

ORDINANCE No. 21 of 16 March, 2005 on the Own Funds and Solvency Margin of Insurers, Reinsurers and Health Insurance Companies
(Heading suppl. – SG, iss. 2 in 2008)

Adopted by Decision 34-H from 16 March, 2005 of the Financial Supervision Commission, promulgated - SG, iss. 29 from 5 April, 2005 in effect as of 1 Jan., 2005; am. and suppl.- iss. 22 from 14 March, 2006; am. iss. 36 from 2 May, 2006; am. and suppl. iss. 2 from 8 Jan., 2008

Chapter One
GENERAL PROVISIONS

Art. 1. (1) (Suppl. - SG, iss. 2 in 2008) This Ordinance shall establish the elements included in calculating the amount of own funds, the solvency margin of insurers, reinsurers and of health insurance companies and the methods of calculation of the said margin.

(2) (Am. - SG, iss. 22 in 2006; suppl. – iss. 2 in 2008) This Ordinance shall furthermore establish the methods of exercising supplementary supervision of the solvency of insurers and reinsurers covered under Items 1 and 2 of Art. 299 (1) of the Insurance Code.

Art. 2. (Am. - SG, iss. 22 in 2006; am. – iss. 2 in 2008) This Ordinance shall furthermore apply in respect of third-country insurers and reinsurers, carrying on insurance or reinsurance business according to the Insurance Code through a branch on the territory of the Republic of Bulgaria.

Art. 3. (1) (Suppl. - SG, iss. 2 in 2008) The sum total of the own funds of any insurer, reinsurer and health insurance company, less any intangible assets, must be at all times at least equal to the solvency margin as calculated according to the procedure established by this Ordinance.

(2) (Am. - SG, iss. 22 in 2006; suppl. – iss. 2 in 2008) The adjusted solvency of any insurer or reinsurer referred to in Item 1 of Article 299 (1) of the Insurance Code must not be negative.

Art. 4. (Am. - SG, iss. 22 in 2006) (1) (Suppl. - SG, iss. 2 in 2008) Together with the annual financial statement, insurers, reinsurers and health insurance companies shall be obligated to submit to the Financial Supervision Commission, hereinafter referred to as “the Commission” an estimate of the amount of own funds and the solvency margin. Any insurers and reinsurers covered under Items 1 and 2 of Art. 299 (1) of the Insurance Code shall furthermore submit together with the consolidated financial statement, an estimate of the adjusted solvency.

(2) (Am. - SG, iss. 2 in 2008) The own funds and the solvency margin shall be calculated on the basis of the data of the financial statements, statistics and appendixes prepared according the requirements envisaged in Ordinance 30 from 2006 on the Requirements for the Accounting, Form and Contents of the Financial Statements, Statistics, Reports and Supplements of Insurers and Health Insurance Companies (prom., SG, iss. 78 in 2006; am. and suppl. iss. 55 in 2007).

Chapter Two OWN FUNDS

Art. 5. (1) (Am. - SG, iss. 22 in 2006; suppl. – iss. 2 in 2008) “Own funds” shall be the funds of an insurer, reinsurer or health insurance company free of any foreseeable liabilities, which are formed as a sum total of the following elements:

1. the capital:

(a) in respect of joint-stock companies - the subscribed share capital;

(b) in respect of mutual insurance cooperatives – the share contributions;

2. (Am. - SG, iss. 22 in 2006) the reserves and the funds covered under Art. 66 (2) of the Insurance Code and Art. 90c (2) of the Health Insurance Act;

3. retained profits from prior periods, less the expected payments of dividends and other charges;

4. the revaluation reserves formed according to the procedure established by the Accountancy Act;

5. any loan-equity (hybrid) instruments issued by the insurer or by the health insurance company;

6. any subordinated loan capital.

(2) The sum total referred to in paragraph (1) shall be reduced by:

1. the unpaid capital;

2. the nominal value of the own shares bought back;

3. the loss for the current year and the uncovered losses from prior periods;

4. (New - SG, iss. 22 in 2006; am. – iss. 2 in 2008) the balance sheet value of the participations within the meaning of § 1 item 19 of the Additional Provisions of the Insurance Code, which the insurer, reinsurer or the health insurance company owns in an insurer, reinsurer, health insurance company, pension insurance company, insurance holding company, mixed-activity insurance holding company, credit institution, financial institution under Art. 3 para 1 of the Law on Credit Institutions, ancillary services company under Art. 2 para 4 of the Law on Credit Institutions, investment intermediary, management company as well as the investments in loan-equity (hybrid) instruments and in subordinated loan in such companies, where the insurer, reinsurer or the health insurance company has participation, when they are not consolidated in its financial statement;

5. (New - SG, iss. 2 in 2008) the balance sheet value of the participations which exceed 50 per cent of the capital of the related undertaking, which the insurer, reinsurer or health insurance company owns in commercial companies, other than the companies under item 4, as well as the investments in loan-equity (hybrid) instruments and in subordinated loan in such

companies, in which the insurer, reinsurer or health insurance company has participation, when they are not consolidated in its financial statement;

(3) (New - SG, iss. 22 in 2006; suppl. iss. 2 in 2008) The Deputy Chairperson may exempt from application of Item 4 Paragraph 2 in the cases when the insurer, reinsurer or the health insurance company have acquired the participation or the share in the capital or have made the investment temporarily and with the purpose of financial assistance of the company in relation to its rehabilitation and protection against insolvency.

Art. 6. The profit referred to in Item 3 of Art. 5 (1) herein may be considered as a component of the own funds if the Shareholders' General Meeting or the Cooperative Members' General Meeting has passed a resolution barring the payment of dividends out of the said profit or the making of any charges therefrom.

Art.7. The funds referred to in Item 5 of Art. 5 (1) herein must satisfy the following requirements:

1. the amounts of the said funds must be fully paid-up;
2. the maturity of the said funds must not be fixed;
3. the repayment of the said funds must not be secured in any form by the issuer or by the health insurance company;
4. in the event of liquidation or bankruptcy of the insurer or of the health insurance company, the said funds must become repayable after the claims of all other creditors have been fully satisfied;
5. the claims to the principal (the nominal value) of the said funds cannot become repayable without approval by the Deputy Chairperson of the Financial Supervision Commission in charge of Insurance Supervision Division, hereinafter referred to as the "Deputy Chairperson";
6. (New - SG, iss. 22 in 2006) the conditions on which these funds have been raised by the insurer or the health insurance company entitle it to defer the payment of interest or dividend thereon;
7. (New - SG, iss. 22 in 2006) the conditions on which these funds have been raised are such that in case of non-payment of principal, respectively the capital or of the interest, or the dividend hereunder, the insurer or the health insurance company can continue its activity.

Art. 8. The subordinated loan referred to in Item 6 of Article 5 (1) herein must fulfill the following requirements:

1. the amounts of the said loan must be fully paid-up;
2. the repayment of the said loan must not be secured in any form by the insurer or by the health insurance company;

3. for a subordinated loan with a fixed maturity, the original maturity must be at least five years;
4. a subordinated loan the maturity of which is not fixed must become repayable subject to five year's notice, unless the repayment thereof requires approval of the Deputy Chairperson;
5. the early repayment of the said loan cannot be effected if, as a result of this, the own funds would fall below the level required to cover the solvency margin;
6. an early repayability of the said loan must be impossible;
7. if interest or other return is stipulated, it must not be payable before the agreed repayment date of the loan;
8. in the event of the liquidation or bankruptcy of the insurer or of the health insurance company, the said loan must become repayable after the claims of all other creditors have been fully satisfied;
9. (New - SG, iss. 22 in 2006) the loan conditions may be changed only with the approval of the Deputy Chairperson.

(2) During the last five years before the repayment date, the extent to which the subordinated loan with a fixed maturity ranks as a component of the own funds of the insurer or of the health insurance company shall be reduced by 20 per cent annually. After the repayment date of the said loan, it shall be completely excluded upon calculation of the own funds.

(3) Where the subordinated loan referred to in paragraph (1) is without a fixed maturity, the said loan shall be repaid after approval by the Deputy Chairperson, granted on the basis of a written application filed by the insurer or by the health insurance company not later than six months prior to the repayment, subject to the condition of fulfillment of the requirement of Art. 3 (1) herein. The application referred to in sentence one shall state the date of repayment of the loan and the total amount of own funds before and after the said repayment.

Art. 9. (1) The amount of the funds referred to in Items 5 and 6 of Art. 5 (1) herein may not exceed 50 per cent of the lesser of:

1. the own funds;
2. the solvency margin.

(2) No more than 25 per cent of the funds referred to in paragraph (1) may consist of subordinated loans with a fixed maturity.

Art. 10. (1) (Effective until 31 Dec., 2009) Any insurer carrying on insurance business which encompasses insurances covered under Section I, Items 1, 2 and 4 of Annex No. 1 of the Insurance Code, may include 50 per cent of the future profits arising from the said insurances in the own funds thereof, provided that the value of the said profits do not exceed 25 per cent of the lesser of:

1. the own funds;

2. the solvency margin.

(2) The amount of the future profits shall be obtained by multiplying:

1. the estimated annual profit, which may not exceed the arithmetical average of the profits made from the insurances referred to in paragraph (1) over the last five years, by

2. a factor which represents the average period left until the expiration of the validity of the contracts under the said insurances, and the factor used may not exceed six.

(3) The inclusion in the own funds of the future profits from the insurances referred to in paragraph (1) shall require approval by the Deputy Chairperson, granted on the basis of a written application accompanied by an actuarial report substantiating the likelihood of emergence of such future profits.

(4) The Deputy Chairperson shall pronounce on the request within seven days after the filing of all requisite documents and shall notify the applicant forthwith, as well as transmit a notification in writing within three days after making the decision.

(5) (New - SG, iss. 22 in 2006) In the own funds shall not be included future profits from the insurances under paragraph (1), which arise from already accounted and included in the own funds revaluations of assets.

Art. 11. Subject to approval by the Deputy Chairperson, any insurer carrying on insurance business which encompasses insurances covered under Section I of Annex No. 1 of the Insurance Code, where the said insurer does not use a Zillmerised reserve or where the said insurer forms a reserve Zillmerised at a rate not exceeding the loading for acquisition costs included in the net premium, may include in its own funds the difference in the sums between the non-Zillmerised or partially Zillmerised mathematical provisions and mathematical provisions Zillmerised at a rate equal to the loading for the acquisition costs included in the premium. The sum referred to in sentence one may not exceed 3.5 per cent of the difference between the sums insured and the relevant mathematical provisions for all contracts for which Zillmerising is possible. The difference shall be reduced by the amount of any deferred acquisition costs entered on the balance sheet as an asset.

Art. 12. (1) (Am. - SG, iss. 22 in 2006; iss. 2 in 2008) Any insurer carrying out business on insurances under Section II of Annex 1 of the Insurance Code which discounts the provisions for claims outstanding according the procedure of Art. 7 para 4 of Ordinance 27 from 2006 on the Procedure and Methods for the Formation of Insurance Reserves and Health Insurance Reserves (Prom., SG, iss. 36 in 2006; am. and suppl. - iss. 65 in 2007) shall reduce its own funds by the difference between the amount of the discounted and undiscounted provisions for claims outstanding.

(2) The reduction referred to in Paragraph (1) shall not be effected in respect of any insurances covered under Section II, Item 1 and 2 of Annex No. 1 of the Insurance Code, as well as in respect of any claims with equal periodic payments included in the reserve.

Art. 12a. (New - SG, iss. 2 in 2008) For determination of the own funds of a reinsurer shall apply Art. 5 – 12.

Chapter Three SOLVENCY MARGIN

Section I General Provisions

Art. 13. “Solvency margin” shall be the minimum amount of the own funds, less any intangible assets, which are required to ensure the fulfillment of the contractual obligations of an insurer or a health insurance company in the long term in accordance with the total volume of the activities thereof.

Section II Methods of Calculation of the Solvency Margin of an Insurer Carrying on Insurance Business which Encompasses Insurances Covered Under Section I of Annex No. 1 of the Insurance Code

Art. 14. (1) The solvency margin of an insurer carrying on insurance business which encompasses insurances covered under Section I, Item 1 and 2 of Annex No. 1 of the Insurance Code shall be determined as the sum of the following results:

1. the calculations in respect of the mathematical provisions;
2. the calculations in respect of the capital at risk.

(2) The calculations in respect of the mathematical provisions referred to in Item 1 of Paragraph (1) shall be effected in the following manner:

1. (Suppl. - SG, iss. 22 in 2006; am. – iss. 36 in 2006) a 4 per cent fraction of the gross mathematical provisions, inclusive of the distributed additional income according to Art. 15 of Ordinance 27 from 2006 on a Procedure and Methods for the Formation of Insurance Reserves and Health Insurance Reserves (SG, iss. 36 in 2006), the reserve for future income allocation as well as the reinsurance acceptances reserve;
2. the result referred to Item 1 shall be adjusted by a ratio of the net and gross amount of the mathematical provisions; the said ratio may in no case be less than 0,85.

(3) The calculations in respect of the capital at risk referred to in Item 2 of Paragraph (1) shall be effected in the following way:

1. (Am. - SG, iss. 36 in 2006) for contracts on which the capital at risk is not a negative figure: a 0.3 per cent fraction of the sum insured due under the contracts upon occurrence of death, reduced by the mathematical provisions under the said contracts; the distributed additional income according to Article 15 of Ordinance 27 from 2006 on a Procedure and Methods for the Formation of Insurance Reserves and Health Insurance Reserves shall be excluded from the mathematical provisions; for term Life Insurance with cover of a death risk with a validity of the contract not exceeding three years, the fraction of the capital at risk shall be 0.1 per cent, and when the validity of the contract is more than three years but not more than five years, the above fraction shall be 0.15 per cent;

2. the result referred to in Item 1 shall be multiplied by the ratio of the total capital at risk net of reinsurance to the total capital at risk gross of reinsurance, determined for the last financial year; the said ratio may in no case be less than 0.5.

(4) (New - SG, iss. 2 in 2008) For the purposes of the calculations under Paragraph 2 and 3, receivables on a special purpose vehicle for alternative transfer of insurance risk may be considered reinsurance, subject to the approval of the Deputy Chairperson, on the basis of a reasoned request, to which shall be attached written evidence about the reliability of the special purpose vehicle for alternative transfer of insurance risk. Art. 10(4) shall apply.

Art. 15. The solvency margin of an insurer carrying on insurance business which encompasses insurances covered under Section I, Item 3 of Annex No. 1 of the Insurance Code shall be determined as the sum of:

1. a 4 per cent fraction of the gross reserves under unit-linked life insurance, multiplied by the ratio of the net and the gross reserves under unit-linked life insurance, where the insurer bears an investment risk; the said ratio may in no case be less than 0,85;

2. a 1 per cent fraction of the gross reserves under unit-linked life insurance, multiplied by the ratio of the net and the gross reserves under unit-linked life insurance, where the insurer bears no investment risk and the allocation to cover management expenses is fixed for a period exceeding five years; the said ratio may in no case be less than 0,85;

3. twenty-five per cent of the net administrative expenses pertaining to this type of insurance for the last year, where the insurer bears no investment risk and the allocation to cover management expenses is not fixed for a period exceeding five years;

4. a 0.3 per cent fraction of the capital at risk multiplied by the ratio of the total capital at risk net of reinsurance to the total capital at risk gross of reinsurance, determined for the last financial year, where the insurer covers a death risk; the said ratio may in no case be less than 0,5.

Art. 16. (1) The solvency margin of an insurer carrying on insurance business which encompasses insurances covered under Section I, Item 4 of Annex No. 1 of the Insurance Code, where the insurer may not terminate the contract unilaterally, shall be determined as the sum of:

1. the solvency margin determined according to the procedure established by Item 1 of Article 14 (1) herein;

2. the solvency margin determined according to the procedure established by Article 20 herein.

(2) (Am. - SG, iss. 2 in 2008) Upon determination of the solvency margin referred to in Item 2 of Paragraph (1), the constant 106,200,000 in Annex No. 1 hereto or the constant 74,400,000 in Annex No. 2, as the case may be, shall be reduced to one third of the value thereof if the insurances referred to in Paragraph (1) fulfill the following conditions:

1. the premiums are calculated on the basis of morbidity tables according to mathematical methods applied in insurance;

2. a provision is set up for increasing age;
3. the insurer may terminate the contract before the end of the third year after conclusion of the said contract at the latest;
4. the contract provides for the possibility of increasing premiums or reducing payments, including for current contracts.

Art. 17. The solvency margin of an insurer carrying on insurance business which encompasses insurances covered under Section I, Item 5 of Annex No. 1 of the Insurance Code shall be determined according to the procedure established by Item 1 of Art. 14 (1) herein.

Art. 18. The solvency margin of an insurer carrying on insurance business which encompasses insurances covered under Section I, item 6 of Annex No. 1 to the Insurance Code shall be determined according to the procedure established by Art. 20 herein.

Art. 19. (1) The solvency margin of an insurer carrying on insurance business which encompasses insurances covered under Section I of Annex No. 1 of the Insurance Code shall be the sum of the results covered under Art. 14 (1), Art. 15, 16, 17 and 18 herein.

(2) The solvency margin of an insurer carrying on insurance business which encompasses insurances covered under Section I and Section II, Point A, Item 1 of Annex No. 1 of the Insurance Code shall be the sum of the results referred to in Paragraph (1) and the solvency margin of the said insurer for the insurances covered under Section II, Point A Item 1 of Annex No. 1 of the Insurance Act, determined according to the procedure established by Art. 20 herein.

Art. 19a. (New - SG, iss. 2 in 2008) The solvency margin of an insurer carrying on insurance business which encompasses insurances covered under Section I of Annex 1 of the Insurance Code, which is also carrying on inward reinsurance, for the pursued by it inward reinsurance shall be calculated according Section IV, where some of the following conditions exist:

1. the inward reinsurance premiums underwritten by the insurer, exceed 10 per cent of the gross amount of the underwritten premiums, or BGN 97 800 000;
2. the technical provisions formed by the insurer in relation to inward reinsurance exceed 10 per cent of the gross amount of the formed technical provisions.

Section III

Methods of Calculation of the Solvency Margin of an Insurer Carrying On Insurance Business which Encompasses Insurances Covered under Section II of Annex No. 1 of the Insurance Code, and of a Health Insurance Company

Art. 20. (1) The solvency margin shall be determined using the following methods:

1. calculations in respect of the premiums;
2. calculations in respect of the average annual amount of claims.

(2) The calculations in respect of the premiums under Item 1 Paragraph 1 shall be effected according to Annex No. 1 hereto, taking as a basis the higher of:

1. the premium income for the latest financial year, with the premium income on insurances covered under Section II, Item 11, 12 and 13 of Annex No. 1 of the Insurance Code being increased by 50 per cent;

2. the earned premiums for the last financial year, with the earned premiums on insurances covered under Section II Item 11, 12 and 13 of Annex No. 1 of the Insurance Code being increased by 50 per cent.

(3) (New - SG, iss. 2 in 2008) Subject to the approval of the Deputy Chairperson, an insurer may use statistics methods for the premium income allocation by the types of insurances under Section II, Item 11, 12 and 13 of Annex 1 of the Insurance Code. The written application shall be accompanied by an actuarial report which gives a reasoned justification of the need of applying and the reliability of the statistics method.

(4) (Prev. para 3 - SG, iss. 2 in 2008) The calculations in respect of the average annual amount of claims under para 1 item 2 shall be effected according to Annex No. 2 hereto, using as a basis the claims under contracts for the past three financial years or, respectively, for the past seven financial years where the insurer essentially underwrites one or more of the risks of storm, hail or frost or credit risks, with the claims on insurances covered under Section II Item 11, 12 and 13 of Annex No. 1 of the Insurance Act being increased by 50 per cent.

(5) (New - SG, iss. 2 in 2008) Subject to the approval of the Deputy Chairperson, an insurer may use statistics methods for allocation of the claims by the types of insurances under Section II, Item 11, 12 and 13 of Annex 1 of the Insurance Code. The written application shall be accompanied by an actuarial report which gives a reasoned justification of the need of applying and the reliability of the statistics method.

(6) (New - SG, iss. 2 in 2008) In respect to the insurance under Section II, Item 18 of Annex 1 of the Insurance Code, the amount of the paid up claims in the calculation of the solvency margin towards the average annual amount of claims shall be the amount of the expenses made by the insurer in providing travel assistance services.

(7) (Prev. para 4 - SG, iss. 2 in 2008) The solvency margin of an insurer providing insurances covered under Section II of Annex No. 1 of the Insurance Code shall be equal to the higher of the two results of the calculations using the methods referred to in para 1.

Art. 20a. (New - SG, iss. 2 in 2008) On reasoned request of an insurer, to which shall be attached written evidence about the reliability of the special purpose vehicle for alternative transfer of insurance risk, the Deputy Chairperson may approve that receivables on such SPV may be considered reinsurance for the purposes of the calculations of the factors K1 of Annex No. 1 and K2 of Annex 2 in the indicators for the share of reinsurers in the effected payments on claims during the last three financial years and for change in the share of reinsurers in the outstanding claims reserve in the last three financial years.

Art. 21. (1) The solvency margin of a health insurance company shall be determined as the sum of the results referred to in Paragraphs (2) and (3).

(2) For health insurance contacts which have a similar technical basis to that of the insurances covered under Section I, Item 4 of Annex No. 1 of the Insurance Code and fulfill the

conditions under Art. 16 (2) herein, the solvency margin shall be determined according to the procedure established by Article 16 herein.

(3) For all other health insurance contracts, the solvency margin shall be determined according to the procedure established by Art. 20 and 22 herein.

Art. 22. If the solvency margin as determined according to the procedure established by Art. 20 herein is lower than the solvency margin for the preceding year, the solvency margin shall be at least equal to the solvency margin for the preceding year multiplied by the ratio of the net provisions for claims outstanding at the end of the financial year and the net provisions for claims outstanding at the beginning of the financial year. The said ratio may in no case be higher than one.

Section IV
(New - SG, iss. 2 in 2008)
Methods of Calculation of the Solvency Margin of a Reinsurer

Art. 22a. (New - SG, iss. 2 in 2008) (1) The solvency margin of a reinsurer which carries on reinsurance under Section II of Annex 1 of the Insurance Code shall be calculated in accordance with Art. 20, 20a and 22.

(2) Subject to the approval of the Deputy Chairperson, a reinsurer may use statistics methods for allocation of the premium income and of the claims by the types of insurances in the calculation of the solvency margin. The written application shall be accompanied by an actuarial report, which gives a reasoned justification of the need of applying and the reliability of the statistics method.

Art. 22b. (New - SG, iss. 2 in 2008) The solvency margin of a reinsurer carrying on life reinsurance shall be calculated in accordance with Art. 22a. Where the reinsurer pursues reinsurance under Section I, Item 1 point “b”, Item 3 and 5 of Annex – 1 of the Insurance Code, its solvency margin concerning the activity on these types of insurances shall be calculated according Section II.

Art. 22c. (New - SG, iss. 2 in 2008) The solvency margin of a reinsurer carrying on simultaneously non-life reinsurance and life reinsurance, shall be the sum of the solvency margins for each of the activities, specified respectively in Art. 22a and Art. 22b.

Chapter Four
SUPPLEMENTARY SUPERVISION OF INSURERS AND REINSURERS WHICH
PARTICIPATE IN AN INSURANCE GROUP
(Heading suppl. – SG, iss. 2 in 2008)

Section I
General Provisions

Art. 23. (Suppl. - SG, iss. 2 in 2008) The insurers and reinsurers participating in an insurance group shall be subject to supplementary supervision with a view to establishing their solvency with respect to their links with other undertakings.

Section II
**Adjusted Solvency of Insurers and Reinsurers Referred to in Item 1 of Art. 299 (1) of
the Insurance Code**
(Heading, am. – SG, iss. 22 in 2006; suppl. – iss. 2 in 2008)

Art. 24. (1) (Am. - SG, iss. 22 in 2006; suppl. – iss. 2 in 2008) The adjusted solvency of the insurers and reinsurers referred to in Item 1 of Art. 299 (1) of the Insurance Code shall be determined using Method 2 under Annex No. 3 hereto.

(2) (Am. - SG, iss. 22 in 2006, suppl. – iss. 2 in 2008) The adjusted solvency of the insurers or reinsurers referred to in Paragraph (1) may furthermore be determined using any of the other methods covered under Annex No. 3 hereto where so prescribed by the Deputy Chairperson.

Art. 25. (1) (Am. - SG, iss. 22 in 2006; suppl. – iss. 2 in 2008) In the determination of the adjusted solvency of the insurers and reinsurers referred to in Art. 24 herein shall be taken account of the proportional share held by the said insurers and reinsurers in related undertakings.

(2) “Proportional share”, as referred to in Paragraph (1), shall mean:

1. (Suppl. - SG, iss. 2 in 2008) where Method 1 or Method 2 under Annex No. 3 is used: the proportion of the subscribed capital that the insurer or the reinsurer holds, whether directly or through related entities, or

2. where Method 3 under Annex No. 3 is used: the percentage used for the establishment of the consolidated accounts.

(3) (Am. - SG, iss. 22 in 2006; suppl. – iss. 2 in 2008) Regardless of which method under Annex No. 3 is used, when the related undertaking is a subsidiary undertaking and has a deficit in covering the solvency margin by own funds, the total solvency deficit [of the subsidiary undertaking] shall be taken into account. Where by decision of the Deputy Chairperson the liability of the parent undertaking, holding the share of capital, is limited only to the amount of that share, the Deputy Chairperson may allow the deficit in the subsidiary undertaking’s solvency to be accounted on a proportionate basis.

(4) Where there are no capital ties between some of the undertakings in the insurance group, the proportional share on the basis of which the adjusted solvency is calculated shall be determined by the Deputy Chairperson.

Art. 26. (Am. - SG, iss. 22 in 2006; suppl. – iss. 2 in 2008) (1) Regardless of which method under Annex No. 3 hereto is used for the calculation of the adjusted solvency of the insurers and reinsurers referred to in Art. 24 herein, the double use of elements included in the own funds of the said insurers or reinsurers, taken into account in the calculation of the adjusted solvency, shall be eliminated.

(2) For the purposes of Paragraph (1), when calculating the adjusted solvency and where the method used under Annex No. 3 hereto does not provide for this, the following amounts shall be eliminated:

1. the value of any assets of an insurer or reinsurer referred to in Art. 24 herein which represent the financing of elements included in the own funds of an insurer or reinsurer, which is a related undertaking;

2. the value of any assets of an insurer or reinsurer, which is a related undertaking to the insurer or reinsurer referred to in Art. 24 herein which represent financing of elements included in the own funds of the insurer or reinsurer referred to in Art. 24 herein;

3. the value of any assets of an insurer or reinsurer which is a related undertaking to the insurer or reinsurer referred to in Article 24 which represent the financing of elements included in the own funds of any other insurer or reinsurer which is a related undertaking to the insurer or reinsurer referred to in Art. 24 herein.

(3) Without prejudice to the provisions of Paragraphs (1) and (2), the future profits referred to in Art. 10 herein, which are expected to arise in an insurer or reinsurer carrying on insurance business which encompasses insurances covered under Section I of Annex No. 1 of the Insurance Code, which is a related undertaking to the insurer or reinsurer referred to in Art. 24 herein, may be taken into account in the calculation of the adjusted solvency subject to the condition that they are eligible for inclusion in the own funds of the related insurance undertaking or reinsurance undertaking.

(4) Without prejudice to the provisions of Paragraph (1) and (2), the subscribed but unpaid capital of an insurer or reinsurer which is a related undertaking to the insurer or reinsurer referred to in Art. 24, can be taken into account in the calculation of the adjusted solvency provided that its inclusion is admitted in the own funds of the related insurance or reinsurance undertaking. Sentence one shall not apply when the subscribed but unpaid capital represents a potential liability of the participating undertaking.

(5) In the calculation of the adjusted solvency no account shall be taken of the subscribed but unpaid capital of an insurer or reinsurer – a related undertaking to the insurer or reinsurer referred to in Art. 24, which represents a potential liability for another insurer or reinsurer – a related undertaking to the insurer or reinsurer referred to in Art. 24.

(6) Where the Deputy Chairperson decides that certain elements of the insurer or reinsurer which is a related undertaking to the insurer or reinsurer referred to in Art. 24, other than those listed in Paragraph 3-5, which can be taken into account in the calculation of the adjusted solvency, but cannot effectively be used for cover of the solvency margin of the insurer or reinsurer referred to in Art. 24 for which adjusted solvency is calculated, these elements may be included in the calculation only to the extent they can be taken into account for the cover of the solvency margin of the related undertaking.

(7) The sum of the elements according Paragraph 3-6 may not exceed the amount of the own funds of the insurer or reinsurer which is a related undertaking.

Art. 27. (Am. - SG, iss. 22 in 2006; suppl. – iss. 2 in 2008) (1) When calculating adjusted solvency, no account shall be taken of any elements included in the own funds which have arisen out of reciprocal financing between an insurer referred to in Art. 24 herein and:

1. a related undertaking;
2. a participating undertaking;

3. a related undertaking with participating in it undertaking.

(2) When calculating adjusted solvency, no account shall furthermore be taken of any elements included in the own funds of an insurer or reinsurer which is a related undertaking to the insurer or reinsurer referred to in Art. 24 herein when the said elements arise out of reciprocal financing with any other undertaking related to an insurer or reinsurer referred to in Art. 24 herein.

(3) Reciprocal financing shall exist when an insurer, reinsurer or a related undertaking holds shares in the capital or makes loans to another insurer which, whether directly or through related persons, possesses an element included in the own funds of the insurer or of the related undertaking.

Art. 28. (Am. - SG, iss. 22 in 2006; suppl. – iss. 2 in 2008) (1) Where an insurer or reinsurer referred to in Article 24 herein has more than one related undertaking which is a insurer or reinsurer, all related undertakings which are insurers or reinsurers shall be integrated when calculating adjusted solvency.

(2) In cases of successive participations, adjusted solvency shall be calculated at the level of each participating undertaking which is an insurer or reinsurer, which has at least one related undertaking insurer or reinsurer. Successive participation shall be the case where an insurer or reinsurer referred to in Art. 24 herein is a participating undertaking in another insurer or reinsurer which, for its part, is also a participating undertaking in at least one other insurer or reinsurer.

Art. 29. (Am. - SG, iss. 22 in 2006; canceled – iss. 2 in 2008)

Art. 30. (Am. - SG, iss. 22 in 2006; suppl. – iss. 2 in 2008) Where an insurer or reinsurer referred to in Art. 24 herein participates in another insurer, reinsurer or a third-country insurer through an insurance holding company, the solvency of the said insurance holding company shall be taken into account when calculating adjusted solvency. The solvency of the insurance holding company shall be determined according to the procedure established by Art. 33.

Art. 31. (Am. - SG, iss. 22 in 2006; suppl. – iss. 2 in 2008) Where an insurer or reinsurer referred to in Art. 24 herein is a participating undertaking in a third-country insurer or a third-country reinsurer, for the purposes of calculating the adjusted solvency of the insurer or reinsurer referred to in Art. 24 herein, the own funds and the solvency margin of the third-country insurer or the third-party reinsurer shall be determined according to the procedure established by Chapter Two and Chapter Three herein.

Art. 32. (Am. - SG, iss. 22 in 2006; suppl. – iss. 2 in 2008) Where information necessary for the calculation of the adjusted solvency of the insurer or reinsurer referred to in Art. 24 herein, concerning a subsidiary undertaking, has not been submitted to the Commission, the book value of the said undertaking on the balance sheet of the insurer or reinsurer referred to in Art. 24 herein shall be deducted from the elements included in the calculation of the adjusted solvency of the said insurer or reinsurer. In such case, the unrealized gains connected with such participation shall not be allowed as an eligible element when calculating the adjusted solvency.

Art. 32a. (Am. - SG, iss. 22 in 2006; suppl. – iss. 2 in 2008) When an insurer or reinsurer under Art. 24 is a participating undertaking also in a health insurance company, including

where successive participations exist, such health insurance company shall be considered a related insurance undertaking in the calculation of the adjusted solvency of the insurer or reinsurer.

Section III

Supplementary Supervision of Insurers and Reinsurers Covered under Item 2 of Article 299 (1) of the Insurance Code (Heading, am. – SG, iss. 22 in 2006; suppl. – iss. 2 in 2008)

Art. 33. (Am. - SG, iss. 22 in 2006; suppl. – iss. 2 in 2008) (1) The insurers and reinsurers covered under Item 2 of Article 299 (1) of the Insurance Code shall be subject to supplementary supervision. Section II of Chapter Four herein shall apply, *mutatis mutandis*, to any insurance holding company, third-country insurer or third-country reinsurer.

(2) For the purposes of Paragraph (1), the parent undertaking shall be treated as if it were an insurer or reinsurer which:

1. has a zero solvency margin: where the parent undertaking is an insurance holding company;
2. has a solvency margin calculated according to the procedure established by Chapter Three herein: where the parent undertaking is a third-country insurer, or a third-country reinsurer, as the case may be.

Art. 34. (Am. - SG, iss. 22 in 2006; am. and suppl. – iss. 2 in 2008) Where information necessary for the exercise of the supplementary supervision under this Section, concerning a subsidiary undertaking, has not been submitted to the Commission, the book value of the said undertaking on the balance sheet of the insurance holding company, the third-country insurer or the third-country reinsurer shall be deducted from the elements included in the calculation of the adjusted solvency of the said subsidiary undertaking. In such case, the unrealized gains connected with such participation shall be ignored upon application of the measures for exercise of supplementary supervision under this Section.

ADDITIONAL PROVISIONS

§ 1. Within the meaning given by this Ordinance:

1. “Zillmerised reserve” shall be the net premium reserve reduced by the unredeemed portion of the acquisition costs.
2. “Net amount of the mathematical provisions” shall be the gross amount of the mathematical provisions after subtraction of the reinsurance cessions.
3. “Capital at risk” shall be the amount payable on death less the mathematical provision.
4. “Net reserve on unit-linked life assurance” shall be the gross amount of the reserve on unit-linked life assurance after subtraction of the reinsurance cessions.
5. “Premium income” shall be the premium income recognized in the financial statement of an insurer or a health insurance company.
6. “Net provisions for claims outstanding” shall be the gross amount of the provisions for claims outstanding after subtraction of the reinsurance cessions.
7. (Canceled - SG, iss. 22 in 2006);
8. (Canceled - SG, iss. 22 in 2006);
9. (Canceled - SG, iss. 22 in 2006);
10. (Canceled - SG, iss. 22 in 2006);
11. (Canceled - SG, iss. 22 in 2006);
12. (Canceled - SG, iss. 22 in 2006);

13. (Canceled - SG, iss. 22 in 2006).

FINAL PROVISIONS

§ 2. This Ordinance is issued in pursuance of Article 49 of the Insurance Act and Article 90a of the Health Insurance Act and was adopted by Decision No. 34-H dated 16 March 2005 of the Financial Supervision Commission.

§ 3. Article 10 (1) herein shall apply until the 31st day of December 2009.

§ 4. This Ordinance shall enter into force on the 1st day of January 2005.

§ 5. The Financial Supervision Commission shall give directions for the application of this Ordinance.

TRANSITIONAL AND FINAL PROVISIONS to the Insurance Code
(SG, iss. 103 in 2005, in effect as of 1 Jan., 2006)

.....
§ 12. (1) The sub-statutory acts of application of the revoked Insurance Act shall preserve their action, so far as they do not contradict the Insurance Code.

(2) The Commission shall adopt the sub-statutory acts for the application of the Insurance Code, as well as the amendments and supplements to the acts under para 1, unless their express revocation is necessitated, within one year of the coming into force of the Insurance Code, unless another term is set.

ORDINANCE on Amendment and Supplement to
Ordinance No. 21 from 2005 on the Own Funds and Solvency Margin of Insurers and Health
Insurance Companies
(SG, iss. 22 in 2006)

.....
Additional Provisions

§ 27. Everywhere in the Ordinance and the Annexes thereto, the abbreviation “IA” /Insurance Act/ shall be replaced with the words “of the Insurance Code”;

§ 28. Everywhere in the Ordinance and the Annexes thereto, the words “Annex No. 1 to Art. 6 para 2 IA” shall be replaced with the words “Annex No. 1 of the Insurance Code”.

Transitional and Final Provision

§ 29. Until the coming into effect of the provision of Art. 99 para 3 and Art. 101 para 1 item 3 of the Insurance Code, the own funds and the margin of solvency shall be calculated on the basis of the data from the annual financial statement, prepared under Ordinance No. 20 from 2005 of the Financial Supervision Commission on the form and content of the annual financial statement of the insurers and health insurance companies (SG, iss. 15 in 2005) as well as from the statistics, specified by orders No. 62/2 Feb., 2004; No. 145/1 April, 2004 and No. 109/27 April, 2005 of the Deputy Chairperson of the Financial Supervision Commission in charge of Insurance Supervision Division.

Annex No. 1
to Article 20 (2)
(Am. - SG, iss. 36 in 2006,
am. and suppl., iss. 2 in 2008)

Solvency Margin Calculated in Respect of Premiums

Obtained by applying one of the following formulae:

1. (Am. - SG, iss. 2 in 2008) $SMp = (H - RP) \times 0.18 \times K1$,
when $(H - RP) < 106,200,000$,

2. (Am. - SG, iss. 2 in 2008)

$SMp = [0.18 \times 106,200,000 + 0.16 \times (H - RP - 106,200,000)] \times K1$,
when $(H - RP) > 106,200,000$,

where:

SMp represents the solvency margin calculated in respect of the premiums;

H represents the higher of the following two values:

(a) $PI + Pr \times 0.5$, or

(b) $PE = PI + Pr \times 0.5 + PUPb + PUPrb \times 0.5 - PUPe - PUPre \times 0.5$;

where:

PI represents the premium income for the financial year (including the inward insurance premiums);

Pr represents the premiums for the financial year on insurances covered under Section II, Item 11, 12, and 13 of the Insurance Code;

PE represent the premiums earned during the financial year;

(Am. - SG, iss. 36 in 2006) PUPb represents the provision for unearned premiums at the beginning of the financial year, formed according to the procedure established by Article 11 (3) of the Ordinance No. 27 from 2006 on the Procedure and Methods for the Formation of Insurance Reserves and Health Insurance Reserves;

(Am. - SG, iss. 36 in 2006) PUPrb represents the provision for unearned premiums at the beginning of the financial year, formed according to the procedure established by Article 11 (3) of Ordinance No. 27 from 2006 on the Procedure and Methods for the Formation of Insurance Reserves and Health Insurance Reserves, for insurances covered under Section II, Items 11, 12 and 13 of Annex No. 1 of the Insurance Code;

(Am. - SG, iss. 36 in 2006) PUPe represents the provision for unearned premiums at the end of the financial year, formed according to the procedure established by Article 11 (3) of the Ordinance No. 27 from 2006 on the Procedure and Methods for the Formation of Insurance Reserves and Health Insurance Reserves;

(Am. - SG, iss. 36 in 2006) PUPre represents the provision for unearned premiums at the end of the financial year, formed according to the procedure established by Article 11 (3) of the Ordinance No. 27 from 2006 on the Procedure and Methods for the Formation of Insurance Reserves and Health Insurance Reserves, for insurances covered under Section II, Items 11, 12 and 13 of Annex No. 1 of the Insurance Code;

(Suppl. - SG, iss. 2 in 2008) RP represent the portion of refunded premiums and written-off receivables on premiums in connection with early terminated contracts, which are included in the premium income, which portion corresponds to the period commencing on the date of early termination and ending at the end of the originally agreed insurance period, as well as taxes, contributions in funds and other statutorily established deductions..

$K1 = NCI/GCI$

$NCI = PM - RS + CPCO - CRPCO$

$GCI = PM + CPCO$

$CPCO = PCOe - PCOb$

$CRPCO = PCORe - PCORb$

The factor may in no case be less than 0.50, or $K1 > 0.50$,

where:

NCI represent the net claims incurred during the past three financial years;

GCI represents the claims incurred during the past three financial years;

PM represent the payments made under insurance or health insurance contracts during the past three financial years;

RS represent the reinsurers' share in payments made on claims during the past three financial years;

CPCO represents the change in the provisions for claims outstanding for the past three financial years;

PCOe represents the provisions for claims outstanding at the end of the financial year;

PCOb represents the provisions for claims outstanding at the beginning of the first financial year;

CRPCO represents the change in the reinsurers' share in the provisions for claims outstanding for the past three financial years;

PCORe represents the reinsurers' share in the provisions for claims outstanding at the end of the financial year;

PCORb represents the reinsurers' share in the provisions for claims outstanding at the beginning of the first financial year.

Annex No. 2

to Article 20 (3)

(Am. and suppl. - SG, iss. 22 in 2006)

Solvency Margin Calculated in Respect of the Average Annual Burden of Claims

Obtained by applying one of the following formulae:

1. (Am. - SG, iss. 2 in 2008)

$SMc = (PM + P \times 0.5 + CPCO + CPCOr \times 0.5 - IR) \times K1 \times 0.26 \times K2$,

when $(PM + P \times 0.5 + CPCO + CPCOr \times 0.5 - IR) \times K1 < 74,400,000$

2. (Am. - SG, iss. 2 in 2008)

$SMc = \{0.26 \times 74,400,000 + 0.23 \times [(PM + P \times 0.5 + CPCO + CPCOr \times 0.5 - IR) \times K1 - 74,400,000]\} \times K2$,

when $(PM + P \times 0.5 + CPCO + CPCOr \times 0.5 - IR) \times K1 > 74,400,000$,

where:

SMc represents the solvency margin calculated in respect of the average annual amount of claims;

PM represents the total amount of the payments made on claims (including inward reinsurance claims) for the past three financial years or, respectively, for the past seven financial years where one or more of the risks of storm, hail or frost or credit risks are essentially underwritten without deducting the benefits and amounts refunded by reinsurers;

P represent the payments made on claims under insurances covered under Section II, Item 11, 12 and 13 of Annex No. 1 of the Insurance Code;

CPCO represents the change in the provisions for claims outstanding for the past three financial years or, respectively, for the past seven financial years, where one or more of the risks of storm, hail or frost or credit risks are essentially underwritten, whereas:

$$\text{CPCO} = \text{PCOe} - \text{PCOb},$$

where:

PCOe represents the provisions for claims outstanding (including the provisions for claims outstanding on reinsurance acceptances) at the end of the financial year;

PCOb represents the provisions for claims outstanding (including the provisions for claims outstanding on reinsurance acceptances) at the beginning of the first financial year;

CPCOr represents the change in the provisions for claims outstanding for the past three financial years or, respectively, for the past seven financial years, where one or more of the risks of storm, hail or frost or credit risks are essentially underwritten under insurances covered under Section II of Annex No. 1 of the Insurance Code, whereas:

$$\text{CPCOr} = \text{PCOre} - \text{PCOrb},$$

where:

PCOre represents the provisions for claims outstanding under insurances covered under Section II, Item 11, 12 and 13 of Annex No. 1 of the Insurance Code at the end of the financial year;

PCOrb represents the provisions for claims outstanding under insurances covered under Section II of Annex No. 1 of the Insurance Code at the beginning of the first financial year;

IR represents the income from recourses for the past three or, respectively, seven financial years;

K2 is a factor equal to:

(a) one-third, where the total amount of payments made under claims or, respectively, the change in the provisions for claims outstanding and the income from recourses is for the past three financial years;

(b) one-seventh, where the total amount of payments made under claims or, respectively, the change in the provisions for claims outstanding and the income from recourses is for the past seven financial years;

$$\text{K2} = \text{NCI}/\text{GCI}$$

$$\text{NCI} = \text{PM} - \text{RS} + \text{CPCO} - \text{CRPCO}$$

$$\text{GCI} = \text{PM} + \text{CPCO}$$

$$\text{CPCO} = \text{PCOe} - \text{PCOb}$$

$$\text{CRPCO} = \text{PCOre} - \text{PCOrb}$$

The factor may in no case be less than 0.50, or $\text{K2} > 0.50$,

where:

NCI represent the net claims incurred during the past three financial years;

GCI represents the claims incurred during the past three financial years;

PM are the payments made under insurance or health insurance contracts during the past three financial years;

RS represent the reinsurers' share in payments made on claims during the past three financial years;

CPCO represents the change in the provisions for claims outstanding for the past three financial years;

PCOe represents the provisions for claims outstanding at the end of the financial year;

PCOb represents the provisions for claims outstanding at the beginning of the first financial year;

CRPCO represents the change in the reinsurers' share in the provisions for claims outstanding for the past three financial years;

PCOre represents the reinsurers' share in the provisions for claims outstanding for the past three financial years;

PCOrb represents the reinsurers' share in the provisions for claims outstanding at the beginning of the first financial year.

Annex No. 3
to Article 24
(Am. - SG, iss. 22 in 2006; am. and suppl. iss. 2 in 2008)

**Methods of Calculation of Adjusted Solvency of Insurers and Reinsurers Covered under
Item 1 of Article 299 (1) of the Insurance Code**

(Heading, suppl. – iss. 2 in 2008)

Method 1: (Suppl. - SG, iss. 2 in 2008)

Deduction and Aggregation Method

The adjusted solvency of any insurer referred to in Article 24 herein is the difference between:

1. the sum of:

- (a) the own funds of the insurer or reinsurer, less any intangible assets, and
- (b) the proportional share of the insurer or reinsurer in the own funds of a related undertaking – insurer or reinsurer, less any intangible assets, and

2. the sum of:

- (a) the solvency margin of the insurer or reinsurer;
- (b) the proportional share of the solvency margin of the related undertaking – insurer or reinsurer .

Where the participation in a related undertaking – insurer or reinsurer is, wholly or in part, through connected persons, Item 1 (b) and Item 2 (b) shall include the corresponding proportional shares of the own funds of the related undertaking – insurer or reinsurer, less any intangible assets, or of the solvency margin of the related undertaking – insurer or reinsurer, respectively.

Method 2: (Am. - SG, iss. 2 in 2008)

Requirement Deduction Method

The adjusted solvency of an insurer or reinsurer referred to in Article 24 herein is the difference between:

1. the own funds of the insurer or reinsurer, less any intangible assets, and

2. the sum of:

- (a) the solvency margin of the insurer or reinsurer;
- (b) the proportional share of the solvency margin of a related insurance undertaking or related reinsurance undertaking.

When valuing the own funds under item 1, participations are valued by the equity method.

When valuing the own funds under item 1, the participations and investment of Item 4 Art. 5(2) in a related insurance undertaking, or related reinsurance undertaking shall not be deducted.

Method 3: (Am. - SG, iss. 2 in 2008)

Accounting Consolidation-Based Method

The calculation of the adjusted solvency of an insurer or reinsurer referred to in Article 24 herein shall be carried out on the basis of the consolidated accounts. The adjusted solvency of an insurer or reinsurer referred to in Article 24 herein is the difference between:

1. the own funds of the insurer or reinsurer, less any intangible assets, calculated on the basis of consolidated data, and

2. either:

- (a) the solvency margin of the insurer or reinsurer and the proportional share of the solvency margin of a related insurance undertaking or related reinsurance undertaking, based on the percentages used for the establishment of the consolidated accounts, and

(b) the solvency margin of the insurer or reinsurer, calculated on the basis of consolidated data.

Note: (Suppl. - SG, iss. 2 in 2008) In the calculation of the adjusted solvency of an insurer or reinsurer referred to in Art. 24 by any of the above indicated methods, where the amount of the minimum guarantee capital is higher than the solvency margin, instead of the solvency margin shall be included the minimum guarantee capital.