

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**

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 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 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:

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- (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;
 - (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,

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- (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;
- (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:

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- (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.

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 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,

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- (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,
 - (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;

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

CHAPTER III

INSURANCE AND REINSURANCE UNDERTAKINGS WITH THE PARENT UNDERTAKINGS OUTSIDE THE UNION

Article 380

Criteria for assessing third country equivalence

The criteria which shall be taken into account in order to assess whether the prudential regime in a third country for the supervision of groups is equivalent to that laid down in Title III of Directive 2009/138/EC shall be the following:

- (a) whether the supervisory authorities of the third country have the necessary means, the relevant expertise, capacities including financial and human resources, and mandate to effectively protect policy holders and beneficiaries, regardless of their nationality or place of residence;
- (b) whether the supervisory authorities of the third country are empowered by law or regulation to:
- (i) determine which undertakings fall under the scope of supervision at group level,
 - (ii) supervise insurance and reinsurance undertakings which are part of a group,
 - (iii) impose sanctions or take enforcement action where necessary;
- (c) whether the supervisory authorities of the third country are able to effectively assess the risk profile and solvency and financial position of insurance and reinsurance undertakings which are part of a group as well as that group's business strategy;
- (d) whether the scope of supervision at group level at least includes all undertakings over which a participating undertaking, as defined in Article 212(1)(a) of Directive 2009/138/EC, exercises dominant or significant influence unless where this would be inappropriate to the objectives of group supervision;
- (e) whether the supervisory authorities of the 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 the time;
- (f) 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;

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- (g) whether the prudential regime of that third country requires an effective system of governance at the group level 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 group and to the relevant supervisory authorities;
 - (iv) requirements for ensuring that the outsourced functions or activities are effectively supervised;
- (h) whether the prudential regime of that third country requires an effective risk-management system in place at the group level comprising at least all of the following:
 - (i) strategies, processes and internal reporting procedures necessary to identify, measure, monitor, manage and report risks on a continuous basis, to which the group is or could be exposed and their interdependencies;
 - (ii) an effective internal control system;
- (i) whether the prudential regime of that third country requires the group to have sound reporting and accounting procedures to monitor and manage the intra-group transactions and the risk concentrations;
- (j) whether the prudential regime of that third country requires that effective risk-management, compliance, internal audit and actuarial functions are established and maintained by the group;
- (k) whether the prudential regime of that third country requires the group to do all of the following:
 - (i) to provide third country supervisory authorities with any information necessary for the purposes of supervision;
 - (ii) to report significant risk concentration at the level of the group and significant intra-group transactions, on at least an annual basis;
 - (iii) to disclose publicly, on at least an annual basis, a report on the solvency and financial condition of the group which is equivalent to that specified in Article 51 of Directive 2009/138/EC;
- (l) whether the prudential regime of that third country requires that proposed changes to the business policy or management of the group, or to qualifying holdings in the group, are consistent with the sound and prudent management of the group;
- (m) whether the assessment of the financial position of the group relies on sound economic principles and whether the assessment of solvency is based on an economic valuation of all assets and liabilities;
- (n) whether the prudential regime of that third country requires the group to hold adequate financial resources including all of the following:

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- (i) a requirement that the group establishes technical provisions with respect to all of its insurance and reinsurance obligations towards policy holders and beneficiaries of insurance and reinsurance undertakings which are part of the group;
 - (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 the group only invests in assets and instruments whose risks it can properly identify, measure, monitor, manage, control and report;
 - (iv) a requirement by the supervisory authorities of the third country that the group 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;
 - (v) a requirement that insurance or reinsurance undertakings which are part of the group maintain a minimum level of capital, non-compliance with which triggers immediate and ultimate supervisory intervention;
 - (vi) a requirement that the group capital requirement is met 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;
- (o) whether the capital requirements of the prudential 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;
 - (p) whether the prudential 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 (n)(iv) is not complied with;
 - (q) whether the supervisory authorities of the third country restrict the use of own-fund items of a related insurance or reinsurance undertaking where they consider that they cannot effectively be made available to cover the capital requirement of the participating undertaking for which the group solvency is calculated;
 - (r) whether the calculation of group solvency in the third country's prudential regime produces a result that is at least equivalent to the result achieved by either one of the calculation methods set out in Articles 230 and 233 of Directive 2009/138/EC, or a combination of them, and that calculation ensures that there is no double use of own funds to meet the group capital requirement and that the intra-group creation of capital through reciprocal financing is eliminated;
 - (s) whether the prudential 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;

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- (t) whether the prudential 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;
- (u) whether the prudential 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;
- (v) whether third country supervisory authorities which receive confidential information from other 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;
- (w) 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.

CHAPTER IV

FINAL PROVISIONS

Article 381

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

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