

Executive Order on solvency and operating plans for insurance companies¹

Executive Order no. 1523 of 13 December 2007

The following shall be laid down pursuant to section 18(1); section 143(1), nos. 1, 2, 3, 5, 6 and 8; section 248(2) and section 373(4) of the Financial Business Act, cf. Consolidated Act no. 1413 of 10 December 2007:

Scope

1. This Executive Order shall apply to insurance companies. "Insurance companies" shall mean life-assurance companies, lateral pension funds (nationwide occupational pension funds), non-life insurance companies, reinsurance companies and captive reinsurance companies as well as branches of foreign insurance companies with a registered office outside the European Union or outside countries with which the Community has entered into an agreement and which carry out direct insurance activities in Denmark.

2. In this Executive Order, classes of insurance shall mean the classes of insurance described in annexes 7-8 of the Financial Business Act.

3. Undertakings shall prepare capital adequacy statements in accordance with this Executive Order and guidelines on adequate base capital and individual solvency need.

Requirement for the amount of base capital

4. Insurance companies shall at all times possess base capital which corresponds to no less than the greatest of the individual solvency need and the capital requirement, cf. section 11(5) and section 126 of the Financial Business Act. The capital requirement shall be the greatest of the solvency requirement and the minimum capital requirement for the insurance company, cf. section 127 of the Financial Business Act.

Risk-weighted items for life-assurance provisions

5.-(1) Life-assurance provisions for calculation of the solvency requirement, cf. however section 6(2) and (3), shall be calculated in accordance with the same method as that used in the annual financial statements, cf. sections 15 and 66 of the Executive Order on Financial Reports for Insurance Companies and Lateral Pension Funds (Nationwide Occupational Pension Funds). The life-assurance provisions for calculation of the solvency requirement shall be calculated as the greatest value of the sum of guaranteed benefits and potential bonuses on

¹ This Executive Order contains provisions implementing parts of Council Directive 73/239/EEC (Official Journal 1973 L 228, p. 3), (First Non-Life Insurance Directive); Council Directive 76/580/EEC, (Official Journal 1976 L 189, p. 13), (directive on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance); Council Directive 84/641/EEC, (Official Journal 1984 L 339, p. 21), (Tourist Assistance Directive); Council Directive 87/343/EEC, (Official Journal 1987 L 185, p. 72), (Credit Insurance Directive); Council Directive 92/49/EEC, (Official Journal 1992 L 228, p. 1), (Third Non-Life Insurance Directive); Council Directive 98/78/EC, (Official Journal 1998 L 330, p. 1), (Insurance Group Directive); European Parliament and Council Directive 2002/83/EC, (Official Journal 2002 L 345, p.1), (Life-Assurance Directive); and European Parliament and Council Directive 2005/68/EC, (Official Journal 2005 L 323, p.1), (Reinsurance Directive).

While this translation was carried out by a professional translation agency, the text is to be regarded as an unofficial translation based on the latest official Executive Order no. 1523 of 13 December 2007. Only the Danish document has legal validity.

March 2008, GlobalDenmark Translations

future premiums for each contract and the value guaranteed on surrender of the contract, cf. however, subsection (2).

(2) If the probability of surrender before expiry of the contract is less than 1, and the probability applied for surrender of less than 1 can be justified because the access of the insured to surrender is limited by the contract to exceptional situations, the value guaranteed on surrender may be reduced in accordance with the probability for surrender.

(3) The reinsurance part of life-assurance provisions shall be calculated in accordance with the same method as that used in the annual financial statements, cf. section 8 of the Executive Order on Financial Reports for Insurance Companies and Lateral Pension Funds (Nationwide Occupational Pension Funds).

6.-(1) The risk-weighted items for life-assurance provisions, cf. section 126(2), nos. 1 and 2 of the Financial Business Act, shall comprise the life-assurance provisions less the reinsurance part of the life-assurance provisions, but to no less than 85 per cent of the life-assurance provisions.

(2) For the supplementary insurance contracts in class of insurance I the risk-weighted items for life-assurance provisions shall comprise 25 times the amount calculated in accordance with sections 9-13.

(3) For insurance contracts in class of insurance V the risk-weighted items for life-assurance provisions shall comprise the life-assurance provisions.

(4) For class of insurance III the risk-weighted items for life-assurance provisions shall comprise the unit-linked contracts.

Items for risk sums

7.-(1) The risk sum, without deductions for reinsurance, shall be calculated for each insured party as the difference between

- 1) the amount falling due in the event of the death of the insured party as well as the capital value of the benefits falling due after the death of the insured party, calculated on the insurance company's technical basis, and
- 2) the technical life-assurance provisions for the insured party.

(2) The risk sum for own account shall be calculated in the same way as the risk sum without deductions for reinsurance, cf. subsection (1), ignoring the insurance benefits and premiums the company has ceded in reinsurance.

(3) The calculation of the total risk sum of the company shall only include the insured parties with a positive risk sum.

8.-(1) The risk-weighted items for the risk sum, cf. section 126(2), nos. 1, 2 and 3 of the Financial Business Act, shall comprise the risk sum for own account, but no less than 50 per cent of the risk sum without deductions for reinsurance.

(2) For insurance contracts in class of insurance I, which are term life-assurance contracts with a term of no more than three years, including group life-assurance contracts, the risk-weighted items for the risk sum shall amount to 33 1/3 per cent of the risk sum for own account, but no less than 16 2/3 per cent without deductions for reinsurance.

(3) For insurance contracts in class of insurance I, which are term life-assurance contracts with a term of more than three years, but no more than five years, the risk-weighted items for the risk sum shall amount to 50 per cent of the risk sum for own account, but no less than 25 per cent without deductions for reinsurance.

Gross premiums and gross claims

9. The risk-weighted items for gross premiums and the risk-weighted items for gross claims expenses of an insurance company which carries out non-life insurance activities shall amount to the greatest of

- 1) the premium requirement mentioned in section 126(2), no. 5a of the Financial Business Act, and
- 2) the claims requirement mentioned in section 126(2), no. 5b of the Financial Business Act.

10.-(1) For classes of insurance 11, 12 and 13, the premiums forming the basis of the calculation of the premium requirement shall be raised by 50 per cent.

(2) When calculating the premium requirement, the insurance company shall carry out a risk weighting of the relationship between the sum of the insurance company's claims paid net of reinsurance and the sum of the gross claims paid. The calculation shall be on the basis of the three latest accounting years and the risk weighting may be no more than 50 per cent.

11.-(1) For classes of insurance 11, 12 and 13, the gross claims forming the basis of the calculation of the compensation requirement shall be raised by 50 per cent.

(2) In the event that the insurance company has taken over an insurance portfolio, the insurance company shall include the claims expenses of this portfolio for the three-year period in the calculation of the claims for damages.

(3) If the insurance company primarily covers risks related to credit, storm, hail, or frost, the calculation of the compensation requirement shall be on the basis of the annual average gross costs of claims for the most recent seven years.

(4) The insurance company's calculation of the claims for damages shall include a risk weighting of the relationship between the sum of the insurance company's claim paid net of reinsurance and the sum of the gross claims paid. The calculation shall be on the basis of the three latest accounting years and the risk weighting may be no more than 50 per cent.

General regulations regarding solvency

12. The Danish FSA may reduce the risk weighting of the solvency requirement carried out in accordance with sections 5, 8, 10(2), and 11(4) for reinsurance, if the nature or quality of the current reinsurance cover of the company has changed significantly in relation to the reinsurance cover existing in the years which form the basis for the calculated reduction. The Danish FSA may similarly reduce the reduction, provided it is calculated on the basis of contracts which do not involve risk transfer or only an insignificant risk transfer.

13. Notwithstanding sections 9-12 and section 14, the solvency requirement shall amount to no less than the solvency requirement for the previous year weighted with the relationship between provisions for claims less the reinsurance part for provisions for claims as at the end

While this translation was carried out by a professional translation agency, the text is to be regarded as an unofficial translation based on the latest official Executive Order no. 1523 of 13 December 2007. Only the Danish document has legal validity.

March 2008, GlobalDenmark Translations

of the most recent accounting year, and provisions for claims less the reinsurance part for provisions for claims as at the start of the most recent accounting year. The weight may be no more than 100 per cent.

Reduced minimum capital requirement

14.-(1) For mutual insurance companies, that are not covered by section 126(5) and (6) of the Financial Business Act, the minimum capital requirements in section 126(2), nos. 7 and 8 of the Financial Business Act shall be reduced by 25 per cent.

(2) In order to apply subsection (1), at least one of the following conditions shall be met:

- 1) the articles of association of the insurance company shall allow for demanding extra contributions or reducing benefits, or
- 2) prior to entering into the insurance contracts the insurance company shall provide information that the company's minimum capital requirement has been reduced by 25 per cent. For insurance contracts already established, this information shall be provided no less than once a year.

(3) For mutual insurance companies, that are covered by the special reduced minimum capital requirement in section 126(6) of the Financial Business Act, the insurance company shall, prior to entering into the insurance contracts, provide clear and comprehensible information that the company's minimum capital requirement has been reduced and that it is possible to demand extra contributions or reduce benefits. For insurance contracts already established, this information shall be provided no less than once a year.

Base capital

15.-(1) Own funds shall be calculated in accordance with Executive Order on Financial Reports for Insurance Companies and Lateral Pension Funds (Nationwide Occupational Pension Funds).

(2) Own funds shall be deducted from the equalisation reserves within classes of insurance 14 and 15, cf. *bekendtgørelse om udjævningsreserver inden for kredit- og kautionforsikring* (Executive Order on equalisation reserves within credit and suretyship insurance).

(3) Intangible assets shall be calculated in accordance with Executive Order on Financial Reports for Insurance Companies and Lateral Pension Funds (Nationwide Occupational Pension Funds).

(4) For directly and indirectly owned assets representing a risk in an individual undertaking, or a group of undertakings representing a joint risk, cf. section 131(2), no. 3 of the Financial Business Act, the carrying amount of the relevant asset shall be calculated in accordance with the Executive Order on Financial Reports for Insurance Companies and Lateral Pension Funds (Nationwide Occupational Pension Funds).

(5) Directly and indirectly owned holdings in subsidiary financial institutions and associated financial institutions that are to be deducted from the core capital, cf. section 131(5) of the Financial Business Act, shall be calculated in accordance with the Executive Order on Financial Reports for Insurance Companies and Lateral Pension Funds (Nationwide Occupational Pension Funds).

Individual solvency need and reporting

16.-(1) The board of directors and the board of management of the undertaking shall calculate the individual solvency need of the undertaking. In the calculations the undertaking shall take account of the conditions described in the guidelines on adequate base capital and individual solvency need.

(2) The individual solvency need shall be calculated as an amount.

(3) The individual solvency need shall be reported to the Danish FSA every half year as at the end and the middle of the year. The individual solvency need shall be reported to the Danish FSA with the solvency requirement and a statement of the base capital on TB forms no later than 15 March and 31 August respectively. The forms are available at the Danish FSA website. Reporting shall be on a machine-readable, durable medium.

(4) The undertaking shall notify the Danish FSA immediately if the undertaking fails to meet the individual solvency need calculated by the management.

Operating and restoration plans

17.-(1) For use in the Danish FSA's assessment of whether an insurance company has adequate base capital, an application from an insurance company for authorisation to carry out insurance activities shall be accompanied by an operating plan for the activities the undertaking intends to carry out. The operating plan shall cover the first three accounting years of the company and it shall be divided into quarters. If the first financial statements are submitted for a period of less than one year, the operating plan shall cover this period and the three subsequent accounting years.

(2) Operating plan shall include the following:

- 1) An opening balance sheet as it is expected to appear after payment of formation expenses.
- 2) The expected accounting results in the form of income statements and balance sheets for the accounting years covered by the operating plan.
- 3) A presentation of the expected costs of establishing the administration of the insurance company during the period covered by the operating plan.
- 4) For insurance companies carrying out life-assurance activities, a statement of the technical basis etc. forming the basis of the operating plan.
- 5) A report on the intended reinsurance programmes and credit rating (security).
- 6) Information on the type of risks the insurance company intends to cover.
- 7) For insurance companies carrying out non-life insurance activities, a report on the background for the company's expected premiums received net of reinsurance and compensation paid net of reinsurance.
- 8) A report on the investment policy of the insurance company.
- 9) Calculation of expected capital requirement, individual solvency need, and base capital at the end of each quarter covered by the operating plan.
- 10) Information on the equipment the insurance company has at its disposal for use in the activities covered by class of insurance 18.
- 11) An assessment of the probability that the insurance company cannot comply with the capital requirement and the individual solvency need within the first year.
- 12) An assessment of the probability that the insurance company will lose all its base capital within the first year.

While this translation was carried out by a professional translation agency, the text is to be regarded as an unofficial translation based on the latest official Executive Order no. 1523 of 13 December 2007. Only the Danish document has legal validity.

March 2008, GlobalDenmark Translations

13) For insurance companies carrying out life-assurance activities, the Danish FSA may require a longer period for the assessments mentioned in nos. 11 and 12.

(3) The Danish FSA may also demand the information deemed necessary to assess whether the results in the operating plan can be regarded as likely.

(4) The Danish FSA may stipulate the form of reporting and the format of the operating plan.

18. If the Danish FSA finds that the information submitted, cf. section 17, does not make it likely that, during the period of the operating plan, the insurance company will be in possession of the necessary base capital, the licence will not be issued.

19.-(1) After the licence has been issued the insurance company shall submit quarterly financial statements to the Danish FSA in such a form as to make it immediately possible to compare the actual results of the company with the expected results contained in the operating plan.

(2) If the financial position of the insurance company deteriorates in relation to the operating plan, the Danish FSA may make a decision regarding revision of the plan or preparation of a new operating plan for following three accounting years.

20. The provisions of sections 15-17 shall apply correspondingly when an insurance company applies to extend its current licence, to the extent that the Danish FSA deems that the situation of the company compared with the desired extension of the licence makes this necessary.

21.-(1) If the Danish FSA has required that a company prepare a plan for restoration of the company's financial position, cf. part 16 of the Financial Business Act, said plan shall cover no less than the 3 subsequent accounting years.

(2) The plan for restoration shall include the following as a minimum:

- 1) Estimated administrative costs.
- 2) Expected expenses and income in connection with direct insurance activities as well as taking over and cession of reinsurance.
- 3) An expected balance sheet.
- 4) The expected investment policy.
- 5) An estimate of the size of the capital requirement, the individual solvency need and base capital.
- 6) A report on the intended reinsurance programmes and credit rating (security).

Penalties and entry into force

22.-(1) Intentional or grossly negligent violation of section 3, section 17(1) and (2), section 19(1) and section 21 shall be subject to a fine.

(2) Companies, etc. (legal persons) may incur criminal liability according to the regulations in part 5 of the Criminal Code.

Entry into force

23.-(1) This Executive Order shall enter into force on 31 December 2007.

While this translation was carried out by a professional translation agency, the text is to be regarded as an unofficial translation based on the latest official Executive Order no. 1523 of 13 December 2007. Only the Danish document has legal validity.

March 2008, GlobalDenmark Translations

(2) At the same time, Executive Order no. 719 of 21 June 2007 on solvency and operating plans for insurance companies shall be repealed.

(3) The insurance company shall report pursuant to section 16(3) for the first time as at the end of 2007. Reporting shall be no later than 15 March 2008. Documentation for the calculation of adequate base capital and the individual solvency need, cf. the guidelines on adequate base capital and individual solvency need, shall be available no later than in connection with the first report.

The Danish Financial Supervisory Authority, 13 December 2004

Henrik Bjerre-Nielsen

/Jarl Kure

Links to EC directives, cf. note 1

[Directive 1973/239/EEC](#) Celex no. 31973L0239
[Directive 1976/580/EEC](#) Celex no. 31976L0580
[Directive 1984/641/EEC](#) Celex no. 31984L0641
[Directive 1987/343/EEC](#) Celex no. 31987L0343
[Directive 1992/49/EEC](#) Celex no. 31992L0049
[Directive 1998/78/EC](#) Celex no. 31998L0078
[Directive 2002/83/EC](#) Celex no. 32002L0083