

Bank of England PRA

Appendix 3: Draft statement of policy – The Prudential Regulation Authority’s approach to insurance branch authorisation and supervision

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1: Introduction

1.1 This statement of policy (SoP) expands upon the approach set out in ‘The Prudential Regulation Authority’s (PRA) approach to insurance supervision’¹ (‘the approach document’) and should be read alongside the PRA’s supervisory statement (SS) 44/15 – Solvency II: third-country insurance and pure reinsurance branches.²

1.2 This SoP outlines the PRA’s approach to the authorisation and supervision of third-country insurance branches, including the PRA’s approach to determining when a subsidiary would be more appropriate than a branch. Third-country insurance branches are branches of undertakings that have permission to effect contracts of insurance in the UK, but are not headquartered in the UK or Gibraltar. These foreign insurance undertakings that have a UK branch are herein referred to as ‘third-country branch undertakings’, aligning with the definition in the PRA Rulebook.

1.3 This SoP is relevant to all third-country insurance branches, as well as to any insurance undertaking not headquartered in the UK or Gibraltar looking to operate in the UK in the future. This SoP does not apply to Swiss General Insurers, as defined in the PRA Rulebook, to which different requirements apply pursuant to the Swiss Treaty Agreement (No. 91/370/EEC).

Foreign insurers in the UK

1.4 The UK has a significant presence of third-country insurers that have established operations in the UK to take advantage of insurance expertise, proximity of fellow insurers, and the UK’s strong legal and regulatory systems. Many international firms or groups operating in the UK are significant providers of financial services to the UK economy.

1.5 The PRA is open to international participation in the UK insurance market and engages actively in international policy making and supervisory co-operation. Where the Threshold Conditions are met, and where the authorisation of an international insurer is consistent with the PRA’s general objective (to promote the safety and soundness of the firms it regulates) and its insurance objective (to secure an appropriate degree of protection for insurance policyholders) on an ongoing basis, the PRA is open to the activity of international insurers operating in the UK and recognises the benefits that these international insurers can bring to the UK. It is the PRA’s view that, subject to certain safeguards, the ability of financial services

¹ Approach to insurance supervision (July 2023): www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/approach/insurance-approach-2023.pdf

² November 2015: www.bankofengland.co.uk/prudential-regulation/publication/2015/solvency2-third-country-insurance-and-pure-reinsurance-branches-ss.

firms to branch into other countries is an important component of an open world economy which in turn benefits the UK economy.

1.6 Openness must be accompanied by financial and operational resilience to support sustainable economic growth and the PRA's objectives. The PRA terms this 'responsible openness'. The PRA's approach to 'responsible openness' has been informed, in part, by the supervisory lessons learned in the process of reviewing over 180 branch authorisation applications received by the PRA during the Temporary Permissions Regime (TPR), and the transition from EU Passporting to a post-EU withdrawal third-country branch regime.

1.7 If authorised to do so, insurers headquartered outside the UK can operate in the UK either through a branch or by forming a subsidiary through direct PRA authorisation. A subsidiary is a separate legal entity from its parent and, as such, must meet regulatory capital requirements with its own funds, and have its own governance and risk management. A branch forms part of a third-country branch undertaking headquartered abroad.

1.8 The PRA's approach to the authorisation and supervision of third-country branches is anchored in its statutory objectives. The principles of this approach are set out in further detail in Section 2 and are underpinned by the PRA's assessment of regulatory equivalence and 'supervisability', which is the PRA's ability to effectively supervise an insurer that seeks to operate in the UK through a branch. Third-country branch undertakings operating in the UK are subject to the PRA's rules which are relevant to third-country branches and third-country branch undertakings, as set out in the PRA Rulebook. Additional background is set out in the approach document and SS44/15 – Solvency II: third-country insurance and pure reinsurance branches.³

1.9 As a branch forms part of a third-country branch undertaking headquartered abroad, the PRA requires that the third-country branch undertaking as a whole has adequate financial resources. This is in contrast with the financial resources requirements for a subsidiary and reflects the PRA's view that the third-country branch's operations are necessarily dependent on those of the third-country branch undertaking.

1.10 Supervisory powers reflect the differences in how a firm is structured. Insurance subsidiaries are subject to the PRA's insurance supervision regime for UK-based insurers. In contrast, responsibilities for the supervision of third-country branches are split between the

³ For further details of PRA rules and expectations to which the PRA expects third country branches to refer, please see the following sections of the Prudential and Resolution Policy Index: www.bankofengland.co.uk/prudential-regulation/prudential-and-resolution-policy-index/insurance/third-country-branches-of-international-insurers; Cross-cutting policies: www.bankofengland.co.uk/prudential-regulation/prudential-and-resolution-policy-index/insurance/cross-cutting-policies; Run Off and Undertakings in Difficulty: www.bankofengland.co.uk/prudential-regulation/prudential-and-resolution-policy-index/insurance/run-off-and-undertakings-in-difficulty; and Policyholder Protection: www.bankofengland.co.uk/prudential-regulation/prudential-and-resolution-policy-index/insurance/policyholder-protection.

supervisor where the third-country branch undertaking is headquartered (the home supervisor) and the PRA (the host supervisor). The PRA focuses on maintaining strong, cooperative working relationships with home supervisors in other jurisdictions, bilaterally and through supervisory colleges.

1.11 In promoting its statutory objectives of safety and soundness and policyholder protection, the PRA focuses principally on the harm that firms can cause to the stability of the UK financial system. Aspects of both life and non-life insurance can be deemed critical to ensuring a stable financial system.

1.12 In fulfilling its primary objectives, the PRA also considers risks to the protection of policyholders and to firm safety and soundness. This includes a consideration of the liabilities of a firm that are protected by the Financial Services Compensation Scheme (FSCS), as this can be an indicator of the impact of firm failure on both policyholders and FSCS levy payers. As a result, the PRA has different expectations for insurers that underwrite liabilities which are backed by the FSCS. Above certain thresholds, the PRA will consider authorising firms as subsidiaries in the UK rather than permitting them to operate through a UK branch, thereby allowing the PRA to exercise greater supervisory oversight of the whole firm and its risks.

1.13 The PRA will also apply greater regulatory scrutiny to certain arrangements of third-country branches that have liabilities that are backed by the FSCS, including outwards reinsurance arrangements.

1.14 The Financial Conduct Authority (FCA) is the conduct regulator for all insurers operating in the UK. Third-country branches are subject to the FCA's rules: these are not affected by this SoP.

2: Assessing risks of a third-country branch in the United Kingdom

Overview of the PRA's approach to third-country insurance branches

2.1 When considering applications from a firm for authorisation as a third-country branch, the PRA's approach is anchored in its statutory objectives and includes an assessment of regulatory equivalence and 'supervisability', which is the PRA's ability to effectively supervise an insurer that seeks to operate in the UK through a branch. As set out in the flowchart below, the PRA considers, and needs to be satisfied regarding:

- the third-country branch undertaking's ability to meet the Threshold Conditions;⁴
- the home jurisdiction's supervisory equivalence;
- the capability of the third-country branch undertaking to be effectively supervised by the home supervisor;
- supervisory co-operation between the PRA and the home supervisor;
- UK policyholders of the firm will be given the appropriate priority in an insolvency and there is no discrimination against policyholders whose business is written in the UK in the event of a winding up;
- the scale of UK branch activity covered by the FSCS;
- the impact of the failure of a firm with a UK branch on the wider UK insurance market and financial system;
- the PRA's assessment of the outwards reinsurance arrangements of the third-country branch and third-country branch undertaking; and
- the third-country branch's and third-country branch undertaking's abilities to meet relevant PRA rules and expectations, including the Senior Managers and Certification Regime.

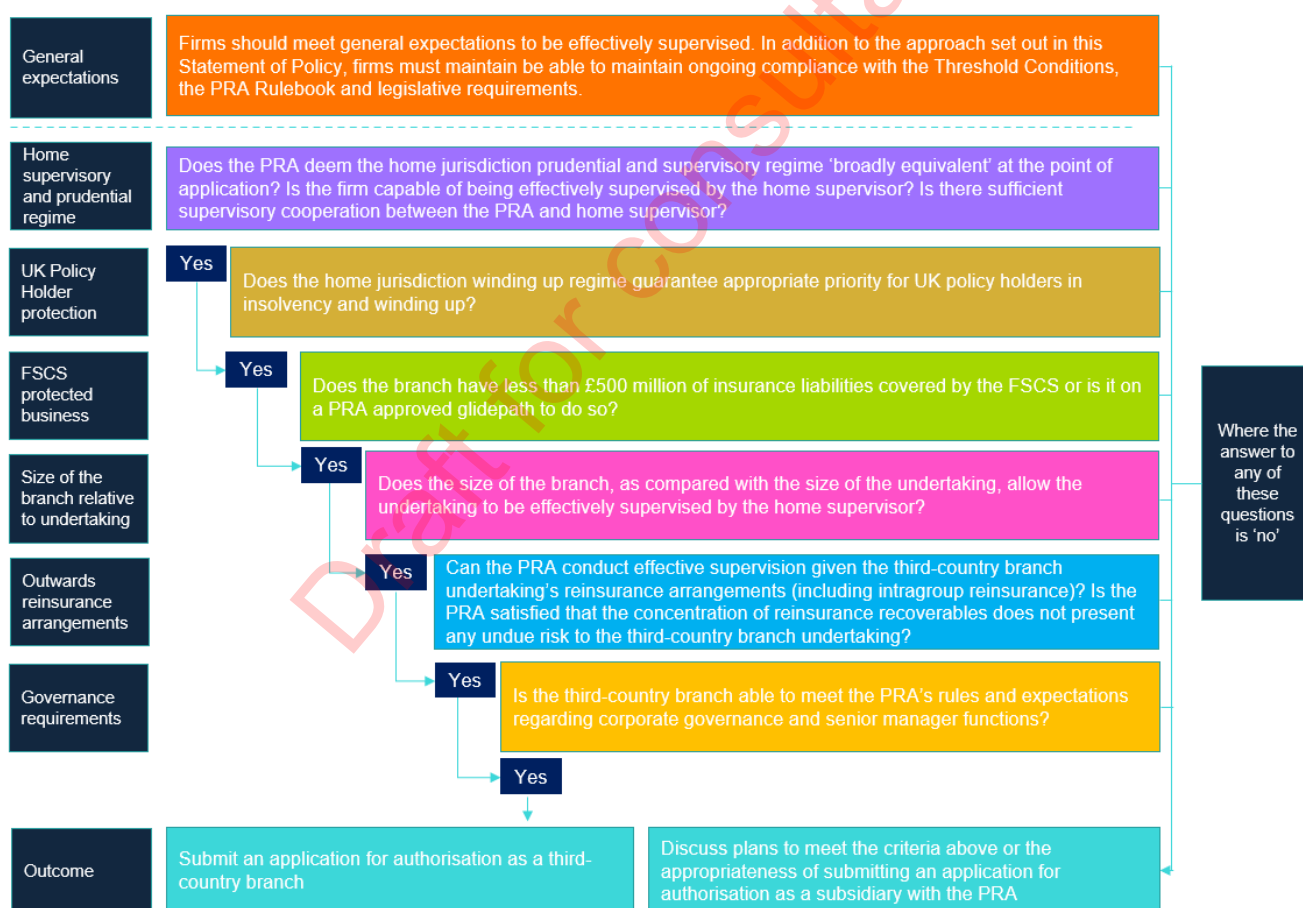
2.2 Each of the factors listed above will be explained further in this chapter. While the PRA assesses these considerations in their totality, it emphasises the overall 'supervisability' of a third-country branch undertaking. In particular, the PRA will place considerable weight on assessing the extent and quality of co-operation with the home supervisor. In performing the assessment, the PRA will balance the overall supervisability against the nature and scale of the insurance activities that the firm proposes to carry out, including those through its UK branch.

⁴ The full Threshold Conditions Order can be found in Schedule 6 to the Financial Services and Markets Act (FSMA) 2000.

2.3 Where the PRA’s assessment of the factors above finds the firm to be outside of risk tolerance for authorisation to operate in the UK through a branch, there are a number of areas that the PRA will discuss with the firm and home supervisor. This may include actions to reduce the risks identified in the PRA’s risk assessment, the potential for the use of a ‘glidepath’⁵ to improve risk assessment, or the appropriateness of applying to operate in the UK as a subsidiary instead.

2.4 Firms should use the flowchart below to help ascertain whether it would be appropriate to submit an application for authorisation to operate as a third-country branch in the UK. This flowchart sets out factors to consider for both the third-country branch undertaking and the third-country branch. The questions in this flowchart reflect the PRA’s indicative risk appetites. In each case, these factors will be assessed in the context of the overall branch authorisation application.

Chart 1: The PRA’s approach to third-country branch authorisation and supervision



⁵ A 'glidepath' refers to a plan for how a risk assessed as out of tolerance on application will move to within tolerance by a certain time.

The third-country branch undertaking's ability to meet the Threshold Conditions

2.5 The Threshold Conditions are the minimum requirements that all firms regulated by the PRA must meet on an ongoing basis.⁶ In this context, the third-country branch undertaking must meet the Threshold Conditions at authorisation and on an ongoing basis in order to be permitted to carry on regulated activities through a UK branch. PRA-authorized firms need to meet both the PRA-specific and the FCA-specific Threshold Conditions. This SoP section discusses the PRA-specific Threshold Conditions.

2.6 The PRA's approach to assessing compliance with the Threshold Conditions will include an assessment of compliance with the Threshold Condition that 'business [is] to be conducted in a prudent manner'. This is to ensure the adequacy of the financial resources of the third-country branch undertaking.⁷ SS44/15 – Solvency II: third-country insurance and pure reinsurance branches sets the expectation that third-country branch undertakings should provide sufficient information so that the PRA may form an opinion on the adequacy of these worldwide financial resources.⁸

2.7 The adequacy of the financial resources of the third-country branch undertaking as a whole is critical to the PRA's primary objectives of promoting firm safety and soundness and policyholder protection. The PRA considers that the financial resources of the third-country branch are intrinsically linked to the financial resources of the third-country branch undertaking. This is because aspects of financial resources are routinely managed by the third-country branch undertaking, rather than by the branch independently – such as asset portfolios and reinsurance arrangements.

2.8 The PRA also considers that the third-country branch undertaking's capital and solvency, and its management of operations on behalf of the UK branch, are important for promoting the safety and soundness of third-country branches, and the protection of branch policyholders.

2.9 The PRA will collect information on the third-country branch undertaking's historic and projected financial resources at the point of authorisation, and periodically on an ongoing basis. This information may be collected directly from third-country branch undertakings, from the third-country branch or from the home supervisor.

⁶ The full Threshold Conditions Order can be found in Schedule 6 of FSMA.

⁷ Rule 13.1 of the Third Country Branches Part of the PRA Rulebook.

⁸ SS44/15 – Solvency II: third-country insurance and pure reinsurance branches:

www.bankofengland.co.uk/prudential-regulation/publication/2015/solvency2-third-country-insurance-and-pure-reinsurance-branches-ss.

2.10 Where a third-country branch undertaking notifies the PRA that it is in difficulty or is projected to encounter difficulty⁹ the PRA will request additional information. A third-country branch undertaking can be considered to be in difficulty at a minimum when it is either in breach, or in danger of breaching, its home jurisdiction's financial resources requirements or other conditions for authorisation.

2.11 In conjunction with discussions with the third-country branch undertaking and the home supervisor, the PRA will use the information submitted to assess whether the third-country branch undertaking can either sustainably recover sufficient financial resources within a pre-agreed timescale, or demonstrate its ability to run-off solvently. In either case, the PRA will place emphasis on the assessment of any third-country branch specific factors.

The PRA's assessment of the home jurisdiction's supervisory equivalence

2.12 The PRA will undertake an assessment of supervisory equivalence to ascertain whether the home jurisdiction's supervision regime is 'broadly equivalent'.

2.13 The PRA's approach to the assessment of the 'broad equivalence' of a home jurisdiction's supervision regime has been published in the PRA's approach document. A non-exhaustive list of the factors which the PRA considers in conducting this assessment is set out below:

- regulatory framework;
- powers;
- supervision of individual firms and the consolidated group;
- information sharing;
- confidentiality; and
- competence and independence of supervision.

2.14 The PRA's assessment of the 'broad equivalence' of a home jurisdiction's supervision regime is not based on proportionality. The PRA's determination of equivalence will be independent of the nature and scale of activities carried out by the third-country branch. The PRA will not publish the results of these equivalence assessments.

2.15 The PRA will periodically update its assessment of the home jurisdiction's supervision regime. Where the home jurisdiction's supervision regime is not considered, or is no longer

⁹ In accordance with the notification requirements set out in Rule 2.1 of the Undertakings in Difficulty Part of the PRA Rulebook.

considered, 'broadly equivalent', the PRA will implement additional supervisory measures as appropriate. These could include requiring the firm to form a subsidiary.

The capability of the third-country branch undertaking to be effectively supervised by the home supervisor

2.16 The PRA's proportionate approach to the supervision of third-country branches from jurisdictions with broadly equivalent supervisory regimes places reliance on the home supervisor. As a result, the PRA's assessment of whether the third-country branch undertaking is capable of being effectively supervised by the home supervisor is a pre-requisite for authorisation to operate as a third-country branch in the UK.

2.17 The PRA's assessment will differ for each third-country branch undertaking, based on the specific application for authorisation. For guidance, firms may refer to Threshold Condition 4F which sets out a non-exhaustive list of criteria for the assessment of whether a firm is capable of being effectively supervised.¹⁰ The PRA will follow the same principles when it assesses whether a third-country branch undertaking is capable of being effectively supervised by its home supervisor.

Supervisory co-operation between the PRA and the home supervisor

2.18 Supervisory co-operation is usually underpinned by the PRA entering into a memorandum of understanding (MoU) with the relevant home supervisor. The purpose of the MoU is to establish the general terms for co-operation in the fields of prudential supervision, and for mutual assistance and exchange of information between the supervisory authorities within their respective statutory competencies pertaining to (re)insurance regulation and supervision.

2.19 Supervisory co-operation can be further facilitated by the signing of a Split of Responsibilities (SoR) agreement between the PRA and the relevant home supervisor, which supplements the MoUs on supervisory co-operation and exchange of information.

2.20 Insurance SoRs are non-legally binding bilateral agreements that typically cover the performance of respective supervisory tasks, the reliance that each supervisor may place on the other, co-operation and information sharing, meetings with and information requests to the firm, and how each risk element will be assessed.

¹⁰ The full Threshold Conditions Order can be found in Schedule 6 of FSMA.

2.21 The PRA considers that the supervision of third-country branches is more effective and efficient by clarifying the co-operation between the home and the host supervisory authority. The PRA does not consider insurance SoR agreements as a pre-requisite for the authorisation and operation of insurance third-country branches in the UK.

2.22 The PRA considers not just whether the above arrangements have been agreed, but how well their aims are achieved in practice. The high-level outcomes the PRA expects to achieve include: appropriate equivalence of the home jurisdiction's supervision in practice, transparency over when and how the home supervisor might intervene to remedy non-compliance with prudential standards, and any triggers for pre-emptive action.

2.23 The PRA will seek regular engagement with the home supervisor, either through a college, bilateral engagement or both, as appropriate, which should facilitate a technical discussion of the material risks and risk management practices at the third-country branch undertaking. The PRA will apply a proportionate approach to the frequency of sought engagement and supervisory co-operation with the home supervisor by considering the PRA's risk assessment of the third-country branch.

2.24 The effectiveness of supervisory co-operation with the home supervisor, including the level of co-operation and information the PRA receives, will determine the level of reliance it can place on the home supervisor and hence the amount of additional supervisory activities the PRA will undertake.

UK policyholder protection in insolvency and winding up

2.25 The PRA will assess, on authorisation and on an ongoing basis, whether UK branch policyholders are given the appropriate priority in an insolvency and that there is no discrimination against policyholders whose business is written in the UK in the event of a winding up.¹¹ The fairness of treatment of UK policyholders in a winding up scenario is an important condition for the authorisation and ongoing supervision of any third-country branch.

2.26 The PRA will assess the impact of any changes from the point of authorisation which may impact the priority given to UK policyholders. The PRA will also assess the third-country branch undertaking's description of the applicable laws relating to winding-up in the relevant jurisdiction. These changes could be notified by the third-country branch undertaking, the home supervisor, or any other source. Where the PRA determines that UK branch policyholders are not given appropriate priority, it will seek remediation which could include third-country branch specific requirements or requiring the branch to subsidiarise.

¹¹ Regulation 21 of The Insurers (Reorganisation and Winding Up) Regulations (2004).

The scale of UK branch activity covered by the FSCS

2.27 Eligible policyholders of insurers operating in the UK which are authorised by the PRA are covered by the FSCS. Therefore, regardless of whether third-country insurers operating in the UK do so through branches or subsidiaries, the potential cost to the FSCS of an insurer default would be the same.

2.28 The level of FSCS-protected liabilities is a strong indicator of the impact of failure of a branch to both policyholders and FSCS levy payers.

2.29 Levies on insurers writing FSCS-protected business are used to cover the costs of compensation. The size of these levies is limited to prevent insurers becoming unprofitable as a result of their FSCS levy obligations. The FSCS has a borrowing protocol in place with HM Treasury for access to the National Loans Fund for funding requirements in excess of these annual limits. Given this, the PRA applies a greater level of supervisory oversight for these firms and the PRA has a greater ability to mitigate risks in subsidiaries as it has access to a wider range of supervisory tools and legal powers. While not a hard threshold, the PRA expects third-country branches to have under £500 million of insurance liabilities covered by the FSCS when operating as a branch and may consider authorisation as a subsidiary as an alternative where this is not the case.

2.30 In referring to 'FSCS-protected liabilities', the PRA means an estimate of the aggregate gross amount of liabilities calculated by reference to protected contracts of insurance with eligible claimants. This is calculated before the application of any limits on the compensation that would be paid by the FSCS (for example where the limit of cover is 90% of the claim for certain protected contracts of insurance). The gross amount of such protected liabilities excludes any recovery that the FSCS might make from the estate of the insurer which is in default. It is also independent of the assets of the estate, including any recoveries which the insurer may be able to make under contracts of reinsurance.

2.31 The PRA will take into account the medium-term strategy, business plan and forecasts of the branch business in assessing the FSCS-protected liabilities threshold. For example, the PRA may decide to allow a firm to operate through a branch if FSCS-protected liabilities are likely to fall below the threshold in the near future. Conversely, the PRA may expect a firm to begin preparations to operate through a UK subsidiary where its FSCS-protected liabilities are currently below the threshold, but the firm is projecting that it will grow above it in the near future.

2.32 The PRA is aware that the process of converting from a branch to a subsidiary requires planning and preparation, and will consider with firms a reasonable time period to restructure, where appropriate, taking into account the operational steps involved and the risks to the PRA's objectives.

The impact of a branch failure on the wider insurance market and financial system

2.33 If an insurer's FSCS liabilities are below the threshold of £500 million, it could still, in some cases, pose a significant risk to the financial stability of the UK. The PRA will consider other relevant factors when reviewing the potential impact of a third-country branch on financial stability, including the:

- availability of substitute products that would offer a policyholder a similar level of protection;
- branch's position in the UK market, particularly assessing the size of the market share in a niche market;
- level of connectivity of a branch in the industry it operates within: for example, the extent and complexity of inter-firm transactions; and
- significance of the UK operations of the third-country branch compared to the amount of business within other jurisdictions (ie the relative size of the UK third-country branch compared to the third-country branch undertaking as a whole).

2.34 The PRA will assess the relative size of the third-country branch as compared to the third-country branch undertaking, using measures such as liabilities and premiums, in its assessment of supervisability and impact and likelihood of failure.

2.35 The PRA will take a proportionate approach to this assessment and consider third-country branch specific factors on a case-by-case basis. For higher potential impact category third-country branches, the PRA will assess whether the third-country branch represents the majority of the third-country branch undertaking. The starting point for assessment will be proportionately less onerous for lower potential impact category third-country branches.

2.36 Where a third-country branch undertaking's liabilities and premiums are disproportionately weighted towards the UK, the effectiveness of home supervisor's supervision may be reduced, compromising the supervisability of the third-country branch undertaking. Poorer supervisability may increase the risk of failure.

The PRA's assessment of the outwards reinsurance arrangements of the third-country branch and third-country branch undertaking

2.37 The PRA's assessment of whether the third-country branch undertaking complies with the Threshold Condition that 'business [is] to be conducted in a prudent manner' will include an assessment of the reinsurance arrangements of both the third-country branch undertaking

and the third-country branch. The PRA recognises that reinsurance can be an important part of risk management.

2.38 The PRA will undertake a case-by-case assessment of reinsurance arrangements. The PRA's assessment is, in part, informed by the total volume of FSCS-protected business a third-country branch has as a proportion of total third-country branch liabilities. Therefore, third-country branches with significant FSCS-protected liabilities as a proportion of total third-country branch liabilities should expect more intensive supervisory scrutiny of reinsurance arrangements.

2.39 The PRA's assessment of reinsurance arrangements will consider, but is not limited to, the following factors:

Table A: PRA's approach to assessing reinsurance arrangements

Component of reinsurance arrangements	Description of the PRA's approach to assessing the risks arising
Intra-group reinsurance	The PRA will assess the level of intra-group reinsurance ceded by the third-country branch undertaking, given that high levels of intra-group reinsurance may indicate that in substance, the third-country branch undertaking is operationally completely dependent on an intra-group entity. The third-country branch could be considered a 'branch of a branch'.
Aggregate reinsurance cessions	<p>The PRA will assess whether the aggregate reinsurance cessions by the third-country branch undertaking have any adverse impact on supervisability, risk management or the protection of branch policyholders. Where the third-country branch undertaking's reinsurance cessions become substantial, particularly where more risk is ceded than retained, supervisability can be undermined in several ways:</p> <ul style="list-style-type: none"> • the independence of the third-country branch undertaking can deteriorate; • the ability of the undertaking to manage ongoing reinsurance arrangements, including under stress, can deteriorate; • incentives for prudent management of insurance risk may be undermined; and

	<ul style="list-style-type: none"> • a larger proportion of the capital backing the third-country branch undertaking's liabilities is ultimately further removed from the branch policyholders.
Concentration of reinsurance arrangements	<p>The PRA will assess the concentration risks arising from the outwards reinsurance arrangements of both the third-country branch and the third-country branch undertaking, although the assessment for each may differ.</p> <p>In particular, the PRA will assess the magnitude of reinsurance recoverables from a single counterparty. For the third-country branch undertaking, the PRA will consider whether the reinsurance recoverables from a single counterparty are proportionate to the overall capital of the third-country branch undertaking. For the third-country branch, the PRA will assess the appropriateness of the absolute reinsurance recoverable from a single counterparty.</p> <p>Third-country branches should also refer to the following supervisory statements to inform their understanding of the PRA's approach to assessing reinsurance arrangements:</p> <ul style="list-style-type: none"> • SS20/16 – Solvency II: reinsurance – counterparty credit risk, which sets out the PRA's expectations regarding firms' management of reinsurance counterparty credit risk; and • SS1/20 – Solvency II: Prudent Person Principle, which sets out the PRA's expectations regarding prudent management of outwards reinsurance, including the management of concentration risk.

2.40 Insurers considering an application for authorisation to operate as a third-country branch in the UK should proactively engage with the PRA where they assess that they may have high levels of reinsurance with regard to the factors listed above. Third-country branches should also engage with the PRA where the reinsurance arrangements of the third-country branch undertaking change materially from authorisation.

The third-country branch's ability to meet PRA rules including the Senior Managers and Certification Regime

2.41 The PRA's expectations for all insurers, including third-country branches, in respect of senior manager roles are set out in SS35/15 – Strengthening individual accountability in insurance. In addition, third-country branch specific expectations are set out in SS44/15.

3: Third-country branches as composites

3.1 The PRA will not grant or vary permission if that would allow a newly established third-country insurance branch or an existing third-country insurance branch engaging solely in general insurance business or solely in long-term insurance business, to engage in both general insurance business and long-term insurance business. This does not apply to a third-country pure reinsurance branch.

3.2 The PRA will not grant permission to allow a third-country branch undertaking that pursues both general insurance business and long-term insurance business in its home jurisdiction to establish a branch in the UK, if that branch will engage in long-term business.

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