

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 IV

REORGANISATION AND WINDING-UP OF INSURANCE UNDERTAKINGS

CHAPTER I

Scope and definitions

Article 267

Scope of this Title

This Title shall apply to reorganisation measures and winding-up proceedings concerning the following:

- (a) insurance undertakings;
- (b) branches situated in the territory of the Community of third-country insurance undertakings.

Article 268

Definitions

- 1 For the purpose of this Title the following definitions shall apply:
 - a ‘competent authorities’ means the administrative or judicial authorities of the Member States which are competent for the purposes of the reorganisation measures or the winding-up proceedings;
 - b ‘branch’ means a permanent presence of an insurance undertaking in the territory of a Member State other than the home Member State which pursues insurance activities;
 - c ‘reorganisation measures’ means measures involving any intervention by the competent authorities which are intended to preserve or restore the financial situation of an insurance undertaking and which affect pre-existing rights of parties other than the insurance undertaking itself, including but not limited to measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims;
 - d ‘winding-up proceedings’ means collective proceedings involving the realisation of the assets of an insurance undertaking and the distribution of the proceeds among the creditors, shareholders or members as appropriate, which necessarily involve any intervention by the competent authorities, including where the collective proceedings are terminated by a composition or other analogous measure, whether or not they are founded on insolvency or are voluntary or compulsory;
 - e ‘administrator’ means a person or body appointed by the competent authorities for the purpose of administering reorganisation measures;

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- f 'liquidator' means a person or body appointed by the competent authorities or by the governing bodies of an insurance undertaking for the purpose of administering winding-up proceedings;
- g 'insurance claim' means an amount which is owed by an insurance undertaking to insured persons, policy holders, beneficiaries or to any injured party having direct right of action against the insurance undertaking and which arises from an insurance contract or from any operation provided for in Article 2(3)(b) and (c) in direct insurance business, including an amount set aside for those persons, when some elements of the debt are not yet known.

The premium owed by an insurance undertaking as a result of the non-conclusion or cancellation of an insurance contract or operation referred to in point (g) of the first subparagraph in accordance with the law applicable to such a contract or operation before the opening of the winding-up proceedings shall also be considered an insurance claim.

2 For the purpose of applying this Title to reorganisation measures and winding-up proceedings concerning a branch situated in a Member State of a third-country insurance undertaking the following definitions shall apply:

- a 'home Member State' means the Member State in which the branch was granted authorisation in accordance with Articles 145 to 149;
- b 'supervisory authorities' means the supervisory authorities of the home Member State;
- c 'competent authorities' means the competent authorities of the home Member State.