension Funds shall be part, in its condition of Spanish supervisory authority, of the European Insurance and Occupational Pensions Authority (EIOPA), according to the establish regulation (EU) no 1094/2010 of the European parliament and of the council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC.

In the pursuit of the supervisory duties ordered by this Law and by its regulatory development, the Directorate General of Insurance and Pension Funds shall analyse and, where appropriate, consider the guidelines and recommendations arising from the European Insurance and Occupational Pensions Authority. When the Directorate General of Insurance and Pension Funds separates from these guidelines and recommendations, it shall do so by a resolution based on reasons.

2. The Directorate General of Insurance and Pension Funds could give orders in the development of the insurance legislation that is included in royal decrees and orders of the Minister of Economy and Competitiveness, whenever these rules give it express powers for it, prior report of the Consultation Board on Insurance and Pensions Funds.

Such provisions shall receive the name of circulars shall be produced by the proceeding governed in article 24 of the Law 50/1997, of 27 November, of the Government, shall be published in the "Official State Journal" and they shall become in force according to the establish in the first paragraph of article 2 of the Civil Code.

3. The Directorate General of Insurance and Pension Funds, via its website, shall promote the diffusion of as many information as necessary to insure the achievement of the purposes established in this Law and the processing of its proceedings by electronic means.

4. The Directorate General of Insurance and Pension Funds shall create and publish an annual report that presents its supervisory activity and the general situation of the insurance and pension funds markets.

5. The orders given by the Directorate General of Insurance and Pension Funds in the pursuit of the administrative faculties that are granted to it in this law shall be appealed before the Minister of Economy and Competitiveness, in agreement with the established in the Law 30/1992, of 26 November, of the Judicial Regime of the Public Administrations and on the Common Administrative Procedure.

Article 18. *Consultation Board on Insurance and Pensions Funds.*

1. The Consultation Board on Insurance and Pensions Funds (Advisory Commission on

Insurance and Pension Funds) is the advisory administrative college body of the Ministry of Economy and Competitiveness for the matters relative to the ruling and supervision of private insurances, of reinsurance, of pension plans and funds and of the mediation in insurance and reinsurance.

2. It is duty of the Consultation Board on Insurance and Pensions Funds:

a) To report of the projects of provisions of general character on subjects directly related to private insurance, reinsurance, pension plans and funds and the mediation in insurance and reinsurance with the aim of making effective the principle of hearing of the sectors affected in the proceeding of writing of such provisions. The report issued will not be mandatory.

b) To carry out the surveys and reports that are requested by its president.

c) To make general recommendations or of specific character on the subjects stated in letter a) and related to compulsory insurance.

3. The Junta Consultiva de Seguros y Fondos shall be chaired by the General Director of Insurances and Pension Funds and shall be part of it, as spokespersons, the representatives of the State General Administration, policy holders and users, participants of pension plans, insurance undertakings, managing bodies of pension funds, insurance intermediaries, trust unions and employer organizations, reputed undertakings related to private insurance, actuaries, insurance experts and claim adjustors, in the shape and with the composition established by order.

Also, the president may request the assistance of other people or undertakings as experts, depending on the nature of the subjects to be debated.

4. The Consultation Board on Insurance and Pensions Funds shall be convoked in the cases set out by law, whenever required or when so decides the president.

5. In the absence of rules included in this Law and it is regulatory development, as well as of other that may be established to supplement its regime and performance, the Consultation Board on Insurance and Pensions Funds shall be governed by the rules on working of the college bodies foreseen in the Law 30/1992, of 26 November, on the Legal Regime of the Public Administrations and of the Common Administrative Procedure, and by other provisions of the common administrative law applicable to these kinds of bodies.

CHAPTER II

Competences of the Autonomous Communities

Article 19. *Distribution of competences.*

1. The Autonomous Communities which, according to their Statutes of autonomy have assumed competences in the ordering of the insurance and reinsurance undertakings, shall enjoy them in relation to those undertakings whose head office, scope of operations and location of the risks, in case of non-life insurance, or assumption of the compromises, in the case of life insurance, are subscribed to the territory of the Autonomous Communities, according to the following criteria:

a) In the field of the regulation competences, the legislative development of the bases of ordering and supervision of insurance and reinsurance undertakings included in this Law and in the basic ordering provisions that supplement it, belong to them. In that relate to insurance co-operative insurance societies and mutual undertakings or social welfare, they shall also have exclusive competences in the legislation of its organization and performance.

b) In the field of the implementing competences that belong to them, the ruling and supervision of the insurance and reinsurance undertakings that are granted to the State General Administration in this Law, except the competences to grant the administrative authorisation to pursue the insurance activity and its withdrawal, which will always be reserved to the State that will report, where appropriate, to the Autonomous Communities. The references made in this Law to the Ministry of Economy and Competitiveness and to the Directorate General of Insurance and Pension Funds, shall be considered as made to the competent regional body, except from those that refer to Spanish undertakings that act in the scope of the European Union or European undertakings that operate in Spain.

The taking-up authorization of the insurance activity for insurance co-operatives and friendly societies as well as their withdrawal also correspond to the Autonomous Communities, prior report of the Directorate General of Insurance and Pension Funds in both cases. The course of the maximum legal period to solve the authorisation or withdrawal proceeding shall be suspended from the application to the reception of the said report. This period of suspension could not exceed three months in any case. The Autonomous Communities shall report the Directorate General of each authorisation granted, as well as the withdrawals.

2. The Autonomous Communities which, according to their Statutes of Autonomy, have assumed competences relative to the organization and supervision of insurance undertakings shall have them as well on subscription agencies that pursue exclusively on behalf of them.

3. To these effects, the competent bodies of the Autonomous Communities shall send, when requested by the Directorate General of Insurance and Pension Funds and, in any case, annually, the information and documents of each undertaking stated in the articles 80 and 114 of this Law and of its legislative development. Similarly, the Autonomous Communities shall send to the Directorate General of Insurance and Pension Funds the access by electronic means to the information relative to its administrative register of insurance and reinsurance undertakings.

4. The Directorate General of Insurance and Pension Funds and the competent bodies of the Autonomous Communities shall have the necessary cooperation to the effects of standardising the documental information and coordinate their supervisory activities.

SECTION II
Taking-up of the insurance and reinsurance activity

CHAPTER I
Taking-up of the activity of the Spanish insurance and reinsurance undertakings

Section 1. Conditions to taking-up of the activity

Article 20. *Administrative authorisation.*

1. The taking-up of business of the activities defined in article 3.1 by insurance and reinsurance undertakings with head office in Spain shall be submitted to prior administrative authorisation of the Minister of Economy and Competitiveness.

2. An administrative authorisation is necessary as well in the following cases:

a) To extend the activity of an insurance undertaking to branches different to those initially authorised.

b) To extend an authorisation of an insurance undertaking to include any risk different than those initially authorised.

c) To allow that an insurance undertaking pursues its activity in a territory of larger scope than that initially authorised.

d) To extend the territorial field of action or of the activity performed by a reinsurance undertaking.

3. The request for authorisation shall be made at the Directorate General of Insurance and Pension Funds and it shall attach the document certifying compliance with the requirements stated in article 22 of this Law and its development legislation. The maximum deadline to decide on the authorisation proceeding and report the decision is six months. After that period without having been notified any express decision, the request shall be considered as refused.

4. The authorisation granted by the Minister of Economy and Competitiveness shall be valid in the entire European Union without prejudice of the provisions established in article 21.1.

5. The authorisation shall determine the entry in the administrative registry ruled by article 40.

6. Any authorisation granted to an insurance or reinsurance undertaking to pursue its activity in the entire national territory shall be reported by the Directorate General of Insurance and Pension Funds to the European Insurance and Occupational Pensions Authority with the aim that such authority includes its legal name in the public list of authorised insurance and reinsurance undertakings and that such list is updated.

Article 21. *Scope of the authorisation.*

1. The authorisation of the insurance undertakings shall be granted for classes of insurance, according to the classification established in the Annex to this Law. It shall include the entire class of insurance and the coverage of ancillary or additional risks to that, as applicable.

The authorisation shall allow the insurance undertakings the pursuit of the activities under freedom of establishment regime or freedom to provide services regime of the European Union, unless the applicant wishes to cover only pertaining to that class, to pursue the activity in a territory of smaller scope than that of the national territory, or to perform operations included in article 46.2.

The insurance undertakings so authorised could accept reinsurance operations in the same classes of insurance as those included in the authorisation.

2. The authorisation of the reinsurance undertakings shall be granted for life reinsurance activities, non-life reinsurance activities, or for any other kind of reinsurance activity and shall allow the reinsurance undertaking to pursue business under freedom of establishment or freedom to provide services in the European Union.

The reinsurance activity shall be fully separated from the policyholders and the insured persons.

Section 2. Requirements to obtain authorisation

Article 22. *General requirements of the authorisation for insurance and reinsurance undertakings.*

The insurance and reinsurance undertakings with head office in Spain aiming to obtain and maintain the administrative authorisation, the following requirements shall be met:

1. To adopt one of the legal forms foreseen in this Law.

2. To limit the social object to the insurance and reinsurance activity.

3. To present and stick to a scheme of operations.

4. To hold the minimum social capital or minimum mutual fund and of the eligible basic own funds to cover the absolute floor of the minimum capital requirement.

5. To hold eligible basic own funds admissible to cover, at any moment, the minimum capital requirement as well as the eligible own funds to cover the solvency capital requirement.

6. To indicate the contribution to the social capital or mutual fund and the social capital holdings or mutual fund holdings of all shareholders. It shall expressly state which shareholders have control and which have the condition of insurance undertaking, credit institution or investment firm, as well as, in case, the shares, independently of their amount, held by any shareholder of an insurance undertaking, a credit institution or an investment firm.

7. To report on the existence of close links with other persons or undertakings.

8. That anyone who, under any condition, effectively run the undertaking or have other key functions involved in its system of governance, complies with the fit and proper requirements and the necessary qualification and professional experience requirements stated in article 38.

9. To have an efficient system of governance that meets the requirements set out in article 65.

Article 23. *Refusal of authorisation.*

1. The Minister of Economy and Competitiveness shall refuse the authorisation when the insurance or reinsurance undertaking does not certify the compliance with the requirements of article 22.

2. The refusal shall be made through ministerial order which will be reported to the interested undertaking and shall terminate the administrative proceeding.

Article 24. *Operations made without administrative authorisation.*

1. The insurance contracts and other operations submitted to this Law carried out by an unauthorised undertaking, or by an undertaking whose administrative authorisation has been withdrawn or which surpass the limits of the administrative authorisation granted, shall be void as a matter of law.

2. Whomever had made contracts within the context of paragraph 1, shall not be obliged to comply with the obligation of payment of the premiums and shall have right to the refund of the premium paid, unless, previously, a claim had taken place. If prior to such refund a claim takes place, covered by the contract if it had been valid, the undertaking that had celebrated it would be obliged to pay the compensation which amount will be calculated according to the rules governing the payment of the compensation as defined in the insurance contract, without prejudice of the right of compensating the remaining damages that could have raised.

This obligation will be solidary between the undertaking and those people who, holding administrative or management positions in the undertaking, had authorised or allowed the celebration of such contracts or operations, all of it without prejudice of the administrative breaches the directors or managers and the undertaking may have incurred in.

3. The Directorate General of Insurance and Pension Funds shall require any natural or legal person who carries out operations submitted to this Law without having been granted the prior authorisation or surpassing its limits to immediately quit in the pursuit of such activity and shall agree the necessary publication to inform the public.

Article 25. *Organisations and groups of economic interest and joint ventures.*

1. No prior administrative authorisation shall be required to the organizations, provided or not with a legal personality, which are created with permanent character for the distribution of risk coverage between insurance undertakings or for the provision of common services related to its activity, as well as the groups of insurance undertakings stated in article 93, but in any of this cases it shall be reported to the Directorate General of Insurance and Pension Funds in advance of a month prior to starting the organised or grouped activity.

2. The Directorate General could suspend the activities stated in this article or require modifications of these when it considers they do not stick to the precepts of this Law.

Article 26. *Prior consultation to the supervisory authorities.*

The authorisation of an insurance or reinsurance undertaking shall be submitted to prior consultation to the competent supervisory authority of the corresponding Member State when any of the following circumstances takes place:

1. That the new undertaking is going to be controlled by an insurance or reinsurance undertaking, a credit institution, an investment services firm or a managing entity of collective investment schemes or of pension funds, authorised in another Member State.

2. That its control is going to be exercised by a parent company of an insurance or reinsurance undertaking, of a credit institution, of an investment firm or of a managing entity of collective investment schemes or of pension funds, authorised in another Member State.

3. That its control is going to be exercised by the same natural or legal persons that control an insurance or reinsurance undertaking, a credit institution, an investment firm or a managing entity of collective investment schemes or of pension funds, authorised in another Member State.

This consultation shall reach, in special, to the assessment of suitability of the shareholders and to the fit and proper requirements, qualification and experience of those who, under any degree, effectively run the undertaking or have other key functions involved in the system of governance of the new undertaking or of the parent company, and it could be repeated for the ongoing supervision of the compliance with such requirements by the Spanish insurance undertakings.

Article 27. *Nature, shape and name of the insurance and reinsurance undertakings.*

1. The insurance activity could only be pursued by private undertakings adopting any of the following legal forms:

a) Companies limited by shares,

b) Societas europaea,

c) Mutual insurance company,

d) Co-operative society,

e) European co-operative society,

f) Friendly society.

The mutual insurance companies, the co-operative societies and the friendly societies will only be able to operate with a fixed premium.

2. The reinsurance undertakings shall adopt the legal form of limited company or societas europaea.

3. Also, the activity of insurance and reinsurance could be performed by the undertakings adopting any form governed by public law, whenever they have as purpose the pursuit of insurance or reinsurance activities under conditions which are equivalent to those of the private insurance or reinsurance undertakings.

The undertakings which the previous paragraph refers to, shall bind to the provisions of this Law, in default of special rules included in their specific regulation, and shall also be submitted, in the pursuit of their insurance activity, to the legislation of the insurance contract and to the competence of the Civil Courts.

Article 28. *Constitution.*

The insurance and reinsurance undertakings shall be constituted by means of a public deed that shall be registered in the Mercantile Register. With such registration the companies limited by shares mutual insurance companies and friendly societies will be provided with their legal personality. The co-operative societies shall be provided with their legal personality according to their specific regulation.

Article 29. *Name.*

The legal name of the insurance and reinsurance undertakings shall include the words “insurance” or “reinsurance”, or both at the time, according to their social object, that are exclusively reserved for such undertakings. The expressions “mutual insurance company”, “co-operative societies” and “friendly societies” are also reserved and shall be included in their name by any undertaking of this nature.

Article 30. *Head office.*

1. The head office of the insurance and reinsurance undertakings shall be located in the Spanish territory, when Spain is the location of the centre of its effective administrative and management or of its main establishment or production.

2. The relocation of the head office of an insurance or reinsurance undertaking established in Spain abroad shall be authorised by the Minister of Economy and Competitiveness, prior publication of the agreement of relocation and having transcurred a month from the publication of the last notice reporting the policyholders their right to inform the Directorate General of Insurance and Pension Funds of the reasons that, the case may be, they could have to be in disagreement with the relocation. However, such public notice could be disregarded when the authorisation is rejected for not meeting the legal requirements.

3. The relocation of the head office of an insurance undertaking abroad shall be individually notified to the policyholders. This individual notification shall be informed on the supervisory authority the insurance undertaking will be submitted to once having moved the head office and on the right of the policyholders to terminate their insurance contracts.

4. The proceeding of relocation of head office foreseen in the previous paragraph shall be established by the regulatory development.

5. In case of relocation to Spain of the head office of an insurance or reinsurance undertaking with head office abroad, the agreed in article 20 shall be of application.

Article 31. *Social object.*

1. The social object of the insurance undertaking shall be exclusively the pursuit of insurance operations and other activities defined in article 3.

2. The object of the insurance undertakings that intend to operate in any of the life insurance modalities shall be exclusively the pursuit of operations of such class of insurance and the coverage of life class ancillary risks. Furthermore, prior obtaining the corresponding administrative authorisation, they could pursue operations in classes 1 (accident) and 2 (sickness), included in the Annex A). a) to this Law, without submitting, in this case, to the required limits and requirements for the coverage of ancillary risks.

3. The social object of the insurance undertakings that intend to operate in any of the non-life classes of insurance shall not include pursuing operations in life insurance class. However, if they are only authorised for the risks included in the classes 1 (accident) and 2 (sickness), included in the Annex A). a) to this Law, they could operate in the life class if they achieve the necessary administrative authorisation.

4. The social object of the reinsurance undertakings shall exclusively be the activity of reinsurance and its related operations. These will be construed as performing statistical or actuarial surveys, risk analysis or research for its consumers, as well as any other activity related or derived from the reinsurance activity. Also, holding company activities and the activities related to the financial sector could be considered as included in the social object of the reinsurance undertakings.

Article 32. *Scheme of operations.*

The scheme of operations is the document that compile the strategy plan of the business Project which shall set out remarks or full and suitable explanations relative to all those requirements, previsions, estimations and conditions or policies that are determined according to the rules.

Article 33. *Social capital.*

1. The companies limited by shares and the co-operative societies shall have the following minimum social capital when intending to operate in the classes of insurance listed below:

a) 9,015,000 Euros for the classes of life insurance, suretyship, credit, whichever class of insurance covering civil liability and exclusively reinsurance activity.

b) 2.103.000 Euros for the classes of insurance: accident, sickness, legal expenses, assistance and funeral expenses.

In the case of insurance undertakings that only pursue sickness insurance granting health assistance compensations and which limit their activity to a territorial scope which is less than two million inhabitants, it will be enough with half of the capital or mutual fund foreseen in the previous paragraph.

c) 3.005.000 Euros, for the other classes.

2. The minimum social capital of the companies limited by shares shall be fully paid and subscribed at least in a fifty per cent. Any disbursement of capital over the minimum shall stick to the general mercantile legislation.

In any case, the capital will be represented by nominative shares or nominative account notes.

3. The undertakings pursuing their activity in different non-life classes of direct insurance shall have the social capital corresponding to the class of insurance for which the biggest amount is required.

4. If, according to article 31.2 or 3 they also pursue activities in the class of life insurance, the social capital would be the corresponding to the addition of the requirements for the life class and for one of the non-life class that they operate.

Article 34. *Mutual fund.*

1. The mutual insurance company shall certify permanent mutual funds, provided by their mutual members or constituted with surpluses of the financial years, which minimum amounts, according to the classes where they intend to operate, shall be the same established as paid-up social capital for limited companies.

However, for mutual insurance companies under the regime of passive allocation three quarters of such amount shall be required.

2. Friendly societies which have achieved an administrative authorization to operate by classes of insurance shall certify a mutual fund which minimum amount shall be the corresponding to those established as paid-up social capital for limited companies in article 33.1, without prejudice of the establishments of article 45.2.c) for the friendly societies which operate by classes of insurance and which continue pursuing insurance operations of the article 44.1.

3. The rest of friendly societies shall certify a mutual fund of 30,050.61 Euros. Likewise, they will create with their patrimony a working-balance which allows them to pay the claims and expenses without waiting for the collection of the allocations.

4. When mutual insurance companies and friendly societies operating by classes, pursue their activity in different classes of insurance, the established in article 33.3 will be of application, being the references to the social capital considered as made to the mutual fund.

5. The mutual fund shall always be fully subscribed and paid-up.

Article 35. *Limitations on the distribution of dividends, allocations and any other retribution linked to the social capital.*

The insurance and reinsurance undertakings shall not distribute dividends, allocations or any other kind of retribution linked to the paid-up social capital, to the issuance premium, to the paid-up mutual fund or to any other of the capital elements equivalent to the basic own funds determined for mutual insurance companies or friendly societies, under the following circumstances:

a) In case the solvency capital requirement or the minimum capital requirement is not reached, or

b) If the distribution of these dividends, allocations or other retributions linked to these capital elements could derive in a breach of the solvency capital requirement or the minimum capital requirement.

Article 36. *Shareholders*.

The natural or legal persons who, directly or indirectly, hold shares in the insurance or reinsurance undertaking by means of a qualifying holding shall be suitable in order to ensure the sound and prudent management of the undertaking, according to the establishments by regulatory development.

Article 37. *Close links.*

The close links between the insurance or reinsurance undertakings and other natural or legal persons, in case of existing, could not prevent the correct pursuit of the undertaking's supervision.

The rules of a third country external to the European Union regulating one or several persons that have close links with the insurance or reinsurance undertaking, or the application of such rulings, shall neither prevent the correct exercise of the undertaking's supervision.

Article 38. *Fit and proper requirements of whom effectively runs the undertaking or has other key functions involved in the system of governance of the undertaking.*

1. The insurance and reinsurance undertakings and the parent undertaking of groups of insurance undertakings shall guarantee that any person effectively running the undertaking, under any condition, and those who have other key functions involved in its system of governance comply, at any moment, with the following requirements:

a) Be recognised for commercial and professional honourability.

b) Have knowledge and experience appropriate to make possible the sound and prudent management of the undertaking.

2. It will be considered to effectively run an insurance or reinsurance undertaking those people who hold positions of administration or management, considering as such:

a) administrators or members of the college management bodies or legal persons will be allowed to hold management positions, but, in this case, they shall appoint a natural person who also meets the requirements previously stated as representative.

b) Managing directors and similar, considering as such any person pursuing in the undertaking senior management functions under the direct dependency of its management body, executive committees or chief executives.

3. The insurance and reinsurance undertakings, as well as the parent undertakings of groups of insurance undertakings, shall report to the Directorate General of Insurance and Pension Funds the appointment, as well as any change in the identity of the persons who effectively run the undertaking or group, under any condition, and who have other key functions involved in the system of governance of the undertaking, altogether with the information necessary to assess whether that people who, if that is the case, have been appointed, comply with the fit and proper requirements. Similarly, they shall report to the Directorate General of Insurance and Pension Funds when any of the persons which the previous paragraphs refer to has been substituted for not complying any longer with the fit and proper requirements Such reports shall be made in a maximum period of fifteen working days from the date of appointment.

4. The cases where it is considered that the fit and proper requirements are complied with by person who effectively run the undertaking or have other key functions involved in the system of governance of the undertakings shall be regulated, as well as the information requirements that shall be sent to the Directorate General of Insurance and Pension Funds to the effects of assessing their compliance.

Article 39. *Responsibility and duties of the administrative and management bodies of the insurance and reinsurance undertakings.*

1. The administrative body of the insurance or reinsurance undertaking shall assume the responsibility to ensure that the undertaking complies with the provisions included in this Law as well as the other rules of private insurance.

2. The provisions in relation to the duties of the administrators contained in chapter III of Section VI of the rewritten text of the Law on Capital Companies, approved by the Royal Legislative Decree 1/2010, of 2 July, shall be of application to the members of the administration body of the insurance undertakings.

3. Those holding management positions shall assume the responsibility derived from the compliance of the duties they have been attributed according to the organization structure of the undertaking as well as of the duties that have been delegated by the administrative body.

Article 40. *Administrative register.*

1. The Directorate General of Insurance and Pension Funds shall keep an updated

administrative register, where the following persons and undertakings shall be registered:

a) The Spanish insurance and reinsurance undertakings, and the shareholders with a qualifying holding in an insurance or reinsurance undertaking.

b) Anyone who, under any condition, effectively runs insurance and reinsurance undertakings, insurance holding companies, mixed-financial holding companies, mixed-activity insurance holding companies and mutual group societies which are the head of an insurance group. In case that a legal person is appointed as member of the administrative body the natural person appointed as representative shall be also registered.

c) The groups and subgroups supervised by the Directorate General of Insurance and Pension Funds according to the established in section V of this Law.

d) The insurance undertakings of the European Union which operate in Spain under freedom of establishment or freedom to provide services and their attorneys or representatives, as well as any person who effectively runs these branches and the branches of reinsurance undertakings of the European Union that so request voluntarily.

e) The branches of the insurance or reinsurance undertakings of third countries authorised in Spain, as well as their attorneys or representatives and the persons who effectively run these branches.

f) The risk mitigation organizations among insurance undertakings or organizations constituted by insurance undertakings for the provision of common services related to their activities and its senior members.

2. The actions to be registered and the registration regime shall be established by regulatory development.

3. The administrative register will be public, guaranteeing the access by the use of electronic means. The interested parties shall access to the data register, considering that the access to personal information shall be ruled by the established in the Law 19/2013, of 9 December, on transparency, access to the public information and right governance and other laws that result of application.

4. The Autonomous Communities which have competences of ruling and supervision according to article 19.1 shall have the corresponding administrative register. Each entry made in that register shall be reported telematically to the Directorate General of Insurance and Pension Funds.

Section 3. Mutual insurance companies, insurance co-operative societies and friendly societies

Article 41. *Mutual insurance companies.*

1. The mutual insurance companies are non-profit mercantile societies, which have the purpose to cover its members, either natural or legal persons, against the risks insured through a fixed premium to be paid at the beginning of the risk period.

2. Mutual insurance companies may constitute mutual groups according to the requirements established by the regulation.

3. In the cases of dissolution of the Mutual insurance company and in those of transformation, merger, and division where the undertaking resulting from the transformation or merger, or beneficiary of the division is a company limited by shares, as well as in those of global transfer of assets and liabilities, the current members of the mutual undertaking and those who were members in the last five years, or previously, if so is agreed by the statutes, shall receive, at least, half of the net worth of the mutual undertaking.

Article 42. *Insurance co-operative societies.*

The insurance co-operative societies which have the purpose to cover its members against the risks insured by a fixed premium to be paid at the beginning of the risk, shall be governed by the following provisions:

a) The condition of co-operative member shall be inseparable of that of policyholder or insured person, whenever this latter is the final payer of the premium.

b) Unless otherwise provided by the social statutes, the co-operative members are not personally liable for social debts. In case that, according to the social statutes, the co-operative members were personally liable for the social debts, their liability would be limited to an amount equal to the amount of the annual premium corresponding to each one of them. The statute clause on personal liability of the co-operative member for social debts shall be included in the insurance policies and highlighted.

c) The registration in the Mercantile Register and the corresponding register of co-operative undertakings shall take place prior to the administrative authorisation ruled by article 20.

d) Regarding the rest of their activity, they shall be governed by the provisions of this Law, its regulatory development and by the precepts of the rewritten text of the Law on Capital Companies referred to, as well as by its regulatory development and by the co-operative legislation.

The co-operatives submitted to organisation and supervision by the Autonomous Communities which have assumed competences on insurance shall be ruled by the provisions passed by those, by the provisions of this Law and by its development regulation and by the established in the rewritten text of the Law on Capital Companies.

Article 43. *Friendly societies.*

1. Friendly societies are insurance undertakings which pursue a voluntary insurance mode which is ancillary to the statutory Social Security System, by means of contributions of the mutual members, natural or legal persons, or of other undertakings or protector members. Those friendly societies which were approved as alternative to Social Security, recognized in the fifteenth additional provision of the Law 30/1995, of 8 November, on organization and supervision of private insurance, also pursue an insurance mode alternative to the registration in the Special Regime of Social Security of Freelance Workers.

When in a friendly society all the members are employees, its protector members or promoters are the undertakings, institutions or individual businessmen where they provide their services and the compensations that are granted are only a consequence of prevision agreements between these and those, are deemed to refer that the mutual undertaking acts as an instrument of company social welfare.

2. Friendly societies shall meet the following requirements:

a) The established for the mutual insurance companies in article 41.

b) The condition of mutual member shall be inseparable from that of policyholder of insured person, whenever this latter is the final payer of the premium.

c) To establish equal obligations and rights for all the mutual members, without prejudice to contributions and compensations maintenance of the statutory relationship established taking into account the circumstances that may concur in each case.

d) Unless otherwise provided by the social statutes, the mutual members are not personally liable for social debts. In case that, according to the social statutes, the mutual members were liable for social debts, their liability shall be limited to a lesser amount than a third of the addition of the quotas that had been paid during the last three years, independently of the present year. The statute clause on personal liability of the mutual members for social debts shall be included in both the compensations regulation and the insurance policies and highlighted.

e) The registration of the mutual members in the friendly society shall always be voluntary and shall require either individual statement of the requesting party, either general in character statement derived from agreements adopted by the representative bodies of a co-operative or of a professional association, unless explicit opposition of the mutual member, without giving them the possibility to set limits to register in a friendly society different to those set out in its statutes because of justified reasons.

f) The registration of the associates could be directly made by the friendly society or by the insurance mediation activity, this latter whenever the requirements of mutual fund and financial guarantees are complied with. However, associates could participate in the registration of new members and in the collection management of the quotas; in that case, they could receive an appropriate economic compensation established by the statutes.

g) To only perform the insurance operations and to grant the social compensations listed in article 44, without prejudice to the established in article 45 for the friendly societies authorised to operate by classes.

h) To directly undertake the risks guaranteed to its associates, without performing co-insurance operations nor accepting reinsurance, although operations of risk transfer through reinsurance with undertakings authorised to operate in Spain could be made. However, friendly societies which have authorisation to operate by entire insurance classes could perform co-insurance operations and accept reinsurance.

i) The compensations and other income of the administrators because of travel, lodgement and support, received because of their management functions in the friendly society shall be part of the administration expenses which could not exceed the limits established in the corresponding regulation. However, friendly societies authorised to operate by classes shall not be bound to limits in their administration expenses.

j) In case that a friendly society holds the majority control of other undertakings and it pays the administrators any amount related to the expenses stated in the previous paragraph, these shall compute as administration expenses of the friendly society.

3. Friendly societies could constitute friendly societies groups according to the same requirements as those established by the regulation for mutual groups.

4. The legal regime which governs mutual insurance companies that may be implemented for friendly societies shall be regulated.

Article 44. *Scope of coverage and compensations for the friendly societies.*

1. In the risk prevision on people, the contingencies that may be covered are death, widowhood, orphanhood, retirement and dependence and they shall guarantee the economic compensation as a capital or an income. Likewise, compensations could be granted for marriage, descendants and death. And they could pursue insurance operations for accident and incapacity for work, sickness, legal expenses and assistance as well as to grant family aids to overcome the needs due to legal acts or actions that temporarily prevent the performance of an occupation.

The economic compensations that are guaranteed could not exceed 30,000 Euros as annual rent or its actuarial equivalent as single capital perception, calculated according to the technical base established for the calculation of such a rent, with a limit of 300,000 Euros.

The limits stated in the previous paragraph could be updated by order of the Minister of Economy and Competitiveness, considering the sufficiency of the financial guarantees to deal with the updated provision.

However, for those friendly societies which are involved in any of the situations foreseen in articles 159.1 and 172 of this Law, the new economic compensations to be guaranteed could not exceed 18,000 Euros as annual rent or 78,000 Euros as single capital perception.

2. In the prevision of risks on property, there only can be guaranteed, within the quantitative amount of such goods, the risks listed below:

a) Officially protected housing and others of social interest, whenever they are inhabited by the associate or his/her family.

b) Machinery, goods and working tools of the associates who are entrepreneurs and small employers. To these effects, small employers will be construed as freelance workers and professionals and businessmen, including farmers, who do not have more than five employees.

c) Crops of cultivated direct and personally grown by the farmer or his/her family, whenever they are not included in any annual plan of combined agricultural insurance, and the forest, livestock, hives, fish farm and small animal husbandry that are integrated in the family farm.

3. Each friendly society could grant all or some of the contributions stated in the previous two paragraphs.

4. Besides the established in the paragraphs 1 and 2, friendly societies complying with the requirements of the mutual fund and financial guarantees could grant social contributions linked to the aforementioned insurance operations according to the following:

a) They shall be specifically authorised by the Directorate General of Insurance and Pension Funds or by the body of the competent Autonomous Communities.

b) The granting of social contributions shall be made with absolute economic-financial and accountancy separation in relation to the insurance operations.

c) The resources allocated to the social welfare activity shall be of its free disposal.

5. In any case, the proportionality principle included in article 65 shall be of application, to friendly societies which have not obtained the administrative authorisation stated in article 45.

Article 45. *Friendly societies authorised to operate by insurance classes.*

1. Friendly societies could operate by insurance classes and shall not be subject to the limits imposed in article 44, whenever they obtain prior administrative authorisation.

The authorisation could be granted for the life insurance class or for the following non-life insurance classes included in Annex A). a) to this Law: Class 1 (accident), class 2 (sickness), class 16 (miscellaneous financial losses), class 17 (legal expenses), class 18 (assistance) and class 19 (funeral expenses), taking into account the established in article 31.

2. The necessary requirements for a friendly society to obtain and maintain the administrative authorisation to operate by classes, are the following:

a) Having transcurred, at least, a period of five years since the obtention of the administrative authorisation to pursue the insurance activity.

b) Not having been subject to special control measures, or having been initiated against it a dissolution administrative proceeding or a withdrawal of the administrative authorisation proceeding during the previous two years to the presentation of the authorisation application.

c) Holding the minimum mutual fund, the basic eligible own funds to cover the absolute floor of the minimum capital requirement and the eligible own funds to cover the solvency capital requirement, as well as having technical provisions, all of it in the same terms as those established by this Law for the mutual insurance companies.

When a friendly society obtains the administrative authorisation to operate in ~~the~~ life class and continues pursuing non-life insurance operations, it shall have a minimum mutual fund corresponding to the addition of that required to the mutual insurance companies for life class and the minimum foreseen in article 34.3.

When a friendly society obtains the administrative authorisation to operate in one or several classes of non-life insurance and continues pursuing life insurance operations, it shall have a minimum mutual fund corresponding to the addition of that required to the mutual insurance companies for the authorised class requiring the biggest amount and the minimum foreseen in article 34.3.

d) Having annual gross premium income and a total gross amount of technical provisions exceeding the limits that are established according to the law for the special regime of solvency stated in article 101.

e) To present and comply with a scheme of operations according to article 32 related to those classes of insurance for which the authorisation is being requested.

3. The request for authorisation to operate by classes shall be made to the Directorate General of Insurance and Pension Funds or, where appropriate, by the competent body of the Autonomous Community and the documents giving credit to the compliance with the requirements of paragraph 2 shall be enclosed. The authorisation shall be granted by classes and shall include the entire class and the coverage of the ancillary or additional risks of that, as appropriate.

In everything else, the proceeding and the administrative decision shall follow the established with general character in articles 20 to 22.

4. If the administrative authorisation is obtained for life class, the friendly society could continue pursuing also, where appropriate, insurance operations of accident, sickness and funeral expenses. If the administrative authorisation is so for any of the non-life classes, the friendly society could, besides the insurance operations corresponding to the authorised class, continue pursuing those of article 44.1. In both cases, the limitations imposed by article 43.2, letters g) and h) shall be considered as exempt only in the insurance classes for which has been obtained the administrative authorisation.

5. The pursuit of the activities this article bounds to an administrative authorisation to operate by classes by a friendly society, without having been obtained such authorisation previously, shall be construed as forbidden operation and shall be bound to the administrative effects and responsibilities foreseen in article 5, to the regulation on special control measures of section VI, and to the regime of breaches and penalties of section VIII.

6. Friendly societies could renounce to the authorisation to operate by classes granted and return to the regime of coverage and compensations ruled by article 44, in the terms and conditions established by law.

Section 4. Activity of the Spanish insurance and reinsurance undertakings under the regime of freedom of establishment and freedom to provide services in the European Union.

Article 46. *Spanish undertakings that can operate in the European Union.*

1. The Spanish insurance and reinsurance undertakings that have obtained the valid authorisation in the entire European Union according to article 20 could pursue, in the same terms and conditions of the authorisation granted, their activities under the regime of freedom of establishment or under the regime of freedom to provide services in the entire territory of the European Union.

2. The established in the previous paragraph shall not be of application for:

a) The insurance operations when the risks are covered by the Insurance Compensation Consortium.

b) The insurance undertakings that are bound to the special solvency regime, ruled in chapter VIII of Section III of this Law.

c) The following operations of non-life insurance:

1. Those carried out by mutual insurance companies that have reached with another mutual an agreement on the full reinsurance of the insurance contracts which have been subscribed or the substitution of the transferee mutual by the transferor for the execution of the commitments resulting from such contracts.

2. Those of class 19 (funeral expenses) of those ruled in the Annex A). a) of this Law.

3. The activity under the freedom of establishment or freedom to provide services regime in the European Union of the Spanish insurance undertakings shall be registered in the register established in article 40, stating the information that is detailed in the following articles and in the development regulation.

Article 47. *Conditions for the establishment of branches.*

1. Any Spanish insurance undertaking that pretends to establish a branch in the territory of another Member State shall communicate it to the Directorate General of Insurance and Pension Funds, enclosing the information regulatory established.

2. In the maximum period of three months from the reception of the communication mentioned in the previous paragraph, the Directorate General of Insurance and Pension Funds shall inform about this point to the supervisory authority of the host Member State and shall enclose a certificate attesting that the insurance undertaking holds the solvency capital requirement and the minimum capital requirement, calculated according to the established in this Law and in its development regulation, and shall inform of such sending to the insurance undertaking.

3. The Directorate General of Insurance and Pension Funds could refuse to send such information when, considering the documentation presented by the insurance undertaking, it has reasons to doubt of the suitability of its system of governance, of its financial situation or of the fit and proper of the general attorney, according to the established in article 38. The refusal to send the information to the host Member State shall be reported to the insurance undertaking, which could apply to the Courts. After a period of three months without having received the explicit decision, the communication of information shall be construed as refused.

4. If the supervisory authority of the host Member State informed the Directorate General of Insurance and Pension Funds on the conditions under which, because of general interest, such activities shall be pursued in the mentioned host Member State, the aforementioned Directorate General shall communicate them to the interested insurance undertaking.

5. The insurance undertaking could establish the branch and begin with its activities since the Directorate General of Insurance and Pension Funds informs of the conformity of the supervisory authority of the host Member State or of the performance conditions given by it. It could also begin with the activity after the period of two months from the communication made by the Directorate General of Insurance and Pension Funds which paragraph 2 refers to.

6. Any modification in the content of any of the information reported according to the established in paragraph 1 shall adjust to the proceeding ruled in this article. The insurance undertaking shall inform, also, to the supervisory authority of the host Member State where it is going to be established or is established and, both supervisory authority of the host Member State and the Directorate General of Insurance and Pension Funds, shall have a common period of a month to execute the duties attributed to them in this article.

7. The branch shall keep its documentation in the host Member State where the documents could be claimed and delivered to.

Article 48. *Communication to operate under freedom to provide services.*

1. Any Spanish insurance undertaking that pretends to pursue for the first-time activities under the regime of freedom to provide services in one or more Member States shall inform of the project to the Directorate General of Insurance and Pension Funds, declaring the nature of the risks and commitments it intends to cover.

2. The Directorate General of Insurance and Pension Funds shall communicate the information received according to the established in the previous paragraph in a maximum

period of a month, from its reception, to the Member State or States where the insurance activity is intended to be pursued under the regime of freedom to provide services. The contents of this communication shall be regulated.

3. The insurance undertaking could begin its activity from the certified date when the Directorate General of Insurance and Pension Funds informs that it has sent the communication mentioned in paragraph 2.

4. Any modification of the nature of the risks or commitments the insurance undertaking intends to cover under the regime of freedom to provide services shall adjust to the proceeding and requirements established in the previous paragraphs.

Article 49. *Statistical information relative to the cross-border activities of the Spanish insurance undertakings.*

The Spanish that operate under freedom of establishment or freedom to provide services regime shall inform the Directorate General of Insurance and Pension Funds of the statistical information that is regulatory established, which may be sent, in a reasonable period, to the supervisory authorities of the interested Member States so requesting.

Section 5. Activity of the Spanish insurance and reinsurance undertakings in third countries

Article 50. *Creation of undertakings and other operations in third countries.*

1. The creation by Spanish insurance and reinsurance undertakings of foreign subsidiaries, the acquisition of the condition of holding of foreign undertakings, the establishment of branches and, where appropriate, the activity under the freedom to provide services in countries which are not members of the European Union shall require communication to the Directorate General of Insurance and Pension Funds with a month's notice.

When such activities may damage the financial situation and the solvency of the undertaking, the aforementioned Directorate General, may agree with reasons, in a period of a month, the prohibition of such activities and the establishment of conditions for its performance.

2. If after the said period opposition has not been presented, the performance of the operation shall be reported to the Directorate General of Insurance and Pension Funds once it has been made effective.

CHAPTER II
Taking-up and pursuit of the activity in Spain of insurance and reinsurance undertakings from other Member States of the European Union

Section 1. General provisions for insurance and reinsurance undertakings

Article 51. *Insurance and reinsurance undertakings from other Member States that can operate in Spain.*

1. The insurance undertakings with head office in other Member States which have obtained authorisation to pursue business in their home State, may pursue its activities in Spain under the freedom of establishment or under freedom to provide services regime.

The insurance undertakings excluded from the scope of application of the Directive 2009/138/CE of the European Parliament and the Council, of 25 November 2009 on life insurance, taking-up and pursuit of the insurance and reinsurance activities and its pursuit (Solvency II), shall not invoke the stated in the previous paragraph, according to the established in the articles 4 and 7 nor the bodies governed by public law listed in the articles 8 and 10 of the aforementioned Directive.

2. The insurance undertakings mentioned in the first paragraph of paragraph 1 shall respect the conditions given because of general interest and those of chapter VII of section III, on market behaviour which, if that is the case, are of application. They shall present, in the same terms and conditions as the Spanish insurance undertakings, all the documents requested by the Directorate General of Insurance and Pension Funds in order to verify the compliance in Spain with the Spanish rules of application.

3. The reinsurance undertakings with head office in other Member States which have obtained authorisation to operate in the State of origin, may pursue their activities in Spain under the freedom of establishment or freedom to provide services regime, without needing administrative authorisation or prior notice, even though they shall comply with the conditions

given for general interest reasons and those of supervision which, if that is the case, are of application. They shall present, in the same terms and conditions as the Spanish insurance undertakings, all and each of the documents that are required by the Directorate General of Insurance and Pension Funds in order to verify that they comply in Spain with the Spanish rules that are of application.

4. The contract information and the other information that the Directorate General of Insurance and Pension Funds is entitled to request or which shall be sent by the insurance undertakings with head office in another Member State that pursue business in Spain under the freedom of establishment or of freedom to provide services regime shall be presented in Spanish.

Article 52. *Compliance with the legal provisions by the insurance and reinsurance undertakings operating in Spain under freedom of establishment or of freedom to provide services regime.*

1. If the Directorate General of Insurance and Pension Funds verifies that an insurance or reinsurance undertaking pursuing business in Spain under the freedom of establishment or of freedom to provide services regime does not comply with the Spanish provisions that are of application, it will be required to fit its action to the Spanish legal system. In default of the necessary fitting by the undertaking, the Directorate General of Insurance and Pension Funds shall inform the supervisory authority of the origin State Member in order to adopt the necessary measures for the insurance or reinsurance undertaking to terminate that irregular situation and to report such measures to the Directorate General of Insurance and Pension Funds.

2. If, due to the lack of adoption of the necessary measures or because those adopted were not suitable, the breach of the Spanish legal system persists, the Directorate General of Insurance and Pension Funds may adopt the prohibition measures of policies and tariffs agreed in article 120 and the special control measures of the Chapter II of Section VI that, in both cases, are of application, after informing the supervisory authorities of the home member state.

Also, the Directorate General of Insurance and Pension Funds or the supervisory authority of the Home Member State, may remit the subject to the European Insurance and Occupational Pensions Authority and ask for assistance.

3. In case of emergency, the measures mentioned in the previous paragraph could be adopted by the Directorate General of Insurance and Pension Funds without need of requirement or of information required by paragraph 1.

Article 53. *Taxes and additional fees.*

The insurance contracts celebrated under the freedom of establishment or of freedom to provide services regime that cover localised risks allocated in Spain or that undertake commitments in Spain shall be subject to the additional fees in favour of the Insurance Compensation Consortium to cover its needs in the pursuit of its duties of compensation of losses derived from extraordinary events happening in Spain, of national guarantee fund in the motor vehicle liability insurance derived from the traffic of motor vehicles and in its condition of liquidator of insurance undertakings, as well as of other taxes and additional fees requested by Law under the same conditions as the contracts subscribed with Spanish insurance undertakings.

Article 54. *Motor vehicles liability insurance.*

The insurance undertakings that operate in Spain under the regime of freedom of establishment or freedom to provide services in the motor vehicle liability insurance, excluding the carrier’s liability, shall be integrated in the Spanish Motor Insurers Bureau (OFESAUTO).

Section 2. Activity under the freedom of establishment regime of the insurance and reinsurance undertakings with head office in other Member States

Article 55. *Conditions of taking-up and pursuit of the activity under the regime of freedom of establishment.*

1. Before a branch in Spain of an insurance undertaking of another Member State is established and begins pursuing its activity under a regime of freedom of establishment, the Directorate General of Insurance and Pension Funds could inform the supervisory authority of the Home Member State of the terms and conditions why, because of general interest, the activity shall be pursued in Spain.

The aforementioned Directorate General shall have a period of two months to do it, counting from the reception from the supervisory authority of the Home Member State the communication stated in article 47.2.

The branch may be established and begin with its activity in Spain since the supervisory authority of the Home Member State reports the acceptance of the conditions stated by the Directorate General of Insurance and Pension Funds. It could also start when, after the aforementioned period of two months, it has not received such communication.

2. Any modification in the branch of any of the aspects stated in article 47.1 shall be bound to the same proceeding, but the period, which shall be common, shall be reduced to a month.

Article 56. *Supervision of branches in Spain by the authorities of the home Member State.*

When the insurance or reinsurance undertaking authorised in another Member State pursues its activity in Spain by means of a branch, the supervisory authorities of the Home Member State could proceed, by themselves or by the persons who have been appointed for it, prior information to the Directorate General of Insurance and Pension Funds, to the verification of the necessary information to perform the financial supervision of the undertaking.

The Directorate General of Insurance and Pension Funds shall participate in such verification in the terms and conditions established by regulatory development.

The European Insurance and Occupational Pensions Authority could participate in the verifications made together with the other acting supervisors.

Section 3. Activity under freedom to provide services of insurance and reinsurance undertakings with head office in other Member States

Article 57. *Conditions of taking-up and pursuit of the activity under the freedom to provide services regime.*

The insurance undertakings with head-office in another Member State of the European Union may start or, if that is the case, modify its activity in Spain under the freedom to provide services regime since they receive the communication that the supervisory authority of the Home Member State has sent the Directorate General of Insurance and Pension Funds the communication stated in article 48.2.

Article 58. *Specific requirements for the motor vehicle liability insurance.*

1. The insurance undertakings with head-office in another State of the European Union that intend to operate in Spain under the freedom to provide services regime covering the risks of the motor vehicle liability class of insurance, excluding the carrier’s liability, shall comply with the following requirement prior to beginning with its activity in Spain:

a) To communicate the Directorate General of Insurance and Pension Funds the name and address of a representative natural person that currently lives in Spain or of a legal person that is established in Spain, vested with the following faculties:

1. To deal with the claims made by damaged third parties. To such effects, they shall have enough powers as to represent the insurance undertaking, even for the payment of the compensations and to defend it before the Spanish Courts and administrative authorities.

2. To represent the insurance undertaking before the competent Spanish legal and administrative authorities in everything that concerns to the control of existence and the validity of the insurance policies covering the liability resulting from the traffic of land motor vehicles.

b) To formulate before the Directorate General of Insurance and Pension Funds the accountable express declaration that the insurance undertaking has become part of the Spanish Motor Insurers Bureau (OFESAUTO) and that it is going to apply the fees legally required in favour of the Insurance Compensation Consortium.

2. If the insurance undertaking had not appointed the representative stated in paragraph 1.a), the representative appointed in Spain for the processing and winding-up of the accidents occurred in another Member State shall assume its functions, when the damaged party has its residence in Spain.

Article 59. *Tax liabilities.*

The insurance undertakings with head-office in other State of the European Union that intend to operate in Spain under the regime of freedom to provide services shall be obliged to carry out withholdings or income on account and pay the amount in the Treasury, as well as to inform the Tax Administration, related to the operations that are made in Spain, under the terms established in the regulation on the personal income tax, on the corporation tax and on the income tax for non-residents.

Article 60. *Underwriting agencies.*

1. The insurance undertakings could subscribe binding authority agreements with Spanish legal persons for the underwriting of risks on behalf and on the account of those.

2. The underwriting agency in Spain shall access to its activity after obtaining the administrative authorization of the Directorate General of Insurance and Pension Funds. The requirements and the proceedings to obtain and keep the administrative authorisation shall be regulatory develop.

3. Also, an administrative authorisation shall be necessary to enable an underwriting agency to operate for other insurance undertakings different from those initially authorised as well as to underwrite business in other risks different to those initially requested and authorised with a certain undertaking which is already authorised. The requirements and the proceeding to obtain the extension of the administrative authorisation shall be regulatorily developed.

4. The regulation on qualified holdings included in articles 85 to 99 shall be applicable to the underwriting agencies, understanding that the mentions there made to the insurance undertakings are made for underwriting agencies, when the endorser or the acquirer is an insurance undertaking, an insurance broker, a reinsurance broker or another underwriting agency.

5. The name "underwriting agency" is reserved to the undertakings defined in this article. In the mercantile documents of subscription of insurance policies and the publicity that the underwriting agencies make with general character or online there shall be included their nature of underwriting agency and the insurance undertaking or undertakings they have celebrated the binding authority agreements with.

6. The consumer attention department and services of the insurance undertakings shall deal and solve the claims and queries that are presented related to the action of the underwriting agencies in the terms established by the regulation on protection of financial services consumers.

7. The Directorate General of Insurance and Pension Funds shall withdraw the administrative authorisation granted to the underwriting agencies in the terms established in the paragraph 3, letters a) and b), paragraph 4, letters a), b), d), e) and f), and in the paragraphs 6 and 7 of article 169, considering that the references there included to the insurance undertakings are made for the subscription agencies.

The cause of withdrawal of the administrative authorisation because of effective absence of activity of this Law shall refer to all the binding authority agreements subscribed by the subscription agency have been withdrawn.

8. The special control measures included in article 160 shall be applicable to the underwriting agencies whenever they are of application.

9. The regime of breaches and penalties shall be established in the section VIII of this Law.

CHAPTER III
Taking-up and pursuit of the activity in Spain of insurance and reinsurance undertakings from third countries

Section 1ª Insurance undertakings from third countries

Article 61. *Authorisation of branches of insurance undertakings from third countries.*

1. The Minister of Economy and Competitiveness could authorise the insurance undertakings with head office in third countries outside the European Union to establish branches in Spain, whenever they comply with the requirements that are regulatory established.

2. The maximum period to decide on the proceeding and to communicate the decision is six months. After this period without having been communicated an express decision, the application made shall be construed as refused.

3. Once the administrative authorisation is granted, the branch, its general attorney and the person who effectively run the company shall be registered in the administrative register regulated by Article 40.

4. The requirements regulatory established shall not be required for the branches established in Spain of insurance undertakings with head-office in Switzerland, operating in

non-life insurance.

Article 62. *Limitations to the activity in Spain of the insurance undertakings from third countries.*

It is forbidden to contract in Spain direct insurance operations with insurance undertakings from third countries outside the European Union or to do through private insurance brokers that pursue their activity for those with the exception when such insurance undertakings celebrate contracts via branches legally established in Spain.

Section 2. Reinsurance undertakings from third countries

Article 63. *Branches of reinsurance undertakings from third countries.*

1. The establishment of branches in Spain of reinsurance undertakings from third countries shall require the prior administrative authorisation from the Minister of Economy and Competitiveness, which shall be granted according to the established in article 61, for life reinsurance activities, non-life reinsurance activities or for all kinds of reinsurance activities.

2. The authorisation of the branches shall determine the registration in the administrative register foreseen in article 40.

Article 64. *Activity in Spain of the reinsurance undertakings from third countries from the home country.*

The reinsurance undertakings of third countries could pursue their activity in Spain from the country where they have their head-office, but nor from branches located from outside Spain, even when established in the European Union.

SECTION III
Pursuit of the activity

CHAPTER I
System of governance of the insurance and reinsurance undertakings

Article 65. *General requirements of the system of governance.*

1. All the insurance and reinsurance undertakings shall have an efficient system of governance that guarantees the sound and prudent management of the activity and that is proportional to the nature, scale and complexity of its operations.

2. The system of governance shall have written policies on corporate governance that include, amongst others, a transparent and appropriate organization structure, with a clear distribution and an appropriate separation of duties, efficient mechanisms to guarantee the reporting of information, and remuneration policies and practices appropriate to the characteristics of the undertakings.

3. The system of governance of the undertaking shall include the following duties: risk management, compliance and internal and actuarial audit.

The system of governance shall establish efficient mechanisms that guarantee the compliance of the requirements of fit and proper of the person who effectively run the undertaking or who have other key functions involved in it, foreseen in article 38 and of the requirements established in this Law and in the development regulation related to risk management, the internal prospective risk assessment, internal control and compliance, internal audit, actuarial function and outsourcing of functions and activities.

4. The ultimate responsible of the system of governance shall be the administration body of the insurance and reinsurance undertakings.

5. The Directorate General of Insurance and Pension Funds shall verify the system of governance of the insurance and reinsurance undertakings and shall assess the emerging risks identified by such undertakings that could affect to its financial soundness, with the possibility of requesting to them to adopt the necessary measures to improve and consolidate its system of governance.

Article 66. *Risk management system, own risk and solvency assessment, internal control system and system of governance duties.*

1. The insurance and reinsurance undertakings shall establish an efficient risk management system including the strategies, proceedings and procedures of information necessary to identify, measure, control, manage and report on an ongoing basis the risks that, independently or jointly, are or may be exposed to, and their interdependences.

That risk management system shall be effective and shall be duly integrated in the organization structure and in the decision-making process of the undertaking, and it shall duly consider the persons who effectively run the undertaking or have other key functions involved in the system of governance.

The insurance and reinsurance undertakings shall establish a risk management function that ease the implementation of the risk management system.

2. As a part of its risk management system, the insurance and reinsurance undertakings shall conduct an own risk and solvency assessment periodically and, in any case, immediately after any significant change in its risk profile.

The own risk and solvency assessment shall be an integral part of the business strategy and shall be considered in the strategic decisions of the undertaking on an ongoing basis.

The insurance and reinsurance undertakings shall inform the Directorate General of Insurance and Pension Funds the results of each own risk and solvency assessment, in the terms that are regulatorily established.

The own risk and solvency assessment will not be used to calculate or to adjust the capital requirement.

3. Insurance and reinsurance undertakings shall establish, document and control at any time an internal control system suitable for its organization.

Such system shall include, at least, accountancy and administrative procedures, an appropriate structure, appropriate reporting arrangements at all levels of the undertaking and a compliance function.

The compliance function shall include advising the administrative or management body about the compliance with the legal, regulatory and administrative provisions affecting the undertaking, as well as about the compliance with its internal regulation. Likewise, it shall include the assessment of the impact of any modification in the legal environment on the operations of the undertaking and the identification and assessment of compliance risk.

4. The insurance and reinsurance undertakings shall count with an efficient internal audit function that shall include an evaluation of the adequacy and effectiveness of the internal control system and of other elements of the system of governance of the undertaking and shall be developed according to the established in the organization, supervision and solvency regulation of the insurance and reinsurance undertakings and of the account audit activity.
The internal audit duty shall be objective and independent from the operational functions.
Any findings and recommendations derived from the internal audit shall be reported to the administrative or management body, who shall establish which action to adopt related to each one of them and shall guarantee that such actions are carried out.

5. Insurance and reinsurance undertakings shall count with an effective actuarial function.

The actuarial function shall be performed by persons having enough knowledge of the actuarial and financial mathematics, according to the nature, scale and complexity of the risks inherent to the activity of the insurance or reinsurance undertaking, and who could demonstrate the relevant experience with applicable professional and other standards.

6. The risks to be included in the risk management system shall be regulatory established as well as the scope of the internal assessment and of the actuarial function.

Article 67. *Outsourcing of functions.*

1. The insurance and reinsurance undertakings may outsource its critical or significant functions or activities except when the following circumstances take place:

a) Materially impairing the quality of the system of governance of the undertaking concerned,

b) The operational risk increases unduly, it diminishes the capacities of the Directorate General of Insurance and Pension Funds to supervise the compliance of the obligations of the undertaking or affects the continuous and satisfactory service for the policyholders.

2. With the aim of avoiding these negative effects, a person responsible of the outsource duty or activity shall be appointed in the undertaking who has enough experience and knowledge as to check the action of the service suppliers.

3 The insurance and reinsurance undertakings shall previously inform the Directorate General of Insurance and Pension Funds of the outsourcing of critical or significant functions or activities, as well as any significant later change related to such functions or activities. This Directorate General may oppose to the same, in a period of a month from the reception of the notice, when any of the cases established in paragraph 1 happen.

The changes relative to the responsible of the function, to the service supplier or to the scope of the activities outsourced are considered significant.

4. In any case, the insurance or reinsurance undertakings that outsourced part of its

functions shall still answer for the compliance of the obligations established in this Law and in its regulatory development.

CHAPTER II
Valuation of the assets and liabilities, financial guarantees and investments.

Section 1. Valuation of assets and liabilities, and rules on technical provisions

Article 68. *Valuation of assets and liabilities.*

The insurance and reinsurance undertakings shall value the assets and liabilities according to the following rules:

1. The assets shall be valued at the amount for which they could be exchanged between the knowledgeable willing parties in an arm’s length transaction.

2. Liabilities shall be valued at the amount for which they could be transferred or settled between the knowledgeable willing parties in an arm’s length transaction.

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

Article 69. *Technical provisions.*

1. The insurance and reinsurance undertakings shall register amongst its debts the technical provisions necessary to show all the obligations derived from the insurance and reinsurance contracts.

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

3. The calculation of the technical provisions shall make use of and be consistent with the information provided by the financial markets and the generally available date on underwriting risks (market consistency).

4. The technical provisions shall be valued in a prudent, eligible and objective manner.

5. The technical provisions to report and the techniques, methods and hypothesis for its calculation, as well as the conditions of application the matching adjustment to the relevant risk-free interest rate term structure and the volatility adjustment to the relevant risk-free interest rate term structure shall be established by regulatory development.

6. When the insurance or reinsurance undertaking wishes to apply the matching adjustment stated in the previous paragraph, it shall obtain a prior authorisation of the Directorate General of Insurance and Pension Funds, in the terms and conditions established by the rules of direct application of the European Union.

The maximum period to decide on the proceeding of prior authorisation and notice of the order is of six months. After that period without having reported the express order, the application presented shall be considered as dismissed.

Article 70. *Requirement of increase of the amount of the technical provisions.*

1. At the request of the Directorate General of Insurance and Pension Funds, the insurance and reinsurance undertakings shall prove the adaptation of tier of its technical provision, as well as the application and suitability of the methods used and the appropriateness of the base statistical data used.

2. When the amount and the calculation of the technical provision does not comply with the established in the applicable provisions, the Directorate General of Insurance and Pension Funds could require to such undertakings to increase the amount of the technical provisions until placing them at the required tier.

Such requirements shall not constitute a special control measure of those established in chapter II of section VI. The faculties of supervision related to the technical provisions in a procedure of special control measures shall apply without prejudice of the previous paragraph.

Section 2. Own funds

Article 71. *Establishment of the own funds.*

1. The own funds of the insurance and reinsurance undertakings shall comprise the sum of basic and the ancillary own funds. The elements integrating each one of them shall be defined by regulatory development.

The amount of each element of the ancillary own funds the undertaking wishes to include in the own funds, for solvency purposes, shall show its capacity to absorb the losses and shall be based on prudent and realistic hypothesis and shall be bound to the prior authorisation of the Directorate General of Insurance and Pension Funds in the terms and conditions that are established in the rules of direct applications in the European Union.

The prior authorisation of the Directorate General of Insurance and Pension Funds shall approve the monetary amount of each element of the ancillary own funds, or the methods to calculate such amount. In this latter case, the authorisation shall extend to the specific amount according to this method and, also, it shall establish its validity period.

The maximum period to solve the proceeding of the prior authorisation and the notice of the order is of three months, unless exceptional circumstances arise, in which case it could be extended to six. After that period without having reported the express order the application presented shall be considered dismissed.

2. By regulatory development, the cases and the conditions where the surplus funds constituted by the accumulated profits that have not been directed to distribution to the holders and beneficiaries of the insurance and that comply with the criteria established in it to be classified as own funds of tier 1 according to article 72 could be established, shall not be considered as obligations derived from the insurance or reinsurance contracts.

Article 72. *Classification of own funds in tiers.*

1. Own-fund items shall be classified into three tiers: tier 1, tier 2 and tier 3. The criteria of classification in these tiers shall be established in the rules of direct application in the European Union.

2. The insurance and reinsurance undertakings shall classify its own funds according to the said criteria. To such purpose, they shall be addressed to the list of the elements of own funds ruled in the rules of direct application in the European Union.

3. The limits applicable to the tiers 1, 2 and 3, the obligations of the insurance undertakings related to the classifications of own funds and the authorisation proceeding by the Directorate General of Insurance and Pension Funds for the inclusion of the elements not incorporated to the list of the previous paragraph shall be established by regulatory development, without prejudice of the rules of direct application of the European Union.

Article 73. *Eligibility of the own funds.*

1. Basic own funds shall only be eligible for the coverage of the solvency capital requirement and the minimum capital requirement.

2. Ancillary own funds shall only be eligible for the coverage of the solvency capital requirement. Ancillary own funds shall not be allowed to cover the minimum capital requirement.

Section 3. Solvency capital requirement

Article 74. *Calculation of the solvency capital requirement.*

1. The solvency capital requirement shall be calculated on the presumption that the undertaking will pursue its business as an ongoing concern and shall be equal to the value at risk of the basic own funds of an insurance or reinsurance undertakings, subject to a confidence level of 99,5% over a one-year period.

2. The insurance and reinsurance undertakings shall calculate the solvency capital requirement at least once a year and report of that calculation to the Directorate General of Insurance and Pension Funds.

3. The insurance and reinsurance undertakings shall cover, at any moment, the solvency capital requirement with the own funds, both basic and ancillary that are admissible.

The admissible amount of the own funds for the coverage of the solvency capital requirement shall be equal to the addition amount of tier 1, the admissible amount of tier 2 and the admissible amount of tier 3.

4. The calculation of the solvency capital requirement shall be ruled by regulatory development.

5. Additionally, the insurance or reinsurance undertaking shall report, in a period of a month since the variations are detected, this information when its risk profile or the own funds deviates significantly from the hypothesis acting as base for the last information provided to the Directorate General of Insurance and Pension Funds.

Without prejudice of this obligation, the Directorate General of Insurance and Pension Funds could request the insurance or reinsurance undertaking to rework and present new calculations, related to the information that must be reported, when there are evidences that the risk profile of the undertaking has deviated significantly since the date of reference of the last information provided.

Article 75. *Methods of calculation the solvency capital requirement.*

1. The solvency capital requirement could be calculated according to the following methods:

a) Using the standard formula, with the possibility of applying simplifications and specific parameters, if the case.

b) Using full or partial internal models.

2. The use of internal models and specific parameters shall require a prior administrative approval, request by the undertaking. The maximum period to decide on the proceeding and report the order is six months. After that period without having reported the express order the application presented shall be considered dismissed.

3. The calculation methods of the solvency capital requirement, the authorisation and application proceedings and the effects of breaching them shall be developed by regulatory development and by the rules of direct application of the European Union.

Article 76. *Demand of capital add-on.*

Following the supervisory review process and with exceptional character, the Directorate General of Insurance and Pension Funds could request the supervised insurance or reinsurance undertaking, by a motivated order, capital add-on. The cases a capital add-on, the applicable proceeding and the periods of review shall be developed by regulatory development and by the direct application of rules of the European Union.

Article 77. *Liability of the administrative, management and supervisory body related to the internal models.*

1. The administrative, management and supervisory bodies of the insurance and reinsurance undertakings shall give their express agreement to the request of authorisation of the internal model sent to the Directorate General of Insurance and Pension Funds, and similarly, in that related to the request of authorisation of any later modification of that model.

2. It is responsibility of the administrative, management and supervisory bodies of the undertakings to introduce the necessary systems that guarantee the permanent correct working of the internal model.

Specifically, they shall be responsible for ensuring the ongoing appropriateness of the design and operations of the internal model, and that the internal model continues to appropriately reflect the risk profile of the insurance and reinsurance undertakings concerned.

Section 4. Minimum capital requirement

Article 78. *Minimum capital requirement.*

1. The insurance and reinsurance undertakings shall hold basic own funds eligible to cover the minimum capital requirement which shall match with the amount of the basic own funds eligible below which the holders and beneficiaries, in case of continuing with their activity, would be exposed to an inacceptable risk tier.

The eligible of the basic own funds for the coverage of the minimum capital requirement shall be equal to the addition of tier 1 and the eligible number of elements of the basic own funds classified in tier 2.

2. The minimum capital requirement shall be calculated as a linear function of a group or sub-group of the following variable nets of reinsurance: the technical provision, the written premiums, the risk capital, the deferred taxes and the administration expenses of the undertaking. The linear function shall be calibrated to the value-at-risk of the basic own funds of an insurance or reinsurance undertaking subject to a confidence level of 85% over a one-year period.

3. The minimum capital requirement shall not be less than a 25 per 100 and shall not exceed a 45 per 100 of the share capital requirement of the undertaking, including any capital add-on requirement demanded.

In any case, they shall an absolute floor of:

a) 2,500,000 Euros when related to insurance undertakings that operate in classes different to life insurance, including the captive insurance undertakings, except when all or some of the risks of civil liability, credit or caution [classes 10 to 15 of the Annex A). a) of this Law] are covered, in which case it shall not be below 3,700,000 Euros;

b) 3,700,000 Euros for life insurance undertakings, including the captive insurance undertakings;

c) 3,6000,000 Euros when related to reinsurance undertakings, except in the case of the captive reinsurance undertakings, which minimum capital requirement shall not be below 1,200,000 Euros;

d) The sum of the amounts established in letters a) and b) when related to insurance undertakings that simultaneously perform life insurance and non-life insurance.

4. For the mutual undertakings under a regimen of supplementary members' calls and the co-operative undertakings, the minimum absolute amount of the minimum capital requirement shall be of three fourths of that required for the other undertakings.

When the undertakings mentioned do not operate in civil liability, credit or caution liability classes nor they perform an activity exclusively of reinsurance, and the annual amount of the premiums or quotas does not exceed five million Euros for three consecutive years, the minimum capital requirement could not be less than 800,000 Euros if they operate in life insurance, 200,000 Euros if they operate in other damage to property, legal expenses and funeral expenses, 300,000 Euros if they operate in the other classes. In case the undertaking exceeds the amount of five million Euros during three consecutive years, with effects from the fourth year, the minimum amount foreseen in the previous paragraph shall apply.

However, the mutual and mutual-type undertakings benefiting from the said regime shall be excluded of the minimum absolute amount of the minimum capital requirement when they do not operate in life, civil liability, credit or caution classes nor they perform activities exclusively of reinsurance and the annual amount of premiums and quotas does not exceed 750,000 Euros.

5. For the friendly societies that have not obtained the administrative authorisation to operate by classes, the minimum absolute amount of the minimum capital requirement shall be of three fourths of that requested in the first paragraph of the previous paragraph.

However, for the mutual and mutual-type undertakings that include in their statutes the possibility of paying supplementary of quotas or to reduce the benefits and which annual amount of the quotas does not exceed five million Euros during three consecutive years, the minimum absolute amount of the minimum capital requirement shall be that foreseen in the second paragraph of the previous paragraph. In case the undertaking exceeds the amount of five million Euros for three consecutive years, from the fourth the minimum amounts shall be those established in the previous paragraph.

The friendly societies which exclusive subject is to grant benefits or teaching or education allowances shall be exempt of the minimum absolute amount of the minimum capital requirement and, in any case, those friendly societies that do not operate by classes, that include in their statutes the possibility to pay supplementary of quotas or to reduce the benefits, that do not cover life risks and which quota amount does not exceed 750,000 Euros.

To the effects of this paragraph, the risks covered by these friendly societies shall be assimilated to the classes of insurance in the way foreseen by regulatory development for the capital solvency requirement.

6. The insurance or reinsurance undertakings shall calculate the minimum capital requirement at least quarterly and shall report the results of this calculation to the Directorate General of Insurance and Pension Funds. Despite the previous, it shall not be necessary to quarterly calculate the solvency capital requirement, for the application of the limits foreseen in the first paragraph of paragraph 3.

Section 5. Investments

Article 79. *Rules on investment of the insurance and reinsurance undertakings.*

1. The insurance and reinsurance undertakings shall invest its resources according to the prudent person principle. They shall invest only in assets and instruments whose risks the undertaking concerned can properly identify, measure, monitor, manage, control and report to the Directorate General of Insurance and Pension Funds. Such risks shall be considered in the valuation of the global needs of solvency in the own risk and solvency assessment.

2. The rules on investment shall be developed by regulatory development and by the direct application rules of the European Union.

CHAPTER III
Public disclosure on the financial and solvency condition.

Article 80. *The solvency and financial condition report.*

1. The insurance and reinsurance undertakings shall annually publish a report on their financial and solvency situation. The contents, manner and the deadlines of publication of this report shall be established by regulatory development.

2. The insurance and reinsurance undertakings shall have suitable systems and structures to fulfil with the requirements related to the obligations of information and publication of the solvency and financial condition report, and shall have a written policy to guarantee the permanent suitability of all the information published.

The solvency and financial condition report shall be approved by the administration body of the undertaking prior to its publication.

Article 81. *Waiver of disclosure of information in the solvency and financial condition report.*

1. The Directorate General of Insurance and Pension Funds could authorise the insurance and reinsurance undertakings not to disclose information when by disclosing such information, the competitors of the undertaking would gain significant undue advantage or when there are obligations to policy holder or other counterparty relationships binding an undertaking to secrecy or confidentiality.

In this case, the undertaking shall present a statement related to this effect in its solvency and financial condition report and shall state the reasons.

2. The stated in the previous paragraph shall not apply to the information relative to the capital's management which contents shall be developed by regulatory development.

Article 82. *Updated on the report on the solvency and financial condition report and additional voluntary information.*

1. In the event that any major development significantly affects the information published in the solvency and financial condition report, the insurance and reinsurance undertakings shall disclose the appropriate information on its nature and effects. What is considered as a major development and the measures that the Directorate General of Insurance and Pension Funds shall be established by regulatory development.

2. The insurance and reinsurance undertakings may disclose, on a voluntary basis, any information or explanation related to its financial and solvency situation is nor already required to be disclosed according to articles 80 and 81 of this law and its regulatory development and in paragraph 1 of this article.

CHAPTER IV
Accounting obligations

Article 83. *Accounting of the insurance and reinsurance undertakings.*

1. The accounting of the insurance and reinsurance undertakings shall be governed by its specific rules and, in default, by those established in the Code of Commerce, in the Spanish National Chart of Accounts and in the other provisions of the mercantile legislation related to accounting.

2. The economic activity of any kind of insurance and reinsurance undertaking shall match with the calendar year.

The specific accounting rules stated in the previous paragraph, the accounting obligation of the insurance undertakings, the accounting principles of mandatory application, the rules on formulation of the annual accounts, the assessment criteria of the elements integrating it, as well as the approval, checking, deposit and advertising of such accounts shall be established by regulatory development.

3. The Minister of Economy and Competitiveness, prior report of the Institute of Accounting and Accounts Auditin and of the Consultation Board on Insurance and Pensions Funds, could pass the specific rules of accounting stated in paragraph 1, especially the Accounting Plan for insurance and reinsurance undertakings, as well as their modifications and ancillary rules.

The Minister of Economy and Competitiveness could entrust the Directorate General of Insurance and Pension Funds with the development of the specific accounting rules of the insurance and reinsurance undertakings and their adaptation to the accounting standards that are applicable, prior report of the Institute of Accounting and Accounts Auditing and of the consultation board on insurance and pensions funds.

Article 84. *Formulation of the consolidated financial statements of the insurance and reinsurance undertakings' groups.*

1. The established in Article 43 bis of the Code of Commerce shall be of application to the insurance and reinsurance undertakings' groups defined in paragraph 3 of the present article.

Despite this fact when, according to the established in the said article, the international accounting standards adopted by the European Union Regulations are not applied, the formulation of the consolidated financial statements of the insurance and reinsurance undertakings' groups shall be governed by its specific rules and, in default, by those established in the Code of Commerce and in its development rules.

2. The establishment of the specific applicable rules for the formulation of consolidated financial statements of the insurance and reinsurance undertakings' groups shall be made according to the established in article 83.3. Such establishment shall be made in compliance with the principles on the presentation of accounts of undertakings' groups that are included in the Book I of the Code of Commerce and its development provisions, being able to include the adaptations of required compliance that are necessary for the groups of insurance and reinsurance undertakings.

3. To the effects of this article, groups of insurance and reinsurance undertakings shall be construed as such where any of the following circumstances meet:

a) The dominant undertaking is an insurance or reinsurance undertaking.

b) The dominant undertaking is an undertaking which main activity consists on holding participations in insurance and reinsurance undertakings.

c) When being integrated by insurance and reinsurance undertakings or by other kind of undertakings, the activity of the first is the most significant of the group.

The concept of group foreseen in the present article to the effects of formulation of consolidated financial statements, is independent of that foreseen for the supervision of groups in the section V of this Law.

CHAPTER V
Regime of participations held in insurance and reinsurance undertakings

Article 85. *Obligations relative to the acquisition of hold participations in insurance and reinsurance undertakings.*

1. Any natural or legal person who, by itself or acting in agreement with others, has acquired directly or indirectly a hold participation in an insurance or reinsurance undertaking, in a way that the percentage holding of capital or of voting rights is equal or higher to a five per cent, whenever the following paragraph 2 is not of application, shall report in writing, in a maximum period of ten working days to be counted from the moment of acquisition, to the Directorate General of Insurance and Pension Funds and to the participating undertaking, stating the amount of the participation reached.

2. Any natural or legal person who, by itself or acting in agreement with others, has decided to acquire, directly or indirectly, even in the cases of capital increase or decrease, mergers and divisions, a qualifying holding in an insurance or reinsurance undertaking or to increase its participation holding significantly, so the proportion of its voting rights or of participation holding in the capital becomes equal or higher to the limits of twenty per cent, thirty per cent or fifty per cent and also when, in virtue of the acquisition the insurance or reinsurance undertaking could be controlled by the acquirer, shall be previously reported in writing to the Directorate General of Insurance and Pension Funds, stating the amount of such holding, the terms and conditions of the acquisition and the maximum period to make the operation and shall provide with the documentation regulatory established.

This obligation also corresponds to the insurance or reinsurance undertaking being acquired or increased in the referred qualifying holding.

The Directorate General of Insurance and Pension Funds shall assess the fitness and property of whom intends to acquire or increase its holding and the financial soundness of the acquisition or increase suggested according to the criteria and the proceeding that are regulatory established. The information that is provided shall be relevant for the assessment, and proportional and appropriate to the nature of whom intends to acquire or increase its holding and to the proposed acquisition. The Directorate General of Insurance and Pension Funds could oppose to the acquisition and present objections to the said.

3. To the effects of establishing whether a participation is a qualifying holding in an insurance or reinsurance undertaking, shall not be taking into account the voting rights nor the percentage of the share capital resulting from an issuance operation or resulting from the allocation of financial instruments, nor the allocation of financial instruments based on a firm

commitment, whenever such rights are not exercised to affect the administration of the issuer and whenever they are transferred in a period of a year from the acquisition. The shares, contributions and voting rights to include in the calculation of a participation shall be regulatory established.

In any case, significant influence shall be construed as the possibility of appointing or dismissing any member of the administrative or management body of the insurance undertaking.

4. The established in this article for the insurance and reinsurance undertakings shall be construed without prejudice of the application of the regulation on public offers of acquisition and information on qualifying holdings included in the Law 24/1988, of 28 July, on the Stock Market and in its development regulation and without prejudice of the application of the regulation on control of economic mergers included in the Law 15/2007, of 3 July, on Competence Defence.

Article 86. *Breach effects.*

1. When any of the acquisitions or increases regulated in article 85 is made, without having previously informed the Directorate General of Insurance and Pension Funds or, having informed, the period regulatory set out had not transcurred or if an express opposition by the Directorate General of Insurance and Pension Funds had been received, the following effects shall arise:

a) The political rights corresponding to the participations irregularly acquired shall not be exercised. If so, the corresponding votes shall be void and the agreements shall be challengeable according to the established in chapter IX of section V of the rewritten text of the Law on Capital Companies, approved by the Royal Legislative Decree 1/2010, of 2 July, and for which the Directorate General of Insurance and Pension Funds shall be legitimized.

b) If necessary, any or all of the special control measures foreseen in articles 160 to 163 shall be adopted on the insurance or reinsurance undertaking.

c) Also, the corresponding administrative penalties shall be imposed according to the established in chapter II of section VIII.

2. When it is demonstrated that the holders of a qualifying holding exercise an influence that undermines the sound and prudent management of an insurance or reinsurance undertaking, that seriously damages its financial situation, or who are no longer fit and proper, there could be adopted all and each of the measures foreseen in the previous paragraph, even though the suspension of voting rights could not exceed three years. Exceptionally, the Minister of Economy and Competitiveness, on the motion of the Directorate General of Insurance and Pension Funds, could withdraw the authorisation.

Article 87. *Obligations relative to the reduction of a qualifying holding in an insurance or reinsurance undertaking.*

1. Any natural or legal person who has decided to stop having, directly or indirectly, a qualifying holding in any insurance or reinsurance undertaking, shall previously report in writing to the Directorate General of Insurance and Pension Funds and shall inform of the forecasted amount of the decrease in its holding. Such person shall also inform the Directorate General of Insurance and Pension Funds if it has decided to reduce its qualifying holding, in a way that the percentage of voting rights or of share capital is lower to a twenty, thirty or fifty per cent or that the person could lose control on the insurance or reinsurance undertaking.

This obligation also corresponds to the insurance or reinsurance undertaking in which the qualifying holding has been decreased or in which has been ceased to have such qualifying holding.

2. The breach of this duty of information shall be punished according to the established in Chapter II of section VIII.

Article 88. *Obligations of additional information.*

Insurance undertakings shall inform, when presenting their regular reporting, and also when required to do so by the Directorate General of Insurance and Pension Funds, the identity of the shareholders or members who have qualifying holdings, the amount of such and the alterations that take place in the shareholders. Specially, the information on qualifying holdings shall be obtained from the Annual General Meeting of shareholders, or from the information received in virtue of the obligations derived from the Law 24/1988, of 28 July, on the Stock Market.

CHAPTER VI

Company operations

Section 1. Portfolio transfer

Article 89. *Transfer of portfolio between insurance undertakings.*

1. The Minister of Economy and Competitiveness shall authorise the operation of portfolio transfer between insurance undertakings.

2. The decision on the request for authorisation shall be handed down in a period of six months after its reception at the Directorate General of Insurance and Pension Funds, or when the documents required are complete and, in any case, in the next twelve months after its reception. When the decision on the application is not handed down in such period, it shall be considered as refused. The proceeding of authorisation as well as the consequences of the transfer of portfolio shall be established by regulatory development.

3. The portfolio transfer of insurance contracts between insurance undertakings could be:

a) Partial, when it consists of a group of policies included in one or more classes of insurance, grouped according to an objective criterion that should be clearly established in the transfer agreement with the conditions established by regulatory development.

b) Total, when it includes all the policies corresponding to one or more classes of insurance. In this case, the authorisation for the transfer shall declare the withdrawal of the administrative authorisation of the undertaking to operate in the class or classes transferred.

Section 2. Structural modification

Article 90. *Structural modifications.*

1. The Minister of Economy and Competitiveness shall be responsible for authorizing the transformation, merge, global transfer of assets and liabilities or division operations where an insurance undertaking takes part, or any agreement which has economic or judicial analogue effects on the previous. To these effects, and prior to granting the authorisation, a report shall be requested to the Bank of Spain, to the Executive Service of the Commission for the Prevention of Money Laundering and Financial Offences and to the National Securities Market Commission, with regard to their competences.

2. The request for authorisation shall be handed down in the next six months to its reception at the Directorate General of Insurance and Pension Funds, or when the documents required are complete and, in any case, in the next twelve months after its reception. When the decision on the request has not been handed down in such period, it shall be considered as refused. The other terms of the authorisation proceeding shall be established by regulatory development.

3. Anything not expressly regulated in this Law and it is development regulation and as far as it does not oppose to it, the mercantile regulation and, specifically, the established in the Law 3/2009, of 3 April, on structural modifications of the mercantile companies and in the cases where the legislation on co-operative companies shall apply to the transformation, merge, global transfer of assets and liabilities, and division of insurance undertakings.

4. In anything that is not expressly regulated in this Law, and as far as it does not oppose to it, the mercantile regulation and, specifically, the established in the Law 3/2009, of 3 April, on structural modifications of the mercantile companies shall apply to the transformation, merge, global transfer of assets and liabilities, and division of reinsurance undertakings.

Article 91. *Exceptional cases of structural modifications.*

Exceptionally, the Ministry of Economy and Competitiveness may authorise the transformation, merge, global transfer of assets and liabilities and division of insurance undertakings in cases different from those regulatory foreseen when, considering the special circumstances that occur in the requesting insurance undertakings, it is obtained a more suitable development of the activity by the affected insurance undertaking, whenever this does not undermine its financial guarantees, the rights of the policyholders and its transparency in the assumption of commitments derived from the insurance contracts.

Section 3. Statutory modifications

Article 92. *Statutory modifications.*

The modifications of the statutes which because of their subject shall be included in the special administrative register shall be reported to the Directorate General of Insurance and Pension Funds.

The communication to the Directorate General of Insurance and Pension Funds shall be made in the next ten working days to the adoption of the statutory modifications agreement.

Section 4. Insurance or reinsurance groups or joint ventures

Article 93. *Groups of economic interest and joint ventures of the insurance or reinsurance undertakings.*

1. The insurance and reinsurance undertakings may constitute groups of economic interest and joint ventures, this last case exclusively between themselves, according to the general legislation that rules them and submitted to the control of the Directorate General of Insurance and Pension Funds, besides the control foreseen in such legislation.

2. Exceptionally, the Directorate General of Insurance and Pension Funds may authorise joint ventures of undertakings integrated by insurance or reinsurance undertakings and other companies that are not insurance or reinsurance undertakings when, considering the special circumstances that take place in the insurance or reinsurance undertaking that requests for the joint venture achieves a more suitable development of its activity, whenever it does not undermine its financial guarantees, the rights of the policyholders and its transparency in the assumption of the commitments derived from insurance contracts.

CHAPTER VII
Market behaviour

Section 1. Policies and tariffs

Article 94. *Premium tariffs and technical basis.*

1. The premium tariffs shall be substantiated on technical basis and on statistical information created according to the established in this Law and in its development regulation. They shall be sufficient, according to reasonable actuarial assumptions, to allow the insurance undertaking to satisfy the whole sheaf of commitments derived from insurance contracts and, especially, to constitute the adequate technical provisions.

In the calculation of tariffs in the scope of application of the Directive 2004/113/CE, of the European Council, which applies the principle of equal treatment between men and women in the access to and supply of goods and services, different treatment to men and women in the premiums and benefits to the insured persons shall not be accepted to be established, when these consider sexual condition as a calculation factor. In any case, the expenses related to pregnancy and childbirth shall justify differences in the premiums and benefits to the persons individually considered.

Exceptions to the established in the previous paragraph are the insurance contracts linked to a working relationship, where the difference in the premiums and provisions is allowed when justified by actuarial factors.

Likewise, the principles of equity, indivisibility and invariability shall be respected.

2. The premium tariffs shall respond to the regime of freedom of competence in the insurance market without, to these effects, having the character of restrictive practice of the competence the use of common statistics by the insurance and reinsurance undertakings, for the individual creation of its risk premium tariffs, whenever such statistics are created according to the regulations of the European Union given for the application of article 101.3 of the Treaty on the Functioning of the European Union.

Article 95. *Control of the policies, tariffs and technical documentation of the activity.*

1. The contract conditions and policy models, the premium tariffs and the technical bases shall not be bound to administrative authorisation and shall not be subject of telematic sending to the Directorate General of Insurance and Pension Funds.

However, the Directorate General of Insurance and Pension Funds may require the presentation, whenever found relevant, of the contract conditions, the policy models, the premium tariffs and the technical bases of the insurance undertakings, as well as the contract models, premiums and any other documentation related to the reinsurance activity, to monitor whether the actuarial principles, the provisions included in this Law and its development regulation and those ruling the insurance contract are respected.

The obligation included in the previous paragraph could not constitute a prior condition for the taking-up and pursuit of its activity for the insurance or reinsurance undertaking.

2. The insurance and reinsurance undertakings shall have at available for the Directorate General of Insurance and Pension Funds the documents stated in this article in their head office.

Section 2. Duty of information

Article 96. *General duty of information to the policyholder.*

1. Before celebrating an insurance contract, the insurance undertaking shall inform in writing to the policyholder of the Member State and the authority vested with the control of the activity of the insurance undertaking, a point that, also, shall be included in the policy and in any other document whereby the insurance contract is formalized. Likewise, the policyholder shall be provided with all the information established in the development regulation of this Law.

2. Before celebrating a non-life insurance contract, whether the holder is a natural person, or any life insurance contract, the insurance undertaking shall inform in writing to the policyholder of the legislation applicable to the contract, of the provisions relative to the claims that might be made and on the other points established by regulatory development.

3. In life insurance contracts where the policyholder undertakes the risk of investment, it shall be clearly and precisely informed that the amount that is going to be received depends on the fluctuations of the financial markets, foreign to the control of the insurer and which historic results are not indicators of future results.

In those modalities of life insurance where the policyholder does not undertake the risk of investment, shall be informed of the expected profitability of the operation considering all the expenses. The modalities where it is applicable as well as the methodology of calculation of the expected profits shall be established by regulatory development.

4. Before celebrating a funeral expenses insurance contract or a sickness insurance, in any of its modalities of coverage, the insurance undertaking shall inform in writing to the policyholder of the criteria to apply to renew the policy and to update the premiums in successive periods, in the terms established by regulatory development.

5. During the entire period of validity of the life insurance contract, the insurance undertaking shall inform the holder of any modification in the information initially supplied and, also, about the situation of its share in the profits, in the terms and conditions regulatory established.

6. Such information shall be accessible, provided in the formats and channels suitable for disabled people, so they can effectively access to the contents without discriminations and under equal conditions.

Section 3. Conflict resolution mechanism. Other provisions.

Article 97. *Mechanisms for conflict resolution.*

1. The may arise between policyholders, insured persons, beneficiaries, damaged third parties or rights-holders of any of these with the insurance undertakings shall be solved by the competent courts and judges.

2. Likewise, their differences could be voluntarily submitted to arbitration decision in the terms and conditions of articles 57 and 58 of the rewritten text of the General Law for the Defence of Consumers and Users and other compatible laws, approved by the Royal Legislative Decree 1/2007, of 16 November.

3. Similarly, they could present their differences to an intermediary in the terms foreseen in the Law 5/2012, of 6 July, on mediation in civil and mercantile matters.

4. In any case, and except for those cases where the legislation of protection of consumers and users prevents it, also free disposal according to law litigious matters, rose or which could rise, could be submitted to arbitration, in the terms of the Law 60/2003, of 23 December, on Arbitration.

5. In the terms foreseen in the legislation in force on protection of consumers of financial services, included in the Law 44/2002, of 22 November, on Measures of Reform of the Financial System, and in its development regulation, the insurance undertakings shall be obliged to handle and solve the complaints and claims made by the policyholders, insured, beneficiaries, damaged third parties or right-holders of any of these that may be presented, related to their interests and rights legally accepted. To these effects, the undertakings shall have a customer attention service or department in charge of solving and handling the claims and complaints.

Article 98. *Advertising.*

1. Insurance undertakings may make advertising of their services in all the media always respecting the established in the Law 34/1988, of 11 November, on General Advertising, and

its development regulation, as well as the specific regulation for their adaptation to the insurance undertakings included in the development regulation of this Law.

2. The Directorate General of Insurance and Pension Funds may approve by circulars, according to the established in article 17.2, special rules related to the advertising of the activities included in this Law.

3. The Directorate General of Insurance and Pension Funds shall carry out the necessary actions with the aim of achieving the cessation or correction of the advertising that is contrary to the provisions stated in the previous paragraphs, without prejudice of the penalties that are applicable according to chapter II of section VIII.

Article 99. *Protection of personal data.*

1. Insurance undertakings may treat the data of the policyholders, insured persons, beneficiaries or damaged third parties, as well as of their right-holders without need of counting with their consent to the sole effect of guaranteeing the full performance of the insurance contract and the compliance with the obligations established in this Law and in its development provisions.

The treatment of the data of the abovementioned persons for any purpose different to those specified in the previous paragraph shall count with the specific consent of the interested parties.

2. The insurance undertakings may treat without consent of the interested party any data related to their health in the following cases:

a) To determine the health assistance that should have been provided to the damaged party, as well as the benefit that is related to it when these have to be satisfied by the undertaking.

b) For the suitable payment to the health providers or the refund to the insured or its beneficiaries of the health assistance expenses that have taken place in the scope of an insurance contract of health assistance.

The treatment of the data shall be limited in these cases to those that are essential for the payment of the benefit or the provision derived from the insurance contract. The data could not be subject of treatment for any other purpose, without prejudice of the obligations of information established in this Law.

The insurance undertakings shall inform the insured, beneficiary or damaged third party about the treatment and, where appropriate, of the cession of their health information, in the terms foreseen in Article 5 of the Organic Law 15/1999, of 13 December, on protection of personal data unless such obligation is assumed under contract by the policyholder, when talking about collective insurance.

3. The insurance undertakings that are part of a group to the effects foreseen in chapter V could exchange, without need of counting with the consent of the interested party, the personal data that are necessary for the compliance with the obligation of supervision established in this Law. The data could not be used for any other purpose if not counting with the specific approval of the interested party for it.

4. The insurance undertakings, or in the case, the reinsurance undertakings, may inform to their reinsurance undertakings, without consent of the policyholder, insured person , beneficiary or damaged third party, the data that are strictly necessary to celebrate the reinsurance contract in the terms foreseen in article 77 of the Law 50/1980, of 8 October, on Insurance contracts or for the pursuit of the related operations, understanding as such the performance of statistical or actuarial contracts, risk analysis or researches for their consumers, as well as any other activity related or derived from the reinsurance activity.

The cession of such data for any purpose different from the established in the previous paragraph shall require the consent of the interested party.

5. The companies carrying out outsourced activities on behalf of insurance undertakings shall be considered to be in charge of the treatment, with the obligation of adhering to the regime foreseen for such data in the Organic Law 15/1999, of 13 December, and in its development regulation.

6. In the cases of portfolio transfer included in this Law, as well as in those of transformation, merge or division of insurance undertakings related to it, data transfer shall not take place, without prejudice of the compliance by the responsible of the established in article 5 of the Organic Law 15/1999, of 13 December.

7. The insurance undertakings could set common files containing personal data for the winding-up of accidents and the statistical-actuarial collaboration with the aim of allowing the pricing and selection of risks and the creation of surveys on insurance technique. The cession

of such data shall not require the previous consent of the affected party, but the information to this of the possible cession of his/her personal data for common files for the mentioned purposes does, with express notice of who is the responsible, so that the rights of access, correction, cancellation and opposition foreseen in the Law can be exercised.

Also, common files may be set with the aim of preventing frauds in insurance without the need to have the consent of the interested party. However, in these cases the notice to the affected party shall be necessary, in the first introduction of his/her data, of who is responsible for the file and of the means to exercise the rights of access, rectification, cancellation and opposition.

In any case, the data relative to health could only be subject of treatment with the express consent of the affected party.

8. The information to be provided to the policyholder according to article 96 shall similarly include that which, related to the treatment of the personal data, is established in article 5 of the Organic Law 15/1999, of 13 December.

9. The insurance undertakings shall proceed, in a period of ten days, to the cancellation of the data that had been provided prior to the celebration of a contract whether this did not take place, unless they counted with the specific consent of the interested party which shall be express when related to health data.

Article 100. *Fight against insurance frauds.*

The insurance undertakings shall adopt effective measures to prevent, hinder, identify, detect, report and solve fraudulent behaviours related to insurance, either adopted individually or through the participation in common files stated in article 99.7.

The insurance undertakings could also subscribe collaboration agreements with the Home Office and with the Security Forces, as well as with the regional offices and Police forces of the Autonomous Communities that have analogue functions, with the aim of collaborating, each of them in the scope of their competences, in the prevention and investigation of insurance frauds. In any case, the Exchange of information that could take place under such conventions shall respect the established in the Organic Law 15/1999, of 13 December.

CHAPTER VIII

Special solvency regime

Article 101. *Scope of application.*

1. The insurance undertakings with head office in Spain that do not pursue activities under the freedom of establishment or freedom to provide services regime in other Member States nor in third countries, may adhere to this special solvency regime if they accredit having complied with all the conditions required by regulatory development during the three previous years and if they forecast not to exceed the amounts provided in the five incoming years.

When the insurance undertakings under this special regime exceed any of the amounts listed by regulatory development for three consecutive years, they will be automatically submitted to the general regime from the fourth year on.

2. Additionally, the insurance undertakings with head office in Spain that do not pursue activities under the freedom of establishment or freedom to provide services regime in other Member States nor in third countries may adhere to the special solvency regime, whenever they are in any of the following situations:

a) The friendly societies that have not obtained an authorisation to operate by classes and that have included in their regulations of contributions and benefits a financial-actuarial system, by which the benefit to be obtained by the mutual member is in direct relation with the contributions effectively made and attributed and that, the total results at year end, either positive or negative, once having covered the legal and solvency obligations of the undertaking, are moved to the provisions of the active mutual members.

b) Exclusively guarantee benefits in case of death, when the amount of these provisions does not exceed the average value of the funeral expenses of a single death or when these benefits are provided in kind.

3. The insurance undertakings belonging to a group could only adhere to the special solvency regime if all of them comply, individually, with the necessary requirements to adhere to such regime.

4. The decision given by the Directorate General of Insurance and Pension Funds shall state the year from which the undertaking can adhere to the special solvency regime.

5. The undertakings that request administrative authorisation for the taking-up and pursuit of the activity may not adhere to this special regime at the initial authorisation to carry out the insurance activity.

Article 102. *Conditions of the exercise of the undertakings submitted to the special regime.*

The undertakings stated in this chapter shall adjust their exercise to the provisions of this Law that are of application and to their development regulation, with the following conditions:

a) The administrative authorisation shall not include the pursuit of activities under a regimen of freedom of establishment or freedom to provide services of the European Union.

b) The share capital shall be the required in the articles 33 and 34.

c) The minimum capital requirement shall adjust to the established in article 78.

d) The requirements and regime applicable to the valuation of technical provisions, investments, own funds and capital solvency requirement shall adjust to the proceeding established by regulatory development.

e) The requirements of the system of governance for this kind of undertakings shall be established by regulatory development.

f) The requirements of public information on the financial and solvency situation of these undertakings shall, as far as of application, those established in chapter III of section III of this Law and its development regulation.

CHAPTER IX

Community co-insurance. Limited reinsurance

Article 103. *Regime of Community co-insurance.*

1. The insurance undertakings participating in Spain in an operation of community co-insurance as leading insurance undertaking, as well as their activities as co-insurers, shall be governed by the provisions applicable to the large risks insurance contract.

2. When an insurance contract can be classified as community coinsurance, the obligations that are imposed to the insurance undertakings that operate under the freedom to provide services regime according to the established in articles 57 to 59 shall only apply to the leading insurance undertaking of the operation.

3. The Spanish undertakings that participate in community co-insurance operations have to dispose of enough statistical data on the operations they participate in, in each of the Member States.

Article 104. *Technical provisions of community co-insurance.*

If a Spanish insurance undertaking participates in a community co-insurance operation, it shall calculate the corresponding technical provision corresponding to its participation in the operation according to the provisions of this Law and its development regulation, even though the amount of such technical provisions shall be at least equal to the amount calculated according to the regulation governing the leading insurance undertaking.

Article 105. *Limited reinsurance.*

Insurance and reinsurance undertakings that celebrate contracts or that carry out activities of limited reinsurance shall have enough means to identify, measure, monitor, manage, control and report in an appropriate manner the risks derived from such contracts or activities. Specific provisions could be regulatory adopted in relation to the requirements for the pursuit of activities of limited reinsurance.

CHAPTER X

Conditions relative to the pursuit of the activity by branches and subsidiaries of insurance and reinsurance undertakings from third countries

Article 106. *Financial guarantees of the branches of insurance and reinsurance undertakings with head office in third countries.*

1. The branches of insurance and reinsurance undertakings with head-office in third countries shall carry out their activity submitted to the provisions established in this Law and in its development regulation for the undertakings with head-office in Spain, except for those relative to the activity under the freedom of establishment and under freedom to provide services regime in the European Union, which in any case shall not be applicable, so that their risks shall always be allocated and their commitments shall always be undertaken in Spain.

2. Despite this, and without prejudice of the agreements celebrated by the European Union with third countries, the rules specified by regulatory development shall be taken into account.

Article 107. *Regime of the branches of undertakings with head office in third countries, authorised in several Member States.*

1. Despite the established in article 106, and without prejudice of the agreements celebrated by the European Union with third counties, the branches in Spain of undertakings with head office in third counties that, at the same time, have branches in other Member States, may apply the regime that is established by regulatory development.

2. For the application of this regime, the undertaking shall request for it to the Directorate General of Insurance and Pension Funds and to the supervisory authorities of other Member States where it has branches established, suggesting with reasons which supervisory authority it wants to be submitted to, which shall be in charge, thereafter, to verify the solvency of all the branches authorised in the European Union for the whole of its operations.

The approval of the request shall require the agreement of all the supervisory authorities implied and the regime may only be applied from the date when the chosen supervisory authority, in case of not being the Spanish, reports the Directorate General of Insurance and Pension Funds of its compromise to verify the solvency of all the branches established in the European Union of the whole of its operations.

3. The Directorate General of Insurance and Pension Funds shall provide to the supervisory authority in charge of controlling the solvency, the information necessary about the branch established in Spain so that such authority can verify its global solvency.

4. The application of this regime may conclude, by decision of the Directorate General of Insurance and Pension Funds or of any other of the supervisory authorities implied. The conclusion of application of this regime shall affect to all the branches authorised in the European Union. To these effects, the Directorate General of Insurance and Pension Funds shall report its decision to the other supervisory authorities implied and, in the case of having been adopted the decision by another supervisory authority implied, the termination in the application of the regime shall take place from the date when the Directorate General of Insurance and Pension Funds receives the notice from the supervisory authority which had adopted the decision.

5. To the effects of application of the articles 156, 157 and 160.1.a), the supervisory authority in charge of controlling the global solvency shall be equated, in that relative to its faculties for all of the branches, to the supervisory authorities of undertakings with head office in the European Union.

6. In case of withdrawal of the authorisation granted to the branch established in Spain, the Directorate General of Insurance and Pension Funds shall inform to the supervisory authorities of the other Member States.

The Directorate General of Insurance and Pension Funds, once having received the notice of withdrawal of the authorisation granted to a branch established in another Member State, shall adopt the necessary measures and, whether the withdrawal was reasoned due to insufficiency of global solvency, it shall proceed to withdraw the authorisation granted to the branch established in Spain.

Article 108. *Equivalence of the solvency regime of the reinsurance undertakings from third countries.*

1. It shall be assessed whether the solvency regime applied by a third country to the activities of reinsurance of undertakings which head office is located in that third country is equivalent to that established in the European Union, according to the following paragraphs:

a) This equivalence shall be determined by the European Commission according to the criteria specified by it, with the assistance of the European Insurance and Occupational Pensions Authority.

The list of equivalent prudential regimes shall be published by the European Insurance and Occupational Pensions Authority at its website and shall be updated. The decisions of the Commission shall be periodically reviewed with the aim of being updated to answer to any substantial modification of the supervisory regime of the European Union and of the supervisory regime of the third country.

b) When all the criteria established in the paragraph a) are not met, the equivalence may be established in a temporary manner by the European Commission with the assistance of the European Insurance and Occupational Pensions Authority, in agreement with the criteria that are established by regulatory development.

The list of third countries for which it had been established a temporary equivalent solvency regime shall be published by the European Insurance and Occupational Pensions Authority at its website who shall keep it up to date. The decisions of the Commission shall be regularly reviewed with the aim of being updated with the reports of the progress made by the third country, which shall be presented to the Commission on an annual basis for its assessment with the assistance of the European Insurance and Occupational Pensions Authority.

The temporary equivalence regime shall be of five years from the 1st January 2016 or shall terminate on the date that, according to paragraph a), the prudential regime of that third country is considered equivalent, if this last date is prior. Such period may be extended for a maximum of another year when it is necessary that the European Insurance and Occupational Pensions Authority and the Commission carry out an equivalence assessment to the effects of paragraph a).

2. In case the solvency regime of a third country is considered equivalent, the reinsurance contracts celebrated with reinsurance undertakings which head office is located in that third country shall have equal consideration to the reinsurance contracts celebrated with an authorised reinsurance undertaking according to the established in this Law.

SECTION IV
Supervision of the insurance and reinsurance undertakings

CHAPTER I
General principles

Article 109. *Subjective and objective scope of the supervision.*

1. The Directorate General of Insurance and Pension Funds shall pursue its supervisory duties on the insurance and reinsurance undertakings authorised to operate in Spain, including the activities that are done by branches and under the regime of freedom to provide services, as well as on the other undertakings and subjects included in article 2.

2. The supervision shall consist in the continuous verification of the correct pursuit of the activity of insurance or reinsurance, of the financial situation, of the market behaviour and of the compliance of the rules of supervision by the insurance and reinsurance undertakings.

Article 110. *Proportionality of the actions of the Directorate General of Insurance and Pension Funds.*

1. Without prejudice of the main purpose of this Law, established in article 1, the Directorate General of Insurance and Pension Funds shall duly consider the effects of its decisions in the stability of the financial system, especially in emergency situations, taking into account the information available in the precise moment. In periods of great instability, it shall also consider the possible pro-cyclical effects of its decisions.

2. The actions of supervision shall be made in a proportional way to the nature, complexity and magnitude of the inherent risks to the activity of the insurance or reinsurance undertakings.

Article 111. *Transparency of the supervisory action.*

1. The Directorate General of Insurance and Pension Funds shall pursue the supervision of the insurance and reinsurance undertakings in a transparent way and duly guaranteeing the protection of the confidential information.

2. The Directorate General of Insurance and Pension Funds may create guidelines addressed to the undertakings submitted to the supervision, stating the criteria, practices or proceedings that are found suitable for the compliance of the supervisory regime. Such guides, which shall be made public, may include the criteria the Directorate General of Insurance and Pension Funds will follow in the exercise of its supervisory activities.

To such purpose, the Directorate General of Insurance and Pension Funds may make its own and transfer as such, as well as to develop, supplement or adapt the directives that, directed to the subjects submitted to its supervision, are approved by the bodies or international committees in the ruling or supervisions of insurances or pension plans.

Article 112. *Convergence of supervisory practices.*

In the frame of the European Union policies on stability and financial integration, the Directorate General of Insurance and Pension Funds shall consider, in the suitable way, the European dimension of the supervision of the insurance and reinsurance undertakings by the convergence of the supervisory instruments and practices.

To these effects, the Directorate General of Insurance and Pension Funds shall participate in the activities of the European Insurance and Occupational Pensions Authority.

Article 113. *General supervisory powers.*

1. In the exercise of its supervisory duties on insurance and reinsurance undertakings and in the terms established in this Law and in the other rules governing private insurance, the Directorate General of Insurance and Pension Funds shall have the following powers:

a) To request all the information that is necessary to the effects of supervision, statistic and accountancy, according to article 114.

b) To access to any document in any format and to receive a copy of it.

c) To request from any person the remission of information in the period that is reasonably settled by the Directorate General of Insurance and Pension Funds and, if necessary, to summon and take a statement of a person to receive information.

d) To make the necessary inspections and checks.

e) To require the telephone registers and data transfers that are available

f) To request the insurance and reinsurance undertakings and to the members of their administrative or management body or to the person controlling them, the provision of reports of independent experts, auditors of its internal control bodies or of verification of rule compliance.

g) To develop, with ancillary character to the calculation of the solvency capital requirement and when necessary, the quantitative instruments necessary in the frame of the process of supervision, with the aim of valuing the capacity of the insurance and reinsurance undertakings to face possible events or future modifications of the economic conditions that may negatively impact in its global financial situation. It could also request that the undertakings carry out the corresponding tests.

h) To adopt the preventive and corrective measures that are necessary with the aim of guaranteeing that the insurance and reinsurance undertakings adhere to the rules governing its activity that have to be complied with.

i) To make public any measure taken, subsequent to the breach of the applicable rules, unless its publication may put at a serious risk the insurance market or cause a disproportionate damage to the affected people.

j) Whichever other functions are necessary for the pursuit of the financial supervision, of the supervision of market behaviour and of the supervision by inspection in the field of the undertakings and the groups.

2. These previous faculties could also be pursued in relation to the outsourced activities of the insurance and reinsurance undertakings, in agreement with the established in due form and in the rules of the European Union of direct application.

3. The supervisory actions shall be developed by the public officers of the Cuerpo Superior de Inspectores de Seguros del Estado (High Body of Insurance Inspectors of the State) with the collaboration of the public officers belonging to the technical bodies of the General State Administration, as well as of expert IT officers.

4. Without prejudice of the faculties of supervision listed in the previous paragraphs, the Directorate General of Insurance and Pension Funds may start the supervisory procedure by inspection in the terms established in chapter IV of this section.

5. In default of special rules of proceeding, those of the Law 30/1992, of 26 November on the Judicial Regime of the Public Administration and on the Common Administrative Proceeding shall be of application.

Article 114. *Information to be provided to the effects of supervision, statistics and accountancy.*

1. The insurance and reinsurance undertakings shall provide to the Directorate General of Insurance and Pension Funds with the documentation and information that are necessary for the purposes of supervision. Such documentation and information shall include, at least, that necessary for the actions in the frame of the supervisory proceeding foreseen in article 117.2.

Additionally, the insurance and reinsurance undertakings shall provide the Directorate General of Insurance and Pension Funds with the documentation and information with statistical and accountancy effects.

2. The Directorate General of Insurance and Pension Funds may establish the nature, scope and format of the information referred in paragraph 1, which presentation is required,

either periodically, either in those cases where previously established situation take place, either by individual requirements or during inspection actions.

The Directorate General of Insurance and Pension Funds may also request information related to the contracts in hands of intermediaries or to the contracts celebrated with third parties. Similarly, it may request information to account auditors, in agreement with the established in the normative ruling the activity of the account audit, actuaries and other experts foreign to the undertakings.

3. The information stated in paragraphs 1 and 2 shall include qualitative and quantitative data, either historical, current or forecasted, and either coming from internal or external sources, or whichever combination of the said and shall adhere to the principles established by regulatory development.

4. The insurance and reinsurance undertakings shall have suitable systems and structures to comply with the requirements established in this article as well as a written policy, approved by the administrative or management body of the undertaking, that guarantees the continue suitability of the information presented.

Article 115. *Supervision of insurance and reinsurance undertakings of the European Union that operate in Spain under the freedom of establishment or freedom to provide services regime.*

1. The Directorate General of Insurance and Pension Funds shall supervise the activity of the insurance and reinsurance undertakings of other member States that operate in Spain under the freedom of establishment or freedom to provide services regime, in that relative to the compliance of the provisions that are of application because of general interest and those of chapter VII of section III. To these effects they shall be bound to the inspection supervisory procedure of chapter IV of this section.

2. If the Directorate General of Insurance and Pension Funds had reasons to consider that the activities of an insurance or reinsurance undertaking that operates by branches or under freedom to provide services in Spain may affect its financial soundness, it shall inform the supervisory authorities of the Home Member State.

3. When an insurance or reinsurance undertaking authorised in another Member State pursues its activity in Spain via a branch, the supervisory authority of the Home Member State may proceed, by themselves or through the intermediation of persons appointed for that purpose, prior reporting to the Directorate General of Insurance and Pension Funds, on-site verifications of the information necessary to ensure the financial supervision of the undertaking.

The Directorate General of Insurance and Pension Funds may participate in those verifications.

Article 116. *Supervision of Spanish branches established in another Member State.*

1. When an insurance or reinsurance undertaking authorised in Spain pursues its activity in another Member State by a branch, the Directorate General of Insurance and Pension Funds may proceed, by itself or through the intermediation of persons appointed for that purpose appointed for it, prior report to the supervisory authority of the host Member State, on-site verifications of the information necessary to ensure the financial supervision of the undertaking.

The authorities of the host Member State may participate in those verifications.

When the Directorate General of Insurance and Pension Funds report the supervisory authorities of the host Member State that it intends to carry out an on-site verification according to the present article, and when, it is prohibited from exercising its right to carry out those on-site verifications, the Directorate General of Insurance and Pension Funds may refer the matter to the European Insurance and Occupational Pensions Authority and request its assistance. This authority may participate in on-site examinations when they are carried out jointly by two or more supervisory authorities.

2. If the Directorate General of Insurance and Pension Funds was informed by the supervisory authority of another Member State that a Spanish insurance or reinsurance undertaking operating in that State by a branch or under freedom to provide services, is pursuing activities that could affect its financial soundness, the Directorate shall verify that the undertaking is complying with the prudential principles that are required.

CHAPTER II

Financial supervision

Article 117. *Contents of the financial supervision.*

1. The financial supervision shall consist, specifically, in the approval, for the group of activities of the supervised undertaking, of the government system, the solvency, the constitution of technical provisions, the assets and the own eligible funds, according to the rules that are of application, as well as the check of compliance with the other obligations imposed in this Law and in its regulatory development.

Besides, when related to insurance undertakings guaranteeing the provision of a service, the supervision shall extend also to the technical means in place for the undertakings to pursue the operations they have committed to carry out.

The supervision of the financial situation shall be based on a prospective risk-oriented approach.

2. The Directorate General of Insurance and Pension Funds shall review and value the strategies, processes and proceedings of information established by the insurance and reinsurance undertakings with the aim of complying with the provisions included in this Law and in the other rules governing private insurances.

The review and valuation shall include the analysis of the legal, technical and economic-financial situation of the undertaking and, especially, the compliance with the requirements established in the rules developing this Law on solvency, technical provisions capital, investment rules, own funds and internal models when used.

3. The Directorate General of Insurance and Pension Funds shall assess the adequacy of the methods and practices of the insurance and reinsurance undertakings designed to identify possible events or future changes in the economic conditions that could have adverse effects on the overall financial standing of the undertaking concerned. Similarly, it shall assess the ability of the undertakings to withstand those possible events or future changes in economic conditions

4. The insurance and reinsurance undertakings shall solve the lacks or deficiencies detected in the supervision's exercise.

5. The reviews and valuations shall be made regularly. The minimum scope of the reviews and valuations considering the nature, reach and complexity of the activities of the insurance or reinsurance undertaking concerned shall be established by regulatory development.

CHAPTER III

Supervision of market conduct

Article 118. *Contents of the market conduct supervision.*

The supervision of the market conduct shall care for the transparency and the ordered performance of the insurance market, the freedom of the holders to decide on the contract of insurance and the insurance undertaking they make agreements with and, in general, the protection of policyholders, insureds and beneficiaries promoting the spread of any information needed to guarantee the achievement of these goals, according to the established in this Law and in its development rules.

The pursuit of the Directorate General of Insurance and Pension Funds shall be construed without prejudice of the possible qualification of such practices as restrictive of the competence by the competence authorities, according to the established in articles 1, 2 and 3 of the Law15/2007, of 3 July, on Defence of Competence.

Article 119. *Administrative protection.*

1. The protection of the users in the field of the private insurance is exercised by the Directorate General of Insurance and Pension Funds, in the terms foreseen in this Law, in the Law 44/2002, of 22 November, on Reform Measures of the Financial System, and its development rules.

2. The Directorate General of Insurance and Pension Funds shall decide on the complaints and claims that are presented by policyholders, insureds, beneficiaries, damaged third parties and associations that are related to their interests and rights legally accepted and that derived from alleged breaches by the entities claimed of the rule on transparency and protection of consumers or of the good practices in the insurance market.

The Directorate General of Insurance and Pension Funds shall decide on the complaints and claims presented by reasoned reports, that will never be considered as administrative action to be appealed.

3. The lack of care to the requirements made by the Directorate General of Insurance and Pension Funds derived from the reports issued by the service of claims of the Directorate

General of Insurance and Pension Funds shall give place, depending on the cases, to the imposition of administrative penalties corresponding to the breaches registered in the section VIII or to the ruled prohibition in article 120.

4. Where there are evidences of repeated or serious non-compliance of the transparency and customer protection rules or of the good practices of the insurance market by an insurance undertaking, the Directorate General of Insurance and Pension Funds shall adopt the measures that correspond in the frame of a supervisory proceeding.

Article 120. *Prohibition of policies and tariffs.*

The Directorate General of Insurance and Pension Funds could forbid by order the use of the premium's policies and tariffs that do not comply with the established in article 94 and 95. To these effects, the corresponding administrative procedure shall start where to agree, as provisory measure, the suspension of the use of the said premium's tariffs and policies.

Prior to starting the administrative procedure to decide on the said prohibition, the said Directorate General could request the insurance undertaking to fit its premium's policies and tariffs according to the established in the aforementioned articles.

CHAPTER IV

Supervision by inspection

Article 121. *Actions of inspection.*

1. For the purposes of supervision, it has attributed, the Directorate General of Insurance and Pension Funds may pursue the inspection faculty in the terms foreseen by this chapter. The supervision might be performed by inspection proceeding.

2. The inspection may be on the market practices, the legal, technical, economic-financial and solvency situation, as well as on the conditions under which it pursues its activity and the market practices, with the aim that the Directorate General of Insurance and Pension Funds can suitably pursue the competences it has attributed. They could be performed with general character or referred to specific matters.

Article 122. *Subjects of the inspection activity.*

The following undertakings and persons may be subjects of inspection:

a) The insurance and reinsurance undertakings authorised to operate in Spain, including the activities they pursue by branches and under the freedom to provide services regime.

b) The other undertakings and subjects included in article 2.

c) The undertakings intended to be part of a group of insurance undertakings.

d) Whomever pursues operation that can, in the beginning, be defined as insurance, to check if they pursue the activity without prior administrative authorisation.

e) Whomever exercises outsourced functions of insurance and reinsurance undertakings.

Article 123. *Inspection staff.*

1. The inspection actions shall be performed by public officers of the. State Insurance Inspection In the performance of their duties, they shall be considered as public authority.

2. The public officers belonging to the technical departments of the General State Administration, as well as the expert IT officers could only collaborate in the inspection actions in the terms established in the regulatory development of this Law.

Article 124. *Inspection faculties.*

1. For the correct pursuit of the functions, the inspection team could examine the books, registers and documents, whichever the format is, including IT programmes and magnetic, optical or any other kind of file, relative to the operations of the undertaking in the terms that are developed by regulatory development.

2. Likewise, it could ask to have presented or delivered a copy to the effects of its incorporation in the official report, and the insurance undertaking shall be obliged to it and to make as convenient as possible for the performance of its duties. If the person or undertaking inspected had reasonable grounds, it could oppose to handing a copy of the documents alleging its reasons in writing for it to be included in the official report.

3. The inspection actions could be performed indifferently at the head office of the inspected subject, at any of its branches, where its activity is totally or partially pursued, in the premises where it provides its services, functions or insurance and reinsurance activities

when these are outsourced and at the offices of the Directorate General of Insurance and Pension Funds when the elements subject of the inspection can be examined there.

The public officers of the State Insurance Inspection shall have access to the head office and the branches, premises and offices where the inspected subject pursues its activities, by the undertaking or undertakings that are suspected to be a group. As it is an address protected by the constitution and, in case of opposition, the appropriate judicial authorisation shall be necessary and, in the case of the other offices, of the Directorate General of Insurance and Pension Funds.

4. The inspection of market practices could start without prior notice or identification of the acting officers, assuming these the condition of simple users or interested people in the products and services on offer, with the aim of knowing, as accurately as possible, the real condition of such practices which shall be stated in the corresponding report.

Article 125. *Documentation of the inspection actions.*

1. The inspection actions shall be documented in official report which could be final or previous.

The previous official report will be written when there are sufficient elements to start the proceeding of supervision by inspection if waiting for the writing of the final official report could put at risk the care of the interests of the insurance parties or the behaviour of the undertaking or person inspected or other circumstances present in the inspection instruction if so advised.

2. Independently of the content and shape that is established by regulatory development, the official report shall include, in the case:

a) The facts verified by the acting inspector that are relevant to the effects of judicial qualification of the behaviour or inspected activity.

b) The legal, technical, economic-financial and solvency situation derived from the actions performed by the inspection.

c) The causes that could determine the withdrawal of the authorisation, administrative termination, adoption of special control measures, the adoption of a recovery plan or a short-term financing plan, the increase of the amount of the technical provision, the request of additional solvency capital requirement as well as the imposition of administrative penalties.

d) The proposal to revoke the authorisation, the administrative termination of the insurance undertaking, of adoption of special control measures, of a recovery or short-term financing plan in cases of financial deterioration or of increase of the amount of the technical provisions or request of additional solvency capital requirement.

3. To all intents, its annexes and diligences issued by the inspector during the verification activity shall be part of the official report.

4. The official report shall be considered as public documents and shall be evidence of the facts included in them and checked by the acting inspector, unless otherwise stated.

Article 126. *Supervision by inspection proceeding.*

1. The administrative supervisory proceeding shall adjust to the following steps:

a) It shall start by agreement of the Directorate General of Insurance and Pension Funds where the aspects that have to be subject of inspection will be established.

b) The inspection actions prior to the writing of the official report shall have the necessary duration for the suitable compliance of the mandate included in the inspection order, from the agreement of the Directorate General of Insurance and Pension Funds which orders the inspection.

c) The official report shall be served to the interested entity, who shall have a period of fifteen days to present appeals and to present the evidences that are found suitable in defence of its rights against the Directorate General of Insurance and Pension Funds. If evidences were presented and these were admitted, they shall be presented in a period not higher than ten days.

d) If after the allegations of the interested undertaking and, in the case, the presentation of evidences, new actions on the supervision by inspection may be done, shall be included in an ancillary official report and these shall start again the process of hearing for a period of eight days.

e) Considering the action, the Directorate General of Insurance and Pension Funds shall adopt the resolution that shall end the procedure.

f) In case the official report includes a proposal to increase the amount of the technical provisions, the request of additional solvency capital requirement, of adoption of special control measures, a recovery plan or of short-term financing in cases of financial deterioration, of withdrawal of the authorisation or of administrative termination of the insurance and reinsurance undertaking, the resolution may establish, in case it is possible, the increase or special control measures applicable, the recovery plan or the short-term financing, it shall start the administrative winding-up of the insurance or reinsurance undertaking or of withdrawal of the administrative authorisation.

2. The period to adopt the resolution shall be of six months since serving the official report. In the case foreseen in letter d) paragraph 1, this period shall count from the notice of the ancillary official report.

CHAPTER V
Duty of professional secrecy and use of confidential information

Article 127. *Duty of professional secrecy.*

1. Except for the information registrable in the administrative register stated in article 40, the data, documents and information that are held by the Directorate General of Insurance and Pension Funds in virtue of as many functions as given by this Law shall be considered as reserved.

2. All the persons pursuing or that have pursued an organisation and supervision activity for insurance and reinsurance undertakings, as well as those that have been vested with functions related to such undertakings, shall have the obligation to hold professional secrecy on the confidential information received because of professional reasons in the pursuit of such functions. The breach of this obligation shall imply criminal liability and any other foreseen by the laws. These persons could not be asked in court or make statements or publish, report or show reserved data or documents, not even after having finished the service, except with express permission granted by the Directorate General of Insurance and Pension Funds that, in any case, may refer to personal data. If such permission was not granted, the person affected shall hold secrecy and shall be exempt of the liability arising from it.

3. Exceptions to the obligation of secrecy established in the previous paragraph are made for the following situations:

a) When the interested party expressly accepts the publication, communication or spreading of the data.

b) The publication of aggregated data with statistical purposes or the communication as summary or aggregate so the individual undertakings could not be identified even indirectly.

c) The information required by the competent judicial authorities in a criminal procedure.

d) The information that, in the frame of bankruptcy proceedings the insurance or reinsurance undertaking is submitted to, whenever it is not related to interested third parties in the recovery of the undertaking.

e) The information that, in the frame of the administrative or contentious-administrative appeals where the resolution adopts in the pursuit of the powers of supervision of the activity of insurance and reinsurance undertakings, either required by the competent administrative or judicial authorities.

f) The information required by the research parliamentary committees, in the terms established by the parliament rules. To such effect, the Directorate General of Insurance and Pension Funds may request, with reasonable reasons, to the competent bodies of the Chamber, the celebration of a secret session or the application of the proceeding established to access to the classified subjects.

The judicial authorities, as well as the members of a Research Parliamentary Committee receiving classified information shall be obliged to adopt the necessary measures to guarantee its secrecy.

4. The established in this article is construed without prejudice of the research faculties granted to the European Parliament in article 226 of the Treaty on the Functioning of the European Union.

Article 128. *Exchange of confidential information.*

1 . Notwithstanding the provisions set out in the article above, confidential information may be provided to the persons or entities mentioned below to facilitate compliance with their respective duties; in turn, such persons shall be bound by the duty of professional secrecy in agreement with the provisions set forth in such article:

a) The competent authorities for supervision of insurance entities and other financial entities in the remaining Member States.

b) The Bank of Spain, the National Spanish Securities Market Commission and the remaining entities or bodies in charge of the supervision of the accounts and the solvency of financial entities.

c) The Insurance Compensation Consortium, exercising its duties as the liquidator of insurance entities and the guarantee fund; and additionally, in connection with the information needed for the verification of surcharges.

d) The authorities responsible for combating money laundering.

e) The account auditors of insurance and reinsurance entities and their groups, and the Institute for Accounting and Account Auditing.

2. Confidential information may also be furnished to the Tax Agency, following the issue of a non-delegable authorisation from the Minister for the Economy and Competitiveness.

3. Spanish insurers and reinsurers established in other Member States cannot be the subject of the communication set forth in such section, save as expressly ordered by the competent authority communicating the information or the competent authority of the Member State where the branch is established, respectively

Article 129. *Cooperation with the European Insurance and Occupational Pensions Authority.*

The Directorate General of Insurance and Pension Funds shall provide without delay the European Insurance and Occupational Pensions Authority all the information necessary for it to fulfil its duties.

Article 130. *Cooperation agreements with third parties.*

1. The cooperation agreements where an exchange of information with the authorities of third countries for the supervision of insurance, reinsurance and other financial entities or with other authorities, bodies, natural or legal persons of third countries is expected, shall require that the information provided is protected by professional secrecy guarantees at least equivalent to those included in article 127, that there is reciprocity and that the exchange of information has the aim of complying with the supervisory duties of such authorities, bodies, natural or legal persons.

2. The Directorate General of Insurance and Pension Funds could transfer personal data to third countries in agreement with section V of the Organic Law 15/1999, of 13 December, on Protection of Personal Data.

3. When the information has its origin in another Member State could not be disclosed without the express agreement of the competent authorities that have provided it and, as the case may be, only with the purpose that such authorities have given their agreement.

4. Without prejudice of the established in the previous paragraphs, the Directorate General of Insurance and Pension Funds may reject to provide information to the competent authorities of third countries when the supply of such information damaged the sovereignty, the security or public order, or that had begun legal proceedings before the Spanish authorities or adopted by such authorities a final judgement on such proceedings on the same rights and against the same people responsible that the information may be requested for.

SECTION V
Supervision of insurance and reinsurance undertakings' groups

CHAPTER I
General provisions on groups

Article 131. *Definitions and rules on the supervision of insurance and reinsurance undertakings' groups.*

1. To the effects of the established in this chapter, it shall be construed as:

a) Parent undertaking: That defined as such in Article 9, as well as any other undertaking that, to the knowledge of the supervisory authorities, effectively exercises a dominant influence on another.

b) Branch undertaking: That defined as such in Article 9, as well as any other undertaking that, to the knowledge of the supervisory authorities, a parent undertaking effectively exercises a dominant influence.

c) Participation: That defined as such in Article 9, as well as the direct or indirect ownership of voting rights or of capital in an undertaking on which, to the knowledge of the supervisory authorities, a notable influence is effectively exercised.

d) Participating undertaking: A parent undertaking or another undertaking that holds a participation, or either any undertaking related to another because of being submitted to a single management or because its administrative, management or control bodies mainly consist on the same people.

e) Related undertaking: An undertaking being a branch or another undertaking where a participation is held or that is linked to another because of being submitted to a single management or because its administrative, management or control bodies mainly consist on the same people.

f) Group: Any group of undertakings that:

1.º Consists of a participating undertaking, its subsidiaries and the undertakings where the participant or its subsidiaries hold a participation, as well as the undertakings linked to each other by a single management or because its administrative, management or control bodies mainly consist on the same people; or

2.º Is based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among those undertakings, and that may include mutual or mutual-type associations, provided that:

i. One of those undertakings effectively exercises, through centralised coordination, a dominant influence over the decisions, including financial decisions, of the other undertakings that are part of the group considered as subsidiaries; and

ii. The establishment and dissolution of such relationships for the purposes of this section are subject to prior approval by the group supervisor; and

iii. In case of being groups of mutual or mutual-type associations, they submit to the established by regulatory development.

g) Group supervisor: The supervisory authority responsible for the supervision, established according to article 134.

h) College of supervisors: Permanent but flexible structure for the cooperation, coordination and facilitation of decision making concerning the supervision of a group;

i) Insurance holding undertaking: a parent undertaking which is not a mixed financial holding company and the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance or reinsurance undertakings, including third-country undertakings, at least one has its address in the European Union.

j) Mixed insurance holding undertaking: parent undertaking other than an insurance undertaking, a third-country insurance undertaking, a reinsurance undertaking, a third-country reinsurance undertaking, an insurance holding company or a mixed financial holding company, which includes at least one insurance or reinsurance undertaking among its subsidiary undertakings;

k) Mixed financial holding undertaking: Defined as such in Article 2.7 of the Law 5/2005, of 22 April, of supervision of the financial conglomerates which modifies other laws of the financial sector.

l) Intra-group operations: all the operations that, directly or indirectly, relate an insurance undertaking with other undertakings of the same group or with any natural or legal person closely linked to the undertakings of that group for compliance of an obligation, either contractual or not, and that have as subject a payment or not.

m) Regulated undertakings: those defined as such in Article 2.3 of the Law 5/2005, of 22 April, on supervision of the financial conglomerates that modifies other rules of the financial sector.

2. The provisions of this Law on the group supervision of insurance and reinsurance undertakings shall be applied without prejudice of the obligations that are derived from the supervisory rules apply to the undertakings considered individually.

Article 132. *Groups subject to supervision.*

1. Supervision at the level of group applies to the following:

a) Insurance or reinsurance undertakings that are a participating undertaking in, at least, one insurance or reinsurance undertaking, even in an insurance or reinsurance undertaking of a third country;

b) Insurance or reinsurance undertakings which parent is an insurance holding undertaking or a mixed financial holding undertaking with head office in the European Union;

c) Insurance or reinsurance undertakings which parent is an insurance holding undertaking or a mixed financial holding undertaking with head office outside the European Union, or an insurance or reinsurance undertaking of a third country;

d) Insurance or reinsurance undertakings which parent is a mixed holding undertaking.

2. When the mixed financial holding undertaking is bound to equivalent provision in agreement with this Law and with the Law 5/2005, of 22 April, on supervision of financial conglomerates and which modifies other rules of the financial sector, especially in that relative to the supervision on risk requirements, the Directorate General of Insurance and Pension Funds when being group supervisor, prior consultation to the other supervision authorities affected, could decide to apply only the suitable provisions of the Law 5/2005 to that mixed financial holding undertaking.

3. When a mixed financial holding undertaking is bound to equivalent provisions according to this Law and with the Law 10/2014, of 26 June, on ordering, supervision and solvency of credit agencies, or with the Law 24/1988, of 28 July, on the Stock Market, and their respective development provisions, especially in that related to the supervision on risk requirements, the Directorate General of Insurance and Pension Funds when being group supervisor, prior consultation to the other authorities responsible for the supervision of the subsidiaries of the mixed financial holding undertaking, could decide to apply to such undertaking only the provisions of the Law 10/2014, of 26 June, on ordering, supervision and solvency of credit agencies, or of the Law of 24/1988, of 28 July, on the Stock Market.

4. The Directorate General of Insurance and Pension Funds, when being group supervisor, shall inform the Banking Supervision Authority and the European Insurance and Occupational Pensions Authority of the decisions adopted in virtue of the paragraphs 2 and 3.

Article 133. *Scope of application of the group supervision.*

1. The exercise of group supervision shall not imply that the supervisory authorities are required to play a supervisory role in relation to the third-country insurance undertaking, the insurance holding company, the mixed financial holding company, without prejudice of the establishment by regulatory development., or mixed activity insurance holding, all of them considered individually.

2. In case the Directorate General of Insurance and Pension Funds is the group supervisor it could agree not to include an undertaking in the group supervision, where:

a) The undertaking has its address in a third country where there are legal obstacles to deliver the necessary information, without prejudice of the established by regulatory development;

b) The undertaking presents of negligible interest considering the objects of the group supervision; or

c) The inclusion of the would be inappropriate or misleading with respect to the objectives of the group supervision.

However, where several undertakings of the same group, taken individually, may be excluded pursuant to letter (b), they must nevertheless be included where, collectively, they are of non- negligible interest.

In the cases considered in letters b) and c), the Directorate General of Insurance and Pension Funds, before agreeing on the non-inclusion of the undertaking in the scope of the group supervision, it shall inform the other supervisory authorities affected.

Once the Directorate General of Insurance and Pension Funds has agreed on the non-inclusion in the group supervision of an insurance or reinsurance undertaking that is located in another Member State, in virtue of the cases included in letters b) or c), the supervisory authorities of the Member State where the non-include undertaking is located may ask the Spanish undertaking heading the group any information which may facilitate the supervision of the insurance or reinsurance undertaking concerned.

3. When the supervisory authority of another Member State, that is group supervisor, agrees on the non-inclusion of a Spanish insurance or reinsurance undertaking in the group supervision in virtue of analogue suppositions to those foreseen in the letters b) or c) of the previous paragraph, the Directorate General of Insurance and Pension Funds may ask the undertaking heading the group any information which may facilitate the supervision of the Spanish insurance or reinsurance undertaking that has not been included in the scope of the group.

CHAPTER II

Exercising group supervision

Section 1. Rights and duties assigned to the Directorate General of Insurance and Pension Funds as group supervisor

Article 134. *Exercising group supervision functions by the Directorate General of Insurance and Pension Funds.*

1. The Directorate General of Insurance and Pension Funds shall pursue the duties of group supervisor when all the group undertakings have their head office in Spain.

2. In case not all the undertakings of the group have their head office in Spain, the Directorate General of Insurance and Pension Funds shall pursue its duties as group supervisor when in any of the following suppositions:

a) Where a group is headed by an insurance or reinsurance undertaking that has its head office in Spain.

b) Where a group is headed by an insurance holding undertaking or a mixed financial holding undertaking, if all its insurance or reinsurance subsidiaries have their head office in Spain.

c) Where a group is headed by an insurance holding undertaking or a mixed financial holding undertaking that has its head office in Spain, if any of the subsidiaries insurance or reinsurance undertakings of the insurance holding undertaking or mixed financial holding undertaking also has its head office in Spain.

d) Where a group is headed by several insurance holding or mixed financial holding undertakings with their head office in Spain and in other Member States, if the insurance or reinsurance undertaking with the largest balance sheet total of all the insurance and reinsurance undertakings with their head office in the European Union, has its head office in Spain.

e) Where more than one insurance or reinsurance undertaking which have their head offices in different Member States have as their parent the same insurance holding company or mixed financial holding company and none of those undertakings have their head office in Spain and in other Member States where there is a subsidiary if is in Spain the head office of the insurance or reinsurance undertaking with the largest balance sheet total.

f) Where the group is a group without a parent undertaking, or in any circumstances not referred to in letters a) to e), if the insurance or reinsurance undertaking has its head office in Spain.

3. The cases where even not meeting the criteria set out in paragraph 2, the Directorate General of Insurance and Pension Funds will assume the duties of group supervisor, as well as the cases when even meeting the circumstances the Directorate General does not assume the duties of group supervisor shall be established by regulatory development.

Article 135. *Duties of the Directorate General of Insurance and Pension Funds as group supervisor. College of supervisors.*

1. The Directorate General of Insurance and Pension Funds when acting as group supervisor shall have the following duties:

a) coordination of the gathering and dissemination of relevant or essential information for going concern and emergency situations, including the dissemination of information which is of importance for the supervisory task of a supervisory authority.

b) Supervisory review and assessment of the financial situation of the group.

c) Assessment of compliance of the group with the rules on solvency and risk concentration, and on the intra-group transactions.

d) Assessment of the system of governance of the group and of whether the members of the administrative, management or supervisory body fulfil the requirements established in article 38 and others that are established by regulatory development.

e) Planning and coordination, through regular meetings held at least annually or through other appropriate means, of supervisory activities in going-concern as well as in emergency situations, in cooperation with the supervisory authorities concerned and taking into account the nature, scale and complexity of the risks inherent in the business of all undertakings that are part of the group.

f) Management of the validation process of the internal models used at group level, according to the established in article 147, and the process for permitting the application of the regime of groups with centralised risk management.

g) Other tasks, measures and decisions assigned to the group supervisor in this Law and in the other rules that are of application.

2. Chapters, I, IV and V of section IV shall be applicable to group supervision also to the supervision of insurance or reinsurance undertakings.

3. In order to facilitate the exercise of the group supervision tasks, a college of supervisors shall be established. The aspects relative to the members and functioning of the college of supervisors shall be developed in the regulatory development, as well as the contents of the coordination agreements celebrated between the Directorate General of Insurance and Pension Funds and other supervisory authorities.

Article 136. *Access to the information and verification.*

1. The natural or legal persons included in the scope of the group supervision and its related and participated undertakings, shall exchange all the information that is relevant for the purposes of group supervision.

2. The Directorate General of Insurance and Pension Funds, when being group supervisor, access to all pertinent information for the purposes of exercising supervision of the group nd irrespective of the nature of the entity concerned, in the terms provided for the supervision of individual undertakings under articles 113 and 114.

The Directorate General of Insurance and Pension Funds may solely directly address information requests to entities of the group other than the insurance or reinsurance entity subject to group supervision, where such information had been requested from the former and had not been provided within the term requested.

3. When it can be assumed, on the basis of the economic, financial or management relations of an insurance or reinsurance entity with other entities, that there is a group of insurance entities subject to supervision, as provided under th is Law, and the entities had failed to calculate the solvency capital requirement of the group, the Directorate General of Insurance and Pension Funds, may request information from these entities, or inspect them, for the purposes of establishing whether the calculation is applicable.

4. The Directorate General of Insurance and Pension Funds may verify the information requested, in agreement with paragraph 2 of this article, at the premises of the insurance or reinsurance undertaking subject to group supervision as well as at the premises of its related undertakings, at those of the parent undertaking, at those of other undertakings related to the parent undertaking and. at the undertakings presumed to be part of a group

5. The information verification procedure by the Directorate General of Insurance and Pension Funds shall be regulated for entities which are part of a group and that have their head office in other Member States, as well as the information verification procedure by the supervisory authority of another Member State for entities that are part of a group and are domiciled in Spain.

Section 2. Collaboration with other supervisory authorities

Article 137. *Invitation and consultation between the supervisory authorities.*

1. The Directorate General of Insurance and Pension Funds, being or not group supervisor, shall call all the supervisory authorities involved in group supervision at least when having evidences of any of the following situations:

a) A significant breach of the solvency capital requirement or of the minimum capital requirement of an individual insurance or reinsurance undertaking.

b) A significant breach of the solvency capital requirement at group level calculated on the basis of the consolidated data, or of the aggregated solvency capital requirement of the group, whichever the calculation method used is.

c) Other exceptional circumstances.

2. Without prejudice of the established in article 135, whenever a decision is significant for the supervisory task of other supervisory authorities, the Directorate General of Insurance and Pension Funds shall, prior to making a decision, consult each other in the college of supervisors with regards to the following:

a) Changes in the shareholder structure, organisational or management structure of insurance and reinsurance undertakings in a group, which require the authorisation of supervisory authorities;

b) The decision on the extension of the recovery period according to article 156.

c) Mayor sanctions or exceptional measures taken by the supervisory authorities, including the imposition of a capital add-on to the solvency capital requirement, the imposition of any limitation on the use of an internal model for the calculation of the solvency capital requirement, or other extraordinary measures.

Related to the established in the letters b) and c), the group supervisor shall always be consulted.

In addition, the supervisory authorities concerned shall, where a decision is based on information received from other supervisory authority, consult each other prior to that decision.

3. The Directorate General of Insurance and Pension Funds could not make that consultation in emergency situations or, where such consultation could jeopardise the effectiveness of the decision. In this case, the Directorate General of Insurance and Pension Funds shall inform the other supervisory authorities affected.

Article 138. *Information requested to the other supervisory authorities.*

1. The Directorate General of Insurance and Pension Funds, when being group supervisor, could ask the supervisory authorities of the Member State where the parent undertaking has its head office to request that undertaking any information which would be relevant for the exercise of its group supervision coordination rights and duties to transmit that information.

2. When the Directorate General of Insurance and Pension Funds, as group supervisor, needs any information that has already been given to other supervisory authorities, shall contact that authority to request the said information.

Article 139. *Cooperation with the supervisory authorities of credit institutions and investment firms.*

If an insurance or reinsurance undertaking and either a credit institution, an investment firm or both are directly or indirectly related or have a common participating undertaking, the Directorate General of Insurance and Pension Funds shall closely cooperate with the supervisory authorities concerned, providing and requesting them, without prejudice of their respective competences, any information that could simplify their task.

Section 3. Levels of supervision

Article 140. *Ultimate parent at Community level.*

1. Where a participating insurance or reinsurance undertaking or an insurance holding company or a mixed financial holding company, having their head office in Spain is, itself a subsidiary of another parent insurance or reinsurance undertaking or an insurance holding company or a mixed financial holding company that has its head office in another Member State, the group supervision shall apply at the level of the ultimate parent insurance or reinsurance undertaking or of the insurance holding company or mixed financial holding company with head office in that other Member State.

2. The group supervision of a parent insurance or reinsurance undertaking or of an insurance holding company or mixed financial insurance company that have its head office in Spain and that is ultimate parent at the level of the European Union shall include all the undertakings being part of the group.

Article 141. *National sub-group of insurance or reinsurance undertakings.*

1. When a participant insurance or reinsurance undertaking or an insurance holding company or a mixed financial holding company that has its head office in Spain is also part of a group which ultimate parent has its head office in another Member State, the Directorate General of Insurance and Pension Funds could agree that it is bound to the group supervision of the parent insurance or reinsurance undertaking or an insurance holding company or a mixed financial holding company with head office in Spain which shall be considered, to these effects, as parent of the national sub-group of insurance or reinsurance undertakings.

The supervision of a national subgroup shall require a reasoned order of the Directorate General of Insurance and Pension Funds, prior consultation to the group supervisor and to the ultimate parent undertaking at European Union level.

The Directorate General of Insurance and Pension Funds shall justify the decision adopted both before the group supervisor as before the insurance or reinsurance undertaking or an insurance holding company or a mixed financial holding company ultimate parent undertaking at European Union. The group supervisor shall inform the college of supervisors.

The supervision of the national sub-group could not be agreed or kept when the ultimate parent undertaking at European Union level has been authorised by the group supervisor to submit its subsidiary with head office in Spain to the regime of supervision of group solvency with centralised risk management.

2. The supervision of the national sub-group shall attach to the established for the group supervision with the following characteristics:

a) The supervision of the national sub-group could extent to all the areas subject of the group supervision or only to one or two of them, either being the solvency supervision, the risk concentration and intra-group operations, or the risk management and internal control.

b) The supervision of the solvency of the national sub-group shall attached, also, to the following criteria:

1.º The method to supervise the solvency of the sub-group shall be the one chosen by the group supervisor to analyse the solvency of the ultimate parent undertaking at European Union level.

2.º If the ultimate parent undertaking at European Union level has obtained authorisation of the group supervisor to calculate the solvency capital requirement of the group and that of the insurance and reinsurance undertakings part of the group according to an internal model, such method shall be used for the calculation of the solvency capital requirement of the national sub-group and of the insurance and reinsurance undertakings of it.

3.º If the risk profile of the ultimate parent undertaking at national level significantly deviates from the internal model approved at European Union level, and the undertaking considered does not suitably respond to the requirements made to such effect, the Directorate General of Insurance and Pension Funds may request, by a motivated order, a capital add-on to the solvency capital requirement of the national sub-group that is derived from the application of the said model or, under exceptional circumstance where such request is inappropriate, it may request the undertaking to calculate the solvency capital requirement of the national sub-group according to a standard formula. The Directorate General of Insurance and Pension Funds shall inform of the previous order both to the undertaking and to the group supervisor. The group supervisor shall inform of it to the college of supervisors.

4.º The ultimate parent undertaking at national level could not request authorisation to submit any of its subsidiaries to the supervisory regime of the group solvency with centralised risk management.

Article 142. *Sub-group of undertakings that includes national sub-groups of several Member States.*

1. When the Directorate General of Insurance and Pension Funds has agreed, according to the established in article 141, to submit to the supervision of a group a national sub-group, it could celebrate an agreement with the supervisory authorities of the Member States where the other undertakings related to the same ultimate parent undertaking are present at Community level, and that are ultima parent of the national sub-group of those States, that the supervision could be made at higher sub-group level that includes several national sub-groups. In such case, the group supervision at sub-level group shall only be done by the supervisor appointed in the agreement.

The national supervisory authorities involved in the agreement shall justify the decision adopted both before the group supervisor as before the ultimate parent insurance or reinsurance undertaking or insurance holding company or mixed financial holding company at European Union level. The group supervisor shall inform the college of supervisors.

The supervision of the sub-group that includes several Member States could not include undertakings that are ultimate parent undertaking of a national sub-group in other Member States different to those signers' supervisory authorities' agreement.

2. Exercising sub-group supervision that includes several Member States the rules foreseen for the supervision of a national sub-group shall apply.

CHAPTER III
Group financial situation

Section 1. Group solvency

Article 143. *Supervision of group solvency.*

1. The participating insurance or reinsurance undertakings shall guarantee that the group has eligible own funds available in the group which are always at least equal to the group solvency capital requirement calculated according to the established in this Law and in the other rules that are of application.

When the parent entity of a group is an insurance holding company or a mixed financial holding company, the insurance and reinsurance undertakings being part of the group shall guarantee the compliance of the obligation presented in the previous paragraph.

2. The obliged undertakings according to paragraph 1 shall guarantee that the group has, at any moment, the eligible basic own funds to cover the minimum capital requirement of the group, established according to the rules of application, when so is requested.

Article 144. *Report on the financial and solvency situation at group level.*

1. The participating insurance and reinsurance undertakings, the insurance holding company or the mixed financial holding company shall annually publish a report on the financial and solvency situation at group level. To these effects, articles 80 to 82 for the report on the financial and solvency situation of the individual undertakings shall apply.

2. The undertakings obliged according to paragraph 1, prior approval of the Directorate General of Insurance and Pension Funds, when it is the group supervisor, may produce a single document on the financial and solvency situation, that shall include the information at group level that has to be made public and the information on any of the subsidiaries included in the group that have to be individually identifiable and that has to be made public according to the established in articles 80 to 82.

Article 145. *Calculation of solvency at group level of participating undertakings.*

The calculation of solvency at group level of participating insurance and reinsurance undertakings shall be made according to accounting consolidation-based methods.

However, the Directorate General of Insurance and Pension Funds, when it is the group supervisor, may agree, prior consultation to the other supervisory authorities concerned and to the group, on the application of the deduction or aggregation method or a combination of both accounting consolidation-based method is not appropriate.

Article 146. *Calculation of solvency of the consolidated group: accounting consolidation-based method.*

1. The calculation of group solvency shall be carried out on the basis of the consolidated accounts.

2. The solvency capital requirement of a consolidated group shall be calculated according either to the standard formula or to an internal model, approved in a coherent way with the principles and requirements requested at individual level. The maximum period to decide on the proceeding and report the order is of six months. After that period without having reported an express order, the application shall be considered as dismissed.

3. The system to calculate this method shall be developed by regulatory development.

Article 147. *Internal model of the consolidated group and of insurance and reinsurance undertakings of the group.*

1. The participating insurance and reinsurance undertakings and their related undertakings, or jointly, the undertakings related to an insurance holding company or to a mixed financial holding company could submit the Directorate General of Insurance and Pension Funds, when it is group supervisor, the application for authorisation to use an internal model for the calculation of the solvency capital requirement of the consolidated group and of the solvency capital requirement of the insurance and reinsurance undertakings of the group.

2. When none of the insurance or reinsurance undertakings of the group are located in a Member State different to Spain, the approval of the internal model of the consolidated group and of the insurance and reinsurance undertakings shall be made in a coherent way with the principles and requirements required at individual level. The maximum period to decide on the proceeding and report the order is of six months.

After that period without having reported an express order, the application shall be considered as dismissed.

3. The authorisation proceeding of an internal model of a consolidated group and of the insurance and reinsurance undertakings of the group when any of the undertakings of the group is located in another Member State different to Spain shall be developed by regulatory development. In any case, the maximum period to decide on the proceeding and report the order shall be of six months. After that period without having reported an express order, the application shall be considered as dismissed.

4. The measures to be adopted when the risk profile of an insurance or reinsurance undertaking significantly deviates from the hypothesis the internal model authorised at group

level is based on, shall be established by regulatory development.

Article 148. *Obligation of capital add-on to the consolidated group solvency capital requirement.*

In case the risk profile of the group is not adequately reflected, a capital add-on to the consolidated group solvency capital requirement may be imposed.

Article 149. *Deduction and aggregation method.*

1. According to article 145, the Directorate General of Insurance and Pension Funds, when it is group supervisor, could authorise the use of the deduction and aggregation method in the cases established by the direct application of the rules of the European Union.

2. The calculation system of this method shall be developed by regulatory development.

Article 150. *Regime of groups with centralised risk management.*

The parent undertakings could present an application of authorisation for its subsidiary undertakings to adhere to the regime of groups with centralised risk management.

The requirements to adhere to this regime as well as the authorisation proceeding of the said shall be established by regulatory development.

Section 2.ª Risk concentration and intra-group transactions

Article 151. *Supervision of risk concentration and intra-group transactions.*

The insurance and reinsurance undertakings, the insurance holding company and the mixed financial holding company are obliged to report the Directorate General of Insurance and Pension Funds, when it is group supervisor, on the regular basis that is established by regulatory development and, at least, annually, of any significant risk concentration at group level as well as of all significant intra-group transactions by insurance and reinsurance undertakings within a group, including those carried out with a natural person with close links to an undertaking in the group.

Section 3.ª Risk management and internal control

Article 152. *Supervision of the group system of governance.*

1. The risk management and internal control systems and the information proceedings shall be consistently implemented in all the undertakings in the scope of a group, so that those systems and reporting procedures can be controlled at level of the group

The requirements set out in this Law related to the system of governance of the insurance and reinsurance undertakings individually considered shall apply mutatis mutandis at the level of the group.

2. The participating insurance or reinsurance undertaking or the insurance holding company or the mixed financial holding company shall undertake, at the level of the group, the assessment required in article 66. The own-risk and solvency assessment conducted at group level shall be subject to supervisory review by the Directorate General of Insurance and Pension Funds, when it is group supervisor.

3. The participant insurance or reinsurance undertaking or the insurance holding company or the mixed financial holding company shall establish proceedings directed to identify deteriorating financial conditions of the group and shall report, in a maximum period of ten days, to the Directorate General of Insurance and Pension Funds, when it is group supervisor, of the deteriorating financial conditions that could have occurred.

Section 4.ª Breach of group solvency

Article 153. *Measures directed to face non-compliance.*

1. If the insurance or reinsurance undertakings of a group do not comply with the solvency requirements of the group, the risk concentration and the intra-group transactions, and the risk management and internal control established in chapter III of this section or, despite complying with such requirements, solvency may nevertheless be jeopardised, or the intra-group transactions and the risk concentrations are a threat to the financial situation of the insurance or reinsurance undertaking, the Directorate General of Insurance and Pension Funds, when it is group supervisor, could request to the said undertakings to adopt the necessary measures to solve the situation. When the insurance or reinsurance undertaking has its head office in another member State, the la Directorate General of Insurance and Pension Funds shall inform the supervisory authority of the Member State of the head office of the undertaking about this decision with the aim that it can adopt the necessary measures.

Similarly, the Directorate General of Insurance and Pension Funds, as group supervisor, could require, in the case, the adoption of necessary measures to a parent insurance holding company or a mixed financial holding company. When the insurance holding undertaking or mixed financial holding company has its head office in another Member State, the Directorate General of Insurance and Pension Funds shall inform the supervisory authority of that State of the head office of the insurance holding company with the aim it can adopt the necessary measures.

2. The insurance holding companies or mixed financial holding companies that breach the legal, administrative or regulatory provisions adopted in the application of the present section, and the person that manage such undertakings in an effective way shall be submitted to the regime of breaches and penalties established in section VIII of this Law.

The Directorate General of Insurance and Pension Funds shall cooperate with the other supervisory authorities concerned with the aim of guaranteeing that the penalties that could be imposed are effective, especially when the central administration or the main establishment of an insurance holding undertaking does not match with its head office.

CHAPTER IV
Groups with parent undertakings outside the European Union

Article 154. *Equivalence verification.*

1. In case the parent undertaking of a group is an insurance or reinsurance undertaking or an insurance holding company or mixed financial holding company that has its head office in a third country, the supervisory authorities concerned shall verify the equivalence of the prudential regime for the supervision of groups in that third country to that foreseen for this section, in agreement with the following rules:

a) This equivalence shall be established by the European Commission according to the criteria specified by it, with the assistance of the European Insurance and Occupational Pensions Authority.

The list of equivalent prudential regimes shall be published by European Insurance and Occupational Pensions Authority at its website and shall be updated. The decisions of the Commission shall be periodically reviewed with the aim of being updated to care for any substantial modification of the supervisory regime of the European Union and the supervisory regime of the third country.

b) When not all the criteria established in letter a) are complied, the equivalence could be established temporally by the European Commission, with the assistance of the European Insurance and Occupational Pensions Authority, according to the criteria that are established by regulatory development

The list of third countries that have had a temporarily equivalent solvency regime established shall be published by the European Insurance and Occupational Pensions Authority at its website and shall be updated. The decisions of the Commission shall be regularly reviewed with the aim of being updated with the reports of the progresses made by the third country, which shall be presented to the Commission on an annual basis for its assessment with the assistance of the European Insurance and Occupational Pensions Authority.

The temporary equivalence regime shall be of five years from 1 January 2016 and shall end on the date when, according to letter a), the prudential regime of this third country has been deemed to be equivalent, whichever the earliest is, that period may be extended by a maximum of one more year, where such time is necessary for EIOPA and the Commission to carry out the assessment of equivalence for the purposes of letter a).

The temporary equivalence shall not be applied in case there is an insurance or reinsurance undertaking located in a Member State which has a balance sheet total that exceeds the balance sheet total of the parent undertaking situated outside the Union. In such case, the task of the group supervisor shall be exercised by the acting group supervisor, according to the criteria foreseen in article 134.2.

c) When no delegated act has been adopted according to the previous letters a) and b), the Directorate General of Insurance and Pension Funds, when according to the criteria foreseen in article 134.2 is group supervisor, shall verified motu propio or at the request of the parent undertaking or of any of the insurance or reinsurance undertakings of the group authorised in the European Union, the equivalence of the prudential regime for the supervision of groups of the third country. The European Insurance and Occupational Pensions Authority shall assist in this to the group supervisor.

In doing so, the Directorate General of Insurance and Pension Funds shall consult, assisted by the European Insurance and Occupational Pensions Authority, the other supervisory authorities concerned, before making a decision on equivalence. That decision shall be taken in accordance with the criteria adopted by the European Commission according to letter a), as well as with the decisions previously adopted bilaterally with that third country, except when it is necessary to consider the substantial modifications introduced in the Spanish supervisory regime or in the supervisory regime of that third country.

In case of disagreement between the supervisory authorities about the decision made they may refer the matter to EIOPA and request its assistance in accordance with Article 19 of regulation (EU) No 1094/2010 within three months after notification of the decision the Directorate General of Insurance and Pension Funds, when acting as group supervisor.

2. In case the group supervision in the third country is considered equivalent, the Directorate General of Insurance and Pension Funds shall rely on the equivalent group supervision exercise by the third-country supervisory authorities established in the sections 1 and 2 of chapter II of this section and in articles 144, 148 and the established by regulatory development, mutatis mutandis, to the cooperation with the supervisory authorities of the third country.

3. The rules applicable when the supervision of groups in third countries is not considered equivalent shall be established by regulatory development.

Section VI
Situations of financial deterioration. Special control measures

CHAPTER I
Situations of financial deterioration

Article 155. *Financial deterioration of the insurance and reinsurance undertakings.*

The insurance and reinsurance undertakings shall implement proceedings directed to detecting the deterioration of their financial situation and shall inform in a maximum period of ten days to the Directorate General of Insurance and Pension Funds of the happening of such deterioration, of any lack related to the solvency capital requirement or related to the minimum capital requirement, as well as when there is a risk that such lack may take place in the next three months.

Article 156. *Non-compliance with the solvency capital requirement.*

1. When the insurance or reinsurance undertaking founds a breach related to the solvency capital requirement or a risk that it may take place in the next three months, it shall be obliged to submit to the approval of the Directorate General of Insurance and Pension Funds a recovery plan, in a period of two months since the breach or risk of breach has been found.

2. The Directorate General of Insurance and Pension Funds shall require the undertaking for it to adopt and pursue, in a period of six months since it found the breach or the risk of breach, the necessary measures to re-establish the level of the eligible own funds corresponding to the coverage of the solvency capital requirement or to reduce its risk profile so the solvency capital requirement is covered. The period may be extended for three more months.

3. The cases and the measures to be adopted in case exceptional adverse situations affect insurance and reinsurance undertakings that represent a significant market share or of the classes affected shall be ruled by regulatory development.

Article 157. *Non-compliance related to the minimum capital requirement.*

When the insurance or reinsurance undertaking finds a breach in the minimum capital requirement or a risk that it can take place in the next three months, it shall be obliged to submit to the approval of the Directorate General of Insurance and Pension Funds, in a period of a month, a short-term financing plan directed to re-establish, in a period of three months, to be counted since it has found the breach or the risk that it could take place, the eligible basic own funds, at least, until the minimum capital requirement level, or to reduce the risk profile so the minimum capital requirement is met.

Article 158. *Contents of the plan.*

The contents of the recovery plan and of the short-term financing measures foreseen in this chapter shall be ruled by regulatory development.

CHAPTER II

Special control measures

Article 159. *Situations that can give place to the adoption of special control measures.*

1. The Directorate General of Insurance and Pension Funds may adopt special control measures when the insurance or reinsurance undertakings are found in any of the following situations:

a) Lack of eligible own funds to cover the minimum capital requirement.

b) Lack of the eligible own funds to cover the solvency capital requirement.

c) Deficit higher to a 20 per 100 in the calculation of the solvency capital requirement.

d) Breach of the rules relative to the valuation of assets and liabilities, including the technical provisions, so a deviation higher to a 20 per 100 in the calculation of the eligible own funds takes place to cover the solvency capital requirement. As well, non-compliance with the technical provision, when the level required is not reached once the undertaking has been required to increase it in the terms of article 70.2.

e) Financial or liquidity problems that have implied delay or breach in its payments.

f) Relevant deficiencies in the governance system or in the internal control system, which prevent the management of the activity and, in particular, the compliance with the obligation related to risk management, compliance, internal and actuarial audit or in the outsourcing of functions or activities.

g) Obvious difficulty in carrying out the social purpose, or paralysis of the social bodies in a way that hinders their functioning.

h) Factual situations, deduced from checks made by the Directorate General of Insurance and Pension Funds, that put in danger the solvency of the undertaking, the interests of the insured persons or the fulfilment of the obligations contracted, as well as the lack of adequacy of the accountancy to the accountancy plan of insurance undertakings, or the irregularity of accountancy or of the administration in such terms that notably avoid or hinder knowing the real patrimonial situation of the undertaking.

2. The special control measures may be adopted on the parent undertakings of groups of insurance or reinsurance undertakings and on the insurance and reinsurance undertakings that are part of the group when this is found in any of the situations described in paragraph 1.

Article 160. *Special control measures that can be adopted.*

1. Independently of the administrative penalties that may be imposed, the Directorate General of Insurance and Pension Funds may adopt the following special control measures:

a) To request the insurance undertaking a short-term financial plan.

b) To request the insurance undertaking a recovery plan to re-establish its financial situation.

c) To prohibit the disposal of assets of the undertaking and its subsidiaries, unless they are financial undertakings subject to supervision. This measure may be supplemented by these others:

1.ª The deposit of the securities and other movable properties or the administration of the immovable properties by the person accepted by the Directorate General of Insurance and Pension Funds.

2.ª The notification of the measure to the depository credit institutions of cash or securities.

3.ª The preventive annotation of the prohibition of disposing in the corresponding public registers, which would be enough with the order of the Directorate General of Insurance and Pension Funds where it agrees such prohibition of provision. During the validity of the preventive notice, rights in rem of guarantee may not be registered in the public registered nor register judicial or administrative orders or seizure, and the credit agencies may not charge or made any payment effective because of judicial orders or direct compulsions or by any other concept, without the prior and express authorisation of the Directorate General of Insurance and Pension Funds.

d) To prohibit the undertaking and its subsidiaries, unless these last are financial undertakings submitted to supervision that, without prior authorisation of the Directorate General of Insurance and Pension Funds, may perform disposal and management actions that are agreed assume new debts, distribute dividends, active contributions and returns, contract new insurances or admit new members.

2. The Directorate General of Insurance and Pension Funds shall carry out on behalf and charged to the undertaking the communications that, subsequent to the special control measures adopted, have to be made to the public registers.

Article 161. *Additional special control measures.*

If the deficit of the eligible own funds to cover the solvency capital requirement was higher to a twenty per cent, when the lack affects the minimum capital requirement and in the rest of situations described in article 159.1, letters c) to h), and with the aim of caring for the interests of the policyholders, the Directorate General of Insurance and Pension Funds could adopt, jointly or independently, any of the following measures:

a) The prohibition of disposal of assets.

b) The prohibition of the actions listed in article 160.1.d).

c) To suspend the contract of new insurance policies or the acceptance of reinsurance.

d) To prohibit the extension of the insurance contracts celebrated by the insurance undertaking in all or some of the classes. To these effects, the insurance undertaking shall inform in writing to the policyholders of the prohibition of extension of the contract in a period of fifteen calendar days since it receives the notice of this special control measure; in this case, the period foreseen in the second paragraph of article 22 of the Law 50/1980, of 8 October, on Insurance Contracts, shall be reduced to fifteen calendar days. Independently of the notice in writing to the policyholders, the order that adopts such measure shall be published in the "Official State Journal" and in "Official Journal of the European Union".

e) To prohibit the pursuit of the insurance or reinsurance activity abroad.

f) To request the insurance or reinsurance undertaking to set organization, financial measures or of other nature that are suitable, make a forecast of its results and established the deadlines for its execution, with the aim of overcoming the situation that gave place to such request. Such measures shall be submitted to the approval of the Directorate General of Insurance and Pension Funds.

g) To order the chief executive officer or similar position in the administration that informs the other administrative bodies of the resolution adopted and, where appropriate, the official report as well as to the administrative bodies of its subsidiaries.

h) To convene the administrative bodies or the board or the general meetings of shareholders of the insurance or reinsurance undertaking as well as to appoint the person that shall chair the meeting and present the situation.

i) To provisionally substitute the administrative bodies of the undertaking.

j) To carry out reviews of specific matters by the accounts' auditor of the undertaking or by another account's auditor, whenever it does not mean a damage to the Independence regime they are bound, according to the specific regulation of the audit of accounts activity.

Article 162. *Collaboration of the Insurance Compensation Consortium in the execution of the special control measures adopted.*

The Directorate General of Insurance and Pension Funds may request the collaboration of the Insurance Compensation Consortium so, related to the special control measures adopted, it pursues the functions that are established by regulatory development.

Article 163. *Intervention of the insurance undertaking.*

1. As special ancillary control measure to those foreseen in articles 160 and 161, the Directorate General of Insurance and Pension Funds could agree on the intervention of the insurance or reinsurance undertaking to guarantee its correct compliance.

2. The acts and agreements of any body of the insurance or reinsurance undertaking that are adopted since the date on which the resolutions agreeing on the administrative intervention was reported and that affects or are related to the above mentioned special control measures shall not be valid and may not be taken into effect without the express approval of the appointed insolvency practitioners. The exception to the approval is the pursuit of action or appeals by the intervened undertaking against the administrative actions of supervision or related to the action of the practitioners.

3. The appointed practitioners shall have faculties to revoke as many powers or delegation that had been granted by the administrative body of the insurance or reinsurance undertaking, by its attorneys, prior to the date of publication of the agreement. Once this measure is adopted, the practitioners could request the return of the documents where such powers were included, as well as to promote the registration of the withdrawal in the corresponding public registers.

4. The Directorate General of Insurance and Pension Funds may ask for the support of the Insurance Compensation Consortium to carry out the functions assigned to the practitioners.

Article 164. *Proceeding to adopt special control measures.*

The adoption of special control measures shall be carried out by an administrative proceeding pursued according to the rules of proceeding of supervision by inspection, with the remarks that are established by regulatory development.

Article 165. *Provisional substitution of the administrative bodies.*

The provisional substitution of the administrative bodies of the insurance or reinsurance undertakings shall attach to the following rules:

1. The resolution, with immediate executive character, shall appoint the person or persons that have to act as provisional administrators and shall state if they have to do so jointly or in group.

The appointment shall be published in the "Official State Journal" and shall be registered in the corresponding public registers, including, where appropriate, those existing in the other Member States, a publication that shall establish its efficiency against third parties. The substitution of provisional administrators shall be bound to the same requirements and effects when necessary to proceed so.

2. The provisional administrators shall meet the requirements required by article 38.

3. The provisional administrators shall also have the characteristics of practitioners, with the faculties stated in article 163, of the actions and agreements of the board or general meetings of shareholders of the insurance or reinsurance undertaking.

4. The obligation of formulating the annual accounts of the insurance or reinsurance undertaking and the approval of these and the social management that may be suspended, for a period not longer than a year to be counted from the expiry of the period legally established to such effect, if the Directorate General of Insurance and Pension Funds considered, at the request of the provisional administrators, that there are not accurate and full information or documents for it. In this case, the celebration of board meetings or ordinary meetings of the shareholders or mutual members for the approval of the said may also be suspended.

5. Agreed by the Directorate General of Insurance and Pension Funds the termination of the provisional substitution measure of the administrative bodies of the undertaking, the provisional administrators shall proceed to immediately convoke the general board or meetings of shareholders of the insurance or reinsurance undertaking where the new administration body shall be appointed. Until it assumes the roles, the provisional administrators shall continue pursuing their duties.

6. The provisional administrators may pursue their actions in the territory of all the Member States and could exercise in them the same duties and powers as in Spain. To these effects, it would be enough to accredit their condition of administrator with a certificate of the order where their appointment is agreed. They may only grant representation powers or request assistance when it is necessary to carry out the execution of the measures in the territory of the other Member States and, especially, to solve the problems the creditors living in them could find.

The persons helping or representing them have to be honourable and meet the necessary conditions of qualification or professional experience to pursue their actions, in the terms of article 38.

Article 166. *Effects of the special control measures in other Member States.*

1. Adopted by the Directorate General of Insurance and Pension Funds on an insurance undertaking any other measures included in the articles 160.1.a), b), c) and d), 161.d), e), f) and i) and 163, that shall have effects in agreement with the established in its legislation, in all the Member States. To these effects and without prejudice of the established in the next paragraph, the Directorate General of Insurance and Pension Funds shall inform the supervisory authorities of the other Member States of the agreement to adopt the measure and its effects in a period of ten days to be counted from its adoption.

2. Also, if a special control measure prohibiting disposal of assets on a Spanish insurance undertaking that operates in other Member States under the freedom of establishment or freedom to provide services regime, the Directorate General of Insurance and Pension Funds, shall request, where appropriate, to the corresponding supervisory authorities to adopt on the assets located in their territory the same measures the Directorate General of

Insurance and Pension Funds would have adopted.

Such measures shall be ruled by the established in this Law and in its development rules.

Article 167. *Measures adopted related to insurance undertakings with head office in other Member States.*

1. When a decision has been adopted by a supervisory authority of another Member State on an insurance undertaking with head office in another Member State, the special control measure of prohibition of disposing and it requested to the Directorate General of Insurance and Pension Funds to impose an identical measure on the assets of the undertaking located in the Spanish territory, stating those that shall be subject of the order, the said Directorate General shall impose such measure.

2. When related to an insurance undertaking with head office in another Member State, including its branches in Spain or in other Member State, a reorganisation measure or a winding-up proceeding has been adopted, such measure or proceeding shall have effects in Spain as soon as in the Member State where the measure has been adopted or the proceeding started.

3. Once the adoption of the measure of the start of the proceeding is reported to the Directorate General of Insurance and Pension Funds, it shall publish a summary of the agreement or order related to the measure of proceeding in the “Official State Journal”; in any case, this summary shall include the competent authority of the Member State that has adopted the measure or the proceeding, the legislation of application, as well as, where appropriate, the identification of the liquidator or liquidators appointed.

4. The provisional administrators and liquidators appointed by the competent authority of another Member State could perform their duties in Spain; to such effects, a certificate of the order or a legal copy of the agreement were the appointment is made, translated into Spanish, would be enough to accredit their condition.

5. Such measures adopted by other Member States and their procedures of adoption shall be ruled by the legislation of the Member State of adoption of the measure without prejudice that, for the cases that will be now stated, shall consider the following rules leaving aside what is established in the international treaties:

a) The effects of the said measures and procedures in the work contracts submitted to the Spanish legislation shall be ruled by it.

b) The rights of the insurance undertaking with respect to buildings, a ship or an aircraft subject to register in a Spanish public register, shall be ruled by the Spanish legislation.

c) Without prejudice of the established in paragraph 1, the opening of reorganisation measures or winding-up proceeding shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, movable or immovable assets – both specific assets and collections of indefinite assets as a whole which change from time to time – which belong to the insurance undertaking and which are situated in Spain at the time of the opening of such measures or proceeding, nor the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee, when such guarantees are ruled by the Spanish legislation.

d) The opening of reorganisation measures or winding-up proceedings against an insurance undertaking purchasing an asset shall not affect the rights of a seller which are based on a reservation of title, when such good is located, at the moment of adoption of the measure or opening of the proceeding, in the Spanish territory.

The opening, after delivery of the asset, of reorganisation measures or winding-up proceedings against an insurance undertaking which is selling an asset shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring a title when it is, in the moment of the adoption of the measure or the opening of the proceeding, in the Spanish territory.

e) The opening of reorganisation measures or winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the insurance undertaking when the Law that rules the winding-up allows the set-off.

f) The effects of a reorganisation measure or of a winding-up proceeding in the rights and obligations of the participating parties in a Spanish ruled market shall be exclusively governed by the Spanish Law.

g) The nullity, voidability or unenforceability of legal acts detrimental to all the group of creditors shall be governed by the legislation of the home member state, unless the person that took advantage of the damaging for the group of creditors gives evidences that such action is submitted to the Spanish legislation and that this does not accept any kind of challenge.

h) The validity of the transfer against payment by an insurance undertaking made after the adoption of a reorganisation measure or opening of a winding-up proceeding, with respect to buildings, a ship or an aircraft subject to register in a Spanish public register or to tradable securities or other securities which existence and transfer means the registration in a register or in an account foreseen by the Spanish legislation or that are placed in a central deposit system governed by the Spanish legislation, shall be ruled by the Spanish legislation.

i) The effects of a reorganisation measure or winding-up proceeding on a pending lawsuit carried out in Spain concerning an asset or a right of which the insurance undertaking has been divested shall be governed solely by the Spanish legislation.

Article 168. *Bankruptcy proceedings.*

1. The insurance undertakings subject of a proceeding of special control measures could not request in court the declaration of a bankruptcy proceeding nor adhere to the measures foreseen in article 5 bis of the Bankruptcy Law 22/2003, of 9 July.

2. The judge, in the case of request of proceeding, before agreeing on its declaration, shall request the Directorate General of Insurance and Pension Funds or, where appropriate, to the competent supervisory body of the Autonomous Communities, a report on the situation of the undertaking and the measures adopted. In case the Directorate General of Insurance and Pension Funds, or the supervisory body of the competent Autonomous Communities, informs that the undertaking is submitted to any special control measure, it should decline the bankruptcy proceeding or the bankruptcy mediator.

3. The judge, when declaring the bankruptcy of an insurance undertaking, shall immediately proceed to reporting the decision to the Directorate General of Insurance and Pension Funds or, where appropriate, to the supervisory body of the competent Autonomous Communities. In the case of the undertakings authorised to operate in the entire national territory, the Directorate General of Insurance and Pension Funds shall inform, in the next ten days, to the supervisory authorities of the other Member States on the existence of the proceeding and its effects. Likewise, the Directorate General of Insurance and Pension Funds shall proceed to the publication in the “Official Journal of the European Union” of a summary of the said order where it shall include, in any case, the competent jurisdictional body and the application to the proceeding to the Spanish legislation.

4. The declaration of bankruptcy of an insurance undertaking does not hinder the adoption of special control measures, or their modification, and the Directorate General of Insurance and Pension Funds or, where appropriate, the competent supervisory body of the Autonomous Communities shall hold all its faculties of withdrawal and dissolution foreseen in the articles 169 to 174. The dissolution agreement of an undertaking in bankruptcy means the opening of the winding-up stage, which shall be governed by the bankruptcy legislation.

The adoption of any of the stated measures shall be immediately reported to the judge of the proceeding by the Directorate General of Insurance and Pension Funds or, where appropriate, by the competent supervisory body of the Autonomous Communities.

Having received the agreement proposal and before transferring to the bankruptcy administration, the judge shall ask for a report to the Directorate General of Insurance and Pension Funds or, where appropriate, to the supervisory body of the competent Autonomous Communities, with the aim that it orders on the viability of continuation of the insurance activity and the compliance of all the solvency guarantees and of pursuit of the insurance activity legally requirable.

Once the said report is received or after the period given without being issued, the judge shall inform the bankruptcy administration together with the proposal of convention to the effects foreseen in articles 107 and 115 of the Bankruptcy Law 22/2003, of 9 July.

The disposal of assets bound to the prohibition of provision, whichever the stage of the bankruptcy proceeding is, shall require the express authorisation of the Directorate General of Insurance and Pension Funds or, where appropriate, of the supervisory body of the competent Autonomous Communities.

5. When they are known creditors that have their address in another Member State, they shall be informed on the way they must request the recognition of their credits and they could present the deeds of credit claim or remarks to these in the manner established by regulatory development.

6. The Directorate General of Insurance and Pension Funds or, where appropriate, the supervisory body of the competent Autonomous Communities shall be a party in all the bankruptcy proceedings affecting insurance undertakings.

SECTION VII
Withdrawal, dissolution and winding-up

CHAPTER I
Withdrawal of the administrative authorisation

Article 169. *Causes of withdrawal and their effects.*

1. It belongs to the Minister of Economy and Competitiveness to revoke the administrative authorisation granted to the insurance and reinsurance undertakings, without prejudice of the established in article 19.1.

2. The withdrawal of the administrative authorisation of an insurance undertaking could be partial when affecting to one or several classes, or total, when it extends to all the classes where the undertaking was authorised.

Similarly, the withdrawal of the administrative authorisation of a reinsurance undertaking could be partial when affecting to the activity of reinsurance of life or to the activity of reinsurance different to life, or total, when extended to both activities.

3. The withdrawal of the authorisation of a class or classes or of an activity is appropriate in the following cases:

a) If the undertaking expressly renounces to it.

b) When the undertaking has not started its activity in a period of a year of stops pursuing it for a period longer than six months. This lack of activity shall be equalled to the effective lack of activity by the insurance undertaking in the class or classes, in the terms that are established by regulatory development. For the reinsurance undertakings, the lack of activity for not starting it or cessation of activity, shall be equalled to the effective lack of activity in the life reinsurance or in a reinsurance different to life.

c) When a total cession of the portfolio of the insurance undertaking in one or more classes or the total cession of the portfolio of the reinsurance undertaking in one of the activities takes place.

4. The total withdrawal of the administrative authorisation is appropriate in the following cases:

a) Those included in paragraph 3, when affecting all the classes where the insurance undertaking is authorised or to the entire activity of the reinsurance undertaking.

b) When the undertaking stops complying with any of the requirements established by this Law for the granting of the administrative authorisation or when it has gained authorisation by false or inaccurate statements.

c) When the undertaking does not comply with the requirements of minimum capital requirement and the financing plan presented is overtly unsuitable, or when the plan approved in the next three months after the moment when the lack is found in relation to the minimum capital requirement does not applied or has not been complied.

d) When dissolution is agreed.

e) When the undertaking has been imposed with the administrative penalty of withdrawal of authorisation.

f) When it is accredited that the holders of a significant participation exercise an influence that goes against the healthy and prudent management of the insurance or reinsurance undertaking that seriously damages its financial situation or those that are suddenly not suitable.

5. The Government could totally revoke the authorisation granted to the Spanish insurance and reinsurance undertakings with majoritarian foreign participation in application of the reciprocity principle or when so is advised by extraordinary circumstances of national interest. In any case shall be applicable this cause of withdrawal to the Spanish insurance and reinsurance undertakings where the majoritarian foreign participation comes from countries of the European Union.

6. When any of these causes of withdrawal foreseen in paragraph 3.b) or in the paragraph 4, letters b) and c), the Minister of Economy and Competitiveness, before agreeing on the withdrawal of the administrative authorisation, could give a period, not exceeding six months, for the undertaking requesting it to solve the situation.

7. The order of withdrawal of the administrative authorisation shall be reported in the maximum period of six months, being it suspended for the period of time that, where appropriate, is granted to the undertaking to overcome the cause of withdrawal.

8. The withdrawal of the administrative authorisation shall establish, in any case, the immediate prohibition of subscribing new insurance or reinsurance contracts by the undertaking as well as the winding-up of the insurance operations of the classes affected by the withdrawal, submitted to the established in section 2 of chapter II of this section.

In case of total withdrawal of the authorisation, the administrative termination of the insurance or reinsurance undertaking shall start, without need to adhere to the established in the articles 173 and 174.1, except for the cases stated in article 172.1 and 2.

9. In case of withdrawal of the authorisation of an authorised insurance or reinsurance undertaking to act in the entire national territory, the Directorate General of Insurance and Pension Funds shall inform the supervisory authorities of the other Member States so they adopt the necessary measures to avoid that the insurance or reinsurance undertaking begins new operations in its territory.

Likewise, in collaboration with the said authorities, the Directorate General of Insurance and Pension Funds shall adopt the measure that are necessary to care for the interests of the policyholder and, especially, they could prohibit the free provision of the assets of the insurance undertaking.

10. Any withdrawal of authorisation of an insurance or reinsurance undertaking authorised to act in the entire national territory shall be reported to the European Insurance and Occupational Pensions Authority, with the aim that such Authority updates the list of authorised insurance undertakings stated in article 20.6.

Likewise, the order where the withdrawal is adopted shall be published in the “Official State Journal” and in the “Official Journal of the European Union”.

Article 170. *Withdrawal of the administrative authorisation to insurance undertakings with head office in other Member States.*

When the supervisory authority of an insurance undertaking with head office in another Member State, that operates in Spain under the freedom of establishment or freedom to provide services regime, revokes an administrative authorisation, the Directorate General of Insurance and Pension Funds shall prohibit to such insurance undertaking contracting new insurance under any of the regimes.

In this case, and with the object of caring for the interests of the policyholders, the Directorate General of Insurance and Pension Funds may adopt, in collaboration with the said authority, the special control measures established in the articles 160 and 161.

Article 171. *Withdrawal of the administrative authorisation of the branches of undertakings with head office in third countries.*

1. It will be cause of withdrawal of the administrative authorisation granted to the branch of an insurance undertaking with head office in a country not member of the European Union, besides those listed in article 169, paragraphs 3 and 4, that meet in such branch any of the circumstances that, in a Spanish insurance undertaking, are cause of dissolution. Also, the Government could revoke the authorisation to these branches when so is advised by extraordinary circumstances of national interest.

In case an insurance undertaking with head office in a country not member of the European Union had branches established in Spain and in other Member States, the Directorate General of Insurance and Pension Funds shall inform the other supervisory authorities implied and shall co-ordinate with them the actions.

2. The need of caring for the interests of the policyholders, beneficiaries, damaged third parties or other insurance undertakings, required by this Law to agree on the intervention of the winding-up of an insurance undertaking, is considered, in any case, in the winding-up that affects the classes of foreign undertakings with head office in countries not members of the European Union which headquarters had been dissolved.

CHAPTER II
Dissolution and winding-up of insurance and reinsurance undertakings

Section 1. Dissolution

Article 172. *Causes of dissolution.*

The causes of dissolution of the insurance and reinsurance undertakings are:

1. The withdrawal of the administrative authorisation that effects of all the classes or activities where the undertaking operates. However, the withdrawal shall not be cause of dissolution when the undertaking renounces to the administrative authorisation and this

renounce is only motivated by the modification of its social object to pursue an activity different to those listed in article 3.1.

2. The total cession of the portfolio of insurance contracts when it affects to all the classes where the undertaking operates. However, these portfolio or activity cessions shall not be cause of dissolution when in the public deed of cession, the assignor states the modification of the social object to pursue an activity different to those listed in article 3.1, or in the case of mutual insurance undertakings or friendly societies that are transformed into a capital undertaking with an activity different to insurance.

3. The number of associates of the insurance mutual undertakings, insurance co-operatives and social welfare insurance undertakings to an amount lower to the minimum established by regulatory development.

4. Shall not pursue supplementary members' calls.

5. The causes of dissolution listed in article 363 of the Rewritten Text of the Law on Capital Undertakings, approved by the Royal Legislative Decree 1/2010, of 2 July, considering the following:

a) When being mutual insurance undertakings and social welfare insurance undertakings, the references made in this precept are made to the share capital shall be construed as made to the mutual fund.

b) Net patrimony shall be construed as that defined in article 36.1.c) of the Code of Commerce.

6. For the insurance co-operatives, the causes of dissolution included in their specific legislation.

Article 173. *Dissolution agreement.*

1. The dissolution, unless the established in compliance of the term stated in the statutes, shall require the approval of the meetings of shareholders. To these effects, the administrators shall convoke it for its celebration in the period of two months since the happening of the cause of dissolution and any other member could appeal to the administrators so they convoke the meetings of shareholders or board if, to their best knowledge, there is a legitimate cause for the dissolution.

2. The agreement of dissolution shall include the lists of assets and rights that represent the assets assigned to the technical provision in the register of investments and those that cover the requirements of capital requirement of the insurance undertaking.

Article 174. *Administrative dissolution.*

1. In case there is a legal cause of dissolution and the board or meeting of shareholders was not convoked or, in case of being, it did not meet, it did not reach an agreement or it was contrary to the termination, the administrators shall be obliged to request the administrative dissolution of the undertaking in a period of ten calendar days, to be counted from the date where the board or meeting of shareholders must have been convoked according to article 173, when not convoked; or, from the date foreseen for its celebration, when that has not been constituted; or, finally, from the date of celebration, when the dissolution agreement could not be achieved or it has been contrary to the dissolution.

2. The administrative dissolution of the undertaking shall take place when, known by the Directorate General of Insurance and Pension Funds there is a concurrence of a cause of dissolution, as well as a breach by the social bodies of the established in the previous paragraph.

Section 2.ª Winding-up

Article 175. *General rules of winding-up.*

1. The winding-up of the Spanish insurance and reinsurance undertakings that have adopted the form of limited undertaking, insurance mutual or friendly society shall be ruled by the established in this Law and in its development rules and, for that not established in it, by the applicable rules to the capital undertakings.

The winding-up of the insurance cooperatives is ruled by the established in the legislation of cooperatives that is of application in anything not established in this Law and in this development rules.

2. The winding-up shall guarantee to the mutual and cooperative members the same rights as those of the members of the capital undertakings and, especially, the right of information and the right to participate in the patrimony resulting of the winding-up.

3. During the winding-up period, the operations defined in article 3.1 could not be celebrated by the insurance contracts in force at the dissolution shall keep their validity until the conclusion of the ongoing insurance period and shall expire at that moment without possibility of extension, without prejudice of the statement of advanced expiry.

4. The winding-up of a Spanish undertaking shall include all its branches.

The obligations derived from the contracts celebrated under the regime of freedom of establishment and the freedom to provide services shall have the same treatment as the obligation resulting from the other insurance contracts of the undertaking under winding-up, without distinguishing on the nationality of the creditors by insurance contract.

When a Spanish reinsurance undertaking is liquidated, the obligations derived from the reinsurance contracts celebrated under the regime of freedom of establishment or freedom to provide services shall have the same treatment as the obligations resulting from the other reinsurance contracts of the undertaking under winding-up.

Article 176. *Effects of the winding-up of Spanish undertakings in other Member States.*

1. The resolution or the agreement implying the winding-up shall be accepted in the territory of the other Member States, in agreement with the established in their legislation, and shall be effective in them as soon as it does in Spain.

To these effects, the Directorate General of Insurance and Pension Funds, in a period of ten days to be counted from the next to the date where order is given or it is aware of the agreement, shall inform the supervisory authorities of the other Member States about the existence of the proceeding and its effects.

Likewise, it shall publish in the “Official Journal of the European Union” a summary of such order or agreement that, in any case, shall state the competence of the Directorate General of Insurance and Pension Funds on the proceeding, that the applicable legislation to such winding-up proceeding is that included in this Law and in its development rules, as well as the identification of the appointed liquidator or liquidators.

2. The liquidators may perform their duties in the territory of all the Member States and may pursue in them the same functions and powers as in Spain. To these effects, it will be enough to accredit their condition of liquidator with a certificate of the order or a legalised copy of the agreement where the appointment was made.

Similarly, powers of attorney may be granted or claim the assistance when it is necessary to pursue the winding-up process in the territory of the other Member States and, especially, to solve the problems that the creditors living in them could find.

In any case, the persons assisting or representing have to have good repute and integrity and meet the necessary conditions of qualification and professional experience to pursue their functions, in the same terms as the liquidators.

Article 177. *Effects in Spain of the winding-up of insurance undertakings with head office in other Member States that operate in Spain under the freedom of establishment or freedom to provide services regime.*

The Directorate General of Insurance and Pension Funds could request to the supervisory authorities of other Member State information about the status and the development of the proceedings of winding-up that are carried out in relation to the undertakings submitted to the supervision of such authorities and that operate in Spain under the freedom of establishment or freedom to provide services regime and shall advertise the said.

Any decision relative to the opening of a winding-up proceeding of an insurance or reinsurance undertaking, including the branches it has in other Member States, adopted in agreement with the legislation of the Home Member State, once having reported it to the Directorate General of Insurance and Pension Funds, shall be accepted without further steps and shall be valid in Spain when so does in the Member State that opens the proceeding.

Article 178. *Supervision of the winding-up.*

1. The undertakings under winding-up are bound to supervision until the cancellation of the registration in the administrative register.

2. The winding-up shall not affect the validity of the measure that, in the pursuit of the supervisory function may have been adopted, being also possible to adopt these following:

a) The intervention of the winding-up, being it bound to the actions of the liquidators in the terms defined in this article, in article 163 and in its development regulatory development.

b) The separation, appointment of liquidators or assignment of the winding-up to the Insurance Compensation Consortium in the cases listed in article 14 of the Legal Statute of the Insurance Compensation Consortium, approved by the Royal Legislative Decree 7/2004, of 29 October.

c) To dispose, as of right or at the request of the liquidators, of the cession of the insurance contract portfolio of the undertaking to ease its winding-up.

d) To establish the date of anticipated expiry of the duration period of the insurance contracts that are part of the portfolio of the undertaking under winding-up, to avoid damages to the creditors on insurance contract. Such order shall respect the economic balance of the provisions in the affected contracts and shall take place with the necessary advertising, with an advance of fifteen calendar days before the day it shall become in force and, unless exceptional circumstances arise that advice not delaying the expiry day, simultaneously to the compliance by the liquidators of the duty of information that is established by regulatory development.

e) To request information to the winding-ups on the development of the winding-up.

Article 179. *Protection of the credits by insurance contract.*

1. In the proceedings of winding-up, the following shall be considered as credits by insurance contract:

a) Those of the policyholders, insureds, beneficiaries of an insurance contract and the injured third parties referred in article 73 of the Law 50/1980, of 8 October, on Insurance Contracts. The credits derived from the provision of the service of repair or replacement of the good damaged or the assistance or the provision in kind the insurance undertaking was obliged in the insurance contract are included.

b) Those of whom had celebrated with the insurance undertakings, contracts affected by the established in article 24 for the operations made without administrative authorisation, or either carried out in breach of the special control measures of suspension in the contracts of new insurances or the acceptance of the reinsurance and of prohibition of the extension of celebrated insurance contracts, respectively foreseen in article 161, letters c) and d).

c) The credits paid by the Insurance Compensation Consortium under article 11.e) of the rewritten text of the Law on civil liability and insurance of vehicular traffic, approved by the Royal Legislative Decree 8/2004, of 29 October.

2. The credits by insurance contract shall be considered as credits with special privilege on the following goods and credits:

a) The assets assigned to the technical provisions in the special register of assets to the effects of winding-up and those assigned to the requirements of capital requirement of the insurance undertaking. Also, shall be considered as such the assets of the insurance undertaking that, breaching the applicable rule, are not included in the registered duly assigned.

b) The goods that are subject to the adoption of the special control measure of prohibition of provision, even if such measure has not been subject of register entry.

3. To the effects of the winding-up, the undertakings shall keep update a special register of the assets representing the technical provisions calculated and invested in agreement with the established in the rules of application. The requirements of such special register of assets shall be ruled by regulation.

4. The payment of the credits by insurance contract shall be made against the affected goods and rights, including the pro rata, with preference over any other credit.

Respect of the credits against the insurance undertaking that do not enjoy the priority stated in paragraph 2, the system of seniority established by the Bankruptcy Law 22/2003, of 9 July, shall be of application.

Article 180. *Judicial regime of the liquidators.*

1. The honourability, qualification and professional experience of the liquidators shall attach to the criteria foreseen in article 38 for the administrators.

2. The liquidators shall be bound to the same regime of administrative liability as the administrators of an insurance undertaking.

Article 181. *Winding-up process.*

1. The liquidators shall subscribe, together with the administrators, an inventory, a census of the members of mutual members that so were at the dissolution and the balance of the undertaking and shall submit them, in a period not longer to a month from their appointment, to the Directorate General of Insurance and Pension Funds or, if the winding-up was controlled, to the practitioner.

2. The liquidators shall adopt the necessary measures to finish the winding-up in the shortest period possible and could transfer the insurance contract portfolio of the undertaking in a partial, total or global way, prior authorisation, as well as to agree on the rescue or termination of the insurance contracts.

3. The alienation of the real estate may take place without public bankruptcy when the winding-up is controlled or when, being valued by the valuation undertakings authorised and registered in the Register of the Bank of Spain, the alienation price is not lower than that of valuation. In any case, it shall require the prior authorisation of the Directorate General of Insurance and Pension Funds.

4. When the exploitable value of an asset is lower than it estimated value in the special register of assets to the effects of winding-up, the liquidators shall justify this situation before the Directorate General of Insurance and Pension Funds.

5. Once all the credits have been paid, the liquidators shall proceed to the distribution of the resulting liquid goods amongst the members or, where appropriate, amongst the mutual members in the terms foreseen in the Law. When it is an insurance co-operative, the distribution of the resulting liquid good shall be ruled by the legislation of co-operative undertakings that is of application.

6. Once the winding-up operations have concluded and, where appropriate, the distribution of the patrimony resulting of the winding-up, the Minister of Economy and Competitiveness shall declare the undertaking in winding-up extinct and shall proceed to cancel the entries in the administrative register, publishing this order in the "Official State Journal".

The cancellation of the administrative register shall establish, in the cases of declaration of extinction of the undertaking, the later cancelation, also, in the Mercantile Register and in the Register of Co-operative Undertakings, when that is the judicial form of the undertaking.

As an exception, the cancelation of the entries in such administrative register shall be made without statement of extinction of the undertaking, and at that moment it may start the activity according to the modified social object, when the general cession of the portfolio of the withdrawal of the authorisation takes place, whenever that, in both cases, the social object of the undertaking has been modified without dissolution of it and the Directorate General of Insurance and Pension Funds has previously checked that the cession of portfolio has been executed or the insurance operations have been liquidated, respectively.

7. During the winding-up period, the undertaking could offer the Minister of Economy and Competitiveness a removal of the cause of dissolution and request to it the recovery of the revoked administrative authorisation. Such recovery may only be granted when the undertaking complies with all the requirements required during the regular performance and it guarantees the entire rights of the policyholders and creditors, even of those whose insurance contracts had been declared expired in the winding-up period. If it agreed on the recovery of the revoked administrative authorisation, the cause of dissolution shall be considered as removed of full right, the registration made in the Mercantile Register shall be cancelled and the agreement of recovery of the said shall receive the same advertising as the order agreeing on the dissolution.

Article 182. *Effects on the shares against insurance undertakings under winding-up.*

1. In the cases of supervised or assumed winding-up proceeding by the Insurance Compensation Consortium, and related to the goods on which the measure of prohibition of provision of article 160.1.c) has been set, real rights of guarantee may not be registered in the public registers nor include judicial orders or administrative rules of seizure from the date of publication in the "Official State Journal" of the Ministry order of dissolution, without prejudice of the effectiveness of the credits that, where appropriate, are intended to be guaranteed with the said registrations or notes.

The persons in charge of the register shall state by a side note the fact of the dissolution and the closing of the register page for the actions stated in the previous paragraph. If the recovery of the revoked administrative authorisation is agreed, the said side note shall be cancelled.

2. In the cases of supervised winding-up by the Ministry of Economy and Competitiveness, the individual actions pursued by the creditors, before starting the winding-up or during it, could continue until the hearing of the final order, but its execution shall be suspended and the credit that, where appropriate, declares such order in favour shall be liquidated with that of the other creditors. However, after a year from the order being final, the suspension shall be automatically made without need of statement or order, whichever the status of the winding-up is.

The established in the previous paragraph is not applicable to the actions in the pursuit of the real rights on assets located outside the Spanish territory, which shall be ruled by their specific regulation, nor the actions in the pursuit of a real right of guarantee that is ruled by a Law different to the Spanish Law.

Section 3. Winding-up by the Insurance Compensation Consortium

Article 183. *Action of the Insurance Compensation Consortium in the winding-up of insurance and reinsurance undertakings.*

The Insurance Compensation Consortium, hereinafter “the Consortium”, shall assume the condition of liquidator of the Spanish insurance and reinsurance undertakings, whichever its shape or judicial nature is, in the cases foreseen in this Law and in the rewritten text of the Legal Statute of the Insurance Compensation Consortium, approved by the Royal Legislative Decree 7/2004, of 29 October.

Article 184. *General substantive rules.*

1. The Consortium shall substitute all the social bodies of the undertaking which winding-up has been granted. Subsequently, there will not be place for the celebration of boards, ordinary or extraordinary meetings of shareholders, mutual members or co-operative members of the undertaking.

However, the administrative and contentious-administrative appeals presented by the insurance or reinsurance undertaking against the actions of supervision of the Ministry of Economy and Competitiveness prior to the assumption of the winding-up by the Consortium may continue by the administration on their own behalf, if they appear to these effects before the administrative or jurisdictional body in a period of a month from the publication in the “Official State Journal” of the assignment of the winding-up to the Consortium.

2. The Consortium, as liquidator body, in representation of the creditors and in defence of its rights, shall urge, when there is place for it, to claim for liability of any kind, civil or criminal, without obligation of presenting any deposit, that may have been incurred by the people who held administration or management positions in the undertaking under winding-up.

When, subsequent to this action, the courts ordered compensations or any other economic compensation in favour of the undertaking and the winding-up was over, the Consortium, if so agreed in the winding-up plan approved by the Board of Creditors, shall distribute the amount achieved amongst the creditors that had not recovered the total amount of their credits, according to the criteria established in the said winding-up plan and in the case of solvent undertakings, amongst the members or mutual members of the undertaking.

3. In any case, the Consortium, its bodies, representatives or attorneys shall be considered as debtors or liable for the obligation and liabilities related to the undertaking which winding-up has been granted, or to its administrators.

4. In the supervised winding-up, the supervision of the winding-up shall end when that is granted to the Consortium.

5. In case there are branch undertaking mainly participated by the insurance or reinsurance undertaking under winding-up and which social object is the management of assets by the undertaking under winding-up, the granting to the Consortium of the winding-up of the insurance or reinsurance undertaking shall imply the appointment of the said as liquidator of such branch undertakings, with substitution of all the social bodies, being only necessary the registration of such appointment in the Mercantile Regimen the corresponding administrative order where the joint winding-up of the group of undertakings is declared.

The winding-up of the branch undertakings shall be pursued according to the rules of the rewritten text of the Law on Capital Undertakings, approved by the Royal Legislative Decree 1/2010, of 2 July. If the branch was insolvent, the Consortium shall be exempt of requesting the bankruptcy, being all the winding-ups made in a coordinate manner.

6. The assignment of the winding-up of an insurance or reinsurance undertaking to the Consortium shall imply the change in the head office, to all the legal effects, to the address agreed by the Consortium. The change in the head office shall also affect the branch undertakings mainly controlled by the undertaking under winding-up which social object is the management of assets on behalf of such undertaking under winding-up.

To register the change in the head office in the Mercantile Register and in the administrative registers it shall be enough to present the certificate of the agreement adopted, issued by the president of the Consortium.

The change in the address and its later modifications shall be reported in the way and with the advertising that the mercantile legislation establishes for the statutory modifications.

Article 185. *General rules of proceeding.*

The winding-up proceeding by the Consortium shall match the following special conditions:

1. Once the winding-up to the Consortium has been granted, all the creditors shall be bound to the winding-up proceeding by it and the creditor or the insurance undertaking could not request the declaration of bankruptcy, without prejudice that the actions of any kind pursued before the courts against such insurance undertaking, prior to the dissolution or during the winding-up period, continue their proceeding until having a final judicial order or decision. But the execution of the order, of the preventive seizures, judicially agreed administrations and other cautionary injunctions adopted by the judicial authority, that of order that settles the execution of the executive proceeding, the summary judicial proceeding and extrajudicial executive proceedings on gods with mortgage or pledged that are located in the Spanish territory, as well as the execution of the administrative urgency order shall be suspended from the granting of the winding-up to the Consortium and during the proceeding by it of the winding-up proceeding.

2. At the date of publication in the "Official State Journal" of the administrative order where the winding-up is granted to the Consortium, the debts outstanding of the insurance undertaking shall be considered as expired, without prejudice of the corresponding discount if their payment is checked before the period established in the obligation, and all the debts of the insurance undertaking shall stop accruing interests, except for the mortgage credits and loans against pledge, to the limits of the said guarantee.

3. The administrators or liquidators, in case of being appointed, shall give the Consortium the inventory, the census of members, mutual members and the balance sheet of the undertaking in the period of a months to be counted since assuming the winding-up, and the Consortium shall not submit it to the Directorate General of Insurance and Pension Funds or to the practitioner, and it shall neither be bound to the obligations imposed by articles 383 to 388 of the rewritten text of the Law on Capital Undertakings, approved by the Royal Legislative Decree 1/2010, of 2 July.

In case the administrators or liquidators did not hand the necessary documentation and information, the Consortium shall make an inventory of the goods of the undertaking, a census of the members and mutual members and a relation of the debts as of the assumption of the winding-up, using to such effects the precedents and information at reach, that shall serve as base for the formulation of the documentation needed to comply with the accountancy and fiscal obligations requested by law, without assuming any liability in case of mistake or omission of data that is not included in the documentation or historical records found.

4. In the compliance of the duty of information to the creditors, it shall be expressly stated the special circumstance that the winding-up has been assumed by the Consortium. Likewise, from the moment of having knowledge of the existence of labour credits or its possible existence is considered, it shall be reported to the Wages Guarantee Fund, a communication that shall have the effects of the summon stated in article 33.3 of the rewritten text of the Law of the Workers' Statute, approved by the Royal Legislative Decree 1/1995, of 24 March.

5. When the Directorate General of Insurance and Pension Funds agrees by right the cession of a portfolio of an undertaking under winding-up, the foreseen in the ruling of development of this Law in that relative to the public information and right of appeal shall not be of application.

6. The alienation of the real estate of the insurance undertaking under winding-up could take place without public bankruptcy and shall not require authorisation of the Directorate General of Insurance and Pension Funds, without prejudice that the alienation of such assets complies with the due rules of transparency and the need of requesting the end of the injunctions on the prudential goods.

7. For that not expressly ruled in the Law, the rules on winding-up and extinction of the rewritten text of the Law on Capital Undertakings, approved by the Royal Legislative Decree 1/2010, of 2 July, shall be of application, also being applicable the Bankruptcy Law 22/2003, of 9 July.

Article 186. *Purchase of credits charged to resources of the Insurance Compensation Consortium.*

1. The Consortium can offer the purchase by cession of its credits, for the corresponding amount in proportion to the forecast in cause of being liquid, taking into account, to only these

effects, the following rules and charged to the resources of the Consortium attached to its winding-up activity and with the aim of improving and achieving a fastest satisfaction of the rights of the creditors by insurance contracts, in agreement with article 179, including the Public Administration that hold such condition:

a) The total goods, rights and credits, including, where appropriate, their interests, shall be included in the assets, even if they have pending or have to have started judicial or extrajudicial actions for them to stay in the patrimony of the undertaking or the refund to it. The credits in favour of the undertaking shall be counted for their balance sheet value, accruing the interests, if applicable, and without deducting to these effects the value corrections that have to be constituted depending on the possible insolvency of the debtors.

b) The material and financial investments shall be valued for the amount that is higher between these two: the purchase price plus the amount of the improvements made on them, including the legally possible regularizations and updates; or the exploitable value.

c) To the effects of establishing the percentage to offer to the creditors by insurance contract stated in article 179.1, the ranking on claims nor the winding-up expenses advanced by the Consortium shall not be taken into account.

Likewise, and also charged to its own resources, the Consortium may purchase the credits of the workers derived from wages and, where appropriate, the compensations owed to those subsequent to the termination of the working relations, with the limits foreseen in article 53.1.b) of the rewritten text of the Law on the Workers' Statutes, approved by the Royal Legislative Decree 1/1995, of 24 March, for the cases of collective dismissal or termination because of objective causes of article 52.c) of the said rewritten text, and that have the exclusive cause of the winding-up, subrogating in the position of those creditors in the winding-up plan of the undertaking.

The Consortium may purchase part of the wages and compensations for termination of the working relation that are to be paid to the Wages Guarantee Fund, subrogating on behalf of the worker against the said body.

The administrative order granting the winding-up to the Insurance Compensation Consortium shall be enough to have the effects foreseen in the paragraphs 6 and 7 of the article 33 of the rewritten text of the Law on the Workers' Statutes approved by the Royal Legislative Decree 1/1995, of 24 March, related to the provisions to be paid by the Wages Guarantee Fund.

To the effects of the foreseen in article 51, paragraph 9 and 10, of the rewritten text of the Law on the Workers' Statute, the collective dismissal of an insolvent undertaking which winding-up has been granted to the Consortium shall have the same treatment as the undertakings involved in a bankruptcy proceeding.

The Consortium could purchase, for their real value and whenever that it is suitable for the most efficient performance of its liquidating function, any kind of credits against the undertakings under winding-up, subrogating in the rights of the recipients, maintaining the range the credits purchased had. Likewise, they could sign as many agreements as it finds suitable for a better performance of the winding-up proceeding.

2. The purchase by cession of the credits stated in paragraph 1 shall not mean, in any case, the assumption of the debts of the insurance undertaking under winding-up by the Consortium.

The cession of such credits, whichever the amount paid was, shall reach the total amount of those and in identical order of preference as corresponding. The holders shall not present any claim on this concept; nor shall they present claims against the Consortium the holders of those credits that chose not to accept the offer made by the Consortium, who shall keep the ownership of their credits and that shall wait for the results of the winding-up.

Article 187. *Payments charged to the resources of the undertaking.*

The Consortium may pay in advance, charged to the resources of the insurance undertaking under winding-up, the credits of the creditors with right in rem in the terms and in the order established in the mortgage legislation. If the satisfaction of such credits were not reach, the said creditors shall have at winding-up their corresponding preference depending on the nature of their credit, to cash the amount not paid.

Article 188. *General board of creditors.*

1. Simultaneously to the formulation of the winding-up plan, the Consortium shall convoke the general board of creditors with an advance of not less than a month and not more than two. They shall be summoned by personal notice and shall make advertising of the convocation that, according to the circumstances of the case, is found suitable. Until the day chosen for the celebration of the board, the creditors or their representatives could study the

winding-up plan. Until fifteen days before the day chosen for the board, the exclusion or inclusion of credits could be requested, as well as the challenge of the amount of those included by a writing to the Consortium, or by the presence before that body, stated in the documents of the winding-up or presenting the documents that the applicant wants to use to justify his/her right. The Consortium shall decide on each claim without further appeal, without prejudice of the right of challenge stated in paragraph 4 and shall present the final list of creditors.

2. The board meeting shall be celebrated on the day, hour and place stated in the convocation, and could continue in the following days if necessary, and shall be chaired by a representative of the Consortium. All the creditors included in the final list could appear, in person or by a representative. The board of creditors shall be legally constituted if the credits of those present or represented amount, at least, three fifths of the liabilities of the debtor, in first meeting, and whichever the number of credits present or represented in second meeting; at least twenty-four hours must pass between the first and the second.

3. Being the board declared as legally constituted by the representative of the Consortium, the session shall start reading the winding-up plan and shall proceed to the debate and later voting on it. The winding-up plan shall be considered as approved whenever there are votes in favour of the plan the creditors which credits amount more than a half of the amount of the credits present and represented, both in the first and in the second convocation, and all the creditors shall be obliged by it, and none of them shall have right to abstention, and being of application to the crediting Public Treasury the established in article 10.30 of the Law 47/2003, of 26 November, on General Budgets.

If the winding-up plan was not approved by the creditors, the Consortium shall request the declaration of bankruptcy.

4. Within the next eight days to the celebration of the board, the creditors that did not appear in it or that, having appeared, were in disagreement with the vote of the majority or that had been eliminated by the Consortium of the final list mentioned in paragraph 1, they could judicially appeal the winding-up plan. The appeal could only be based on the following causes:

a) Defaults in the ways foreseen for the convocation, celebration and adoption of the agreements of the board of creditors.

b) Lack of capacity or representation in any of the voters, unduly inclusion or exclusion or being included in the final list of creditors with higher or lower amount to that considered fair, whenever that in any of these cases the estimation of the claim decisively affects in the building of the majority.

c) Error in the estimation of the assets or in the collocation of credits suffered by the Consortium.

For all the rest, the challenge of the winding-up plan shall attach to the established in the Bankruptcy Law 22/2003, of 9 July, for the opposition to the approval of the agreement.

5. After the period stated in the paragraph 4 without opposition being presented, or once a final order solving has been given, the Consortium shall ratify the winding-up plan adjusting it to the possible modification that may have raised from the voting in the board of creditors or, where appropriate, to those presented by the final order that has ended the challenge and the variations arising in the assets.

6. Via the Consortium shall proceed to the payment of the credits to execute the ratified winding-up plan. The credits not claimed shall be placed in deposit at the Consortium at the disposal of their legitimate owners for a period of twenty years, and after it without having been claimed, they will be cashed in the Public Treasury. Once the winding-up plan is executed, the termination of the undertaking shall take place and the cancellation in the registers in the manner foreseen in article 181.6. The established in article 400 of the rewritten text of the Law on Capital Undertakings, approved by the Royal Legislative Decree 1/2010, of 2 July shall be of application.

7. If, subsequent to the temporal delay, different to the challenge of the winding-up plan foreseen in paragraph 5 of this article, between the approval in the general board of creditors of the winding-up plan and the effective payment of the credits to the creditors and, where appropriate, the division of the social goods between the members, there were a remain or new assets appeared, these shall be included to the patrimony of the Consortium to the effects foreseen in the next paragraph.

8. The credits recognised by firm order reported to the creditor on a later date to the celebration of the general board of creditors, as well as those that the Consortium accepted, for stating that are subject to law, after the said board, shall be paid by the Consortium with

the remain mentioned in the previous paragraph and, in default of it, with its own resources, in the same terms as if they had been included in the winding-up plan. In the case of credits by insurance contract mentioned in article 179, the percentage to pay shall be, where appropriate, that approved by application of the benefits of the winding-up of article 186, if higher than that resulting from the winding-up plan.

9. When the insurance undertaking under winding-up is found in an insolvency situation, if the board of creditors approves the winding-up plan, the recovery by the Consortium of the winding-up expenses shall be conditioned to the other recognised in the winding-up being fully paid.

Article 189. *Performance of the Insurance Compensation Consortium in the bankruptcy proceedings.*

1. The judge, considering the report issued by the Directorate General of Insurance and Pension Funds according to the established in article 168.2, may agree ex oficio the opening of the winding-up stage without taking any more steps, with the effects foreseen in the articles 143 and next of the Bankruptcy Law 22/2003, of 9 July, and with the special remarks included in that Law. In this case, the bankruptcy administration shall present, simultaneously with the report foreseen in article 74 of the Bankruptcy Law 22/2003, of 9 July, the winding-up plan according to article 148 of the same Law.

2. The bankruptcy administration of an insurance undertaking shall be exclusively pursued by the Insurance Compensation Consortium. Similarly, in case of request of a bankruptcy mediator according to the established in article 5 bis of such Law, the appointment shall go to the Insurance Compensation Consortium.

3. In any case, in the cases of judicial declaration of bankruptcy of insurance undertakings, the Insurance Compensation Consortium, besides assuming the duties attributed in article 14.2 of the rewritten text of its Legal Statute, approved by the Royal Legislative Decree 7/2004, of 29 October, shall proceed, where appropriate, to liquidate the amount of the goods mentioned in article 179.2 to the sole effect of distributing it amongst the policyholders, beneficiaries and injured third parties, without prejudice of the rights they still have in the bankruptcy proceeding.

During the bankruptcy process, the creditors by insurance contract shall be considered as creditors with special privileges in the terms foreseen in article 179.

4. If the insurance undertaking in bankruptcy did not have the necessary liquidity, the Consortium may advance the expenses that are necessary, charged to its own resources, for the correct development of the bankruptcy proceeding. However, the payment of the fees to solicitors and fees of lawyers participating in the request or opposition to the bankruptcy proceeding, as well as in the incidents and appeals that could derive, shall be paid by the parties asking for them, and the Consortium shall not make any advanced payment.

5. The credits with special privilege of the creditors by insurance contract mentioned in article 179 could be paid during the common stage of the bankruptcy proceeding if so is found suitable by the bankruptcy administration and charged to the goods stated in article 186, both if the payment can be made without need of alienation or if this was necessary; such alienation shall be made by the Insurance Compensation Consortium according to the established in paragraph 3.

6. The Consortium may apply the benefits of the winding-up of article 186 without prejudice of carrying out the winding-up of the goods affected in the way foreseen in paragraph 3.

7. The report on the qualification foreseen in the number 3 of article 175 of the Bankruptcy Law 22/2003, of 9 July, shall be issued by the Consortium as winding-up body of the undertaking, which shall be interested party in the action in representation of the creditors. This shall be sent as soon as the Consortium has had the possibility to sufficiently know the precedents and being able to issue a report reasoning on the causes of the insolvency and the corresponding qualification. To these effects, the judge shall suspend the opening of the autonomous qualification section mentioned in article 174 of the Bankruptcy Law 22/2003, of 9 July, until the liquidator body reports that it is in condition to issue the said report that, in any case shall always be before the convocation of the board of creditors.

8. Once the bankruptcy process is over, and it if has finally ended by the winding-up of the undertaking, the established in article 188.8 shall be of application.

SECTION VIII
Breaches and penalties

CHAPTER I

Breaches

Article 190. *Persons in breach.*

1. Persons in breach are the natural or legal persons that incur in the actions or omissions classified as breach in the Law and, especially, this following:

a) The insurance or reinsurance undertakings.

b) The insurance holding undertakings, the mixed financial holding undertakings and the mixed insurance holding undertakings, when they are parent undertakings of a group of insurance undertakings under supervision and the undertakings of a mutual group, in accordance with the established in section III.

c) The undertakings that, where appropriate, shall formulate and approve consolidated annual accounts of the insurance and reinsurance undertakings' groups foreseen in article 84.

d) The obliged undertakings of the financial conglomerates when it is an insurance undertaking or a mixed financial holding undertaking, whenever in this last case it corresponds to the Directorate General of Insurance and Pension Funds to coordinate the additional supervision of such financial conglomerate.

e) The natural persons or entities holding significant participations in insurance or reinsurance undertakings.

f) The persons exercing the effective management, under any position, in any of the undertakings described in the previous letters or that pursue in it any of the function of the system of governance foreseen in article 65.3.

g) The persons on whom there is legally established any prohibition or mandate related to the objective scope of this Law.

h) The liquidators of insurance and reinsurance undertakings.

2. Related to letter f) of the previous paragraph, it shall be considered that they exercise the effective management, under any position, anyone holding positions in the administration and management of the undertaking in the terms of article 38.2, as well as anyone who, without being formally appointed, exercise de facto such responsibilities.

Article 191. *Liability of participants, liquidators or managers and directors.*

1. The persons in breach foreseen in article 190.1, letters e) to h), when these are liable for the breaches committed by the undertakings, may be the only punished for the commission of the said.

2. To the effects of the established in the previous paragraph, the persons holding management positions shall not be considered liable of the breaches committed by the undertakings listed in the letters a), b) and c) of article 190.1, in the following cases:

a) When those, being part of college bodies of administration, had not attended with justified causes to the corresponding meetings or had voted against or had saved their vote in relation to the decisions or agreements that had given place to the breaches.

b) When such breaches are exclusively attributed to executive commissions, chief executive officers, general managers or similar bodies, or to other persons with functions foreseen in article 65.

The lack of liability shall not excuse from the obligation of reposition of the altered situation to its original status, foreseen in article 206.1, in case they have made a profit from the decisions or agreements that had given place to the breaches.

Article 192. *Disciplinary powers regarding the insurance undertakings with head office in other Member States.*

Insurance undertakings with head office in other Member States that operate in Spain under the freedom of establishment or freedom to provide services regime are bound to the disciplinary powers of the Ministry of Economy and Competitiveness in the terms contemplate in this section when applicable and with the following precisions:

a) The penalty of withdrawal of the authorisation shall be construed as replaced by the prohibition of starting new operations in the Spanish territory as well as by the prohibition to renew the existing policies.

b) The starting of the proceeding shall be reported to the supervisory authorities of the Home Member State so they, without prejudice of the penalties that may rise according to this Law, adopt the necessary measures so, where appropriate, the undertaking ceases committing the breach or avoids repetition of it in the future. Once the proceeding is finished, the Ministry of Economy and Competitiveness shall report the decision made to the said authorities.

c) The general attorney and other persons directing a branch in an effective way are considered as persons holding directorship or management positions.

Article 193. *Types of breaches.*

The breaches are classified as severe, serious and minor.

Article 194. *Severe breaches.*

They will be considered as severe breaches:

1. The breach of the obligation of having the minimum capital requirement.

2. The breach of the obligation of having the eligible own funds to cover the solvency capital requirement, when this breach derives in a deviation equal or higher to a 20 per cent.

3. The breach of the rules regarding the valuation of assets and liabilities, including the technical provision, so a deviation higher to a 20 per cent in the calculation of the eligible own funds to cover the solvency capital requirement takes place.

4. The breach of the rules regarding the calculation of the solvency capital requirement when this breach derives in a deviation equal or higher to a 20 per cent.

5. To lack of the legally required accountancy, as well as the breach of the obligation of submitting the annual accounts to audit of accounts according to the legislation in force.

6. The pursuit of activities beyond the social object that are legally established with exclusive character or the pursuit of operations forbidden by the rules on ordering and supervision considered as Law or in breach of the requirements established in these, unless they are merely occasional or isolated.

7. In case of lack of the minimum capital requirement or of the solvency capital requirement, not to carry out the communication to the Directorate General of Insurance and Pension Funds in the cases and periods established in the articles 156 and 157 or not presenting the financial plan or the recovery plan foreseen in the said articles.

8. The breach of the obligation of reporting in time the existence of a cause of dissolution.

9. The repeated breach of the special control measures included in the articles 160 and 161. To these effects, it is construed that the breach is repeated when the order of adoption of the measures is breached and the requirement made by the Directorate General of Insurance and Pension Funds is not met in the period granted.

10. To present deficiencies in the system of governance, especially in that regarding the functions of risk management, internal control, compliance and actuarial, as well as in the outsourcing of functions or activities, when such deficiencies decrease the solvency or put at risk, the viability of the insurance or reinsurance undertaking or that of the group defined in article 131.1.f), or financial conglomerate it belongs to.

11. The lack of submission of as many information and documents that shall be supplied to the Directorate General of Insurance and Pension Funds, or the lack of accuracy of those submitted, when this puts at risk the healthy and prudent management of the insurance and reinsurance undertaking or that of the group defined in article 131.1.f), or financial conglomerate it belongs to, or where makes it difficult to assess the solvency and when having presented them correctly, it could be deducted that the undertaking or the group or the financial conglomerate could be involved in a cause of adoption of special control measures, in situations of financial deterioration or under situations leading to the request of additional solvency capital requirement.

12. The purchase or increase of a significant participation in an insurance or reinsurance undertaking in breach with the established in article 85, when this operation implies the transfer of the control of the said.

13. The portfolio cession, the transformation, merge, demerge and termination of insurance and reinsurance undertakings without the necessary authorisation or, if granted, without adjusting to it.

14. The excuse, negative or resistance to the inspection action, whenever there is an express requirement and in writing about it. It is considered as excuse, negative or resistance

to the inspection action, any action or omission of the undertaking or people that are considered to be unduly extending, hindering or drawing out, these actions.

15. The breach of the duty of publishing the report on the financial and solvency situation.

16. The lack of submission by the insurance undertakings that operate in the class 8 of the Annex A). a): Fire and natural forces, of the information to supply to the effects of the charging and collecting the taxes for the maintenance of the fire prevention and extinction services of the special contributions for the establishment or extension of the service of fire prevention and extinction, in compliance with the obligation established by the fourteenth additional provision, when such behaviour is repeated.

17. The pursuit of actions or operations that are against the rules of transparency of the market and protection of the rights of the users in the fields of insurance, whenever the number of persons affected, the repetition of the behaviour or the effects on the trust of the consumers and the stability of the financial system, such breaches may be considered as especially significant.

18. To unduly withhold, without cashing them in the due period, the obligatory charges in favour of the Insurance Compensation Consortium.

19. The breach of the obligation of supplying to the competent body the information stated in the ruling legislation of register of the death coverage insurance contracts, as well as the lack of accuracy of the information submitted, when this behaviour is repeated.

20. The lack of submission of the information stated in article 2.2. of the rewritten text of the Law on civil liability and insurance of vehicular traffic, approved by the Royal Legislative Decree 8/2004, of 29 October and its development rules, as well as the lack of accuracy of the information submitted when this implies difficulties in the effective control of the obligation of insurance or the identification of the insurance undertaking that must assume the damages caused in a traffic accident, whenever such behaviours are repeated.

21. The breach of the duty of accurate information to the members, policyholders and the general public, as well as the breach or faulty compliance of the obligations of information to policyholders and mutual members of the future rights considered derived from instruments with ancillary character or alternative to the Social Security that include retirement commitments, whenever due to the number of affected persons or the importance of the information, such breach may be considered as especially significant.

Article 195. *Serious breaches.*

It shall be considered as serious breach:

1. The breach of the obligation of holding the eligible own funds to cover the solvency capital requirement, when this breach derives in a deviation equal or higher to a 10 per cent, and it does not mean a severe breach.

2. The breach of the rules regarding the valuation of the assets and liabilities, including the technical provision, so a deviation equal or higher to a 10 per cent in the calculation of the eligible own funds to cover the solvency capital requirement takes place and it does not mean a severe breach.

3. The breach of the rules regarding the calculation of the solvency capital requirement when this breach derives in a deviation equal or higher to a 10 per cent and it does not mean a severe breach.

4. The breach of the rules on accountancy of operations and formulation of the annual accounts, whenever they do not mean a severe breach, as well as those regarding the creation of the financial status of obliged report to the Directorate General of Insurance and Pension Funds.

5. The merely occasional or isolated pursuit of activities beyond the exclusive social object or of actions or operations prohibited by the ruling and supervisory directives or with breach of the requirements established in them.

6. The breach of the obligation of reporting in the time the dissolution decision or the request of administrative dissolution.

7. To present deficiencies in the system of governance, especially in that regarding the functions of risk management, internal control, internal audit, actuarial, as well as in the externalization of functions or activities, and whenever this does not imply a severe breach.

8. The lack of submission of as many data or documents as must be supplied to the Directorate General of Insurance and Pension Funds, or the lack of accuracy of those submitted, when this makes it difficult to assess the solvency of the insurance or reinsurance undertaking or of the group defined in article 131.1.f), or financial conglomerate it belongs to

and, when having presented them correctly, a reduction of the solvency ratios declared was deducted.

9. The repeated breach of the agreements and orders of the Directorate General of Insurance and Pension Funds. To these effects, it is construed that the breach is repeated when an agreement or order is breached and the requirements made to such effect by the Directorate General of Insurance and Pension Funds are ignored.

10. The purchase or increase of a significant participation in an insurance or reinsurance undertaking breaching the established in article 85.

11. The breach by the liquidators or by whoever carried out administration or management tasks in the five years previous to the date of dissolution, of the obligations imposed by article 180.

12. Not collecting in the suitable time and way, unduly doing so in an insufficient way and, in general, breaching the obligation of collection of the fees legally established in favour of the Insurance Compensation Consortium.

13. The breach of the duty of information accuracy due to the members, mutual members, policyholders or to the public, as well as pursuing any action or operation breaching the rules of advertising and duty of information of the insurance or reinsurance undertakings.

14. The lack of substitution, according to the established in article 38.3, of those having a cause of disability or prohibition, as well as the lack of submission to the Directorate General of Insurance and Pension Funds of the necessary information to assess the requirements of fit and proper, and the incomplete submission or the lack of accuracy of the information submitted.

15. The breach by the insurance undertaking of the compulsory rules of the specific legislation on insurance contracts, when during the two years previous to their commission, more than ten requirements of the Directorate General of Insurance and Pension Funds in the period granted to such effect had been ignored, those considering that the complaints and claims presented in the proceeding of administrative protection of consumers of financial services were grounded, when it is not considered as a severe breach.

16. The performance of actions or operations in breach of the rules on market transparency and protection of the consumers' rights in the field of insurance, whenever this does not imply the commission of a severe breach according to the established in the previous article, unless it is considered occasional or isolated.

17. The discriminatory behaviours because of sex with the policyholders, insureds, beneficiaries or damaged third parties, when so have been sentenced by a judge, in accordance with the rules on effective equality of men and women.

18. The absence or bad functioning of the customer attention services or departments that, once over the period granted to such effect by the Directorate General of Insurance and Pension Funds, the deficiencies detected by it has not been solved.

19. The breach of the obligation to supply the competent body the information stated in the ruling legislation of the register of death coverage insurance contracts, as well as the lack of accuracy of the information submitted.

20. The breach of the special control measures when not considered severe.

21. The lack of submission by the insurance undertakings that operate in the class 8 of the Annex A). a): Fire and natural forces, of the information to be provided to the effects of charging and collecting the taxes for the maintenance of the fire prevention and extinction services of the special contributions for the establishment or extension of the service of fire prevention and extinction, in compliance with the obligation established by the fourteenth additional provision.

22. The lack of submission of the information stated in article 2.2. of the rewritten text of the Law on civil liability and insurance of vehicular traffic, approved by the Royal Legislative Decree 8/2004, of 29 October and its development rules, as well as the lack of accuracy of the information submitted when this implies difficulties in the effective control of the obligation of insurance or the identification of the insurance undertaking that must assume the damages caused in a traffic accident.

23. The breach of the duty to present a reasoned offer or to give a reasoned answer mentioned in articles 7 and 22.3 of the rewritten text of the Law on Civil Liability and insurance of vehicular traffic, approved by the Royal Legislative Decree 8/2004, of 29 October, when such behaviour is repeated.

Article 196. *Minor breaches.*

It shall be considered as minor breach:

1. The breach of the obligation of having the eligible own funds to cover the solvency capital requirement when this breach means a deviation lower to a 10 per cent.

2. The breach of the rules regarding to the valuation of the assets and liabilities, including the technical provisions, so a deviation lower to a 10 per cent in the calculation of the eligible own funds to cover the solvency capital requirement lower takes place.

3. The breach of the rules regarding the calculation of the solvency capital requirement when this breach derives in a deviation lower than a 10.

4. The submission after the granted period of any data and documents that have to be supplied to the Directorate General of Insurance and Pension Funds, or their lack of accuracy when this does not mean a severe or serious breach. Especially, the submission, after the granted periods or not by regulatory development, of the documentation and information necessary to allow performing the update the of administrative register ruled in article 40.

5. The breach by the insurance undertaking of the imperative rules of the specific legislation on insurance contracts, if, the requirement made to such effect by the Directorate General of Insurance and Pension Funds is ignored, when it considered the complaints and claims presented in the administrative protection proceeding of the consumers of financial services have grounds.

6. No longer hold a significant participation breaching the established in article 85.

7. To present, incomplete or inaccurate, the financial reports of obliged report to the Directorate General of Insurance and Pension Funds.

8. The breach of the agreements or orders of the Directorate General of Insurance and Pension Funds, when it does not constitute a serious breach.

9. Pursuing actions or performing operations that are against the rules on market transparency or protection of the rights of the consumers in the field of insurance, when it does not mean a serious or severe breach, according to the established in the two previous paragraphs.

10. The breach of the duty to present a reasoned offer or to give a reasoned answer mentioned in articles 7 and 22.3 of the rewritten text of the Law on Civil Liability and insurance of vehicular traffic, approved by the Royal Legislative Decree 8/2004, of 29 October, when it does not mean a serious breach.

11. The breach of the decision made by the Customer defender of an insurance undertaking when it goes in favour of a claim presented by a policyholder, insured, beneficiary or damaged third party.

12. To deposit after the period granted the fees collected in favour of the Insurance Compensation Consortium.

13. In general, any breach of the compulsory provisions for the insurance undertakings included in rules considered as Law of supervision of the private insurances, whenever they do not mean a serious or severe breach. To these effects, rules of supervision of private insurances shall be construed as those included in this Law and in its development rules and, in general, those included in the rules containing orders of obliged compliance referred to the objective scope of this Law.

Article 197. *Prescription of breaches.*

1. The severe breaches shall expire in five years, the serious in four years and the minor in two years.

2. The prescription period of the breaches shall start to count from the date when the breach was committed. In the breaches derived from a continuous activity, the starting date shall be that of termination of the activity or that of the last action implying a breach.

3. The expiry shall be interrupted if a disciplinary proceeding is launched with the interested party knowledge and shall restart if the disciplinary file was paralyzed for more than two months for a cause not attributed to the presumed responsible.

The expiry shall also be interrupted by the launching, with the interested party knowledge, of the inspection proceeding where the commission of a breach is brought to light and shall re-start once the order terminating such proceeding is given.

CHAPTER II
Penalties

Article 198. *Administrative penalties of the undertakings because of severe breaches.*

The infracting undertaking shall be imposed with one or several of the following penalties for the commission of severe breaches:

a) Withdrawal of the administrative authorisation.

b) Suspension of the administrative authorisation to operate in one or more classes where the insurance undertaking is authorised to operate in one or several of the activities where the reinsurance undertaking is authorised, for a period not longer than ten years and not shorter than five.

c) Fine for a maximum amount of a 1 per cent of its business volume and higher than 240,001 Euros. To these effects, business volume shall be construed as the corrected accrued premiums with the variation of the provision for premiums not used, in the last economic year closed prior to the commission of the breach. For those undertakings operating under freedom of establishment or freedom to provide services, this amount shall refer to the business volume in Spain.

This penalty may be simultaneously imposed with the penalties foreseen in the letters a), b) and d).

d) Public censure with publication in the "Official State Journal".

This penalty may be simultaneously imposed with the penalties foreseen in the letters a), b) and c).

Article 199. *Administrative penalties for the undertakings because of serious breach.*

The undertaking in breach, for the commission of serious breaches, may be imposed with one or several of the following:

a) Suspension of the administrative authorisation to operate in one or several classes where the insurance undertaking is authorised or to operate in one or several of the activities where the insurance undertaking is authorised, for a period up to five years.

b) Fine for a maximum amount of 240,000 Euros and higher to 60,000 Euros.

This penalty may be simultaneously imposed with the penalties foreseen in the letters a) and c).

c) Public censure with publication in the "Official State Journal".

This penalty may be simultaneously imposed with the penalties foreseen in the letters a) and b).

Article 200. *Administrative penalties to the undertakings because of minor breach.*

The undertaking in breach, for the commission of minor breach, may be imposed with one or several of the following:

a) Fine for the maximum amount of 60,000 Euros.

b) Private censure.

Article 201. *Liability in case of merge, global cession of assets and liabilities or demerge.*

In case of terminated undertakings because of merge, global cession of assets and liabilities or demerge, the administrative liability of the said for the fines in the field of supervision of the private insurance shall be required to the absorbing undertaking or of new creation, considering the percentage of the purchased patrimony, in case of demerge.

Article 202. *Penalties for severe breaches committed by participants, liquidators or anyone who, under any degree, execute the effective management and by whoever holds the functions integrating the system of governance.*

One or several of the following may be imposed for the commission of severe breaches to each subject in breach:

a) Dismissal of the position with disqualification to hold administration, management, winding-up or executing functions foreseen in article 66 in any insurance or reinsurance undertaking, for a maximum period of ten years.

b) Temporal suspension in the pursuit of the position for a period not shorter than one year and not longer than five years.

c) Fine for a maximum amount of 500,000 Euros and higher than 150,000 Euros. This penalty may be simultaneously imposed with the penalties foreseen in the letters a) and b).

d) Public censure with publication in the "Official State Journal". This penalty may be simultaneously imposed with the penalties foreseen in the letters a), b) and c).

Article 203. *Penalties for serious breaches committed by participants, liquidators or anyone who, under any degree, execute the effective management and by whoever holds the functions integrating the system of governance.*

One or several of the following may be imposed for the commission of serious breaches to each infracting subject:

a) Temporal suspension in the pursuit of the position for a period not longer than a year.

b) A fine for the maximum amount of 150,000 Euros and higher than 30,000 Euros. This penalty may be simultaneously imposed with the penalties foreseen in letter a).

c) Public reprimand with publication in the "Official State Journal". This penalty may be simultaneously imposed with the penalties foreseen in the letters a) and b).

Article 204. *Penalties for minor breaches committed by participants, liquidators or anyone who, under any degree, execute the effective management and whom hold the functions integrating the system of governance.*

One or several of the following may be imposed for the commission of minor breaches to each infracting subject:

a) Fine for the maximum amount of 30,000 Euros.

b) Private censure.

Article 205. *Criteria for penalty adjustment*

1. The imposition of penalties shall consider the aggravating or attenuation factors that may arise.

2. Aggravation or attenuation factors, depending on the cases, shall be any of the following circumstances:

a) The nature and number of facts constituting the breach, as well as the intention in its commission.

b) The seriousness of the danger created and the prejudices caused.

c) The earnings achieved, where appropriate, subsequent to the facts or omissions constituting the breach.

d) The previous behaviour of the infracting subject regarding the commission of breaches of the same nature, foreseen in the articles 194, 195 and 196, which have not prescribed and had been given a final order.

e) The liability degree in the facts incurred by the party in breach.

f) The importance of the position held or of the functions pursued by the person liable of the organization structure of the undertaking.

g) The negative consequences of the facts for the insurance sector, the financial system or the national economy.

h) Having voluntarily proceeded to the repair of the damages caused.

i) The dimension of the breaching undertaking measured considering the total amount of its balance, and the business volume, measured considering the amount of the premium volume during the last fiscal year finished prior to committing the breach.

j) The consequences the amount of the penalty to impose could have in the continuity or viability of the infracting undertaking.

k) In case of insufficiency of the solvency capital requirement or of the minimum capital requirement, the objective problems that may have taken place to reach or maintain the level required by law.

l) The remunerations achieved by the infracting subject in the pursuit of its position, as well as its economic situation and other personal circumstances of the said.

m) The level of co-operation of the infracting subjects in the clarification and procedure of the disciplinary files.

3. The attenuation or aggravation circumstances shall be applied to each infracting subject and to each breach committed, being classified as very qualified considering their special importance.

4. The penalties to be imposed shall be divided into three degrees, minimum, medium and maximum. Each degree shall include the result of dividing the maximum amount of time or penalties foreseen in the penalty to be imposed in three stages. Considering the existence or not of attenuation or aggravation circumstances, a penalty shall be set according to the following rules:

a) When in the severe breaches more than two aggravating circumstances took place and, at least, two of them were very qualified, the penalty foreseen in article 198.a) shall be imposed and, where appropriate, those in article 202.a). To graduate this last, the existence of other circumstances different to the two on very qualified of aggravation establishing the imposition of this penalty shall be considered.

b) When in the serious and severe breaches aggravating circumstances took place and, at least one of them was very qualified, the penalties foreseen in article 198.b) or Article 199.a) and, where appropriate, those of article 202.b) or 203.a) shall be imposed, respectively, whenever in the severe breaches do not concur the specific circumstances of application of the established in letter a). Also, to graduate the penalty, in all the cases and according to the criteria of paragraph 2, the existence of other circumstances different to the very qualified of aggravation establishing the imposition of these penalties shall be considered.

c) When circumstances of aggravation and attenuation appeared in the same breach, they shall be reasonably compensated to establish the penalty, graduating the value of ones and others, and applying to the resulting the following criteria:

1. When only one circumstance of aggravation appeared, the penalty shall be imposed in medium degree.

2. When several circumstances of aggravation appeared, or just a very qualified one, the penalty shall be imposed in maximum degree.

d) When there were not attenuation or aggravation circumstances, or these were compensated, the penalty shall be imposed in minimum degree.

e) With general character, within the limits of each degree the amount of the penalty shall be placed in the half of the degree that corresponds, otherwise having to give reasons, and considering that, if there were attenuation circumstances, the penalty to be applied shall be the resulting of multiplying the amount of half of the degree by 0.5 times each attenuation circumstances appeared. If an attenuation circumstance was considered very qualified, it shall be counted as two attenuation circumstances that do not have such consideration.

f) When several penalties are simultaneously imposed for the same breach, the aggravating or extenuating circumstances shall apply to the graduation of all the penalties corresponding to this breach.

Article 206. *Measures inherent to the imposition of administrative penalties.*

1. The administrative entity imposing the penalty may request the party in breach to cease on the behaviour and the recovery to the original status of the situation modified by him/her in the period established to such effect.

2. Likewise, in case that, considering the number and kind of persons affected by the penalties of separation or suspension, it was necessary to guarantee the continuity in the administration and management of the undertaking, the administrative entity that imposes the penalty may dispose the appointment, with provisional character, of one or more administrators or of the members that are necessary to the college body of the administration may adopt agreements, stating their functions in both cases. The appointment of the provisional administrators shall be ruled by the established in the general rules of this Law and shall hold their position until, the competent body of the undertaking, immediately convoked, makes the necessary appointments and take position of those appointed or, where appropriate, until the period of separation or suspension passes.

3. The imposition of the penalties, except for that consisting in private censure, shall be included in the administrative register of insurance and reinsurance undertakings and in that of the high executives of insurance and reinsurance undertakings and, once executive, they shall be subject of communication in the immediate after general board or meeting to be celebrated.

The penalties of separation from the position and suspension, once being executive, shall be also registered in the Mercantile Register and, where appropriate in the Register of Co-operative Undertakings.

4. Likewise, the penalties, except for that consisting in private censure, once executive, shall be reported to the National Securities Market Commission and to the Bank of Spain.

5. The cancellation of the penalty record in the administrative register could be made ex oficio or at the request of the interested parties, whenever a period of a year has passed for the minor breaches, three for the serious breaches, and five for the severe breaches without being punished again. This period shall be counted from the following day to that when the penalty has been complied.

Article 207. *Accumulation of administrative proceedings and criminal procedures.*

The pursuit of the disciplinary power shall be independent of the eventual accumulation of crimes or misdemeanours of criminal nature. However, when it is considered that the facts may constitute a crime, it shall be reported to the judicial authority or to the Fiscal Ministry and the disciplinary administrative proceeding shall be suspended until there is a firm court order. Also, the suspension of the disciplinary administrative proceeding shall be ordered until there is a firm court order when there is knowledge that a criminal procedure is taking place for the same facts or for others which separation from those of possible penalty according to this law is rationally impossible.

There is not a possible administrative penalty when a criminal one had been given and there is identity of subject, fact and ground. If there is place to restart the disciplinary administrative proceeding, the administrative order to be given shall respect the consideration of the facts included in the judicial order.

Article 208. *Pursuit of the activities and use of the names reserved to insurance and reinsurance undertakings.*

1. The persons or undertakings, as well as whoever holds administrative and management positions in them entitles or in fact without having the necessary administrative authorisation, or that uses the names belonging to the insurance and reinsurance undertakings without being so, shall be punished with a fine for an amount of up to 500,000 Euros, besides of making public this behaviour constituting a breach. If, having been required to immediately quit in the pursuit of activities or in the use of the names, they continued pursuing or using them, they shall be punished with fines for an amount of up to 1,000,000 Euros, which could be repeated according to later requirements.

2. The Director of the Directorate General of Insurance and Pension Funds shall be competent for the imposition of the penalties and for the formulation of the requirements ruled in the previous paragraph. The requirements shall be made prior hearing of the person or undertaking affected and the fines shall be imposed according to the applicable proceeding for the imposition of the penalties to the insurance or reinsurance undertakings.

3. The established in this article shall be construed without prejudice of the other liabilities, even of criminal order, that should be required.

Article 209. *Prescription of the penalties.*

1. The penalties on severe breaches shall prescribe five years after, the penalties for serious breaches, four years after and the minor breaches shall do so after two years.

2. The prescription period of the penalties shall start counting from the following day of the firm order imposing the penalty or, where appropriate, from the breach of the penalty imposed, if this had started being complied with.

3. The prescription period shall be interrupted, with the initiation, with knowledge of the interested party, of the execution of the penalty and shall restart the period if such execution is paralysed for more than three months for a cause not attributed to the party in breach.

CHAPTER III
Disciplinary proceeding

Article 210. *Ruling of the disciplinary proceeding.*

1. The disciplinary proceeding shall be ruled:

a) By the special rules established in this Law and in the ruling normative given in its development.

b) In default, the established in the Royal Decree 2119/1993, of 2 December on the applicable disciplinary proceeding applicable to subjects acting in the financial markets and in the Royal Decree 1398/1993, of 4 August, which approves the ruling of the proceeding for the pursuit of the disciplinary power shall rule. Also, the section IX of the Law 30/1992, of 26 November, on the Judicial Regime of the Public Administration and of the Common Administrative Proceeding shall be of application.

2. A simplified proceeding shall be ruled when related to minor breaches or, even being serious, when the facts are clearly determined to be proven in other disciplinary actions or included in the Minutes of Insurance Inspections, for being accepted or declared by the interested parties, for being included in administrative registers of by other justified circumstances by regulatory development.

Article 211. *Public report.*

The Administration may obtain knowledge of facts or situations that could constitute breaches of the supervisory rules of the private insurances by public report.

Having received a report, it shall be submitted to the competent body to carry out the actions that could be suitable. This body could agree on closing the complaint when it is considered unfounded or when the facts or people denounced are not enough specified or identified. Actions as applicable could be started if there are enough evidences of the accuracy of the facts attributed and these are unknown to the Administration. In this case, the report shall not be part of the administrative record.

The reporter shall not be considered interested party in the administrative actions that are started subsequent to the report and he/she shall not be reported of the results of the said. Neither should be legitimate to present appeals or claims related to the results of such actions.

Article 212. *Administrative competences.*

1. The launching of the disciplinary proceedings shall correspond to the General Director of Insurance and Pension Funds, who shall appoint as instructor and officer intended at the Directorate General of Insurance and Pension Funds.

2. The order of the disciplinary proceedings for serious or minor breaches shall correspond to the General Director of Insurance and Pension Funds.

In case of severe breaches, the order shall correspond to the Minister of Economy and Competitiveness, at the proposal of the Directorate General of Insurance and Pension Funds.

3. The execution of penalties shall correspond to the Directorate General of Insurance and Pension Funds.

Article 213. *Periods.*

1. The period to decide and report the resolution of the disciplinary proceeding shall be of a year to be counted since the adoption of the launching agreement. In case of following the simplified proceeding the period to decide and report the order shall be of six months.

2. Both the period of give order as the periods to carry out the steps foreseen in this chapter could be extended according to the established in the articles 42.6 and 49 of the Law 30/1992, of 26 November, of the Judicial Regime of the Public Administrations and on the Common
Administrative Proceeding, with the duty to report the order to the interested parties.

First additional provision. *Regime applicable to the States of the European Economic Area that are not part of the European Union.*

The provisions of this Law that make reference to the Member States of the European Union, to the insurance and reinsurance undertakings with head office or activity in them of the Spanish insurance and reinsurance undertakings shall also be applicable to the States being members of the Agreement of the European Economic Area which are not members of the European Union, to the insurance and reinsurance undertakings with head office in them and to the activity of the Spanish insurance and reinsurance undertakings in these States.

Second additional provision. *Establishment and information on the compulsory insurances.*

1. The subscription of an insurance or another equivalent guarantee to cover the damages that could be caused and of which they are liable could be requested to anyone who pursues certain activities representing a direct or specific risk for the health of for the safety of people, including financial safety.

The required guarantee shall be proportional to the nature and scope of the risk covered.

2. The obligation of insurance subscription shall be established by rules considered as Law that shall count with a mandatory report of the Directorate General of Insurance and Pension Funds, or from the competent body of the Autonomous Communities, with the aim that they can present remarks related to the insurance technique.

Pursue the business activities without the corresponding compulsory insurance shall constitute a severe administrative breach, except for the established in the specific rule.

The party in breach shall be the natural or legal person that is obliged to the subscription of the insurance who could be punished to a fine from 1,000 to 20,000 Euros.

The instruction and order of the sanctioning proceeding shall correspond to the competent public administration because of the subject which order imposes the subscription of the mandatory insurance.

3. The Directorate General of Insurance and Pension Funds shall report the European Commission, in accordance with the register developed by regulatory development and shall manage with the Insurance Compensation Consortium, the compulsory insurances existing in Spain, stating the specific provision ruling the compulsory insurance.

4. To such effect, the competent bodies of the Autonomous Communities shall report the

Directorate General of Insurance and Pension Funds, in a period of three months to be counted from the date of this Law becoming in force, of the existing compulsory insurances in their respective Community, and in the period of a month since their approval, the compulsory insurances that are established later, staring the specifications of the previous paragraph.

Third additional provision. *Validity of the administrative authorisation in the entire European Union.*

The administrative authorisation granted to the Spanish insurance and reinsurance undertakings under any legislation prior to this Law, when involving the entire national territory, shall be valid in the European Union in the terms of article 21, except for the case of friendly societies that are not authorised to operate by insurance classes and of the insurance undertakings under the special solvency regime.

Fourth additional provision. *Validity of the authorisation to extent the provisions granted to friendly societies.*

The friendly societies that previously to the validity of this Law had obtained the administrative authorisation to extend the provisions but that complied with the requirements to adhere to the special solvency regime could continue their operation by classes.

Fifth additional provision. *Information to the European Commission and to the European Insurance and Occupational Pensions Authority on difficulties of the Spanish insurance or reinsurance undertakings.*

The Directorate General of Insurance and Pension Funds shall inform the European Commission and the European Insurance and Occupational Pensions Authority of the problems of general character the Spanish insurance and reinsurance undertakings find to establish and pursue its activity in a third country.

Sixth additional provision. *Special purpose vehicles.*

Special purpose vehicles, with head office in Spain, that comply with the conditions established in the specific rules of application, may request in Spain the administrative authorisation for the pursuit of its activities that shall be granted by the Minister of Economy and Competitiveness according to the proceeding established by regulatory development, taking into account the rules of the European Union application. The maximum period to decide and inform of the decision is of six months. After this period without having informed an express order, the application shall be considered dismissed.

Seventh additional provision. *Review of the amounts expressed in Euros.*

The amounts expressed in Euros in the articles 11 and 78 shall be reviewed every five years, modifying, where necessary, by increasing the base amount in Euros by the percentage change in the Harmonised Index of Consumer Prices of all Member States as published by Eurostat starting from 31 December 2015 until the date of revision and rounded up to a multiple of 100,000 Euros. If the percentage change since the previous is less than 5%, the amounts will not be revised.

The revised amounts shall be published by the European Commission in the “Official Journal of the European Union” and shall be implemented in a period of twelve months since the said publication.

To ease its knowledge and application, such actions shall be similarly published by the Directorate General of Insurance and Pension Funds.

Eighth additional provision. *Obligations of the account auditors of insurance and reinsurance undertakings.*

The account auditors of insurance or reinsurance undertakings shall have the obligation of informing the Directorate General of Insurance and Pension Funds, in the period established in the rules, of any fact or decision made on an insurance or reinsurance undertaking it is aware of, in the pursuit of its audit function carried out on any undertaking which the insurance or reinsurance undertaking has a close link with resulting of a control position, when such fact or decision may:

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

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

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

d) Non-compliance with the solvency capital requirement; or

e) Non-compliance with the minimum capital requirement.

Ninth additional provision. *Insurance actuaries.*

The insurance actuaries may pursue, in any case, the actuarial function stated in article 66.5 and its development ruling.

In any case, actuaries are persons who have achieved a high university degree of advanced character and major in actuarial and financial sciences.

Tenth additional provision. *Insurance experts, damage commissary and damage liquidators.*

The insurance experts are those who rule on the causes of damage, the assessment of the damages and the other circumstances that have influence in the establishment of the compensation derived from an insurance contract and that formulate the proposal for the liquid amount of the compensation.

Damage commissaries and liquidators are those who pursue the functions attributed by the Law 14/2014, of 24 July, on Maritime Shipping.

The insurance experts, damage commissaries and damage liquidators that take part in the proceeding of contradictory expert evaluation shall have enough technical knowledge on the insurance contract and, if it is related to ruled professions, be in hold of the degree on the subject he/she shall rule, with the scope that is established by regulatory development.

Eleventh additional provision. *Arrangements between undertakings and bodies of the Social Security Administration.*

Without prejudice of the established in the articles 77 and 199 of the rewritten text of the General Law of the Social Security, approved by the Royal Legislative Decree 1/1994, of 20 June, and in this Law, the rules of supervision of private insurance shall be applicable to the financial guarantees, technical basis and premium tariffs that correspond to the obligations assumed by the insurance undertakings in virtue of agreements which, where appropriate and prior report from the Directorate General of Insurance and Pension Funds or competent bodies of the Social Security Administration, or with undertakings of public right that have entrusted, in agreement with their specific legislation, the management of some of the special regimes of the Social Security.

The insurance policy models established in virtue of agreements mentioned in the previous paragraph shall be at provision of the Directorate General of Insurance and Pension Funds or competent bodies of the Autonomous Communities.

Twelfth additional provision. *Communications between supervisors related to penalties.*

In case the Bank of Spain, the National Securities Market Commission, the National Commission on Markets and Competition or the Directorate General of Insurance and Pension Funds start a sanctioning proceeding to a financial undertaking subject to the control of another supervisor, this circumstance shall be reported to the corresponding supervisor, which shall collect the information necessary to the effects of his competences of supervision.

Thirteenth additional provision. *Suretyship insurance in favour of the public Administrations.*

The suretyship insurance contract celebrated with the authorised insurance undertaking to operate in the suretyship class shall be admissible as guarantee against the Public Administration in all the cases where the legislation in force required or allows the credit agencies or the credit financial establishments to constitute guarantees before such administrations. For the insurance contract to serve as guarantee before the public administrations the following requirements shall meet:

a) Insurer shall be the person to present the guarantee before the public administration and the insured shall be such administration.

b) The lack of payment of the premium either unique, first or subsequent, does not give right to the insurer to terminate the contract, and this shall not be terminated, nor the coverage of the insured suspended nor shall he be freed of the obligation in case an accident occurs consisting in the bankruptcy of the circumstances in virtue of which the guarantee shall be made effective.

c) The insurer could not present the policyholder the exceptions that could correspond to him against the policyholder.

d) The policy that makes formal the suretyship insurance contract shall adjust to the model approved by order of the Minister of Economy and Competitiveness.

Fourteenth additional provision. *Additional information obligations of the insurance* *undertakings that operate in the class of fire and natural forces.*

1. The insurance undertakings that operate in the class 8 (fire and natural forces), foreseen in the Annex A). a) of this Law, shall send to the Insurance Compensation Consortium, with the regularity and by the proceeding that is established by rules of the Directorate General of Insurance and Pension Funds, the following information:

a) Personal data of the insurance undertaking: legal name, head office and administrative key it has registered in the Administrative Register of Insurance and Reinsurance Undertakings.

b) Written premiums in the year for fire insurance contracts, distributed by municipalities depending on the risks assumed for goods located in each one of them.

To these effects, the premiums to consider shall be the 100 per 100 of those corresponding to the fire insurance and 50 per 100 of those corresponding to multi-risk insurances that include fire insurance.

In case of existence of co-insurance, the obligation shall rest in each co-insurance undertaking considering their participation quota.

2. This obligation shall be of application both to Spanish insurance undertakings and to those established in other Member State of the European Economic Area that pursue their activity in Spain under the freedom of establishment or under freedom to provide services regime.

The information shall be subject of automate treatment.

3. The Insurance Compensation Consortium shall provide, at the request of the competent authorities for the winding-up and collection of the fees, the maintenance of the prevention and extinction of fires and of the special contributions for the establishment or extension of the fire extinction services, information divided by municipalities and insurance undertakings, so the percentage the volume of fire insurance premiums of an insurance undertaking represents on the addition of the volume of premiums of all the insurance undertakings that cover the risk of fire of goods located in a municipality.

The previous information shall be supplied directly or via the Spanish Federation of Municipalities and Provinces (Federación Española de Municipios y Provincias) in the periods and by the proceeding established by the Directorate General of Insurance and Pension Funds. To these effects, the Insurance Compensation Consortium and the Federación Española de Municipios y Provincias may subscribe the collaboration agreements that are necessary.

Similarly, via the Insurance Compensation Consortium shall be supplied to the «Gestora de Conciertos para la Contribución a los Servicios de Extinción de Incendios AIE», as more representative organization of the insurance undertakings for the subscription of the cooperation agreements for the compliance of the fiscal obligations.

4. The obligation foreseen in paragraph 1 has the consideration of rule and supervision of the private insurances, and their breach shall constitute an administrative breach in agreement with the established in this Law.

The Insurance Compensation Consortium shall send the Directorate General of Insurance and Pension Funds a list of the insurance undertakings that, being authorised to operate in the said class, have not provided the information stated in paragraph 1. Likewise, the Insurance Compensation Consortium shall inform the Directorate General of Insurance and Pension Funds de the significant incidents that may take place in compliance with this obligation.

Without prejudice of the administrative breaches derived from the breach of the obligation and considering the communications of the Insurance Compensation Consortium, the Directorate General of Insurance and Pension Funds may make requirements to the insurance undertakings or request the performance of IT audits, or the application of other measures leading to guaranteeing the accuracy of the information provided.

5. The format of the data file for the issuance of information of the premiums cashed by the insurance undertakings shall be established by mandate of the Directorate General of Insurance and Pension Funds.

Fifteenth additional provision. *Technical bases and calibration of the risks of the funeral insurance.*

The simplified regime applicable to the funeral insurances, at the level of technical basis, provisions and solvency capital requirement, depending on the specific risks of this kind of insurances shall be established by regulatory development.

Sixteenth additional provision. *Progressive introduction of the authorisations* *established by this Law and other measures of adaptation to Solvency II.*

1. From the publication of this Law, the insurance and reinsurance undertakings could submit to the Directorate General of Insurance and Pension Funds the applications of approval relative to a complete or partial internal model, in agreement with article 75.1.b), or to an internal group model, according to the articles 146 and 147, being competence of the Minister of Economy and Competitiveness the decision on these authorisations.

2. Likewise, from that date on, the insurance and reinsurance undertakings may request the Directorate General of Insurance and Pension Funds an authorisation for the following aspects:

a) The ancillary own funds stated in article 71.

b) The classification of the elements of the own funds stated in article 72.

c) The use of specific parameters stated in article 75.1 a).

d) The creation of undertakings with special commitment in agreement with the sixth additional provision.

e) The ancillary own funds of an insurance holding undertaking according to the established by regulatory development.

f) The use of the sub-module of equity market risk based in the duration established by regulatory development.

g) The use of matching adjustment of the corresponding temporal structure of risk-free interest rates according to article 69.5.

h) The use of the transitional measure on the relevant risk-free interest rates term structure stated in the eighteenth final provision.

i) The use of the transitional measures on technical provisions stated in the nineteenth final provision.

3. From 1 September 2015, the insurance undertakings that comply with the established in article 101 may request to the Directorate General of Insurance and Pension Funds the application of the special solvency regime ruled in chapter VIII of section III.

4. Related to the supervision at group level of the insurance and reinsurance undertakings, the Directorate General of Insurance and Pension Funds is competent to:

a) Establish the level and scope of application of the group supervision according to the articles 133 and 140 to 142.

b) Identify the group supervisor according to article 134.

c) Establish a college of supervisors according to article 135.

d) Authorise the established in paragraph 2, letters c), h) and i), at group level, in agreement with the established in the direct rules of application of the European Union.

e) Decide the deduction of any participation in credit undertakings, investment services undertakings and related financial institutions, as developed by regulatory development.

f) Authorise the election of the method to calculate the solvency of the group according to the established by regulatory development.

g) Make an assessment on the equivalence, where appropriate, in agreement with article 154.

h) Authorise the application of the centralised risks centralised management, according to article 150.

i) Establish the methods that guarantee a suitable group supervision of groups of non-equivalent third countries and establish the level of equivalence assessment, in agreement with the established by regulatory development.

5. The orders that finish the negotiated proceeding according to this provision may not have effect until 1 January 2016, whenever these have been ordered previous to that date.

Seventeenth additional provision. *Mandatory report via electronic means.*

The Directorate General of Insurance and Pension Funds may establish via circular the mandatory communication with it by electronic means, in the cases foreseen in article 27.6 of the Law 11/2007, of 22 June, of electronic access of the citizens to Public Services.

Eighteenth additional provision. *Calculation regime of the technical provisions to accountancy effects.*

As far as the Royal Decree 1317/2008, of 24 July, that approves the accountancy plan of the insurance undertakings, to accountancy effects, the articles of the Royal Decree

2486/1998, of 20 November, that approves the Ordering and Supervision Ruling of the Private Insurance and its development rule established by regulatory development are not modified, it will continue being of application.

Nineteenth additional provision. *Normative references.*

The rule references made in other provisions to the rewritten text of the Law on ordering and supervision of the private insurance, approved by the Royal Legislative Decree 6/2004, of 29 October, shall be considered as made to the corresponding precepts of this Law.

Twentieth additional provision. *Resource re-allocation.*

The obligations derived from the compliance of this Law shall be considered by re-allocation of the ordinary resources of the Ministry of Economy and Competitiveness without requiring additional provisions.

First transitory provision. *Regimen of the insurance mutual undertakings, social welfare mutual undertakings and variable premium co-operative undertakings.*

The insurance mutual undertakings at adjustable premium and the social welfare mutual undertakings at adjustable premium that when this Law becomes in force were authorised to pursue the insurance activity in agreement with the established in the rewritten text of the Law on ordering and supervision of the private insurances, approved by the Royal Legislative Decree 6/2004, of 29 October, as well as the friendly societies and co-operative undertakings at variable premium which, according to the established in article 69.2 b) of the rewritten text of the Law on ordering and supervision of the private insurances, approved by the Royal Legislative Decree 6/2004, of 29 October, had been authorised for the pursuit of the insurance activity in any of the Autonomous Communities in the scope of their competences, could not continue pursuing the insurance activity under that judicial nature.

In the period of a year since this Law becomes in force, the insurance mutual undertakings working on fixed premiums, in limited undertakings or either agree on their dissolution and winding-up. The friendly societies and the adjustable premium co-operative undertakings could be additionally transformed into friendly societies at fixed premium and into co-operatives at fixed premium, respectively.

Second transitory provision. *Transitory regime of adaptation to the minimum amounts of share capital and mutual fund.*

1. The insurance undertakings that when this Law becomes in force are attached to the regime foreseen in the sixth additional provision of the rewritten text of the Law on ordering and supervision of the private insurances, approved by the Royal Legislative Decree 6/2004, of 29 October, may keep such regime whenever they have the technical provisions duly calculated, accounted and invested, they have the solvency capital requirement and the minimum capital requirement legally required and they are not involved in any special control measures proceeding, nor they are under dissolution or withdrawal of the administrative authorisation.

2. The insurance undertakings that have chosen for the established in the previous paragraph and stop complying with any of the requirements of this, shall submit to authorisation of the Directorate General of Insurance and Pension Funds a viability plan from the moment they stop complying with such requirements. If the Directorate General of Insurance and Pension Funds authorises the viability plan, it shall set the conditions and the period, which may not be longer than two years, where the undertakings shall reach, in any case, the minimum share capital or mutual fund required by the articles 33 or 34 of this Law, as suitable. The breach of the foreseen period, related to the viability plan, shall be a cause of termination.

3. The insurance undertakings that have chosen for the established in paragraph 1, could keep their activity in the classes where it was authorised, but not extend it to different classes.

Third transitional provision. *Unexpired administrative proceedings.*

The administrative proceedings started before the validity of this Law shall be ruled by the previous normative.

Fourth transitional provision. *Transitional regime in the conditions of pursuit of the friendly societies that have not obtained administrative authorisation to enlarge their benefits.*

1. From 1 September to 31 December 2015, the friendly societies that do not have authorisation to enlarge their benefits may request of the Directorate General of Insurance and Pension Funds to adhere to the special regime foreseen in article 102 of this Law. The maximum validity period of this transitional regime shall be of three years since this Law becomes in force.

2. To adhere to this special regimen, they shall present to the Directorate General of Insurance and Pension Funds, together with the request, an adaptation plan to the general regime of Solvency II.

Fifth transitional provision. *Regime for certain insurance operations carried out by friendly societies under the rewritten text of the Law on ordering and supervision of private insurances, approved by the Royal Legislative Decree 6/2004, of 29 October. Exception to the limits to benefits as capital.*

1. The friendly societies authorised prior to this Law becoming in force that, without having authorisation for the enlarge their benefits, were performing legal expenses or assistance insurance operations, or that provided family allowances to meet the needs arising from

judicial events or facts that temporally prevent the pursuit of the occupation, could continue pursuing these operation with undefined character.

The risk coverages that are made breaching the established in the previous paragraph shall be considered as forbidden operations according to the established in article 5 of this Law.

2. The friendly societies, that under the legislation previous to this Law, were legally guaranteeing the benefits to persons for amounts higher than the limits established in article 44.1 of this Law, may continue guaranteeing the benefits established but might not adopt agreements of increase or revaluation of the benefits while still higher to the limits mentioned in the said precept, nor include new mutual members to these policies of provision rulings.

Sixth transitional provision. *Ancillary advisors registered before 1 January 2016.*

The ancillary advisors that on 1 January 2016 are registered in the Register foreseen in article 52 of the Law 26/2006, of 17 July, of private insurance and reinsurance mediation shall be stop working ex oficio, has the legal obligation of registration has disappeared.

Seventh transitional provision. *Regime of social benefits authorised to the friendly societies under the rewritten text of the Law on ordering and supervision of private insurances, approved by the Royal Legislative Decree 6/2004, of 29 October.*

1. The friendly societies that when this Law becomes in force were authorised to grant social benefits according to the established in article 64.2 of the rewritten text of the Law on ordering and supervision of private insurances, approved by the Royal Legislative Decree 6/2004, of 29 October, may continue granting them, even when the social benefits they have been authorised for are not related to insurance operations stated in article 44.1 of this Law, complying with the conditions established in the said, as well as the following:

a) Since this Law becoming in force, the social bodies of the friendly societies may not agree the granting to new social benefits in favour of the mutual members that do not comply with the established in article 44.4 of this Law.

b) Those that had already been agreed by the social bodies prior to this Law becoming in force, may continue granting them until their total termination, without possibility of extension.

c) The social benefits that are agreed breaching the established in the letters a) and b) of this paragraph shall be considered as forbidden operations according to the established in article 5 of this Law.

2. The friendly societies that, when this Law becomes in force, had authorisation to grant social provision under the established in article 64.2 of the rewritten text of the Law on ordering and supervision of the private insurances, approved by the Royal Legislative Decree 6/2004, of 29 October, and whenever the social benefits they have obtained authorisation for adjust to the established in article 44.1 of this Law, may continue granting them in the terms required in this last order.

Eighth transitional provision. *Transitional regime of the reinsurance activity of the friendly societies' federations.*

The reinsurance contracts subscribed between the friendly societies and the friendly societies' federations, under the established in the previous legislations, that are in force when this Law becomes in force, may stand until they expiry, without possibility of renewal or extension.

Ninth transitional provision. *Transitional regime of the minimum capital requirement.*

1. The insurance and reinsurance undertakings that, when this Law becomes in force, comply with the solvency margin established in article 17 of the rewritten text of the Law on ordering and supervision of the private insurances, approved by the Royal Legislative Decree 6/2004, of 29 October, and by its development rules, but that do not have enough admissible basic own fund to cover the minimum capital requirement according to article 78 of this Law, shall be obliged to comply with the established in this last order before 31 December 2016. Otherwise, the administrative authorisation to pursue the insurance or reinsurance activity shall be revoked.

This previous shall not prevent the application, when suitable, of the special control measures that are necessary.

2. Until 31 December 2017, the percentages foreseen in the first paragraph of article 78.3 of this Law for the calculation of the limits of the minimum capital requirement, shall be exclusively applied to the solvency capital requirement, without including any additional

solvency capital requirement requested.

Tenth transitional provision. *Scope of application of the special solvency regime.*

From 1 September to 31 December 2015, the insurance undertakings with head office in Spain that do not pursue activities under the regime of freedom of establishment or freedom to provide services in other Member States or in third countries may adhere to the special solvency regime ruled in chapter VIII of section III, when applying to the Directorate General of Insurance and Pension Funds accrediting they meet all the conditions established during the proceeding previous to the application by regulatory development.

Eleventh transitional provision. *The insurance or reinsurance undertakings that do not subscribe new contracts from 1 January 2016.*

1. The insurance and reinsurance undertakings that, from 1 January 2016 do not subscribe new insurance or reinsurance contracts and that exclusively manage their existing contract portfolio to end with their activities, shall not be bound to the sections I to V of this Law whenever they comply with any of the following conditions:

a) The undertaking has informed the Directorate General of Insurance and Pension Funds that it will terminate its activity before 1 January 2019.

b) The undertaking is subject to reorganization measures foreseen in the section VI of this Law and an administration has been appointed.

2. The undertakings referred to in paragraph 1, shall be bound to the established in the sections I to V of this Law from the following dates:

a) For those of paragraph 1.a), from 1 January 2019 or from a previous date if the Directorate General of Insurance and Pension Funds is not satisfied with the progresses made related to the cession of the undertaking's activity.

b) For those of paragraph 1.b), from 1 January 2021 or from a previous date if the Directorate General of Insurance and Pension Funds is not satisfied with the progresses made related to the cession of the undertaking's activity.

3. To be able to adhere to this transitional measure, the insurance and reinsurance undertakings shall comply with the following requirements:

a) If the undertaking is part of a group, all the undertakings being part of the said shall stop subscribing new insurance or reinsurance contracts.

b) To present to the Directorate General of Insurance and Pension Funds an annual report that establishes the progress made with views to cease the activity.

c) To report the Directorate General of Insurance and Pension Funds the application of this transitional measure.

4. This transitional measure shall not prevent that an undertaking can operate according to this Law and its development ruling.

Twelfth transitional provision. *Temporal validity.*

Without prejudice of the established in the eighteenth additional provision, until the due provisions of development of this Law are ordered, the Ruling on ordering and supervision of private insurances shall keep its validity, approved by the Royal Decree 2486/1998, of 20 December; the accountancy plan of the insurance undertakings, approved by the Royal Decree 1317/2008, of 24 July, and other provisions of general character given in development of the rewritten text of the Law on ordering and supervision of the private insurances, in anything opposing to this Law.

Thirteenth transitional provision. *Transitional regime of the modifications introduced in the Law on Insurance Contracts via the first final provision of this Law.*

The insurance undertakings shall have a period of six months to adapt the policies on the market since this Law becomes in force to the modifications introduced by the first final provision of the said in the Law 50/1980, of 8 October, of Insurance Contracts. After this period and for a maximum of a year, the insurance undertakings shall adapt, at their renewal, the corresponding policies to the contracts in force. However, those precepts that have imperative character since this Law becomes in force shall be of direct application.

Repeal provision.

Any provision of equal or lower range opposing to the established in this Law, and, especially, to the following are laid down:

a) Articles 33.a), 75 and the definition of large risks of article 107.2 of the Law 50/1980, on Insurance Contracts.

b) Royal Decree 2020/1986, of 22 August, approving the Ruling on the Working of the Liquidating Commission of the Insurance Undertakings.

c) Royal Decree 2226/1986, of 12 September, which vests Liquidating Commission of the Insurance Undertakings the functions attributed to the Commission created by the Royal Decree-Law 11/1981, of 20 August.

d) Royal Decree 731/1987, of 15 Mary, approving the Ruling of the Insurance Compensation Consortium, as far as in force.

e) Order of 25 March of 1988, which supplements the Royal Decree 2020/1986, of 22 August.

f) Royal Decree 312/1988, of 30 March, which vests the Liquidating Commission of the Insurance Undertakings with the winding-up of the social welfare undertakings.

g) Royal Legislative Decree 6/2004, of 29 October, approving the Law on ordering and supervision of private insurances, except for its articles 9, 10 and 24 in that relative to the mutual undertakings, friendly societies and insurance co-operative undertakings; the sixth additional provision, the seventh additional provision; and the reference included in the repeal provision of the Royal Legislative Decree, letter a).8., maintaining in force the fifteenth additional provision of the Law 30/1995, of 8 November, on Ordering and Supervision of Private Insurances, which shall continue being valid.

First final provision. *Modification of the Law 50/1980, of 8 October, on Insurance Contracts.*

The Law 50/1980, of 8 October, on Insurance Contracts, are modified in the following terms:

One. The paragraph 3 of article eight shall be written as follows:

> «3. Nature of the risk covered, describing, in a clear and comprehensive way, the guarantees and coverages granted in the contract, as well as related to each one of them, the exclusions and limits that affected them typographically highlighted. »

Two. Article eleven shall be written as follows:

> «1. The policyholder or the insured hall, during the entire validity of the contract, report the insurer, as soon as possible, the alteration of the factors and the circumstances declared in the questionnaire stated in the previous article that aggravate the risk and that are of a nature that, if known by it when pursuing the contact, would not have been celebrated or would have done so with harder conditions.
>
> 2. In personal insurance, the policyholder or the insured does not have obligation of reporting the changes in the circumstances relative to the health conditions of the insured, which in any case shall be considered as increase in the risk. »

Three. Article twenty-two shall be written as follows:

> «1. The duration of the contract shall be established in the policy, which could not be longer than ten years. However, it could be established to extend it for one or more times for a period not longer to a year each.
>
> 2. The parties could oppose to the extension of the contract by a written notice to the other party, made with a period of, at least, one month of before the termination of the insurance period under way when the party opposing to the extension is the policyholder, and of two months if the oppose is the insurer.
>
> 3. The insurer shall inform the policyholder, at least with two months of advance of the termination of the undergoing period, any modification of the insurance contract.
>
> 4. The conditions and periods of opposition to the extension of each party, or their non-opposition, shall be highlighted in the policy.
>
> 5. The established in the previous paragraphs shall not be of application when not compatible with the rules on life insurance. »

Four. A section five is added, in section III named "Funeral and dependence insurance" with the following articles:

> **«Article hundred and six bis.**
>
> 1. The funeral insurance obliges the insurer, within the limits established in this section and in the contract, to provide the funeral services agreed in the policy in case the death of the policyholder takes place.
>
> The excess of the insured amount on the cost of the service provided by the insurer shall belong to the policyholder, or in default, to the heirs.

2. In case the insurer was not able to provide the benefit for causes foreign to its will, force majeure or unforeseeable circumstances or because the service has been made through other services different to those offered by the insurance undertaking, the insurer shall be obliged to compensate the amount insured to the heirs of the deceased policyholder, not being liable for the quality of the services provided.

3. In case of competition of funeral insurance in a same insurance undertaking, the insurer shall be obliged to refund, at the request of the policyholder, the premiums paid in the policy that he has decided to cancel when the competition arose.

4. In case of death, if there were any funeral insurance competition with more than one insurance undertaking, the insurer that was not able to comply with the obligation of providing the funeral services in the terms and conditions agreed in the contract, shall be obliged to the payment of the insured amount to the heirs of the deceased policyholder.

5. The opposition to the contract extension may only be pursued by the holder.

Article hundred and six ter.

1. The dependence insurance obliges the insurer, within the limits established in this section and in the contract, in case a situation of dependence rises, to the compliance with the agreed provision with the aim of caring, total or partially, directly or indirectly, of the damaging consequences for the policyholder derived from such situation.

2. To the effects of this article, situation of dependence is construed as that foreseen in the ruling normative of the promotion of personal autonomy and care for the people in situation of dependence.

3. The benefit of the insurer could consist on:

a) Paying the policyholder the capital or income agreed.

b) Refund the policyholder for the expenses derived from the assistance.

c) Guaranteeing the policyholder the provision of the assistance services with obligation by the insurer to put at the disposal of the policyholder such services and assume their cost directly.

4. The opposition to the extension of the contract could only be exercised by the policyholder.

Article hundred and six quarter.

In health assistance, dependence or funeral, the insurance undertakings shall guarantee the policyholder the freedom of choice for service suppliers, within the limits and conditions established in the contract. In these cases, the insurance undertaking shall put at the disposal of the policyholder, in an easily accessible way, a list of service supplier that guarantee an effective free choice, except for those contracts where a single supplier is expressly foreseen.

In the funeral insurances, the established in article 106 bis shall be of application. 2 with the heirs hired services by means different to those offered by the insurance undertaking according to the previous paragraph. »

Second final provision. *Modification of the Law 13/1996, of 30 December, on Fiscal, Administrative and Social Order Measures.*

With effect from 1 January 2016, the following modifications are introduced in the Law 13/1996, of 30 December, on Fiscal, Administrative and Social Order Measures:

One. Number 2 of the paragraph 9 of article 12 is suppressed. Two. Paragraph fourteen of article 12 is suppressed.

Third final provision. *Modification of the Law 38/1999, of 5 November, on Building Ordering.*

The Law 38/1999, of 5 November, on Building Ordering, is modified in the following terms:

One. Paragraph 1 of article 19 shall be written as follows:

«1. The regime or requested guarantees for building works included in article 2 of this Law shall be made effective in agreement with the obligatory nature that is established in application of the second additional provision, taking as reference the following guarantees:

a) Insurance on material damages, suretyship insurance or financial guarantee, to guarantee, for a year, the compensation for material damages due to vices or defaults of execution affecting to termination elements or pursuit of the works, that could be substituted for a retention by the promoter of a 5 per 100 of the amount of material execution of the works.

b) Insurance on material damages, suretyship insurance or financial guarantee, to guarantee, for three years, the compensation for material damages due to vices or default of the construction elements or of the facilities that cause the breach of the habitability of paragraph 1, letter c) of article 3.

c) Insurance of material damages, suretyship insurance or financial guarantee to guarantee, for ten years, the compensation of the material damages caused by the building because of vices or defaults that have their origin or that affect the foundation, the supports, beams, forging, load-bearing walls or other structure elements, that directly affect the mechanical resistance and stability of the building. »

Two. The first additional provision is modified which shall be written as follows:

«First additional provision. *Amounts received on the account of Price during the construction.*

One. Obligations of the property developers that receive advanced payments.

1. The natural and legal persons that promote the construction of any kind of housing, including those made under co-owner or co-operative undertaking regime, and that intend to receive from the purchasers amounts of money for the construction, shall meet the following requirements:

a) To guarantee, from achieving the building license, the refund of the amounts given plus the legal interests, by suretyship contract subscribed with insurance undertakings duly authorised to operate in Spain, or by joint guarantee issued by duly authorised credit undertakings, in case the construction does not start or does not end in the period agreed to give the keys of the house.

b) To receive the advanced amount by the purchasers by credit agencies where those shall be deposit in a special account, separated from any other kind of fund belonging to the property developer, including the supposition of co-owners or co-operative undertakings, and which could only be used for the purposes derived from the construction of the houses. The opening of these accounts or deposits in credit undertakings, under their responsibility, shall require the guarantee included in the previous condition.

2. The guarantee shall extend to the amounts provided by the purchasers, including the applicable taxes, plus the legal interest of money.

Two. Requirements of the guarantees.

1. For a suretyship insurance contract to act as guarantee of the amounts paid in advance in the construction and sale of houses it shall comply with the following requirements:

a) An individual insurance policy shall be subscribed by each purchaser where the amounts or the commercial instruments given in for the purchase of the building shall be identified.

b) The amount insured shall include the total amount of the advanced payments in the purchase contract, of joining the promotion or co-operative stage or equivalent judicial instrument, including the applicable taxes, accruing the legal interests of money from the effective date of the advanced payment to the foreseen date of giving the houses to the property developer.

c) The policyholder shall be the property developer to whom shall correspond the payment of the premium for the entire insurance period until the deed of purchase agreement, the co-operative stage or equivalent judicial element is made public.

d) The condition of policyholder corresponds to the purchaser or purchasers that are included in the purchase agreement.

e) The insurer may not oppose to the insured the exceptions that could correspond against the policyholder. The lack of payment by the property developer shall not be, in any case, opposing exception.

f) The duration of the contract could not be shorter to that of the compromise for the constitution and handing of the houses. In case an extension for the handing of the houses is give, the property developer could extend the insurance contract by the payment of the corresponding premium and shall inform the insured of such extension.

g) The insurance undertaking could check during the validity of the contract the documents and data of the property developer-holder that are related to the obligations contracted against the insureds..

h) In case the construction is not started or it does not get to its purpose in the period agreed, the insured, whenever he/she has accurately required to property developer the refund of the amounts paid on account, including the applicable taxes and their interests and the property developer has not made the refund in a period of thirty days, could claim the insurer the payment of the corresponding compensation. Similarly, the insured may directly claim the insurer when the previous claim to the property developer is not possible.

The insurer shall compensate the insured in a period of thirty days to be counted since the claim is made.

i) The amount not accredited as paid by the insured may never be compensated, even if they have been included in the insured amount of the insurance contract, as they delayed payment has been agreed in the cession contract.

j) The insurer could claim the property developer -holder the paid amounts to the insured, to which effect shall subrogate in the rights belonging to these.

k) In case the insurance undertaking had paid the compensation to the insured subsequent to the accident covered by the insurance contract, the property developer could not alienate the house without having previously refund the insurance undertaking for the compensated amount.

l) In anything not specifically stated, the Law 50/1980, of 8 October, on Insurance Contracts shall apply.

2. For a surety to serve as guarantee of the anticipated amounts in the construction and sale of houses, it shall meet the following requirements:

a) It shall be issued and kept in force by the credit undertaking, for the total amount of the advanced amounts in the purchase agreement, of adhesion to the promotion or stage of the co-operative or equivalent judicial instrument, including the applicable taxes, accruing the legal interest of money since the effective handing of the advance payment to the foreseen date of handing the house by the property developer.

b) In case the construction does not start or that is not ended in the period agreed, the beneficiary, whenever he/she has accurately requested the property developer the refund of the monies paid on account, including the applicable taxes, their interests and if this last has not make the refund in a period of thirty days, could request the guarantor the payment of such amounts. Similarly, the beneficiary could claim directly to the guarantor when the prior claim to the property developer is not possible.

c) After a period of two years, to be counted from the breach by the property developer of the guaranteed obligation without having been required by the purchases for the termination of the contract and the refund of the advanced amounts, the expiry of the surety shall take place.

Three. Contract information.

In the contracts to purchase houses where the handing to the property developer of advanced amounts, including in the case of co-owner associations or co-operative undertakings, it should be expressly stated:

a) That the property developer is obliged to refund the acquirer the amounts received on account, including the applicable taxes, plus the legal interests in case the construction is not started or is not finished in the deadlines agreed by contract, or that the habitability permission, first occupation license or equivalent document that gives authorisation to occupy the house.

b) Reference to the insurance contract or bank guarantee stated in paragraph one.1. a) of this provision, stating the name of the insurance undertaking or of the guarantor undertaking.

c) Appointment of the credit undertaking and of the account number where the acquirer of the amounts agreed to be advanced subsequent to the contract celebrated has to be made.

At the moment of granting the purchase contract, the property developer, including in the case of co-owner communities or co-operative undertakings the acquirer shall present the document accrediting the guarantee, referred and individualised of the amounts that have to be advanced at account of the price.

Four. Execution of the guarantee.

If the construction had not been started or the house had not been handed, the acquirer could choose to terminate the contract with the refund of the amounts advanced on account, including the applicable taxes, with the legal interests accrued, or gran tan extension to the property developer, that shall be stated in an additional clause of the contract granted, specifying the new period granted with the termination date of the construction and the handing of the house.

Five. Cancellation of the guarantee.

Once the habitability permission, the first occupation license or the equivalent document accepting the occupation of the house by the competent administrative body is granted and the handing of the house by the property developer to the acquirer is accredited, the guarantees granted by the insurance or guarantor undertaking shall be cancelled. Once the previous conditions are met, the similar effect shall take place if the acquirer rejects to receive the house.

Six. Advertising of the housing promotion.

In the advertising of the housing promotion with perception of amount on account prior to the start of the works or during the construction period it shall be compulsory to state that the property developer shall adapt the action and contract to the compliance with the requirements established in the present law, expressly stating the insurance undertaking or guarantor undertaking, as well as the credit undertaking where the special account is opened where the advanced amounts have to be paid.

Seven. Breaches and penalties.

The breach of the obligations imposed in this provision constitute a breach in that related to consumption, applying the established in the general sanctioning regime on consumers and users' protection foreseen in the general legislation and in the corresponding autonomic rules, without prejudice of the competences granted by the normative in force to the Directorate General of Insurance and Pension Funds.

The breach of the obligation of constituting a guarantee stated in paragraph one.1 of this provision shall give place to a penalty of up to a 25 per 100 of the amounts which refund has to be insured or that corresponding according to the established in the own normative of the Autonomous Communities.

Besides the previous, the breaches and penalties that could correspond according to the specific legislation according to building ordering shall be imposed to the property developer, including in case of co-owner communities or co-operative undertaking.

Eight. Regulatory development.

The public bodies of housing promotion that exclude the requirements established in this additional provision, could be established by regulatory development.

The Government may dictate the complementary provisions for the development of the established in this additional provision. »

Three. A third transitional provision is added with the following text:

«Third transitional provision. *Adaptation to the regime presented in the first additional provision "Cashing of the amounts on account of the price during the construction", in the writing given by the Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings that modifies the Law 38/1999, of 5 November, on Building Ordering.*

The insurance undertakings shall adapt the policies in force on 1 January 2016 to the regime introduced by the third final provision two of the Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings, before 1 July 2016 and for the amounts that are paid on account from that date, which modifies the first additional provision "Cashing of the amounts on account of the price during the construction" of the Law 38/1999 of 5 November, on Building Ordering. »

Four. A third repeal provision with the following text is added:

«Third repeal provision.

Any provision of equal or lower range opposing to the established in this Law and, especially, to the following, is repealed:

a) Law 57/1968, of 27 July, on reception of advanced amounts in the construction and sale of houses.

b) The Decree 3114/1968, of 12 December, on the application of the Law 57/1968, of 27 July, to the Housing Communities and Co-operatives.

c) The Order of 29 November of 1968 on the guarantees insurance of the advanced amounts for houses, as far as being in force. »

Fourth final provision. *Modification of the rewritten text of the Law on Ruling of Pension*

Funds and Plans, approved by the Royal Legislative Decree 1/2002, of 29 November.

The rewritten text of the Law on Ruling of Pension Funds and Plans, approved by the Royal Legislative Decree 1/2002 of 29 November, is modified in the following terms:

One. Article 2 is written as follows:

«Article 2. *Nature of the pension funds.*

Pension funds are patrimony created to the exclusive object of compliance with pension plans, which management, custody and control is made according to the present Law.

Also, open pension funds could be created with the aim of channelling the investments of other pension funds, according to the established in article 11 ter.»

Two. Paragraph 2 of article 10 shall be written as follows:

«2. The conditions that shall rule the relations between the plan and the pension fund shall be established by regulatory development, and especially those referring to the transfer of the position accounts to the plan from a pension fund to another, as well as the winding-up of the plan. The conditions and requirements where the commission of control of a pension fund ascribed to a fund could channel the resources of the position account to other pension funds or ascribe to several, managed by different managing undertakings, where appropriate, shall be established by regulatory development. »

Three. The paragraphs 9 and 10 of article 11 shall be written as follows:

«9. Related to the investment processes developed, the pension funds could be classified in two types:

a) Closed fund, that exclusively rules the investments of the pension plan or plans included in it.

b) Open fund, characterised because of being able to channel the investments of other pension funds and of pension plans ascribed to other funds in agreement with the established in article 11 ter.

10. In the pension funds that integrate pension plans of defined provision could be required in the constitution of a minimum initial patrimony, according to the levels established by regulatory development, considering the guarantees required for its correct financial performance. »

Four. A new article 11 ter is included with the following text:

«Article 11 ter. *Open pension funds.*

1. Open pension funds could be constituted with the aim of channelling the investment of other pension funds and plans ascribed to other pension funds according to the established in this article.

The open pension funds shall be necessarily classified in one of the following categories:

a) Occupational open pension funds, directed to channel the investments of occupational pension funds. In the terms that are established by regulatory development, the pension plans of the occupational system could also channel the resources of its position account to occupational open pension funds.

b) Personal open pension funds, directed to channel the investments of personal pension funds. In the terms that are established by regulatory development, the pension plans of the individual or associated system could also channel the resources of its position account to personal open pension funds.

Each one of the investment pension funds and of the investment pension plans shall hold a participation account in the open fund.

The direct integration of pension plans in open pension plans shall be optional, but must be, in any case, of the same category of occupational or personal.

2. In the occupational open pension funds, a Commission of control of the funds created by representatives of the funds and investment pension plans shall be constituted, and in the case, of the plans directly integrated, which shall be designed by the control committees of such plans and funds amongst its members. As far as there is a single investment fund or a single investment or integrated pension plan, the control committees of this shall pursue as control committees of the open pension plan.

In the personal open pension funds, the constitution of a control committees of the open fund shall not be necessary, corresponding, where appropriate, to the undertaking managing the functions the normative attributes to that.

control committees of the open pension fund shall be ruled by the established in article 14 and in the rules developing it by regulatory development, considering made, where appropriate, to investment pension funds or to investment pension plans the references to pension plans.

The expenses of pursuit of the control committees of the open pension fund shall be borne by the fund, even if the total or partial assumption by the managing or deposit or promoting undertakings of the pension plans could be agreed.

3. The agreement of the managing and deposit undertakings is necessary to constitute an open pension fund.

The open pension funds shall be constituted, prior administrative authorisation, according to the ruled proceeding in the articles 11 and 11 bis with the specifications that, where appropriate, are established by regulatory development. Its name shall be followed, in any case, by the expression, “open pension fund”.

The public deed of constitution of the open pension funds shall include its execution rules where the scope of application stated in the subject and open fund shall be included, the category of occupational or personal and the minimum contents foreseen in article 11.2.c), as much as of application, understanding, where appropriate, made to participation accounts the reference to position accounts.

A closed occupational or personal pension fund could become an open pension fund in the terms established by regulatory development.

4. The open pension funds shall be ruled by the provisions of this Law and its development rules relative to pension funds that are not specific of the occupational or personal funds exclusively directed to integrate in pension plans, considering, where appropriate, made to investment pension funds or investment pension plans the references to pension plans.

The specific requirements and conditions for the activity and working of the open pension plan could be ruled by regulatory development, and especially, a minimum patrimony could be requested.

The provisions of chapter IX shall be applicable to the open pension funds considering the references to pension plans as made, where appropriate, to the investment pension funds and plans. »

Five. Letter g) of the paragraph 1 of the article 20 shall be written as follows:

«The established in the articles 36 and 38 of the Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings, without prejudice of their ruling specificity shall apply to the members and the natural persons being members of the administration council as well as to the general managers and similar to these last of the pension funds’ managing undertakings. »

Six. Paragraph 6 of the article 20 shall be written as follows:

«6. Besides those listed in the article 363 of the rewritten text of the Law on Capital Undertakings, approved by the Royal Legislative Decree 1/2010, of 2 July, it shall be cause of winding-up of the managing undertakings of pension funds, the withdrawal of the administrative authorisation, unless the undertaking renounces to such authorisation, being this renounce only motivated by the modification of its social object to develop an activity different to the social object exclusive of the administration of pension funds stated in letter c) of previous paragraph 1.

The winding-up agreement, besides of the advertising required in article 369 of the Law on capital undertakings, shall be registered in the Administrative Register and shall be published in the Official State Journal and the winding-up undertaking shall be cancelled in the Administrative Register, besides of complying with the established in article 396 of the Law on Capital Undertakings.

Notwithstanding the foregoing, winding-up or clearing of the insurance undertakings authorised as pension fund managers shall be ruled by the specific rule of the Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings. »

Seven. The paragraphs 1 and 2 of article 24 shall be written as follows:

«1. It belongs to the Ministry of Economy and Competitiveness the ordering and administrative supervision of the compliance of the rules of the present Law, with the possibility of collecting from the managing and depositing undertakings, from the undertakings and experts that could have delegated or outsourced the functions, from the marketers of individual pension plans, from the promoters of pension plans, of the control committees, of the actuaries, as well as from the representatives of the pension funds of the other Member States, all the information that is necessary to check the correct compliance of the legal and regulatory development.

The Directorate General of Insurance and Pension Funds shall be part, in its condition of Spanish supervisory authority on pension funds, of the European Insurance and Occupational Pensions Authority (EIOPA), according to the established in the Ruling 1094/2010, of 24 November, of the European Parliament and of the Council, which creates the European Supervision Authority, being of application in relation to pension funds the established in article 17 of the Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings.

2. The established for the supervision of insurance undertakings in the chapter IV of the section IV of the Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings shall be of application to the inspection of managing undertakings and of pension plans and funds.

In absence of a stipulation to the contrary in the specification of the pension plans or in the rules on functioning of the pension funds, any the actions derived from the inspection of the pension plans and funds, except those related to the natural persons, shall be considered as reported when the communication is made before the corresponding managing undertaking.

Likewise, the Directorate General of Insurance and Pension Funds may order the inspection of the deposit undertakings of pension funds to check the correct compliance of the rules relative to pension plans and funds. In this case, the inspection order to the undertaking or administrative body which, where appropriate, is in charge of the control and supervision of the undertaking shall be sent, with the possibility of requesting from that its action or assistance in the cases where it is necessary, being similarly applicable the established on the inspection of insurance undertakings in the said chapter IV of section IV of the Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings.»

Eight. The paragraphs 4 and 5 of the article 24 shall be written as follows:

«4. The data, documents and information that are under the control of the Ministry of Economy and Competitiveness in the exercise of its ordering and supervisory functions of the pension funds, except for those included in the administrative registers of public character, shall be considered as confidential.

Any person pursuing or that have pursued an ordering and supervisory activity related to pension funds, as well as those whom have been vested by the Ministry of Economy and Competitiveness with functions related to the same, shall be submitted to the duty of professional confidentiality in the same terms and with the same liabilities
and exceptions made in the chapter V of section IV of the Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings.

5. The Directorate General of Insurance and Pension Funds could order the inspection of the functions transferred to a third party, as well as those of marketing of pension plans, to check if they are being pursued in agreement with the normative on pension plans and funds. In this case, the inspection notice shall be sent to the entity or administrative body that, where appropriate, is in charge of the control and supervision of the service provider, with the possibility of asking for its action or help in the cases where it is necessary, being applicable the established on the inspection of insurance undertakings in the said chapter IV of section IV of the Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings. »

Nine. A new letter d) in paragraph 2 of article 31 is added with the following text:

«d) After a year without the open pension plan channelling any investment from other pension funds or pension plans and it does not integrate any pension plan or when the effective lack of activity is fund in the terms that are established by regulatory development. »

Ten. The paragraphs 2 and 3 of the article 34 are written as follows:

«2. Independently of the administrative penalty that could be imposed, the special control measures, according to the situation characteristics, may consist on:

1.º Related to the managing undertakings, any of the measures that are ruled in the articles 160 and 161 of the Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings could be ordered, as far as applicable, with the specificity that the reference in such order is made to the suspension to the contract of new insurances by the insurance undertaking or the acceptance of reinsurance and the prohibition of extension of the insurance contracts already celebrated, shall be construed as the suspension of the management and administration of new pension funds by the managing undertaking.

Also, the measure of suspending the managing undertaking of its administration functions of the pension funds or fund could be adopted, in which case the control committees of the fund shall appoint an undertaking to substitute the previous, prior authorisation of the Directorate General of Insurance and Pension Funds, who could proceed to the appointment if the first has not done so.

2.º Related to the pension plans and funds, the measures ruled in the articles 160 and 161 of the Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings could be also adopted, as far as they are applicable with the following special conditions: that the financing or recovery plan shall be approved by the control committees of the pension plan or fund, that the suspension of the contract of new insurances or of acceptation of reinsurance and the prohibition of extension of the insurance contracts already celebrated is substituted by the suspension measure of the integration of new pension plans or new participants in the pension plans, and that the references that are made in such provisions to the insurance undertaking or to its administration bodies shall be considered as made, respectively, to the pension plan or fund or, depending on the case, to the managing or deposit undertakings or to the control committees of the funds or of the pensions plans.

3.º Likewise, and as complementary special control measure to those included in the previous numbers, the Directorate General of Insurance and Pension Funds shall agree the action of the managing undertaking and of the pension fund or funds to guarantee its correct compliance in agreement with the established in article 163 of the Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings.

3. For everything else, the established in the articles 164 and 165 of the Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings shall be of application in relation to the special control measures to be adopted on managing undertakings and pension plans and funds, on the administrative proceeding of adoption of special control measures and provisional substitution of the administration bodies, but considering them as made to the control committees or, where appropriate, to the managing undertakings any reference made to the administration body of the insurance undertaking, when the measures to be adopted are so on pension plans and funds.

The judge ordering the bankruptcy of a managing or deposit undertaking of pension funds shall immediately proceed to the notice of the order to the Directorate General of Insurance and Pension Funds. This could request the bankruptcy judges any information relative to the status and evolution of the bankruptcy proceedings affecting the managing and deposit undertakings of pension funds. »

Eleven. Article 36 shall be written as follows:

«Article 36. *Administrative penalties.*

1. To the undertakings and persons mentioned in paragraph 1 of article 35 of this Law, except for those mentioned in the paragraphs 2, 3 and 4 next, the administrative penalties foreseen in the articles 198, 199 and 200 of the Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings shall be of application, even if, those of suspension of the effective administrative authorisation shall refer to the pursuit of the activity as manager or depository of any pension fund or to the capacity to be promoter of pension plans of the individual system. In the penalty for severe breach foreseen in the letter c) of article 198 of the Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings, business volume shall be construed as the provisions to the pension plans during the last closed year prior to committing the breach. To these effects, the following provisions shall be counted: in the case of managing and deposit undertakings, the total provisions to the pension plans under its management and custody, respectively; in the case of promoters of plans different to those of the managing and deposit undertakings, the total of the provisions to the

pension plans they are promoters of; in case of undertakings or persons who have delegated duties, the total amount of the provisions made to the pension plans ascribed to the pension funds affected by this delegation; and in the case of liquidators different to managing or deposit undertakings, the total of the provisions made to pension plans ascribed to the pension funds affected by the winding-up.

2. The expert actuaries and the undertakings that pursue their activities, by their actions related to the pension plans and funds, shall be punished for the commission of severe breaches with one of the following: prohibition of issuing its orders on the subject for a period not longer than ten years but not shorter than five or fine for amounts from 150,253.02 Euros to 300,506.05 Euros. For the commission of serious breaches, the actuaries shall have one of the following penalties: shall be punished for the commission of severe breaches with one of the following: prohibition of issuing its orders on the subject for a period of up to five years or a fine for amounts from 30,050.61 Euros to 150,253.02 Euros. For the commission of minor breaches, the actuaries shall have fines for an amount of up to 30,050.61 Euros. If the actuary acts on behalf of an undertaking, the same penalties shall be applicable, also, to the undertaking.

3. It shall be of application to the administrative and management positions of the undertakings referred in paragraph 1 of article 35 of this law, except for those pursuing
their activity in marketer undertakings, the liability regime that is rules by articles 191, 202, 203 and 204 of the Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings, for the administrative and management positions of insurance undertakings, even if the disqualification to holder administrative and management positions stated in letter a) of the article 202 shall be, depending on the cases, in any managing or deposit undertaking, in any undertaking where the actuaries pursue their activity or, finally, in any commission or sub commission of control of the pension plans and funds.

Similarly, the articles 191, 202, 203 and 204 of the Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings shall be of application to the administrative and management positions of the pension plan promoting undertakings, and to those of undertakings that have delegated duties of the managing or deposit undertaking.

In these cases, the disqualification shall be referred, according to the cases, to hold administrative and management positions in the said undertakings to pursue functions and duties relative to the pension plans and funds.

4. The administrative penalties foreseen in the articles 56.1, letters b), c) and d); 56.2 and 56.3 of the Law 26/2006, of mediation of private insurance and reinsurance shall be of application to marketer persons or undertakings, even if the temporal cancellation shall be construed as made to the pursuit of the marketing activity of pension plans.

Likewise, the administrative penalties foreseen in the articles 57.3, letters b) and c), and 57.4 of the Law 26/2006, on mediation of private insurance and reinsurance shall be applicable to the administrative and management positions of the marketer undertakings. In these cases, the temporal disqualification shall be referred, depending on the cases, to hold administrations and managing positions in the said undertakings for the pursuit of duties and faculties related to the pension plans and funds.

The penalties stated in the previous paragraphs shall be imposed in the terms established in the said articles 56 and 57.

5. The failure to comply by the participant of the contribution limit foreseen in paragraph 3 of article 5, except if the excess of such limit is withdrawn before 30 June of the following year, shall be punished with a fine equivalent to a 50 per cent of such excess, without prejudice of the immediate withdraw of such excess from the corresponding pension plan or plans. Such penalty shall be imposed, in any case, to the person making the contribution, being participant or not, even if the participant shall be relieved when it was made without the participant's knowledge.

6. To the effects of pursuit of the sanctioning power stated in this article and in the previous, the rules included in the articles 197, 201 and 205 to 2013, both included, of the Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings, shall be of application.

When the infracting is a credit agency or undertaking or person whom has have transferred or that acts as marketer of pension plan, or administrative and management positions of these, to impose penalties the report of the undertaking or administrative body in charge of the control and supervision of such undertakings or people shall be compulsory.

7. All persons or undertakings, as well as anyone who de facto or the jure hold administrative and management positions in them, who pursue the own activity of the pension funds or of the managing undertakings of pension funds without having the necessary administrative authorisation or that use the names “pension plan”, “pension fund”, “pension fund managing undertaking” or “deposit undertaking of pension funds” without being so, shall be sanction according to the established in article 208 of the Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings.»

Twelve. Article 46 shall be written as follows:

«Article 46. *Representatives in Spain of the occupational pension funds of other Member States.*

The pension funds with head office in other Member States who intend to pursue in Spain occupational pension plans subject to the Spanish legislation shall be obliged to appoint a representative, natural person with regular address in Spain or legal person established in it, with the following faculties:

a) Care for the claims presented by the control committees, participants and beneficiaries of the plans subject to the Spanish legislation ascribed to the fund. To such effect, they shall have enough powers as to represent the pension fund, even to order the payment of provision.

b) Represent the pension fund before the Spanish judicial and administrative authorities in anything related to the development of the plans and to the activities of the fund in Spain.

The Minister of Economy and Competitiveness could give orders in detail relative to the contents, shape and deadlines of the obligations included in this article. »

Thirteen. The second additional provision shall be written as follows:

«Second additional provision. *Decision period of the applications for administrative authorisation and registration.*

The administrative authorisations and registration ruled in the present Law shall be solved in the next three months to the date of application. The administrative silence shall be considered as positive. »

Fourteen. The eighth additional provision shall be written as follows:

«Eighth additional provision. *Advance use of the economic rights in the ancillary social welfare systems analogue to pension plans.*

The economic rights of the policyholder or mutual members derived from the premiums, provision and contributions paid to guaranteed insurance schemes, company insurance schemes and insurance contracts signed with friendly societies included in article 51 of the Law 35/2006, of 28 November, on the Personal Income Tax and the partial modification of the laws of the Tax on Undertakings, on the Tax of non-residents and on Patrimony, could be made effective in advance in the exceptional cases of liquidity and of advance disposition foreseen for the pension plans in the paragraph 8 of article 8 of this Law, under the terms and conditions established in such rule and in the rules developing it by regulatory development.

In the case of company insurance schemes and those agreed with friendly societies for the workers of the undertakings’ employees, the advanced disposition of the rights derived from the premiums, benefits and contributions made with at least ten years of age shall be possible is so is accepted by the agreement and if it is foreseen in the corresponding insurance contract or in the provision ruling. In case the insurance undertaking counts with investments affected by the right of advanced disposition they shall be valued at market priced of the assigned assets.

At the friendly societies that, according to the established in the fifteenth additional provision of the Law 30/1995, of 8 November, of Organization and Supervision of the Private Insurances, act as alternative system to the registration in the Social Security Special Regime of the Freelancer Workers, the economic rights of the products and insurances used to comply with such alternative function could not be made effective in the cases of liquidity foreseen in the first and second paragraph 8 of article 8 of this Law.»

Fifteen. A new eighth transitional provision is added with the following text:

«Eighth transitional provision. *Pension funds opened existing before 1 January 2016.*

The occupational or personal pension funds registered in the Administrative Register of Pension Funds that, on 31 December 2015, had operated with open pension funds could continue with such activity, as well as to continue applying their prior regime of composition of the control committee of the fund as far as they have pension plans directly integrated. »

Fifth final provision. *Modification of the Bankruptcy Law 22/2003, of 9 July.* The Bankruptcy Law 22/2003, of 9 July, is modified in the following terms: One. A new paragraph is added to article 233.

«5. In case of insurance undertakings, the appointed mediator shall be the Insurance Compensation Consortium. »

Two. In the second additional provision "Special regime applicable to credit undertakings, investment services undertakings and insurance undertakings" a new writing is given to paragraph 2.h):

«h) The sections VI and VII of the Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings; and the rewritten text of the Legal Statute of the Insurance Compensation Consortium, approved by the Royal Legislative Decree 7/2004 of, 29 October. »

Sixth final provision. *Modification of the rewritten text of the Law on the Local Treasury, approved by the Royal Legislative Decree 2/2004, of 5 March.*

A new seventeenth additional provision is added to the rewritten text of the Law ruling the Local Treasury, approved by the Royal Legislative Decree 2/2004, of 5 March, in the terms that are now related:

«Seventeenth additional provision. *Achievement of information to the effects of winding-up and collection of tributes for the maintenance of the fire prevention and extinction services and of the special contributions by the establishment or extension of the fire extinction services.*

The local undertakings shall collect from the insurance undertakings the necessary information for the winding-up and collection of the taxes for the provision of the fire prevention and extinction and of the special contributions for the establishment or extension of the fire extinction services, according to the proceeding established in the fourteenth additional provision of the Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings. »

Seventh final provision. *Modification of the rewritten text of the Law on Tax on Income of Non-Residents approved by the Royal Legislative Decree 5/2004, of 5 March.*

With effects from 1 January 2016, letter e) of paragraph 1 of the article 31 of the rewritten text of the Law on Tax on Income of Non-Residents approved by the Royal Legislative Decree 5/2004, of 5 March, shall be written as follows:

«e) The insurance undertakings with head office in another Member State of the European Area that operate in Spain under the regime of freedom to provide services, related to the operations made in Spain. »

Eighth final provision. *Modification of the rewritten text of the Legal Statute of the Insurance Compensation Consortium, approved by the Royal Legislative Decree 7/2004, of 29 October.*

The rewritten text of the Legal Statute of the Insurance Compensation Consortium, approved by the Royal Legislative Decree 7/2004, of 29 October, in the following terms:

One. Paragraph 1 of the article 6 shall be written as follows:

«1. The Consortium, related to catastrophic risks, shall have the subject of compensating, in the way established in this Legal Statute, under the regime of compensation, the losses derived from catastrophic events taking place in Spain and that affect the risks located in it.

Similarly, the Consortium shall compensate the personal damages derived from catastrophic events happening abroad when the policyholder of the policy has his/her regular address in Spain.

To these effects, shall be considered as losses the direct damages to the people and goods, as well as, in the terms and with the limits established by regulatory development, the pecuniary losses subsequent to those. Similarly, in the terms established by regulatory development, catastrophic events shall be construed as:

a) The following acts of God: earthquakes and seaquakes, the extraordinary floods, the volcanic eruptions, atypical cyclones and the falling of stony and astral meteorites.

b) Those violently caused subsequent to terrorism, rebellion, uprising, riot and popular tumult.

c) Actions or events of the Armed Forces and Security Forces in peace time. »

Two. Letter b) of article 7 shall be written as follows:

«b) In that relative to the insurance of things, the classes of land vehicles, rail vehicles, fire and natural forces, other damages to good and diverse pecuniary losses, as well as the combined modules of these, or when they are contracted as ancillary. Also in the class of motor vehicles liability.

However, it shall be compulsory to have a single payment for the class of motor vehicles liability, if besides the coverage of civil liability of compulsory subscription of the vehicle had been voluntary contracted a civil liability insurance or a damage insurance related to the said motor vehicle. »

Three. Paragraph 5 of article 8 shall be written as follows:

«5. In the insurance against damages and motor vehicle liability, the Ministry of Economy and Competitiveness, at proposal of the Consortium, could establish a franchise to be charged to the policyholder for the cases where the Consortium has the obligation of compensation. »

Four. Article 14 shall be written as follows:

«Article 14. *Related to the winding-up of insurance undertakings.*

1. The Consortium shall assume the condition of liquidator of the Spanish insurance undertakings stated in article 27.1 of the Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings, subject to the competence of execution of the State and of the Autonomous Communities, when the Ministry of Economy and Competitiveness or the competent body of the related Autonomous Communities assigns the winding-up.

The winding-up shall be assigned to it in the following cases:

a) Simultaneously to the dissolution of the insurance undertaking if it had started on the administrative track.

b) If, once the undertaking is terminated, it has not made the appointment of the liquidators fifteen days before the termination, or when the appointment in the period was so without complying with the legal and statutory requirements.

c) When the liquidators breach the rules that are established for the protection of the policyholders in the Law 20/2015, of 14 July, on organization, supervision and solvency of insurance and reinsurance undertakings, those that govern the winding-up or that prevent it. Also, when delaying in the winding-up or because different circumstances so advise it, the Administration considers that the winding-up shall be granted to the Consortium. In case the winding-up is supervised, the attribution to the Consortium shall be agreed prior report of the practitioner.

d) By the acceptance of the request of the insurance undertaking, if a justified cause is found.

2. The conditions and own functions of the insolvency practitioner of the bankruptcy proceedings any insurance undertaking is submitted to, correspond to the Consortium in the terms foreseen in the bankruptcy administration, and this without being necessary the acceptance of the position. Its action in such proceedings shall not be compensated.

The Consortium shall inform the Court of the identity of the natural person that must represent it in the pursuit of its position, which shall have applied the rules included in article 28 of the Bankruptcy Law 22/2003, of 9 July, with the exception established in it.

It shall also pursuit the functions of bankruptcy mediator when so is requested by an insurance undertaking according to the established in article 5 bis of the Bankruptcy Law 22/2003, of 9 July.

3. In the case, to pursue the winding-up separated from the goods established in article 175 of the Law 20/2015, of 14 July, on organization, supervision and solvency

of the insurance and reinsurance undertakings.

In the terms that are established by regulatory development and prior agreement of the Directorate General of Insurance and Pension Funds, the Consortium could carry out the activities of information to the creditors by insurance contract in relation to the winding-up processes of an insurance undertaking with head office in another Member State of the European Union in that exclusively affecting to the insurance contracts that such undertaking had celebrated in Spain under the regime of freedom of establishment or freedom to provide services.

The Consortium may subscribe agreements with the administrative or judicial bodies that, according to the normative of the Member States of origin, would have been vested with the winding-up of the undertaking, with the aim of providing to the creditors by insurance contract with residence in Spain the presentation and action of the claims before the winding-up bodies.

The pursuit of the activities stated in this paragraph does not imply the assumption by the Consortium of the winding-up duties of the insurance undertakings of other Member States of the European Union nor of its classes in Spain and thus, it shall not imply the pursuit of payments because of the insurance contract nor of advanced payments on account of such payments, not resulting of application, in any case, the established in the articles 179 to 185 of the Law 20/2015, of 14 July, on organization, supervision and solvency of the insurance and reinsurance undertakings.»

Five. The writing of the paragraphs 2 and 4 is modified and a new paragraph 7 to article 18 is added:

«2. All the additional fees in favour of the Consortium shall be compulsorily collected by the insurance undertakings together with their premiums.

In case of fractionations for the premiums, the undertakings could collect to the said additional fees with the first fractionation that is made, or to do so according to the deadlines of the corresponding premium fractionations, even if in this last case the fractioning rates shall be applied on the fractionations of the additional fees, so at every possible period, are established in the tariffs of the additional fees in favour of the Consortium, or being the additional fee directed to financing the winding-up function of the insurance undertakings, those included in the paragraph 3.

The election of the option of dividing the additional fees in favour of the Consortium according to the deadlines of the corresponding instalments of the premium shall be stated in the technical bases of the undertakings, reported to the Consortium and applied in a systematic way to the class or risk, except for a duly justified caused. »

«4. The insurance undertakings shall be obliged, when presenting to the Consortium the statement of the additional fees collected by it, to carry out a winding-up and cash their amount in the periods and according to the rules that are established by regulatory development.

Prior accurate communication to the Consortium, the insurance undertakings could liquidate the additional fees according to the premiums issued, without prejudice of the periodical updates that are necessary. The election of this option shall be applied to all and each of the policy portfolios of the undertaking and in calendar years.

Both the winding-ups made by the Directorate General of Insurance and Pension Funds derived from the official report as well as those others that do not have registered the income period because of their specific rules shall be cashed in the fifteen days following to that when the report of the winding-up of the insurance undertaking took place. »

«7. When the cashing of additional fees made to the Consortium were undue in all or in part, the refund at the request of the interested parties shall be made without prejudice of the checks and request of information that are necessary, in the period of fifteen days from the complete presentation of the document accrediting the error found. »

Six. The paragraph 2 of article 19 shall be written as follows:

«2. The Directorate General of Insurance and Pension Funds, via the State Insurance Inspection and according to the inspection plans approved at proposal of the Consortium, shall make inspections of the undertakings, either being corporate bodies or natural persons, that collect additional fees and premiums on behalf of the Consortium.

The costs of the persona and material means caused by this inspection service shall be paid by the Consortium, signing, to these effects, the suitable agreement with the Directorate General of Insurance and Pension Funds, where the economic compensation to be paid to the body which means have been directed to this purpose, to cover such costs, shall be established. »

Seven. A transitional provision shall be added which shall be written as follows:

«Transitional provision. *Adaptation of the insurance contracts in force at the modification made in the articles 7.b) and 8.5 of the rewritten text of the Legal Statute of the Insurance Compensation Consortium.*

The insurance contract in force shall be adapted to the modification presented by the eighth final provision of the Law on organization, supervision and solvency of the insurance and reinsurance undertakings, in the articles 7.b) and 8.5 of the rewritten text of the legal Statute of the Insurance Compensation Consortium, approved by the Royal Legislative Decree 7/2004, of 29 October, before the first renewal that takes place in the next six months after the said Law becomes in force. The insurance contracts of new issuance that are celebrated from 1 July 2016 shall be adapted to the said. »

Ninth final provision. *Modification of the Royal Legislative Decree 8/2004, of 29 October, which approves the rewritten text of the Law on civil liability and insurance in the traffic of motor vehicles.*

Article 8 shall be written as follows:

«Article 8. *Agreements of direct compensation. Non-fault declaration of an accident. Agreements of health assistance for traffic injured people.*

1. To speed up the compensations in the field of damages caused related to the use and traffic of motor vehicles, the insurance undertaking shall adhere to the direct compensation agreement between insurance undertakings for the winding-up of accident with material damages.

2. To the effects of the established in the previous paragraph, the insurer shall provide with copies of the said non-fault declaration of an accident which shall be used by the driver to report the accidents to the insurance undertaking.

3. To speed up the assistance to the people injured in traffic accidents, the insurer could adhere to the sector agreements of health assistance for people injured in traffic accidents as well as the direct compensation agreements of personal damages.

4. To these effects, such agreement shall include equivalent and non-discriminatory conditions for all the insurance undertakings, and restrictions that are not essential to achieve that goal could not be imposed. »

Tenth final provision. *Modification of the Law 26/2006, of 17 July, on mediation of private insurance and reinsurance.*

The Law 26/2006, of 17 July, on mediation of private insurance and reinsurance is modified in the following terms:

One. Paragraph 1 of article 6, shall be written as follows:

«1. The insurance intermediaries shall offer accurate and enough information in the promotion, offer and subscription of the insurance contracts and, in general, in all of its advisory activity, all of this in the terms established by the Ministry of Economy and Competitiveness. »

Two. Article 8 shall be written as follows:

«Article 8. *The external collaborators of the insurance intermediaries:*

1. The insurance intermediaries could celebrate mercantile agreements with external collaborators that collaborate with them in the distribution of insurance products acting on behalf of such mediators under their liability and management, in the terms that the parties freely agree.

The Directorate General of Insurance and Pension Funds shall establish the general rules and basic principles that have to comply with the training programmes of the collaborators in that related to their content, organization and execution.

2. The external collaborators shall not be considered as insurance mediators and shall pursue their activity under the management, liability and regime of financial capacity of the insurance mediator they act for.

The collaborators shall present themselves as such and, also state the identity of the intermediaries they act on behalf of. In virtue of the mercantile agreement with this, the information to be provided to the policyholder shall be all or some of the established in the article 42, but the policyholder shall receive this information complete in any case.

3. The insurance intermediaries shall have a register book where to write the identification personal data of the external collaborators, stating the registration date and, where appropriate, that of leave, which shall be submitted to the control of the Directorate General of Insurance and Pension Funds.

4. An external collaborator of an insurance intermediary, natural or legal person may not collaborate with other insurance intermediaries of different kind to that first hired. Also, if it is an external collaborator of an exclusive agent, could only collaborate with other exclusive agents of the same insurance undertaking. »

Three. The paragraph 2 of article 15 shall be written as follows:

«2. The data included in the Register of exclusive insurance agents shall be updated and shall be sent by each insurance undertaking to the Directorate General of Insurance and Pension Funds by IT means for their registration in the maximum period of two months in the administrative Register foreseen in the article 52 of this Law. An exclusive insurance agent could not start its activity until the Directorate General of Insurance and Pension Funds has carried out such registration. »

Four. Paragraph 3.e) and paragraph 4 of article 21 shall be written as follows:

«e) The related insurance agents shall agree to have a training programme for employees and external collaborators.

Similarly, the insurance undertakings shall adopt the necessary measures for the training of its related insurance agents and of the people that are part of the management body foreseen in paragraph two of the letter b) of this paragraph in the products of insurance of their mediation.

The documentation corresponding to the training programmes shall be at the disposition of the Directorate General of Insurance and Pension Funds, which could require that the necessary modifications are made.

The Directorate General of Insurance and Pension Funds shall set the general lines and the basic principles that have to be complied by the training programmes of the related insurance agents in that relative to its contents, organization and execution. »

«4. The request of registration as related insurance agent shall be established to the Directorate General of Insurance and Pension Funds and shall be attached by the accrediting documents of the compliance with the requirements stated in paragraph 3. The maximum period to report the express order to the application shall be of three months to be counted from the date of presentation of the application. The registration shall specify the insurance undertakings the related insurance agent is authorised to carry out the insurance mediation activity. The request of application shall be rejected when the compliance with the requirements for the granting are not met. »

Five. The paragraphs 1.c), 1.g) and 2 of article 27 are written as follows:

«1.c) In the insurance brokers, at least, have of the administrators shall have the necessary experience to execute the administration duties. »

«1. g) To present a programme of activities where, at least, the insurance classes and the kind of risks where it is planned to mediate, the ruling principles and the territorial scope of action shall be stated; the personal and material means at disposition for the compliance of such programme and the mechanisms adopted for the solution of complaints and claims of the consumers.

Similarly, it shall include a compromise to have a training programme for those people that, as external employees or collaborators of that, have to assume duties that mean a more direct relation with the possible policyholders and insureds. To these effects, the Directorate General of Insurance and Pension Funds shall set the general lines and basic principles that have to be complied by the training programmes for employees and external collaborators of the insurance brokers in that related to its contents, organization and execution. »

«2. The request of registration as insurance broker shall be address to the Directorate General of Insurance and Pension Funds and shall have attached the documents accrediting the compliance with the requirements mentioned in the previous paragraph. The maximum period to report the express decision on the request shall be of three months to be counted from the date of presentation of the registration application. The request of registration shall be rejected when the compliance with the requirements for the concession are not accredited. »

Six. Paragraph 2 of article 28 shall be written as follows:

«2. The Directorate General of Insurance and Pension Funds shall have a period of three months, from the presentation of the information, to oppose to the acquisition of a qualifying holding or of each one of its increases that are equal or higher to the limits of the 20 per cent, 30 per cent or 50 per cent and also, when in virtue of the acquisition could a broker undertaking could be controlled. The opposition shall be based in the fact that the person who intends to purchase it does not meet the requirements of commercial and professional fit and proper in the terms defined in the Law or that incurs in any of the prohibitions of this Law. If the Directorate General of Insurance and Pension Funds did not make a statement in a period of three months, the purchase and increase of the participation may take place. If the Directorate General expresses its agreement with the purchase or increase of the significant participation, may set a maximum period different to that reported to make the purchase. »

Seven. The paragraphs 2 and 4 of article 39 are now written as follows:

«2. The Directorate General of Insurance and Pension Funds shall establish the requirements and basic principles that have to be complied by the training courses in financial subjects and of private insurances in that related to the contents, organization and execution, that shall be scheduled depending on the education and on the previous knowledge accredited by the audience.

The natural persons or corporate bodies that intend to organise the training courses stated in the previous paragraph, shall request in advance to the Directorate General of Insurance and Pension Funds. The requirements for the authorisation for the organization of the training courses shall be developed by regulatory development. The training organisers shall issue the certificate that accredit the improvement of the said. »

«4. The authorisation granted to the training centres by any competent authority shall have national effect. The holder of the authorisation shall inform the competent authority of its Autonomous Communities or to the Directorate General of Insurance and Pension Funds, as applicable, the opening of new training centres. »

Eight. Paragraph 4 of article 42 shall be written as follows:

«4. The advisory according to the obligation of carrying out an objective analysis the insurance brokers are obliged to, shall be provided based on the analysis of a sufficient number of insurance contracts offered in the market in the risks objects of coverage, so it can provide a recommendation, considering the professional criteria, related to the insurance contract shall be suitable for the needs of the client. »

Nine. Paragraph 1 of article 52 shall be written as follows:

«1. The Directorate General of Insurance and Pension Funds shall carry out the special administrative register of insurance intermediaries, reinsurance brokers and of their executives, where they shall be registered, prior to starting their activities, insurance intermediaries and the reinsurance brokers with residence or with head office in Spain submitted to this Law. In the case of corporate bodies, the administrators and the people being part of the management and liable for the mediation activities shall be also registered.

Also note shall be taken of the insurance and reinsurance mediators with head office in other Member States of the European Economic Area that act under the regime of freedom of establishment or freedom to provide services.

Such register shall also acknowledge the distribution contracts related in article 4.1 of this Law.

This administrative register shall include the circumstances established by regulatory development and the access to its contents shall be general and free. »

Ten. Letter a) of paragraph 1 of the fourth addition provision, shall be written as follows:

«a) The inscription in the special administrative register of insurance intermediaries or reinsurance brokers and of their executives, of the people acting as insurance agents or operators of insurance-banking, either tied or multi-tied, as well as the insurance or reinsurance brokers. »

Eleven. The references to “external assistant”, auxiliary advisor” or “auxiliary” shall be construed as made to “external collaborator”, in the following articles and provisions: 10.4, 16.1, 17.2, 18, 19, 21.3.e), 23.2, 24, 25.1 and 4, 27.1.g), 30.2, 31.2.b), 53, 55.2.u), 62.1.d), 62.2, fourth additional provision and eleventh.1.

Eleventh final provision. *Modification of the Law 35/2006, of 28 November, on the Personal Income Tax and of partial modification of the laws on the Tax on Undertakings, on the Personal Income Tax of the Non-Residents and on Patrimony.*

With effect from 1 January 2016, the following modifications are introduced in the Law 35/2006, of 28 November, on the Personal Income Tax and of partial modification of the laws on the Tax on Undertakings, on the Personal Income Tax of the Non-Residents and on Patrimony:

One. Paragraph 2 of article 99 shall be written as follows:

«2. The natural or legal persons, including the undertakings of income attribution that are paid or refunded attached to this tax, shall be obliged to make retentions and account payments in concept of the account payment of the Personal Income Tax corresponding to the recipients, in the amount established by regulatory development and to cash this amount in the Treasury in the cases and in the ways that are established. The taxpayers that, because of this tax, pursue economic activities related to the taxes they pay in the pursuit of these activities shall be bound to the same obligations, as well as the natural or legal persons and other undertakings non-resident in the Spanish territory, that operate in it by the permanent establishment, or without permanent establishment related to the other income submitted to taxes or account payment that constitute a deductible expense to achieve the income stated in paragraph 2 of article 24 of the rewritten text of the Law on Personal Income Tax of the Non-Residents.

When a undertaking, resident or not, pays or cashes work incomes to taxpayers that provide their services to a resident undertaking related to that in the terms foreseen in article 16 of the rewritten text of the Law on Undertakings' Taxes or to a permanent establishment based in the Spanish territory, the undertaking or the permanent establishment where the taxpayer provides its services, shall made the retention and the account payment.

The insurance undertakings with head office in another Member State of the European Economic Area that operate in Spain under the regime of freedom to provide services shall make retentions and account payments related to the operations carried out in Spain.

The pension funds with head office in other Member States of the European Union that pursue in Spain occupational pension plans bound to the Spanish legislation, according to the established in the Directive 2003/41/CE of the European Parliament and of the Council, of 2 June 2003, relative to the activities and to the supervision of occupational pension funds or, where appropriate, to their managing undertakings, shall make retentions and account payments related to the operations pursued in Spain.

In any case shall the diplomatic missions or consular offices in Spain of foreign States be obliged to make retentions or account payments. »

Two. Letters g) and h) of paragraph 2 of article 105 shall be modified and written in the following way:

«g) For the insurance undertakings with head office in another Member State of the European Economic Area that operate in Spain under the regime of freedom to provide services, related to the operations that are made in Spain.

h) For the undertakings foreseen in the penultimate paragraph of paragraph 2 of article 99 of this Law, related to the operations pursued in Spain. »

Twelfth final provision. *Modification of the Law 4/2014, of 1 April, Basic of the Official Chambers of Commerce, Industry, Services and Navigation.*

One. Paragraph 3 of article 6 is modified with the following text:

«3. The tutelary administration shall rule the cases and the proceeding for the creation, integration, merge, dissolution, winding-up and destination of the patrimony of the Official Chambers of Commerce, Industry, Services and Navigation and of the Chambers Councils. »

Two. A new article 38 is added with the following text:

«Article 38. *Viability plan and termination caused by economic non-viability.*

1. When the Chambers that are submitted to the guardianship of the General State Administration incur in negative results of exploitation in two consecutive economic years, the affected Chamber shall report the guardian administration in a maximum period of a month since this situation is acknowledged.

2. This communication shall be accompanied by a viability plan, audited and approved by the plenary meeting, describing the actions to be carried out to correct the breach in the terms needed, and in any event, in a maximum period of two financial years. In addition, it shall submit the inventory, balance sheet and audit report, as well as all the documentation deemed necessary for the assessment of the economic situation

of the Chamber and the plan.

3. Having presented the viability plan, the guardian Administration could authorise, modify or order any other action on it that is found suitable.
4. When objective circumstances appear that make clearly impossible to solve the situation of economic non-viability by the presentation of a plan or when such plan is breach, the guardian Administration could proceed to the suspension and dissolution of the governance bodies according to article 37, or order the termination and winding-up of the Chamber.
5. In case the termination is agreed, from that moment, the Chamber could not carry our any judicial action, except for those that are strictly necessary to guarantee the efficiency of its winding-up. Once the winding-up is agreed, the Chambers hall present the guardian Administration a winding-up plan which shall be authorised by the Administration.

   When in the decision of termination, the opening of an office of the Official Chamber of Commerce, Industry, Services and Navigation in Spain is agreed, to open such office, the Chamber of Spain could make a proposal for the transfer of assets or of productive units. If the Chamber accepted the proposal, the terms of this shall be included in the winding-up plan.

   The guardian Administration shall supervise the compliance with the winding-up plan. Once the winding-up of the Chamber is done, the automatic termination shall take place.

   In any case the guardian Administration could assume or derive any obligation from the process of winding-up and extinction.

   4. In case of Chambers guarded by the Autonomous Communities shall attach to the established in their specific legislation. »

Thirteenth final provision. *Modification of the Law 27/2014, of 27 November, on the Tax on Undertakings.*

With effect from 1 January 2016, paragraph 1 of article 128 of the Law 27/2014, of 27 November, on the Tax on Undertakings is modified and shall be written as follows:

> **«Article 128.** *Retentions and account payments.*
>
> 1. The undertakings, included in the goods and owner communities, that satisfy or pay incomes according to this Tax, shall be obliged to withdraw or to cash payments, relative to account payments, for the amount resulting of applying the retention percentages that are stated in paragraph 6 of this article to the base of retention established by regulatory development, and to cash this amount in the Treasury in the cases and modes that are established.
>
> Also, the natural persons shall be obliged to withdraw and cash in relation to the income they earn or pay in the pursuit of their economic activities, as well as the natural persons, corporate bodies and other non-resident undertakings in the Spanish territory that operate in it by permanent establishment.
>
> Likewise, the insurance undertakings with head office in another Member State of the European Economic Area that operate in Spain under the regime of freedom to provide services shall be obliged to withdraw and cash in relation to the operations pursued in Spain. »

Fourteenth final provision. *Competences section.*

This Law is order under the article 149.1.11. and 13. of the Spanish Constitution that attributes to the State the competences to establish the bases of organization of the insurance and the bases and coordination of the general planning of the economic activity, respectively. The following precepts are excluded:

a) Articles 16, 17, 18, 40, 119, 120, 121, 123, 126 and 210 to 213, which shall not have basic character.

b) Article 130 that is ordered under article 149.1.3. of the Spanish Constitution, that attributes the State of exclusive competitiveness related to international relations.

c) Articles 9, 10, 11, 12, 13, 24, 27, 28, 29, 30, 31, 33, 34, 36, 37, the chapter II and chapter IV of section III, Articles 89.3, 96, 98.1 and 2, 165.4, 168, 172, 173, 175, 179 to 189 and the Annex, that are ordered under article 149.1.6. of the Spanish Constitution, that attributes the State the competitiveness related to mercantile legislation.

d) Article 97 that is ordered under article 149.1.6. of the Spanish Constitution, that attributes the State the competitiveness related to procedural legislation.

e) Articles 53 and 59, that are ordered under article 149.1.14. of the Spanish Constitution, that attributes the State the competitiveness related to the general treasury.

f) Article 167.2 that is ordered under article 149.1.8. of the Spanish Constitution, that attributes the State the competitiveness related to civil legislation.

Fifteenth final provision. *Incorporation of Law of the European Union.*

By this Law the Directive 2009/138/CE of the European Parliament and of the Council, of 25 November 2009, on life insurance, the take-up of the insurance and reinsurance activity and its pursuit (Solvency II) modified by the Directive 2014/51/EU of the Parliament and of the Council, of 16 April 2014, which modifies the Directives 2003/71/CE and 2009/138/CE and the Rulings (EC) no. 1060/2009, (UE) no. 1094/2010 and (UE) no. 1095/2010 in that relative to the powers of the European Supervision Authority (European Insurance and Occupational Pension Authority) and of the European Supervision Authority (European Securities and Markets Authority) (Omnibus II) are partially incorporated.

Similarly, the Directive 2011/89/UE of the European Parliament and of the Council of 16 December 2011 which modifies the Directives 98/78/CE, 2002/67/CE, 2006/48/CE and 2009/138/CE is incorporated, in that relative to the additional supervision of the financial undertakings that are part of a financial conglomerate.

Sixteenth final provision. *Rules applicable to the proceedings ruled in this Law.*

The proceedings ruled in this Law shall be governed, at first, by the precepts included in it and in its development rules and, subsidiarily, by those of the Law 30/1992, of 26 November, on the Judicial Regime of the Public Administration and the Common Administrative Proceeding and ancillary rules.

Seventeenth final provision. *Rule-making powers.*

1. It belongs to the Government, at the proposal of the Minister of Economy and Competitiveness, and prior hearing of the Consultive Board on Insurance and Pension Funds, to develop this Law in the subjects that are expressly attributed to the rule-making powers, as well as, in general, any other that is susceptible of ruled development that is required for its correct execution, by the approval of its ruling and the further modifications that are necessary.

2. It belongs to the Minister of Economy and Competitiveness, and prior hearing of the Consultive Board on Insurance and Pension Funds, to develop this Law in the subjects that are expressly attributed to the rule-making powers of such Minister and, similarly, to develop the ruling as much as necessary and so it is foreseen in it.

The ruled development of the precepts relative to the friendly societies shall be made by the Government by a specific ruling for such mutual undertakings.

Eighteenth final provision. *Transitional measure on interest rates without risk.*

Prior authorisation of the Directorate General of Insurance and Pension Funds, the insurance or reinsurance undertaking could apply a transitional adjustment to relevant risk-free interest rate term structure related to the admissible obligations related to insurance and reinsurance, in the terms and conditions that are established by regulatory development.

Nineteenth final provision. *Transitional measure on technical provisions.*

Prior authorisation of the Directorate General of Insurance and Pension Funds, the insurance or reinsurance undertaking could apply a transitional deduction to the technical provision, in the terms and conditions that are established by regulatory development.

Twentieth final provision. *Other transitional measures.*

The terms and conditions according to which the insurance and reinsurance undertakings could pursue the following are established by regulatory development:

1. To present and spread the information stated in article 80 and 114, with annual or shorter frequency.

2. To apply a transitional regime for the classification of basic own funds in tiers.

3. To apply the requirements included in article 79 to certain financial instruments issued from 1 January 2011.

4. To apply a transitional regime to the market risk, of concentration and differential sub-modules and to the variable equity market risk sub-module.

5. To request the approval of an internal group model when part of that group has a risk profile substantially different.

6. To manage the portfolio of policies to terminate its activities.

Twenty-first final provision. *Entry into force.*

1. This Law shall enter in force on 1 January 2016.

2. However, the thirteenth transitional provision and the sixteenth additional provision shall enter in force on the following day of its publication. The fourth and tenth transitional provision shall enter in force on 1 September 2015. The ninth final provision shall enter in force on 1 July 2016. The twelfth final provision shall enter in force on the next day to the publication of the Law 40/2015, of 1 October, on the Judicial Regimen of the Public Sector.

Thus,

I order to all the Spanish, individuals and authorities, to care and make this Law cared.

Madrid, 14 July 2015.

FELIPE R.

The President of the Government,
MARIANO RAJOY BREY

ANNEX

Insurance classes

A) Insurance classes different to life insurance and ancillary risks.

a) In the direct insurance different to life insurance, the classification of the risks by classes shall be adjusted to the following:

1. Accidents.

The provisions in this class could be: fixed pecuniary benefits, benefits in the nature of indemnity, combinations of the two, injury to passengers.

2. Sickness (including health assistance and dependence).

The provisions of this class could be fixed pecuniary benefits of repair, either by the refund of the expenses incurred, either by the guarantee of provision of service, or mixed of both.

3. Land vehicles (other than railway rolling stock).

Includes any damage suffered by land vehicles, either motor or not, except for railway rolling stock.

4. Railway rolling stock.

5. Aircrafts.

6. Ships (sea, lake and river canal vessels).

7. Goods in transit (including the baggage and other transported goods).

8. Fire and natural forces.

Includes any damage suffered by the goods (different to those included in the classes 3, 4, 5, 6 and 7) caused by fire, explosion, storm, natural forces different to storm, nuclear energy and land subsidence.

9. Other damages to property.

Includes any damage suffered by the goods (different to those included in the classes 3, 4, 5, 6 and 7) caused by hail or frost, and any event such as theft, other than those included in class 8.

10. Motor vehicle liability (including the carrier's liability).

11. Aircraft liability (including the carrier's liability).

12. Liability for ships (sea, lake and river) (including the carrier's liability).

13. General liability.

All liability other than to those referred to in classes 10, 11 and 12.

14. Credit.

Includes general insolvency, instalment credit, export credits, mortgage credits and agricultural credit.

15. Suretyship (direct and indirect).

16. Miscellaneous financial loss.

Includes employment risk, insufficiency of income (in general), bad weather, loss of benefits, subsidies for the temporal privation of the driving license, continuing general expenses, unforeseen trading expenses, loss of market value, loss of rent, indirect trading loss other than non-trading financial loss and other forms of financial loss.

17. Legal expenses.

The insurance undertakings shall choose any of the following management methods:

a) To grant the claims management of the class of legal expenses to a legally different undertaking, which shall be stated in the contract. If such undertaking was related to another that pursues any class of insurance different to life, the members of the staff of the first in charge of claims management or of the legal advisory related to such management could not simultaneously pursue the same or similar activity in the second. Neither could the people holding management positions in both undertakings could be common.

b) To guarantee in the insurance contract that any member of the staff in charge of the management of the legal advisory related to such management pursues at the same time a similar activity in another class if the insurance undertaking operates in several or for another undertaking that operates in any different class to life and that have financial links of legal defence, or commercial or administrative with the insurance undertaking, independently of specialising or not in such class.

c) Provide in the contract the right of the policyholders to trust in the defence of interests, from the moment they have right to claim the action of the insurer according to the established in the policy, to a lawyer of their choice.

18. Assistance.

Assistance to the people that are in difficulties while traveling, while away from their home or their habitual address. It shall also include the assistance to the people that are in difficulties in other circumstances, established by regulatory development, whenever they are not subject of coverage in other insurance classes.

19. Funeral expenses.

Includes insurance operations that guarantee the provision of funeral services in case death takes place or, either subsidiarily, when such provision could not be provided because of force majeure or for the service being provided by other means, different to those established by the insurance undertaking, to compensate the legal heirs of the deceased policyholder the amount insured, which shall not exceed the average value of the funeral expenses of a death.

The risks included in a class could not be classified in another class, without prejudice of the established related to the ancillary risks in paragraph 4.

When authorisation is granted simultaneously to several classes, it shall be granted with the following names:

1. «Accident and health insurance»: When classes 1 and 2 are authorised.

2. «Motor insurance»: When the authorisation includes the coverage to the passenger of vehicles of the classes 1, 3, 7 and 10.

3. «Marine and transport insurance»: When the authorisation includes the coverage to the passenger of vehicles of the classes 1, 4, 6, 7 and 12.

4. «Aviation insurance»: When the authorisation includes the coverage to the passenger of vehicles of the classes 1, 5, 7 and 11.

5. «Fire and other damages to property»: When the classes 8 and 9 are authorised.

6. «Liability insurance»: When the classes 10, 11, 12 and 13 are authorised.

7. «Credit and suretyship»: When the classes 14 and 15 are authorised.

8. «General insurance»: When all the direct insurance classes different to life insurance listed in this article are authorised.

b) Ancillary risks.

The insurance undertaking that obtains authorisation for a main risk belonging to a Class different to life insurance or to a group of classes could, similarly, cover the risks included in another class without need of obtaining authorisation for such risks, whenever the following requirements are met:

1. That they are linked to the main risk.

2. That they make reference to the subject covered against the main risk.

3. That they are covered by the contract that covers the main risk.

4. That for the authorisation in the class they ancillary risk belongs, larger financial guarantees to those foreseen for the principal are not required, except, regarding this last requirement, that the ancillary risk is that of civil liability which coverage does not exceed the limits that are established by regulatory development.

When the ancillary class is class 2 (sickness), this shall not include the health assistance or dependence assistance provisions.

The risks included in the classes 14 (credit), 15 (security) and 17 (legal defence), could not be considered as ancillary to other classes, except for class 17 (legal defence) which, when the conditions required in the previous paragraph are met, could be considered as ancillary risk to class 18 (assistance), if the main risk only refers to the assistance provided to people under difficulties because of trip or away from their home or of the permanent residence address, and as ancillary risk to class 6 (sea, lake and river vehicles), when related to procedures or risks that arise from the use of sea vessels or that are related to such use.

B) Life class and ancillary risks.

a) The direct insurance on life shall be included in a single class, the life class, which shall include:

1. Life insurance, both for the cases of death and of survival, or both together, included in that of survival the income insurance; the life insurance with return of premiums; the marriage insurance and the birth insurance. Likewise, it shall include any of these insurances when related to an investment fund or to other assets stated in article 73. Similarly, it could include

the dependence insurance.

2. The capitalisation operations based on the actuarial technique, that consist on achieving certain agreements related to its duration and to its amount in exchange of single or periodical payments previously agreed.

3. The collective retirement fund management operations, considering as such those that mean for the insurance undertaking to manage the investment and, specifically, the assets representing the reserves of the undertakings that grant provisions in case of death, life, termination or decrease of activities. Such operation shall also be included when they imply an insurance guarantee, either on the capital maintenance, either on the perception of a minimum interest.

4. The tontines, considering as such those that imply the constitution of associations grouping participants to capitalise they provisions in common and to divide the assets so constituted amongst the survivors or their heirs.

b) Ancillary risks.

The undertakings authorised to operate in the life class could cover as ancillary risks those included in the class 1 (accident) and in the class 2 (sickness), without need of obtaining authorisation for such classes, whenever the following requirements are met:

1. That they are linked to the main risk.

2. That they refer to the subject covered against the main risk.

3. That they are guaranteed in a same contract with it.

4. When the ancillary risk is 2 (sickness), when it does not include health assistance or dependence assistance provisions.