PART C

APPENDICES TO RULES FOR OCCUPATIONAL RETIREMENT SCHEMES

APPENDIX 10

(SLC 6.2.2(c) of Part B of the Pension Rules for Occupational Retirement Schemes)

Occupational Retirement Scheme underwriting biometrical risks or guaranteeing any investment performance or a given level of benefits ("the Scheme")

10.1 Where the Scheme underwrites biometrical risks or guarantees any investment performance or a given level of benefits, it is required to hold, on an on-going basis, additional assets above the technical funding requirement to serve as a buffer. The amount thereof shall reflect the type of risk and asset base in respect of the total range of schemes operated. These assets shall be free of all foreseeable liabilities and serve as a safety capital to absorb discrepancies between the anticipated and the actual expenses and profits. For the purpose of calculating the minimum amount of additional assets, the Rules laid down in paragraphs 10.2 to 10.11 shall apply.

Available Solvency Margin

10.2 Such Scheme shall maintain an adequate available solvency margin in respect of its entire business at all times which is at least equal to the requirements set out in this Appendix.

10.3 The available solvency margin shall consist of the assets of the scheme free of any foreseeable liabilities, less any intangible items, including:

(a) the paid-up share capital;

(b) reserves (statutory and free) not corresponding to underwriting liabilities;

(c) the profit or loss brought forward after deduction of dividends to be paid; and

The available solvency margin shall be reduced by the amount of own shares directly held by the Scheme.

(d) cumulative preferential share capital and subordinated loan capital up to 50% of the lesser of the available solvency margin and the required solvency margin, no more 25% of which shall consist of subordinated loans with a fixed maturity, or fixed term preferential share capital, and provided the following minimum criteria are met –

i. in the event of the bankruptcy or liquidation of the Scheme, binding agreements must exist under which the subordinated loan capital or preferential share capital ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled;

ii. subordinated loan capital must fulfil the following additional conditions–

(aa) only fully paid-up funds shall be taken into account;

(bb) for loans with a fixed maturity, the original maturity must be at least five years. Not later than one year before the repayment date the Scheme must submit to the MFSA for its approval a plan showing how the available solvency margin will be kept at, or brought up to, the required level at maturity, unless the extent to which the loan may rank as component of the available solvency margin is gradually reduced during at least the last five years before the repayment date. The MFSA may authorise the early repayment of such loans provided application is made in writing by the issuing Scheme and its available solvency margin will not fall below the required level;

(cc) loans the maturity of which is not fixed must be repayable only subject to five years' notice unless the loans are no longer considered a component of the available solvency margin, or unless the prior consent of the MFSA is specifically required for early repayment. In the latter event the Scheme must notify the MFSA in writing at least six months before the date of the proposed repayment, specifying the available solvency margin and the required solvency margin both before and after that repayment. The MFSA shall authorise repayment only if the Scheme's available solvency margin will not fall below the required solvency margin;

(dd) the loan agreement must not include any clause providing that in specified circumstances, other than the winding-up of the Scheme, the debt will become repayable before the agreed repayment dates;

(ee) the loan agreement may be amended only after the MFSA has confirmed in writing that it has no objection to the amendment proposed.

(e) securities with no specified maturity date and other instruments, including cumulative preferential shares other than those mentioned in paragraph (d) of this Appendix, up to fifty per centum of the available solvency margin, or the required solvency margin, whichever the lesser, for the total of such securities and the subordinated loan capital referred to in paragraph (d) provided they fulfil the following:

i. they may not be repaid on the initiative of the bearer or without the prior consent of the MFSA;

ii. the contract of issue must enable the Scheme to defer the payment of interest on the loan;

iii. the lender's claims on the Scheme must rank entirely after those of all non-subordinated creditors;

iv. the documents governing the issue of the securities must provide for the loss-absorption capacity of the debt and unpaid interest, while enabling the Scheme to continue its business;

i. only fully paid-up amounts may be taken into account.

10.4 Upon application, with supporting evidence, by the Scheme to the MFSA and with the agreement of the MFSA, the available solvency margin may also comprise:

(a) where Zillmerising is not practised or where, if practised, it is less than the loading for acquisition costs included in the premium, the difference between a non-Zillmerised or partially Zillmerised mathematical provision and a mathematical provision Zillmerised at a rate equal to the loading for acquisition costs included in the premium;

(b) any hidden net reserves arising out of the valuation of assets, in so far as such hidden net reserves are not of an exceptional nature;

(c) one half of the unpaid share capital or initial fund, once the paid-up part amounts to 25 % of that share capital or fund, up to 50 % of the available or required solvency margin, whichever is the lesser.

The figure referred to in point (a) shall not exceed 3.5 % of the sum of the differences between the relevant capital sums of long term business and occupational retirement provision activities and the mathematical provisions for all policies for which Zillmerising is possible. The difference shall be reduced by the amount of any undepreciated acquisition costs entered as an asset.

Required Solvency Margin

10.5 Subject to paragraph 10.6, the required solvency margin shall be determined as laid down in paragraphs (a) to (e) according to the liabilities underwritten.

(a) The required solvency margin shall be equal to the sum of the following results:

i. the first result:

a 4 % fraction of the mathematical provisions relating to direct business and reinsurance acceptances gross of reinsurance cessions shall be multiplied by the ratio, which shall not be less than 85 %, for the previous financial year, of the mathematical provisions net of reinsurance cessions to the gross total mathematical provisions;

ii. the second result:

for policies on which the capital at risk is not a negative figure, a 0.3 % fraction of such capital underwritten by the Scheme shall be multiplied by the ratio, which shall not be less than 50 %, for the previous financial year, of the total capital at risk retained as the Scheme's liability after reinsurance cessions and retrocessions to the total capital at risk gross of reinsurance.

For temporary assurances on death of a maximum term of three years, that fraction shall be 0.1 %. For such assurance of a term of more than three years but not more than five years, that fraction shall be 0.15 %.

(b) For supplementary insurances underwritten in addition to life insurance, in particular, insurance against personal injury including incapacity for employment, insurance against death resulting from an accident and insurance against disability resulting from an accident or sickness; the required solvency margin shall be equal to the required solvency margin for Schemes as laid down in paragraphs 10.7 to 10.12.

(c) For capital redemption operations based on actuarial calculation whereby, in return for single or periodic payments agreed in advance, commitments of specified duration and amount are undertaken, the required solvency margin shall be equal to a 4 % fraction of the mathematical provisions calculated in compliance with paragraph 10.5(a)(i) of this Appendix.

(d) For operations whereby associations of subscribers are set up with a view to capitalising their contributions jointly and subsequently distributing the assets thus accumulated among the survivors or among the beneficiaries of the deceased (tontines), the required solvency margin shall be equal to 1 % of their assets.

(e) For assurances covered by Article 2(3)(a)(i) and (ii) of Directive 2009/138/EC linked to investment funds and for the operations referred to in Article 2(3)(b)(iii), (iv) and (v) of the said Directive, the required solvency margin shall be equal to the sum of the following:

i. in so far as the Scheme bears an investment risk, a 4 % fraction of the technical provisions, calculated in compliance with paragraph 9.5(a)(i) of this Appendix;

ii. in so far as the Scheme bears no investment risk but the allocation to cover management expenses is fixed for a period exceeding five years, a 1 % fraction of the technical provisions, calculated in compliance with paragraph 9.5(a)(i) of this Appendix;

iii. in so far as the Scheme bears no investment risk and the allocation to cover management expenses is not fixed for a period exceeding five years, an amount equivalent to 25 % of the net administrative expenses of the previous financial year pertaining to such business;

iv. in so far as the Scheme covers a death risk, a 0,3 % fraction of the capital at risk calculated in compliance with paragraph 10.5(a)(ii) of this Appendix.

Guarantee Fund

10.6 One third of the required solvency margin as specified in paragraph 10.5 shall constitute the guarantee fund. That fund shall comprise the items listed in paragraph 10.3 and, subject to the agreement of the MFSA, in paragraph 10.4(b). The guarantee fund shall not be less than € 3 million.

Required Margin of Solvency for the purposes of paragraph 9.5(b) of this Appendix

10.7. The required solvency margin shall be determined on the basis either of the annual amount of premiums or contributions, or of the average burden of claims for the past three financial years.

10.8. The amount of the required solvency margin shall be equal to the higher of the two results as set out in paragraphs 10.9 and 10.10.

10.9. The premium basis shall be calculated using the higher of gross written premiums or contributions as calculated below, and gross earned premiums or contributions.

(a) The premiums or contributions (inclusive of charges ancillary to premiums or contributions) due in respect of direct business in the previous financial year shall be aggregated.

(b) To that sum there shall be added the amount of premiums accepted for all reinsurance in the previous financial year.

(c) From that sum there shall then be deducted the total amount of premiums or contributions cancelled in the previous financial year, as well as the total amount of taxes and levies pertaining to the premiums or contributions entering into the aggregate.

(d) The amount so obtained shall be divided into two portions, the first extending up to EUR 50 million, the second comprising the excess; 18 % of the first portion and 16 % of the second shall be added together.

(e) The sum so obtained shall be multiplied by the ratio existing in respect of the sum of the previous three financial years between the amount of claims remaining to be borne by the Scheme after deduction of amounts recoverable under reinsurance and the gross amount of claims. That ratio shall be no less than 50 %.

10.10. The claims basis shall be calculated, as follows:

(a) The amounts of claims paid in respect of direct business (without any deduction of claims borne by reinsurers and retrocessionaires) in the periods specified in paragraph 1 shall be aggregated.

(b) To that sum there shall be added the amount of claims paid in respect of reinsurances or retrocessions accepted during the same periods and the amount of provisions for claims outstanding established at the end of the previous financial year both for direct business and for reinsurance acceptances.

(c) From that sum there shall be deducted the amount of recoveries effected during the periods specified in paragraph 9.7.

(d) From the sum then remaining, there shall be deducted the amount of provisions for claims outstanding established at the commencement of the second financial year preceding the last financial year for which there are accounts, both for direct business and for reinsurance acceptances.

(e) One third of the amount so obtained shall be divided into two portions, the first extending up to EUR 35 million and the second comprising the excess; 26 % of the first portion and 23 % of the second, shall be added together.

(f) The sum so obtained shall be multiplied by the ratio existing in respect of the sum of the previous three financial years between the amount of claims remaining to be borne by the Scheme after deduction of amounts recoverable under reinsurance and the gross amount of claims. That ratio shall be no less than 50 %.

10.11 Where the required solvency margin as calculated in paragraphs 10.8 to 10.10 is lower than the required solvency margin of the preceding year, the required solvency margin shall be at least equal to the required solvency margin of the preceding year, multiplied by the ratio of the amount of the technical provisions for claims outstanding at the end of the previous financial year and the amount of the technical provisions for claims outstanding at the beginning of the previous financial year. In those calculations technical provisions shall be calculated net of reinsurance but the ratio may be no higher than 1.