

Directives

of Federal Office of Private Insurance FOPI

31 December 2006

13.3/2006 - Reporting on Internal Business Transactions in Insurance Groups and Insurance Conglomerates

Legal bases: Article 68 ISA
Article 76 ISA
Articles 193 and 194 SO
Article 204 SO

Decision of: 21 November 2006

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Schweizerische Eidgenossenschaft
Confédération suisse
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Swiss Federal Department of Finance FDF
Federal Office of Private Insurance FOPI

1 Background

This Directive describes minimum reporting requirements with respect to the internal business transactions in insurance groups (groups) and insurance conglomerates (conglomerates) subject to supervision.

This Directive is based on articles 193 and 194 SO and article 204 SO, respectively. According to article 194, paragraph 1 and article 204 SO, groups/conglomerates must submit a report to the supervisory authority on all the important group-/conglomerate-internal transactions within 14 days of legal effectiveness of the transactions. In addition, the status of these group/conglomerate transactions must be reported to the supervisory authority annually within 3 months of year-end closing. The supervisory authority may order more frequent submission of reports.

According to article 193, paragraph 2 and article 204 SO, business dealings and transactions are considered important if they significantly change or will change the financial situation of an individual undertaking or of the group/conglomerate as a whole, or if they exceed the minimum values stated by the supervisory authority.

Article 194, paragraph 1 and article 204 SO specify that the minimum notification deadlines for changes during the business year and for the year-end notification must be complied with. Additionally, the supervisory authority may, where necessary, request that reports be submitted more frequently. Article 194, paragraph 3 and article 204 SO grant the supervisory authority the possibility to issue instructions concerning the type and content of the reports and to define minimum values for notification. It will pay due attention to the size and complexity of the group or the conglomerate in this regard.

Articles 193 and 204 SO enumerate the group-/conglomerate-internal transactions for which an undertaking directly or indirectly relies on another undertaking within the same group. In particular, these transactions include loans, guarantees and off-balance-sheet transactions, allowable equity capital, capital investments, internal reinsurance contracts, and cost-sharing agreements. An additional compound item includes all other risk-transfer transactions. This list constitutes the basis for the group-/conglomerate-internal transactions subject to the notification requirement.

2 Purpose

The purpose of the notification requirement is to provide comprehensive and timely information on group-/conglomerate-internal transactions, focussing on the most important transactions.

This aims to ensure that the supervisory authority has a sufficient basis of information available to evaluate the effects of the group-/conglomerate-internal items and transactions on the financial situation of individual group/conglomerate companies and on the group/conglomerate as a whole.

The supervisory interest in group-/conglomerate-internal transactions is primarily directed at the following aspects:

- Indication of dependencies and/or conflicts of interests of individual undertakings with other companies within a group/conglomerate;
- Identification of contagion risks (risk that problems of one undertaking will encroach upon other parts of the group/conglomerate);
- Identification of evasions of sectoral regulation (risk of supervisory arbitrage, double gearing, etc.).

3 Scope

This Directive applies to all groups/conglomerates that have been placed under supervision by means of an order pursuant to the following legal foundations:

- insurance groups pursuant to article 65 ISA;
- insurance conglomerates pursuant to article 73 ISA.

4 Terminology

4.1 Group-/conglomerate-internal transactions

Group-/conglomerate-internal transactions exist if an undertaking of the group/conglomerate directly or indirectly relies on other undertakings within the group/conglomerate for purposes of fulfilling an obligation. It does not matter whether this occurs in contractual form or otherwise.

4.2 Categories

According to article 193, paragraph 1 SO, the following categories of group-internal transactions exist:

Category	Examples (non-exhaustive)
Loans	<ul style="list-style-type: none"> • Direct and indirect loans between group/conglomerate companies including parent company/holding company without equity capital offset • Other, loan-like cross-financing
Guarantees and off-balance-sheet transactions	<ul style="list-style-type: none"> • Guarantees for additional capital contributions, for covering losses, as security for liabilities obligations of subsidiary companies (SC) or parent companies (PC) • Letters of credit (LoC) for performance obligations of the SC/PC • Letters of intent (LoI) for performance promises of the SC/PC • Leasing obligations and contracts within the group • Pledges • Securities lending with and without transfer of property • Sureties • Loan commitments for the benefit of group-internal, potential liabilities arising from legal disputes with group-internal companies

Category	Examples (non-exhaustive)
Business dealings and transactions that constitute allowable equity capital under article 37, paragraph 2(d) SO	<ul style="list-style-type: none"> • Hybrid instruments admitted as allowable equity capital in one of the participating companies, e.g. subordinated loans • Mandatory convertible bonds
Capital investments	<ul style="list-style-type: none"> • Investments in bond issues of or in other instruments for short-term financing (current accounts, time deposits, etc.) by group-internal companies • Shares or share-like instruments of SCs or of the PC for purposes of a financial investment • Bonds placements of group companies in group companies • Options on own shares within the group/conglomerate
Reinsurance transactions	<ul style="list-style-type: none"> • Group-internal reinsurance and retrocession agreements (pooling) • Financial quota shares • Loss portfolio transfers
Cost-sharing agreements	<ul style="list-style-type: none"> • Service agreements between group companies (investments, IT services, staff costs, group-internal outsourcing, etc.) • Other mutual compensation
Other risk-transfer guarantees	<ul style="list-style-type: none"> • letters of comfort, awareness or intent • Group-internal, alternative risk-transfer transactions (ART) • Balance sheet protection structures such as holding of CDSs (credit default swaps) • CLNs (Credit linked notes) • CDOs (Collateralised Debt Obligations) and • Any other ART instruments of group-internal SCs

There are transactions for which classification in more than one category may be possible. These transactions must be allocated to the category that corresponds best to their intended purpose.

Example: A subordinated loan belongs in the category "allowable equity capital" if it is effectively counted as equity capital by the borrower. However, it should be considered a "loan" if it plays no role with respect to equity capital.

5 Principles

5.1 Notifications on group- / conglomerate-internal transactions

Important group-/conglomerate-internal transactions during the business year must be notified to the supervisory authority within 14 days of legal effectiveness of the occurrence.

Additionally, groups and conglomerates must submit an overview of the existing important group-internal transactions once a year.

The legislative power has granted the supervisory authority the possibility to request more frequent submission of notifications. Reasons for this measure exist in particular if

- the group is undergoing an accelerated phase of change and the status of the group-internal transactions is therefore changing rapidly;
- the changes of important group-internal transactions influence the solvency situation of an individual undertaking in the group/conglomerate or the group/conglomerate as a whole;
- the supervisory authority needs the current status of the group-internal transactions in order to evaluate the financial situation of the group/conglomerate at a particular point in time.

5.2 Minimum values for reporting

The legislative power has mandated the supervisory authority to lay down the minimum values for notifying important group-internal transactions, taking into account the size and complexity of the group/conglomerate (article 193, paragraph 2 SO).

Group-internal transactions must always be notified if they significantly change or will change the financial situation of an individual undertaking or of the group/conglomerate as a whole.

Attention must be paid to this focus on the solvency situation, both at the group level and at the level of individual undertakings. When determining the minimum values, the available own funds at the group/conglomerate level and the own-funds situation of the involved parties must be taken into account.

The following points indicate the thresholds specified by the supervisory authority:

1. A transaction reaches or exceeds 1% of the available solvency margin at the group/conglomerate level. The basis is the calculation of the available solvency margin as of the end of the preceding reporting year. The transaction in question must be notified;

or

2. The sum of the nominal values (in the case of reinsurance, the premiums) of all categories reaches or exceeds 100% of the net assets of one of the involved individual companies. Net assets are the total assets minus short-term and long-term liabilities, but including minority shares. If this threshold is exceeded, all group-/conglomerate-internal transactions of this individual company must be notified that exceed 20% of the net assets.

6 Minimum requirements for reporting

Reporting must include at least the following information:

6.1 Loans

- Names of the involved parties
- Equity capital of the involved parties
- Domicile of the involved parties (country)
- Amount (sum, currency)
- Date of issue
- Term
- Interest rate
- Judicial venue
- Purpose

6.2 Guarantees and off-balance-sheet transactions

- Names of the involved parties
- equity capital of the involved parties
- Domicile of the involved parties (country)
- Amount (sum, currency)
- Date of issue
- Term
- Place of execution and judicial venue
- Purpose of the guarantee / of the off-balance-sheet transaction
- Description of the guarantee / of the off-balance-sheet transaction
- Conditions of performance

6.3 Business dealings and transactions that constitute allowable equity capital under article 37, paragraph 2 SO

- Names of the involved parties
- Own funds of the involved parties
- Domicile of the involved parties (countries)
- Type of allowable own funds
- Amount (sum, currency, interest rate (where applicable))
- Date of issue
- Term
- Purpose

6.4 Capital investments

- Names of the involved parties
- equity capital of the involved parties
- Type of capital investment
- Domicile of the involved parties (countries)
- Amount (sum, currency)
- Issuer
- Term (where applicable)
- Conditions of performance (where applicable)
- Purpose

6.5 Reinsurance transactions

- Names of the involved parties
- equity capital of the involved parties
- Domicile of the involved parties (country)
- Amount (gross premiums written, currency, nominal amount of the risk)
- Type of reinsurance
- Line of direct insurance
- Purpose
- Term
- Deductible of the involved parties

6.6 Cost-sharing agreements

- Names of the involved parties
- equity capital of the involved parties
- Domicile of the involved parties (country)
- Amount (sum, currency)
- Date of the agreement
- Term
- Purpose
- Place of execution
- Description of the underlying service

6.7 Other risk-transfer transactions

- Names of the involved parties
- equity capital of the involved parties
- Domicile of the involved parties
- Amount (sum, currency)
- Description and
- Purpose

The annual notification of the status must be submitted by letter; upon request, submission in electronic form is possible.

The ongoing notification of group-internal transactions must always be by letter; upon request, additional submission in electronic form is possible.

7 First submission and submission deadlines

7.1 Annual notification of status

An up-to-date enumeration of the group-/conglomerate-internal transactions must be submitted for the first time in accordance with the requirements set out in the order placing the group or conglomerate under supervision.

The report on the status of the important group-/conglomerate-internal transactions pursuant to this Directive must be submitted to the supervisory authority within three months of year-end closing (article 194, paragraph 1 SO and article 204 SO).

7.2 Ad hoc notifications

The notification requirement enters into force simultaneously with placement under group or conglomerate supervision.

Important group-internal transactions must be notified within fourteen days of legal effectiveness.

Federal Office of Private Insurance

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