

Commission Delegated Regulation (EU) 2015/35 of 10 October 2014
supplementing Directive 2009/138/EC of the European Parliament
and of the Council on the taking-up and pursuit of the business of
Insurance and Reinsurance (Solvency II) (Text with EEA relevance)

TITLE III

THIRD COUNTRY EEQUIVALENCE AND FINAL PROVISIONS

CHAPTER I

UNDERTAKINGS CARRYING OUT REINSURANCE ACTIVITIES
WITH THEIR HEAD OFFICE IN A THIRD COUNTRY

[^{F1}Article 377A

References to United Kingdom law

In this Title, references to United Kingdom law which implemented the Solvency 2 Directive, or any provisions in that Directive, are to the law of the United Kingdom which was relied on by the United Kingdom immediately before IP completion day to implement Directive 2009/138/EU and its implementing provisions, as such law applies on the day on which regulations are made by the Treasury under this Title.]

Textual Amendments

- F1** [Art. 377A](#) inserted (31.12.2020) by [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/407), regs. 1(2), **11(90A)** (as amended by S.I. 2019/1212, regs. 1(3), 18(2)(b) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 45(c)(ii)); S.I. 2020/1385, regs. 1(2), 54(2); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 378

Criteria for assessing third country equivalence

The criteria to be taken into account in order to assess whether the solvency regime of a third country that applies to reinsurance activities of undertakings with their head office in that third country is equivalent to that laid down in [^{F2}the United Kingdom law which implemented] Title I of Directive 2009/138/EC shall be the following:

- (a) whether the supervisory authorities of that third country have the power, by law or regulation, to effectively supervise domestic insurance undertakings carrying out reinsurance activities or reinsurance undertakings and impose sanctions or take enforcement action where necessary;
- (b) whether the supervisory authorities of that third country have the necessary means, the relevant expertise, capacities including financial and human resources, and mandate

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to effectively protect policy holders and beneficiaries regardless of their nationality or place of residence;

- (c) whether the supervisory authorities of that third country, in the exercise of their general duties, duly consider the potential impact of their decisions on the stability of financial systems globally, particularly during emergency situations, on the basis of the information available at that time;
- (d) whether the supervisory authorities of that third country take into account the potential pro-cyclical effects of their actions where exceptional movements in the financial markets occur;
- (e) whether the taking-up of the business of reinsurance in that third country is subject to prior authorisation conditional on a clear, objective and publicly available set of written standards;
- (f) whether the solvency regime of that third country requires domestic insurance or reinsurance undertakings carrying out reinsurance activities to have an effective system of governance in place which provides for sound and prudent management of the business and prescribes all of the following:
 - (i) the existence of an adequate, transparent organisational structure with a clear allocation and appropriate segregation of responsibilities,
 - (ii) requirements for ensuring that persons who effectively run the undertaking are fit and proper, which are equivalent to Article 42 of Directive 2009/138/EC,
 - (iii) the existence of effective processes to ensure the timely transmission of information both within the undertaking and to the relevant supervisory authorities;
 - (iv) requirements for ensuring that the outsourced functions or activities are effectively supervised;
- (g) whether the solvency regime of that third country requires domestic insurance or reinsurance undertakings carrying out reinsurance activities to have an effective risk-management system in place comprising all of the following:
 - (i) strategies, processes and internal reporting procedures necessary to identify, measure, monitor, manage and report risks, to which the undertaking is or could be exposed, at an individual and an aggregated level and on a continuous basis, and their interdependencies;
 - (ii) an effective internal control system;
- (h) whether the solvency regime of that third country requires domestic insurance or reinsurance undertakings carrying out reinsurance activities to establish and maintain effective risk-management, compliance, internal audit and actuarial functions;
- (i) whether the solvency regime of that third country requires domestic insurance or reinsurance undertakings carrying out reinsurance activities to:
 - (i) provide third country supervisory authorities with any information necessary for the purposes of supervision;

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- (ii) disclose publicly, on at least an annual basis, a report on their solvency and financial condition equivalent to that specified in Article 51 of Directive 2009/138/EC;
- (j) whether the solvency regime of that third country requires that proposed changes to the business policy or management of domestic insurance or reinsurance undertakings carrying out reinsurance activities, or to qualifying holdings in such undertakings, are consistent with maintaining a sound and prudent management of those undertakings;
- (k) whether the assessment of the financial position of domestic insurance or reinsurance undertakings carrying out reinsurance activities relies on sound economic principles and whether solvency requirements are based on an economic valuation of all assets and liabilities;
- (l) whether the solvency regime of that third country requires domestic insurance or reinsurance undertakings carrying out reinsurance activities to hold adequate financial resources including all of the following requirements:
 - (i) a requirement that those undertakings establish technical provisions with respect to all of their reinsurance obligations towards policy holders and beneficiaries of reinsurance contracts,
 - (ii) a requirement that assets held to cover technical provisions are invested in the best interests of all policy holders and beneficiaries taking into account any disclosed policy objective,
 - (iii) a requirement that those undertakings only invest in assets and instruments whose risks the undertaking concerned can properly identify, measure, monitor, manage, control and report,
 - (iv) a requirement that those undertakings meet capital requirements set at a level equivalent to that referred to in Article 101(3) of Directive 2009/138/EC which ensures that in the event of significant losses policy holders and beneficiaries are adequately protected and continue to receive payments as they become due,
 - (v) a requirement that those undertakings maintain a minimum level of capital, non-compliance with which triggers immediate and ultimate supervisory intervention,
 - (vi) a requirement that those undertakings meet the capital requirements referred to in points (iv) and (v) with own funds that are of a sufficient quality and which are able to absorb significant losses, and that own-fund items considered by the supervisory authorities to be of a high quality shall absorb losses both in a going concern and in case of a winding up;
- (m) whether the capital requirements of the solvency regime of that third country are risk-based with the objective of capturing quantifiable risks and that where a significant risk is not quantifiable and cannot be captured in the capital requirements, then that risk is addressed through another supervisory mechanism;
- (n) whether the solvency regime of that third country ensures timely intervention by supervisory authorities of the third country in the event that the capital requirement referred to in point (l)(iv) is not complied with;

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- (o) whether the solvency regime of the third country provides that all persons who are working or who have worked for the supervisory authorities of that third country, as well as auditors and experts acting on behalf of those authorities, are bound by obligations of professional secrecy and whether such obligations of professional secrecy extend to information received from all supervisory authorities;
- (p) whether the solvency regime of the third country provides that, without prejudice to cases covered by criminal law, any confidential information received by all persons who are working or who have worked for the supervisory authorities of that third country is not divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual insurance and reinsurance undertakings cannot be identified;
- (q) whether the solvency regime of the third country provides that, where an insurance or reinsurance undertaking has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that undertaking may be divulged in civil or commercial proceedings;
- (r) whether third country supervisory authorities which receive confidential information from supervisory authorities only use that information in the course of their duties and for any of the following purposes:
 - (i) to check that the conditions governing the taking-up of business of reinsurance, system of governance and public disclosure and solvency assessment have been met,
 - (ii) to impose sanctions,
 - (iii) in administrative appeals against decisions of the supervisory authorities,
 - (iv) in court proceedings relating to the solvency regime in that third country;
- (s) whether third country supervisory authorities are permitted to exchange information received from supervisory authorities, in the discharge of their supervisory functions or the detection and investigation of breaches of company law, with other authorities, bodies or persons where that authority, body or person is subject to the obligation of professional secrecy in the relevant third country and whether that information is only disclosed once the express agreement of the supervisory authority from which it originates has been obtained and, where appropriate, has been obtained solely for the purposes for which the authority gave its agreement.

Textual Amendments

- F2** Words in [Art. 378](#) inserted (31.12.2020) by [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/407), regs. 1(2), **11(91)** (as amended by [S.I. 2020/1385](#), regs. 1(2), 54(2) and with savings in [S.I. 2019/680](#), reg. 11)

[^{F3}Article 378A

1 If the criteria set out in Article 378 have been fulfilled by a third country, the Treasury may by regulations determine that the solvency regime of the third country, that applies to reinsurance activities of undertakings with the head office in that third country, is equivalent to that laid down in the United Kingdom law which implemented the Solvency 2 Directive.

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2 Regulations under paragraph 1 must be regularly reviewed by the Treasury, in order to take into account any significant changes to the supervisory regime in the third country.

3 The PRA must publish and keep up to date on its website a list of the third countries in respect of which Treasury has made regulations under paragraph 1.

4 Where, in accordance with paragraph 1, the solvency regime of a third country has been determined to be equivalent to that laid down in the United Kingdom law which implemented the Solvency 2 Directive, reinsurance contracts concluded with undertakings that have their head office in that third country must be treated in the same manner as reinsurance contracts concluded with undertakings authorised in the United Kingdom.]

Textual Amendments

F3 Arts. 378A, 378B inserted (31.12.2020) by The Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019 (S.I. 2019/407), regs. 1(2), **11(92)** (as amended by S.I. 2020/1385, regs. 1(2), **54(2)(4)(a)** and with savings in S.I. 2019/680, **reg. 11**)

[^{F3}Article 378B

1 The PRA must not retain or introduce for the establishment of technical provisions a system with gross reserving which requires pledging of assets to cover unearned premiums and outstanding claims provisions where the reinsurer is a third-country insurance or reinsurance undertaking, situated in a country whose solvency regime is deemed to be equivalent to that laid down in the United Kingdom law which implemented the Solvency 2 Directive in accordance with Article 378A.]

Textual Amendments

F3 Arts. 378A, 378B inserted (31.12.2020) by The Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019 (S.I. 2019/407), regs. 1(2), **11(92)** (as amended by S.I. 2020/1385, regs. 1(2), **54(2)(4)(a)** and with savings in S.I. 2019/680, **reg. 11**)

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Changes and effects yet to be applied to :

- Regulation revoked by [2023 c. 29 Sch. 1 Pt. 3](#)
- Recital 53 Sentence 1 replacement by [EUR 2016/2283](#) Regulation

Changes and effects yet to be applied to the whole legislation item and associated provisions

- Art. 177(2)(b) words omitted by [S.I. 2019/407 reg. 11\(25\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)
- Art. 177(2)(h)(i) words omitted by [S.I. 2019/407 reg. 11\(25\)\(b\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)
- Art. 177(2)(h)(i) words substituted by [S.I. 2019/407 reg. 11\(25\)\(b\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)
- Art. 177(2)(r) words substituted by [S.I. 2019/407 reg. 11\(25\)\(c\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)
- Art. 177(2)(s) words substituted by [S.I. 2019/407 reg. 11\(25\)\(c\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)
- Art. 177(2)(t) words substituted by [S.I. 2019/407 reg. 11\(25\)\(d\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)
- Art. 177(5)(a) words substituted by [S.I. 2019/407 reg. 11\(25\)\(f\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)
- Art. 177(5)(c) words substituted by [S.I. 2019/407 reg. 11\(25\)\(f\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)