

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 II

**RELATED THIRD COUNTRY INSURANCE
AND REINSURANCE UNDERTAKINGS**

Article 379

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 insurance and reinsurance undertakings with their head office in that third country is equivalent to that laid down in [F¹the United Kingdom law which implemented] Title I, Chapter VI of Directive 2009/138/EC shall be the following:

- (a) whether the assessment of the financial position of domestic insurance and reinsurance undertakings relies on sound economic principles and whether solvency requirements are based on an economic valuation of all assets and liabilities;
- (b) whether the solvency regime of that third country requires domestic insurance or reinsurance undertakings to hold adequate financial resources including all of the following:
 - (i) a requirement that those undertakings establish technical provisions with respect to all of their insurance and reinsurance obligations towards policy holders and beneficiaries of insurance and 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 achieved by 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,

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- (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;
- (c) whether the capital requirements of the solvency regime of that third country are risk-based with the objective of capturing quantifiable risks and, where a significant risk is not quantifiable and cannot be captured in the capital requirements, whether that risk is addressed through another supervisory mechanism;
- (d) 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 (b)(iv) is not complied with;
- (e) 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;
- (f) 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;
- (g) 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;
- (h) 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, 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;
- (i) 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

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originates has been obtained and, where appropriate, has been obtained solely for the purposes for which the authority gave its agreement.

Textual Amendments

- F1** Words in Art. 379(1) inserted (31.12.2020) by [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/407\)](#), regs. 1(2), **11(93)** (as amended by [S.I. 2020/1385](#), regs. 1(2), 54(2) and with savings in [S.I. 2019/680](#), reg. 11)

[^{F2} Article 379A

1 If the criteria set out in Article 379 above have been fulfilled by a third country, the Treasury may by regulations determine that the supervisory regime of that third country is equivalent to that laid down in the United Kingdom law which implemented the Solvency 2 Directive.

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 laid down in the United Kingdom law which implemented the Solvency 2 Directive, and to the supervisory regime in the third country.

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

4 The Treasury may, irrespective of whether the criteria specified in Article 379 have been fulfilled, by regulations determine that for the period referred to in paragraph 6, the solvency regime of a third country that applies to undertakings with the head office in that third country is provisionally equivalent to that laid down in the United Kingdom law which implemented the Solvency 2 Directive, where:

- a it can be shown that a solvency regime capable of being assessed as equivalent in accordance with Article 379 is currently in place or may be adopted and applied by the third country;
- b the third country has a solvency regime that is risk based and establishes quantitative and qualitative solvency requirements and requirements relating to supervisory reporting and transparency;
- c the third country's law, in principle, allows cooperation, and exchange of confidential supervisory information, with the PRA;
- d the third country has an independent system of supervision; and
- e the third country has established obligations on professional secrecy for all persons acting on behalf of its supervisory authorities.

5 The PRA must publish and keep up to date on its website a list of all third countries in respect of which the Treasury have made regulations under paragraph 4.

6 The initial period of provisional equivalence referred to in paragraph 4 must be 10 years, unless before the expiry of that period:

- a the regulations made by the Treasury have been revoked; or
- b the Treasury have made regulations in accordance with paragraph 1 to the effect that the supervisory regime of that third country has been determined to be equivalent to that laid down in the United Kingdom law which implemented the Solvency 2 Directive.

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8 Provisional equivalence must be subject to renewals for further periods of 10 years where the criteria referred to in paragraph 4 continue to be met. The Treasury may by regulations renew the period of provisional equivalence in accordance with this paragraph.

9 Where, in accordance with paragraph 4, the Treasury have made regulations determining that the supervisory regime of a third country is provisionally equivalent, that third country must be deemed to be equivalent for the purposes of Regulation 19 of the Solvency 2 Regulations 2015.]

Textual Amendments

F2 [Art. 379A](#) inserted (31.12.2020) by [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/407\)](#), regs. 1(2), **11(94)** (as amended by [S.I. 2020/1385](#), regs. 1(2), 54(2) and with savings in [S.I. 2019/680](#), reg. 11)

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