

PRA RULEBOOK: SOLVENCY II FIRMS: THIRD COUNTRY BRANCHES INSTRUMENT 2015

Powers exercised

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (1) section 137G (the PRA’s general rules); and
 - (2) section 137T (general supplementary powers).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

Pre-conditions to making

- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

PRA Rulebook: Solvency II Firms: Third Country Branches Instrument 2015

- D. The PRA makes the rules in the Annex to this instrument.

Commencement

- E. This instrument comes into force on 1 January 2016.

Citation

- F. This instrument may be cited as the PRA Rulebook: Solvency II Firms: Third Country Branches Instrument 2015.

By order of the Board of the Prudential Regulation Authority

17 March 2015

Annex

In this Annex, the text is all new and is not underlined.

Part

THIRD COUNTRY BRANCHES

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1 APPLICATION AND DEFINITIONS

1.1 Unless otherwise stated, this Part applies to *third country branch undertakings*, except *Swiss general insurers*.

1.2 In this Part, the following definitions shall apply:

branch MCR

means a capital requirement calculated in accordance with the Minimum Capital Requirement Part of the *PRA Rulebook* but taking account only of the operations effected by the *third country branch*.

branch scheme of operations

means a scheme containing the information required in 5.1.

branch SCR

means a capital requirement calculated in accordance with the *SCR Rules* but taking account only of the operations effected by the *third country branch*.

branch technical provisions

means the technical provisions established in accordance with the Technical Provisions Part of the *PRA Rulebook* to cover the insurance and *reinsurance* obligations assumed by a *third country branch undertaking* in the *UK*.

composite third country branch

means a *third country branch* (except a *third country pure reinsurance branch*) that carries on both *long-term insurance business* and *general insurance business* in the *UK*.

EEA MCR

means a capital requirement calculated in accordance with the Minimum Capital Requirement Part of the *PRA Rulebook* but taking account only of the operations effected by the *third country branch* and all the *third country undertaking EEA branches*.

EEA SCR

means a capital requirement calculated in accordance with the *SCR Rules* but taking account only of the operations effected by the *third country branch* and all the *third country undertaking EEA branches*.

EEA technical provisions

means the technical provisions established in accordance with the Technical Provisions Part of the *PRA Rulebook* to cover the insurance and *reinsurance* obligations assumed by a *UK-deposit insurer* in the *EEA*.

EEA-deposit insurer

means a *third country branch undertaking* that has made a deposit in an *EEA State* (other than the *UK*) under Article 162(2)(e) of the *Solvency II Directive* in accordance with Article 167 of the *Solvency II Directive*.

pre-Solvency II branch MCR

means the minimum capital requirement referred to in INSPRU 1.5.42R of the *PRA Handbook* that applied to the *third country branch undertaking* as at 31 December 2015.

third country branch undertaking SCR

means

- (1) for a *UK-deposit insurer*, *EEA SCR*;
- (2) for an *EEA-deposit insurer*, its solvency capital requirement calculated according to the relevant *Solvency II EEA implementing measures* in the *EEA State* that supervises the solvency of the entire business of the branches within the *EEA* in accordance with Article 167 of the *Solvency II Directive*;
- (3) for all other *third country branch undertakings*, the *branch SCR*.

2 ACCOUNTING RECORDS IN THE UK

2.1 A *third country branch undertaking* must maintain at a place of business in the *UK* all records relating to:

- (1) the activities carried on from its *third country branch*; and
- (2) if it is a *UK-deposit insurer*, the activities carried out from all the *third country undertaking EEA branches*.

[Note: Art. 162 (2) of the *Solvency II Directive*]

3 LOCALISATION AND DEPOSIT OF ASSETS

3.1 A *third country branch undertaking* (except a *UK-deposit insurer*, an *EEA-deposit insurer* and a *third country branch undertaking* that has a *third country pure reinsurance branch*) must hold assets required to cover the *branch SCR* as follows:

- (1) in the *UK*, assets representing the *branch SCR* up to the amount of the *branch MCR*; and
- (2) in any *EEA State*, assets representing the amount of the *branch SCR* in excess of the amount of the *branch MCR*.

3.2 A *UK-deposit insurer* must hold assets required to cover the *EEA SCR* as follows:

- (1) in any of the *EEA States* where the *UK-deposit insurer* pursues its activities, assets representing the *EEA SCR* up to the amount of the *EEA MCR*; and
- (2) in any *EEA State*, assets representing the amount of the *EEA SCR* in excess of the amount of the *EEA MCR*.

3.3 A *third country branch undertaking* (except an *EEA-deposit insurer* and a *third country branch undertaking* that has a *third country pure reinsurance branch*) must hold on deposit as

security in the *UK* with a *CRD credit institution* assets of an amount equal to at least one quarter of the absolute floor of the *MCR* set out in Minimum Capital Requirement 3.2.

[Note: Art. 162(2), Art. 166(4), Art. 167(1) and (2) of the *Solvency II Directive*]

4 SOLVENCY CAPITAL REQUIREMENT AND MINIMUM CAPITAL REQUIREMENT

- 4.1 A *third country branch undertaking* (except a *UK-deposit insurer* and an *EEA-deposit insurer*) must:
- (1) calculate a *branch SCR*; and
 - (2) cover the *branch SCR* with *eligible own funds*.
- 4.2 A *third country branch undertaking* (except a *UK-deposit insurer* and an *EEA-deposit insurer*) must:
- (1) calculate a *branch MCR*; and
 - (2) cover the *branch MCR* with *eligible own funds*.
- 4.3 For the purposes of the calculations referred to in 4.1(1) and 4.2(1), the *third country branch undertaking* must take account only of the operations effected by the *third country branch*.
- 4.4 A *UK-deposit insurer* must:
- (1) calculate an *EEA SCR*; and
 - (2) cover the *EEA SCR* with *eligible own funds*.
- 4.5 A *UK deposit insurer* must:
- (1) calculate an *EEA MCR*; and
 - (2) cover the *EEA MCR* with *eligible own funds*.
- 4.6 For the purposes of the calculations referred to in 4.4(1) and 4.5(1), the *UK-deposit insurer* must take account only of the operations effected by the *third country branch* and all the *third country undertaking EEA branches*.

[Note: Art. 166(1), (2) and (3) and Art. 167(1) of the *Solvency II Directive*]

5 CONTENTS OF THE BRANCH SCHEME OF OPERATIONS

- 5.1 The *branch scheme of operations* must set out the following:
- (1) the nature of the risks or commitments which the *third country branch undertaking* proposes to cover;
 - (2) the guiding principles as to *reinsurance*;
 - (3) estimates of the future *branch SCR* on the basis of a forecast balance sheet, as well as the calculation methods used to derive those estimates;
 - (4) estimates of the future *branch MCR*, on the basis of a forecast balance sheet, as well as the calculation method used to derive those estimates;
 - (5) the state of the *eligible own funds* with respect to the *branch SCR* and *branch MCR*;

- (6) estimates of the cost of setting up the administrative services and the organisation for securing business, the financial resources to meet those costs and, where the risks to be covered are classified under paragraph 18 of Part 1 of Schedule 1 to the *Regulated Activities Order*, the resources available for the provision of assistance;
- (7) information on the structure of the system of governance; and
- (8) for the first three financial years:
 - (a) a forecast balance sheet;
 - (b) estimates of the financial resources intended to cover *branch technical provisions*, *branch MCR* and *branch SCR*;
 - (c) for *general insurance business*:
 - (i) estimates of management expenses other than installation costs, in particular current general expenses and commissions;
 - (ii) estimates of *premiums* or contributions and claims under any *contract of insurance*; and
 - (d) for *long-term insurance business*:
 - a plan setting out detailed estimates of income and expenditure in respect of direct business, *reinsurance* acceptances and *reinsurance* cessions.

[Note: Art. 162(2) and Art. 163(1) and (2) of the Solvency II Directive]

6 TECHNICAL PROVISIONS AND OWN FUNDS

- 6.1 A *third country branch undertaking* (except a *UK-deposit insurer* and an *EEA-deposit insurer*) must establish adequate *branch technical provisions*.
- 6.2 A *UK-deposit insurer* must establish adequate *EEA technical provisions*.
- 6.3 A *third country branch undertaking* (except an *EEA-deposit insurer*) must value assets and liabilities in accordance with the Valuation Part of the *PRA Rulebook* for the purposes of establishing the *branch technical provisions* (or, in the case of a *UK-deposit insurer*, the *EEA technical provisions*).
- 6.4 A *third country branch undertaking* (except an *EEA-deposit insurer*) must determine and classify its *third country branch undertaking own funds* for the purposes of complying with its *branch SCR* and *branch MCR* (or, in the case of a *UK-deposit insurer*, its *EEA SCR* and *EEA MCR*) in accordance with the Own Funds Part of the *PRA Rulebook* as if it were a *UK Solvency II firm*.
- 6.5 A *third country branch undertaking* (except an *EEA-deposit insurer*) must fulfil the requirements in Own Funds 5 for the purposes of complying with its *branch SCR* and *branch MCR* (or, in the case of a *UK-deposit insurer*, its *EEA SCR* and *EEA MCR*) as if it were a *UK Solvency II firm*.

[Note: Art. 165, Art. 166(1), (2) and (3) and Art. 167(1) of the Solvency II Directive]

7 CONDITIONS GOVERNING BUSINESS

- 7.1 A *third country branch undertaking* must fulfil the following requirements laid down in Conditions Governing Business Part of the *PRA Rulebook*, as modified by 7.2, 7.3 and 7.4:
- (1) Conditions Governing Business 1; and
 - (2) Conditions Governing Business 2.2 to 7.
- 7.2
- (1) A reference to “*SCR*” is to be interpreted as a reference to “*third country branch undertaking SCR*”.
 - (2) A reference to “*MCR*” is to be interpreted as a reference to:
 - (a) for a *UK-deposit insurer*, the *EEA MCR*;
 - (b) for an *EEA-deposit insurer*, its minimum capital requirement calculated in accordance with the relevant *Solvency II EEA implementing measures* in the *EEA State* that supervises the solvency of the entire business of the branches within the *EEA* in accordance with Article 167 of the *Solvency II Directive*;
 - (c) for all other *third country branch undertakings*, the *branch MCR*.
 - (3) A reference to “*technical provisions*” is to be interpreted as a reference to:
 - (a) for a *UK-deposit insurer*, the *EEA technical provisions*;
 - (b) for an *EEA-deposit insurer*, its technical provisions calculated in accordance with the relevant *Solvency II EEA implementing measures* in the *EEA State* that supervises the solvency of the entire business of the branches within the *EEA* in accordance with Article 167 of the *Solvency II Directive*;
 - (c) for all other *third country branch undertakings*, the *branch technical provisions*.
 - (4) A reference to “*function*” is to be interpreted as a reference to the *functions* performed in relation to the operations effected by the *third country branch* and includes the *function* of *authorised UK representative*.
 - (5) A reference to “*internal model*” is to be interpreted as a reference to any *internal model* used by a *third country branch undertaking* to calculate the *third country branch undertaking SCR*.
- 7.3 A *third country branch undertaking* (except a *UK-deposit insurer*) must apply the requirements referred to in 7.1 taking account only of matters relevant to the operations effected by the *third country branch*.
- 7.4 A *UK-deposit insurer* must apply the requirements referred to in 7.1 taking account only of matters relevant to the operations effected by the *third country branch* and all the *third country undertaking EEA branches*.

[Note: Art. 162(2) of the *Solvency II Directive*]

8 INVESTMENTS

- 8.1 A *third country branch undertaking* must fulfil the requirements laid down in the Investments Part of the *PRA Rulebook*, as modified by 8.2 to 8.4.
- 8.2 A reference to “*technical provisions*” is to be interpreted as laid down in 7.2(3).
- 8.3 A *third country branch undertaking* (except a *UK-deposit insurer*) must fulfil the requirements in the Investments Part of the *PRA Rulebook* taking account only of the operations effected by the *third country branch*.
- 8.4 A *UK-deposit insurer* must fulfil the requirements in the Investments Part of the *PRA Rulebook* taking account only of the operations effected by the *third country branch* and all the *third country undertaking EEA branches*.

[Note: Art. 162(2) of the Solvency II Directive]

9 REPORTING

- 9.1 A *third country branch undertaking* must fulfil the requirements laid down in Reporting 2.1-5 as modified by 9.2 and 9.3.
- 9.2 A *third country branch undertaking* (except a *UK-deposit insurer*) must fulfil the requirements referred to in 9.1 taking account only of matters relevant to the operations effected by the *third country branch*.
- 9.3 A *UK-deposit insurer* must fulfil the requirements referred to in 9.1 taking account only of matters relevant to the operations effected by the *third country branch* and all the *third country undertaking EEA branches*.

[Note: Art. 168 of the Solvency II Directive]

10 THIRD COUNTRY BRANCH UNDERTAKINGS IN DIFFICULTY

- 10.1 A *third country branch undertaking* (except an *EEA-deposit insurer*) must fulfil the requirements laid down in Undertakings in Difficulty 2 to 5 as modified by 10.2.
- 10.2 (1) A reference to “*SCR*” is to be interpreted as a reference to the *branch SCR* or, for a *UK-deposit insurer*, to the *EEA SCR*.
- (2) A reference to “*MCR*” is to be interpreted as a reference to the *branch MCR* or, for a *UK-deposit insurer*, to the *EEA MCR*.
- (3) A reference to “*technical provisions*” is to be interpreted as a reference to the *branch technical provisions* or, for a *UK-deposit insurer*, to the *EEA technical provisions*.

[Note: Art. 168 of the Solvency II Directive]

11 SEPARATION OF LONG-TERM BUSINESS AND GENERAL BUSINESS

- 11.1 (1) A *third country insurance undertaking* that has a *composite third country branch* must fulfil the requirements laid down in Composites 2 to 4 as modified by 11.2.
- (2) Composites 3 and 4 do not apply to *EEA-deposit insurers*.
- 11.2 (1) The requirements referred to in 11.1 must be fulfilled taking account only of the operations effected by the *third country branch* and, in the case of a *UK-deposit*

insurer, the operations effected by the *third country branch* and all the *third country undertaking EEA branches*.

- (2) The reference to “SCR” in Composites 4.6 is to be interpreted as a reference to the *branch SCR* and, for a *UK-deposit insurer*, the *EEA SCR*.
- (3) The *notional life MCR*, *notional non-life MCR*, the *notional life SCR* and *notional non-life SCR* referred to in the Composites Part of the *PRA Rulebook* shall be calculated taking account only of the operations effected by the *third country branch* and, in the case of a *UK-deposit insurer*, the operations effected by the *third country branch* and all the *third country undertaking EEA branches*.

[Note: Art. 169 of the Solvency II Directive]

12 RESTRICTION OF BUSINESS

- 12.1 A *third country branch undertaking* except a *pure reinsurer* must not carry on any commercial business other than *insurance business* and activities directly arising from that business.
- 12.2 A *third country branch undertaking* that is a *pure reinsurer* must not carry on any business other than the business of *reinsurance* and related operations.

13 WORLDWIDE FINANCIAL RESOURCES

- 13.1 A *third country branch undertaking* must maintain adequate worldwide financial resources, to ensure that there is no significant risk that its liabilities cannot be met as they fall due.

14 TRANSITIONAL MEASURES

- 14.1 The following provisions in the Transitional Measures Part of the *PRA Rulebook* apply to *third country branch undertakings* with the modifications set out in 14.2:
 - (1) Transitional Measures 1.2
 - (2) Transitional Measures 3.1;
 - (3) Transitional Measures 3.3;
 - (4) Transitional Measures 4 to 7; and
 - (5) Transitional Measures 10 to 12.
- 14.2 The modifications referred to in 14.1 are:
 - (1) any modification set out in this Part to any Parts referred to in the Transitional Measures Part of the *PRA Rulebook*;
 - (2) the modifications set out in 10.2;
 - (3) any reference to “*pre-Solvency II MCR*” is to be interpreted as a reference to *pre-Solvency II branch MCR*; and
 - (4) any other necessary modification.