

Directive 2009/138/EC of the European Parliament and of the Council  
of 25 November 2009 on the taking-up and pursuit of the business of  
Insurance and Reinsurance (Solvency II) (recast) (Text with EEA relevance)

TITLE I

**GENERAL RULES ON THE TAKING-UP AND PURSUIT OF  
DIRECT INSURANCE AND REINSURANCE ACTIVITIES**

CHAPTER VIII

**Right of establishment and freedom to provide services**

Section 1

**Establishment by insurance undertakings**

*Article 145*

**Conditions for branch establishment**

1 Member States shall ensure that an insurance undertaking which proposes to establish a branch within the territory of another Member State notifies the supervisory authorities of its home Member State.

Any permanent presence of an undertaking in the territory of a Member State shall be treated in the same way as a branch, even where that presence does not take the form of a branch, but consists merely of an office managed by the own staff of the undertaking or by a person who is independent but has permanent authority to act for the undertaking as an agency would.

2 Member States shall require every insurance undertaking that proposes to establish a branch within the territory of another Member State to provide the following information when effecting the notification provided for in paragraph 1:

- a the Member State within the territory of which it proposes to establish a branch;
- b a scheme of operations setting out, at least, the types of business envisaged and the structural organisation of the branch;
- c the name of a person who possesses sufficient powers to bind, in relation to third parties, the insurance undertaking or, in the case of Lloyd's, the underwriters concerned and to represent it or them in relations with the authorities and courts of the host Member State (the authorised agent);
- d the address in the host Member State from which documents may be obtained and to which they may be delivered, including all communications to the authorised agent.

With regard to Lloyd's, in the event of any litigation in the host Member State arising out of underwritten commitments, the insured persons shall not be treated less favourably than if the litigation had been brought against businesses of a conventional type.

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3 Where a non-life insurance undertaking intends its branch to cover risks in class 10 in Part A of Annex I, not including carrier's liability, it shall produce a declaration that it has become a member of the national bureau and the national guarantee fund of the host Member State.

4 In the event of a change in any of the particulars communicated under point (b), (c) or (d) of paragraph 2, an insurance undertaking shall give written notice of the change to the supervisory authorities of the home Member State and of the Member State where that branch is situated at least one month before making the change so that the supervisory authorities of the home Member State and the supervisory authorities of the Member State where that branch is situated may fulfil their respective obligations under Article 146.

#### *Article 146*

### **Communication of information**

1 Unless the supervisory authorities of the home Member State have reason to doubt the adequacy of the system of governance or the financial situation of the insurance undertaking or the fit and proper requirements in accordance with Article 42 of the authorised agent, taking into account the business planned, they shall, within three months of receiving all the information referred to in Article 145(2), communicate that information to the supervisory authorities of the host Member State and shall inform the insurance undertaking concerned thereof.

The supervisory authorities of the home Member State shall also attest that the insurance undertaking covers the Solvency Capital Requirement and the Minimum Capital Requirement calculated in accordance with Articles 100 and 129.

2 Where the supervisory authorities of the home Member State refuse to communicate the information referred to in Article 145(2) to the supervisory authorities of the host Member State they shall state the reasons for their refusal to the insurance undertaking concerned within three months of receiving all the information in question.

Such a refusal or failure to act shall be subject to a right to apply to the courts in the home Member State.

3 Before the branch of an insurance undertaking starts business, the supervisory authorities of the host Member State shall, where applicable, within two months of receiving the information referred to in paragraph 1, inform the supervisory authority of the home Member State of the conditions under which, in the interest of the general good, that business must be pursued in the host Member State. The supervisory authority of the home Member State shall communicate this information to the insurance undertaking concerned.

The insurance undertaking may establish the branch and start business as from the date upon which the supervisory authority of the home Member State has received such a communication or, if no communication is received, on expiry of the period provided for in the first subparagraph.