



MARKT/2504/07  
February 2007

## **Solvency II**

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### **Treatment of third country reinsurers**

**The purpose of this note is:**

The purpose of this note is to obtain Member States' views on the treatment of third country reinsurers under Solvency II.

**QUESTIONS TO MEMBERS OF EIOPC:**

- 1. Do Member States agree with the general approach proposed in this note regarding the treatment of third country reinsurers under Solvency II?**
- 2. Do Member States have any comments on New Article – Equivalence set out in the Annex to this paper?**
- 3. Do Member States have any comments on Article 49 – Amended set out in the Annex to this paper?**

## **1. REINSURANCE DIRECTIVE**

The current Reinsurance Directive 2005/68/EC does not apply to reinsurance undertakings whose head office lies outside the Community. The treatment of these third country reinsurance undertakings remains a matter for Member States.

### **1.1. Article 49**

However, Article 49 of the Directive does require that a Member State ensures that third country reinsurance undertakings commencing or carrying out reinsurance activities in its territory, do not receive a more favourable treatment than that afforded to a reinsurance undertaking with its head office in that Member State.

### **1.2. Article 50**

Recognising the international nature of reinsurance, the EU Reinsurance Directive also includes a provision enabling the conclusion of international agreements with third countries aimed at defining the means of supervision over reinsurance entities which conduct business in the territory of each contracting party (Article 50).

This provision provides for the creation of a flexible procedure to make it possible to assess prudential equivalence with third countries on a Community (EU) wide basis, so as to improve liberalisation of reinsurance services in third countries, be it through establishment or cross-border provision of services.

## **2. SOLVENCY II**

Reinsurance allows direct insurance undertakings, by facilitating a wider distribution of risks at worldwide level, to have a higher underwriting capacity and to reduce their capital costs. Furthermore, reinsurance plays a fundamental role in financial stability, since it contributes to ensuring the financial soundness and the stability of direct insurance markets, as well as the financial system as a whole.

Because of the important role that reinsurance plays in the global financial system, the Commission Services believe that it is vital that a higher degree of harmonisation should be achieved with regard to the treatment of third country reinsurers under Solvency II.

### **2.1. CEIOPS and IAIS**

CEIOPS in its Consultation Paper No. 16 (see attachment) has proposed that greater harmonisation in this area would be desirable under Solvency II and the IAIS is looking at how regulation of reinsurance could be made more effective and efficient internationally.

### **2.2. EU-US Regulatory dialogue**

The treatment of third country reinsurers is also being discussed in the EU-US regulatory dialogue, in which both Commission Services and CEIOPS participate. US state laws currently automatically allow US insurers to take solvency credit in their balance sheets for the reinsurance they purchase from US reinsurers. By contrast, credit is only allowed for reinsurance purchased from EU reinsurers if these deposit collateral with the US insurer or maintain a non-working trust fund in the US.

### **2.3. Collateral**

The EU Reinsurance Directive will abolish the use of collateral within the EU from December 2008, as collateral requirements act as a barrier to trade and make optimal investment management more difficult and thus result in higher operational costs for reinsurance undertakings.

### **3. COMMISSION SERVICES PROPOSAL**

Taking all of the above into account the Commission Services propose to introduce the draft Articles set out in the annex to this note in the Solvency II Framework Directive regarding the treatment of third country reinsurers.

These Articles introduce an equivalence assessment for third countries with respect to the prudential regime of reinsurers and an explicit requirement that Member States shall treat reinsurers from third countries deemed to be equivalent in the same manner as EU reinsurers. The equivalence assessment would be adopted by the Commission through EIOPC, following consultation with CEIOPS.

Article 49 is retained for those cases where no positive equivalence assessment has yet been made, but is supplemented by an implementing measure allowing the Commission to introduce a harmonised approach regarding the treatment of third country reinsurers domiciled in jurisdictions for which no positive equivalence assessment has yet been made. However, the possibility to introduce implementing measures requiring collateral to be posted is excluded, as this would be inconsistent with the economic risk based approach being taken in Solvency II.

### **4. QUESTIONS TO MEMBERS OF EIOPC**

**Do Member States agree with the general approach proposed regarding the treatment of third country reinsurers under Solvency II?**

**Do Member States have any comments on New Article – Equivalence set out in the Annex to this paper?**

**Do Member States have any comments on Article 49 – Amended set out in the Annex to this paper?**

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## Annex

### **Draft Articles on treatment of third country reinsurers under Solvency II**

#### *New Article - Equivalence*

1. The Commission shall adopt implementing measures listing those third countries whose prudential regimes with respect to reinsurance undertakings are considered to be equivalent to the provisions laid down in this Directive. These measures shall be regularly reviewed to ensure that the prudential regimes of the third countries listed continue to be equivalent and to take into account any changes in the supervisory arrangements of those third countries.
2. Where in accordance with this Article the prudential regime of a third country, in particular as regards the solvency regime and the means of supervision, has been deemed to be equivalent to this Directive, reinsurance contracts with third country reinsurers shall be treated in the same manner as reinsurance contracts with EU reinsurers.

#### *Article 49 - Amended*

1. A Member State shall not apply to reinsurance undertakings having their head offices outside the Community and commencing or carrying out reinsurance activities in its territory provisions which result in a treatment more favourable than that accorded to reinsurance undertakings having their head office in that Member State.
2. The Commission may adopt implementing measures regarding the application of paragraph 1 to ensure a harmonised approach with respect to the treatment of reinsurance undertakings having their head offices outside the community. These implementing measures shall not include measures obliging reinsurance undertakings to pledge assets in order to cover its part of the technical provisions of the direct insurance undertaking.