

# Circular 2008/29

## Internal business transactions — insurance groups

### Reporting on internal business transactions of insurance groups and insurance conglomerates

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 Concordance: previously FOPI Directive 13.3/2006 “Reporting on internal business transactions” of 21 November 2006  
 Legal framework: FINMASA art. 7 sect. 1 lett. b  
 ISA art. 68, 76  
 ISO art. 193, 194, 204

Addressees																					
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## I. Introductory remarks

This Circular describes the minimum reporting requirements with respect to internal business transactions in insurance groups (groups) and insurance conglomerates (conglomerates) subject to regulatory supervision. 1

This Circular is based on art. 193 and 194 of the Insurance Supervisory Ordinance (ISO; SR 961.011) and art. 204 ISO. Pursuant to art. 194 sect. 1 and art. 204 ISO, groups/conglomerates must submit a report to FINMA on all significant internal group/conglomerate transactions within fourteen days of the transactions becoming legally binding. In addition, the status of these group/conglomerate transactions must be reported to FINMA annually within three months of the reporting date of the annual financial statement. FINMA may order that reports be submitted more frequently. 2

According to art. 193 sect. 2 and art. 204 ISO, business dealings and transactions are considered significant if they materially change or stand to change the financial situation of an individual undertaking or of the group/conglomerate as a whole, or if they exceed the minimum values specified by FINMA. 3

Art. 194 sect. 1 and art. 204 ISO stipulate that adherence must be maintained to the minimum notification deadlines for changes during the business year and for the year-end notification. In addition, FINMA may request, where necessary, that reports be submitted more frequently. Art. 194 sect. 3 and art. 204 ISO grant FINMA the possibility to issue instructions concerning the type and content of the reports and to define minimum reporting values. In so doing, FINMA must take due account of the size and complexity of the group or the conglomerate. 4

Art. 193 and 204 ISO list the internal group/conglomerate 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, eligible equity capital, capital investments, internal reinsurance contracts and cost-sharing agreements. All other risk-transfer transactions are to be additionally included in an omnibus item. This list forms the basis for internal group/conglomerate transactions subject to the reporting requirement. 5

## II. Purpose

The purpose of the reporting requirement is to provide comprehensive and timely information on internal group/conglomerate transactions, focussing on the most significant transactions. 6

This is designed to ensure that FINMA has a sufficient basis of information available to evaluate the effects of the internal group/conglomerate items and transactions on the financial situation of individual group/conglomerate companies and on the group/conglomerate as a whole. 7

The supervisory interest in internal group/conglomerate transactions is primarily directed to the following aspects: 8

- 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 circumventions of sectoral regulations (risk of supervisory arbitrage, double gearing, etc.).

### III. Scope of application

This Circular applies to all groups/conglomerates that have been placed under regulatory supervision by means of an order pursuant to the following legal foundations: 9

- insurance groups: pursuant to art. 65 of the Insurance Supervision Act (ISA; SR 961.01);
- insurance conglomerates: pursuant to art. 73 ISA.

### IV. Terminology

#### A. Internal group/conglomerate transactions

Internal group/conglomerate transactions exist if an undertaking of the group/conglomerate directly or indirectly relies on other undertakings within the group/conglomerate for the purpose of fulfilling an obligation. It does not matter whether this takes place on the basis of a contractual agreement or by other means. 10

#### B. Categories

According to art. 193 sect. 1 ISO, the following categories of intra-group transactions exist: 11

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

	legal disputes with internal group companies
Business dealings and transactions that constitute eligible capital pursuant to art. 37 sect. 2 lett. d ISO	<ul style="list-style-type: none"> <li>• Hybrid instruments admitted as eligible capital in one of the participating companies, e.g. subordinated loans</li> <li>• Mandatory convertible bonds</li> </ul>
Capital investments	<ul style="list-style-type: none"> <li>• Investments in bond issues of or in other instruments for short-term financing (current accounts, time deposits, etc.) by internal group companies</li> <li>• Shares or share-like instruments of SCs or of the PC in terms of a financial investment</li> <li>• Bond placements of group companies in group companies</li> <li>• Options on own shares within the group/conglomerate</li> </ul>
Reinsurance transactions	<ul style="list-style-type: none"> <li>• Intra-group reinsurance and retrocession agreements (pooling)</li> <li>• Financial quota shares</li> <li>• Loss portfolio transfers</li> </ul>
Cost-sharing agreements	<ul style="list-style-type: none"> <li>• Service agreements between group companies (investments, IT services, staff costs, intra-group outsourcing, etc.)</li> <li>• Other mutual remuneration arrangements</li> </ul>
Other risk-transfer transactions	<ul style="list-style-type: none"> <li>• Letters of comfort, awareness or intent</li> <li>• Alternative risk-transfer transactions (ARTs) within the group</li> <li>• Balance sheet protection structures such as holding of credit default swaps (CDSs)</li> <li>• Credit-linked notes (CLNs)</li> <li>• Collateralised debt obligations (CDOs) and</li> <li>• Other ART instruments of internal group SCs</li> </ul>

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 designated purpose.

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

## V. Principles

### A. Notifications of internal group/conglomerate transactions

Significant internal group/conglomerate transactions during the business year are to be reported to FINMA within fourteen days of the transactions becoming legally binding. 13

In addition, groups and conglomerates must submit an overview of existing significant intra-group transactions once a year. 14

The legislator has granted FINMA the option of requesting notifications more frequently than once a year. Reasons for this action exist in particular where 15

- the group is undergoing an accelerated phase of change and the status of intra-group transactions is changing rapidly as a result;
- the changes of significant intra-group transactions influence the solvency situation of an individual undertaking in the group/conglomerate or the group/conglomerate as a whole;
- FINMA needs the current status of the intra-group transactions in order to evaluate the group's/conglomerate's financial situation at a particular point in time.

### B. Minimum reporting values

The legislator has mandated that FINMA establish the minimum values for reporting significant intra-group transactions, taking into account the size and complexity of the group/conglomerate (art. 193 sect. 2 ISO). 16

Intra-group transactions must always be reported if they significantly change or stand to change the financial situation of an individual undertaking or of the group/conglomerate as a whole. 17

This focus on the solvency situation, both at the group level and at the level of individual undertakings, is to be duly taken into account. Consequently, when determining the minimum values, the available capital resources at the group/conglomerate level and the capital situation of involved parties must be taken into account. 18

The thresholds established by FINMA are as follows: 19

1. Where 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 respective transaction must be reported.

– 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-owned stakes. Where this threshold is exceeded, all internal group/conglomerate transactions of this individual company must be reported where they exceed 20% of the net assets.

## VI. Minimum reporting requirements

Reporting must include the following information at minimum:	20
<b>A. Loans</b>	
<ul style="list-style-type: none"><li>Names of the involved parties</li><li>Equity capital of the involved parties</li><li>Domicile of the involved parties (country)</li><li>Amount (sum, currency)</li><li>Date of issue</li><li>Term</li><li>Interest rate</li><li>Judicial venue</li><li>Purpose</li></ul>	21
<b>B. Guarantees and off-balance sheet transactions</b>	
<ul style="list-style-type: none"><li>Names of the involved parties</li><li>Equity capital of the involved parties</li><li>Domicile of the involved parties (country)</li><li>Amount (sum, currency)</li><li>Date of issue</li><li>Term</li><li>Place of performance and judicial venue</li><li>Purpose of the guarantee / of the off-balance sheet transaction</li><li>Description of the guarantee / of the off-balance sheet transaction</li><li>Exercise/vesting conditions</li></ul>	22
<b>C. Business dealings and transactions constituting eligible capital pursuant to art. 37 sect. 2 ISO</b>	
<ul style="list-style-type: none"><li>Names of the involved parties</li><li>Capital of the involved parties</li><li>Domicile of the involved parties (country)</li><li>Type of eligible capital</li><li>Amount (sum, currency, interest rate (where applicable))</li><li>Date of issue</li><li>Term</li><li>Purpose</li></ul>	23
<b>D. Capital investments</b>	
<ul style="list-style-type: none"><li>Names of the involved parties</li><li>Equity capital of the involved parties</li><li>Type of capital investment</li><li>Domicile of the involved parties (country)</li><li>Amount (sum, currency)</li><li>Issuer</li><li>Term (where applicable)</li></ul>	24

- Exercise/vesting conditions (where applicable)
- Purpose

## E. Reinsurance transactions

- Names of the involved parties 25
- Equity capital of the involved parties
- Domicile of the involved parties (country)
- Amount (gross premium revenue, currency, nominal amount of the risk)
- Type of reinsurance
- Direct insurance line
- Purpose
- Term
- Deductible of the involved parties

## F. Cost-sharing agreements

- Names of the involved parties 26
- Equity capital of the involved parties
- Domicile of the involved parties (country)
- Amount (sum, currency)
- Date of the agreement
- Term
- Purpose
- Place of performance
- Description of the underlying service

## G. Other risk-transfer transactions

- Names of the involved parties 27
- Equity capital of the involved parties
- Domicile of the involved parties
- Amount (sum, currency)
- Description and
- Purpose

The annual notification of status must be submitted in writing by way of letter; submission in electronic form is possible upon application with FINMA. 28

The ongoing reporting of significant intra-group transactions must always be in writing by post; additional submission in electronic form is possible upon application with FINMA. 29

## VII. Initial submission and submission deadlines

### A. Annual notifications of status

An up-to-date listing of internal group/conglomerate transactions must be submitted for the first time in accordance with the requirements set out in the order placing the group or conglomerate under regulatory supervision. 30

The report on the status of significant internal group/conglomerate transactions pursuant to this Circular must be submitted to FINMA within three months of the reporting date of the annual financial statement (art. 194 sect. 1 ISO and art. 204 ISO). 31

## B. Ad hoc notifications

The reporting requirement enters into force simultaneously upon placement under group or conglomerate supervision. 32

Significant intra-group transactions must be reported within fourteen days of their becoming legally binding. 33