

# Bank of England PRA

## Appendix 4: Draft amendments to SS44/15 – Solvency II: third-country insurance and pure reinsurance branches

Consultation paper | CP21/23

October 2023

Draft for consultation



# Draft amendments to SS44/15 – Solvency II: third-country insurance and pure reinsurance branches

In this appendix, new text is underlined and deleted text is struck through. The appendix also incorporates text that was proposed in CP12/23, highlighted in yellow.

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## 1 Introduction

1.1 This supervisory statement is addressed to third-country insurance undertakings that are headquartered outside of the UK or Gibraltar, and have a UK branch (third-country branch undertakings). This includes third-country insurance undertakings that have a UK branch that solely carries out reinsurance activities (a third-country pure reinsurance branch). The statement replaces Supervisory Statement 10/15 ‘Solvency II: third-country branches’.<sup>1</sup> It should be read alongside the Third Country Branches Part of the Prudential Regulation Authority (PRA) Rulebook, any other rules in the PRA Rulebook that apply to third-country branch undertakings, the relevant European legislation (as it forms part of retained EU law), the **remaining relevant Guidelines on the supervision of branches of third-country insurance undertakings** (herein referred to as ‘the Branch Guidelines’)<sup>1a</sup> **(as set out in Appendix 1 of this supervisory statement)**, the PRA statement of policy (SoP) – The Prudential Regulation Authority’s approach to insurance branch authorisation and supervision, and the relevant provisions of the Financial Services and Markets Act 2000 (FSMA). It sets out the PRA’s expectations of third-country branch undertakings.

1.2 This statement 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).

<sup>1</sup> Supervisory statement 10/15 ‘Solvency II: third-country branches’, March 2015:

[www.bankofengland.co.uk/prudential-regulation/publication/2015/solvency2-third-country-branches-ss](https://www.bankofengland.co.uk/prudential-regulation/publication/2015/solvency2-third-country-branches-ss).

<sup>1a</sup> **Guidelines on supervision of branches of third-country insurance undertakings:**

[www.bankofengland.co.uk/paper/2019/interpretation-of-eu-guidelines-and-recommendations-boe-and-pra-approach-sop](https://www.bankofengland.co.uk/paper/2019/interpretation-of-eu-guidelines-and-recommendations-boe-and-pra-approach-sop). These are derived from the EIOPA Guidelines as at 31 December 2020.

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1.6 Firms should also refer to :

- Bank of England and PRA Statement of Policy ‘Interpretation of EU Guidelines and Recommendations: Bank of England and PRA approach after the UK’s withdrawal from the EU’;<sup>3</sup>
- Supervisory Statement (SS) 1/19 ‘Non-binding materials: The PRA’s approach after the UK’s withdrawal from the EU’;<sup>4</sup> and
- Supervisory Statement (SS) 2/19 ‘PRA approach to interpreting reporting and disclosure requirements and regulatory transactions forms after EU withdrawal’;<sup>5</sup>
- Statement of Policy ‘Solvency II regulatory reporting waivers’;<sup>5a</sup> and
- Supervisory Statement (SS) 40/15 ‘Solvency II: reporting and disclosure’;<sup>5b</sup> and
- Supervisory statement (SS) 20/16 – Solvency II: Reinsurance – Counterparty credit risk.<sup>5c</sup>

1.7 Other supervisory statements apply to third-country branch undertakings with any necessary modifications, and insofar as they are relevant to rules referred to in the Third Country Branches Part (or any other rules that apply to third-country branch undertakings).  
[This paragraph has been moved from paragraph 8.1].

## 2 Compliance with the Branch Guidelines

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### 2.3 [Deleted]

## 3 Availability of assets and winding up

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<sup>3</sup> December 2020: SoP - [Interpretation of EU Guidelines and Recommendations: Bank of England and PRA approach after the UK’s withdrawal from the EU.](#)

<sup>4</sup> December 2020: SS1/19 – [Non-binding PRA materials: The PRA’s approach after the UK’s withdrawal from the EU.](#)

<sup>5</sup> December 2020: SS2/19 – [PRA approach to interpreting reporting and disclosure requirements and regulatory transactions forms after the UK’s withdrawal from the EU.](#)

<sup>5a</sup> SoP – Solvency II regulatory reporting waivers: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2023/june/cp1223app21.pdf>

<sup>5b</sup> July 2016: SS40/15 – [Solvency II: reporting and disclosure](#)

<sup>5c</sup> November 2016: SS20/16 – [Solvency II: reinsurance counterparty credit risk](#)

### 3.2 [This text has been moved to 4.1A.]

3.3 The PRA expects considerable importance to be attached to calculating branch **assets** so as to ensure that only those assets that are available to pay the claims of branch policyholders in the event of a winding up event are included in the calculation of branch assets. Assets will be deemed to be available, where either all of the third-country branch undertaking's assets would be available to pay policyholders in priority to other creditors irrespective of the location **of the claim,<sup>6a</sup>**, or where those assets are exclusively available to pay the claims of branch policyholders (**Branch** Guidelines 6 and 25).

3.4 In accordance with Article 50 of Chapter 2A of the Reporting Part of the PRA Rulebook, **third-country branch undertakings are required to submit to the PRA an analysis from the third-country undertaking of the applicable winding up regime of the home jurisdiction, analysing the priority given to policyholders of the third-country branch compared to other policyholders of the third-country branch undertaking and how the assets of the third-country branch undertaking would be distributed to third-country branch policyholders.**

3.4A As part of the analysis referred to in paragraph 3.4, the PRA expects third-country branch undertakings to provide a numerical illustration of how the available assets would be distributed in a winding up of the third-country branch undertaking. This should reflect the order of priorities of claims which would apply to the distribution of branch assets and take into account all arrangements which may be in place to provide certain policyholders or creditors security, protection, or priority. This analysis should be supported by a legal opinion, taking into account the applicable laws relating to winding up in the home jurisdiction. The qualifications of the person providing the analysis and their competency to advise in respect of those laws should also be stated.

3.4B As set out in section 6 of this supervisory statement, where there is a significant change in the winding up regime applicable to the third-country branch, the PRA expects that the third-country branch undertaking submits an update of the information in paragraphs 3 and 3.4A to the PRA as soon as possible.

### 3.5 [Deleted]

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<sup>6a</sup> 'Location of the claim' means the location of either the beneficiary (including policyholders), the insured risk or the contract signed with the third country insurance undertaking (including whether the business was transacted through the branch or through the head office of the third country insurance undertaking).

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4.1A The PRA expects third-country branch undertakings to maintain financial soundness at branch level (Branch Guidelines 17 and 26) to ensure that the branch policyholders enjoy the same level of protection as those policyholders of an insurance undertaking with its head office situated in the UK. [This paragraph has been moved from paragraph 3.2.]

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4.3 Where the PRA assesses the home jurisdiction's ~~country~~ regime to be broadly equivalent to the regime applied by the PRA to (re)insurers whose head office is in the UK, then compliance with the financial resources requirements of that prudential regime may be relied on by the third-country branch undertaking as tending to establish compliance with the PRA's worldwide financial resources rule. Contravention of financial resources requirements of the home jurisdiction's ~~country~~ prudential regime may be relied on as tending to establish contravention of the PRA's worldwide financial resources rule.

4.4 Where that prudential regime is not broadly equivalent to the regime applied by the PRA to (re)insurers whose head office is in the UK and a third-country branch undertaking from such a jurisdiction notifies the PRA that it is in financial difficulty, then the PRA will take appropriate actions such as assess ~~assessing~~ whether that third-country branch undertaking still meets Threshold Conditions and has adequate financial resources. This assessment may use the adequacy of financial resources using the methods and techniques applicable to (re)insurers whose head office is in the UK.

4.5 Where the adequacy of worldwide financial resources of the third-country branch undertaking is found to be in contravention of the home jurisdiction's prudential regime, the PRA would expect further information to be submitted by the third-country branch undertaking.

4.6 As a minimum, the PRA would expect the third-country branch undertaking to submit a realistic plan to recover sufficient financial resources which explicitly identifies any branch specific recovery conditions.

## 6 Reporting

### 6.1 [Deleted]

6.2 [Deleted]

6.3 [Deleted]

6.4 [Deleted]

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6.6 [Deleted]

6.7 The branch assets which may be included in the reporting templates depend upon the analysis of how **available** assets would be distributed in a winding up. This is relevant where the winding up regime applicable to the third-country branch undertaking does not deliver the protection to branch policyholders that Solvency II requires.

6.7A The PRA expects that third-country branch undertakings guarantee that branch policyholders can obtain any publicly disclosed information concerning the solvency and financial condition of the third-country branch undertaking, if the rules and regulations of the third country home jurisdiction prescribe such disclosure.

6.8 ~~[Deleted]. The PRA expects third country branch undertakings to agree with their supervisor the extent of the narrative reporting required as regards the whole undertaking's solvency (such as copies of the third country regulatory reporting information submitted to the supervisory authority in the third country) as part of the regular supervisory reporting and the ORSA with regard to the branch operations.~~

6.8A With regard to branch operations, the PRA expects third-country branch undertakings to submit the following information to the PRA and agree with their supervisor the frequency with which the information should be submitted:

- a copy of the supervisory reporting documentation of the ~~whole~~ third-country branch undertaking; and
- a summary of any significant concerns which the home ~~supervisory authority~~ supervisor has raised with the third-country branch undertaking.

Where particular risks are identified, the PRA may request further information in relation to the above.

6.8B The PRA may also require third-country branch undertakings to communicate any other information prepared under the responsibility of, or at the request of, the administrative, management or supervisory body of the undertaking, in relation to operations of effected by the branch.

6.8C Where a significant development affects the information received from a third-country branch undertaking, the PRA expects that the undertaking should submit an update of this information to the PRA as soon as possible. Such an update can take the form of amendments to the initial report.

6.9 Third-country branches should refer to Supervisory Statement 40/15, 'Solvency II: reporting and disclosure'.<sup>9</sup> SS40/15 specifies the PRA's approach where discretion is given to supervisory authorities in the instructions accompanying the QRTs. The supervisory statement sets out the PRA's expectations in the following areas that are relevant to branches:

- accident or underwriting year reporting for templates, where this is relevant (section 4);
- reporting of annuities stemming from non-life obligations by currency (section 8); and
- development of the distribution of reported but not settled (RBNS) claims - reporting of numbers of claims (section 9).

6.9A Third-country branches should refer to 'PRA Statement of Policy: Solvency II regulatory reporting waivers' which specifies the PRA's approach to waiving submission of certain Solvency II reporting requirements in the Reporting Part of the PRA Rulebook.<sup>10</sup>

## **6A Notifications**

6A.1 As set out in Fundamental Rule 7,<sup>11</sup> , third-country branches must disclose to the PRA appropriately anything relating to the third-country branch or third-country branch undertaking of which the PRA would reasonably expect notice. This section sets out some examples of circumstances in which the PRA would expect notification.

<sup>9</sup> Supervisory Statement 40/15 'Solvency II: reporting and disclosure: [www.bankofengland.co.uk/prudential-regulation/publication/2015/solvency2-reporting-and-public-disclosure-options-provided-to-supervisory-authorities-ss](https://www.bankofengland.co.uk/prudential-regulation/publication/2015/solvency2-reporting-and-public-disclosure-options-provided-to-supervisory-authorities-ss).

<sup>10</sup> SoP – Solvency II regulatory reporting waivers: [www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2023/june/cp1223app21.pdf](https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2023/june/cp1223app21.pdf).

<sup>11</sup> Rule 2.7 of the Fundamental Rules Part of the PRA Rulebook.



6A.2 As set out in the PRA's SoP – The Prudential Regulation Authority's approach to insurance branch authorisation and supervision, the PRA expects third-country branches to have under £500 million of insurance liabilities covered by the Financial Services Compensation Scheme (FSCS) when operating as a branch, and may consider authorisation as a subsidiary as an alternative where that is not the case. While not a hard threshold, the PRA expects third-country branches to notify the PRA where it is projected that the FSCS-protected liabilities of the branch may grow above this threshold in the near future.

6A.3 Third-country branches are also expected to notify the PRA where:

- the reinsurance arrangements of the third-country branch undertaking change materially from the point of authorisation, or where the arrangements would result in high levels of reinsurance with regard to the factors listed in Table A of the PRA's SoP 'The Prudential Regulation Authority's approach to insurance branch authorisation and supervision';<sup>12</sup> and
- the liabilities and/or premiums of the third-country branch increase materially as compared to the third-country branch undertaking, so that the PRA can reassess the supervisability of the third-country branch undertaking.

## 7 Third-country branches as composites

[This section has been deleted]

~~7.1 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.~~

~~7.2 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.~~

## 8 Application of other supervisory statements to third-country branch undertakings

[This section has been deleted]

~~8.1 Other supervisory statements apply to third-country branch undertakings with any necessary modifications, and insofar as relevant to rules referred to in the Third-Country~~

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<sup>12</sup> [\[Link to new SoP being consulted on as part of CP21/23\]](#)



~~Branches Part (or any other rules that apply to third-country branch undertakings). [This paragraph has been moved to paragraph 1.7]~~

## **9 Own Risk and Solvency Assessment ('ORSA') reporting**

9.1 Third-country branches are required to submit ORSAs to the PRA.<sup>13</sup> Third-country branches should discuss their approach to ORSA submission with their supervisor. The PRA will adopt a proportionate approach to ORSA submission, and where appropriate it will consider proposals from third-country branches to combine submissions and submit the third-country branch undertaking ORSA in lieu of a separate UK third-country branch ORSA.

9.2 The PRA expects that third-country branches consider the relative size of the third-country branch, as compared with the third-country branch undertaking, when determining what would constitute a proportionate approach to ORSA submission.

9.3 The PRA expects that where the third-country branch undertaking ORSA is submitted in lieu of a third-country branch ORSA, it should contain the following at minimum, and that additional content should be agreed with the supervisor:

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<sup>13</sup> Conditions Governing Business 3.8. See also Supervisory Statement 19/16 'Solvency II: ORSA': [www.bankofengland.co.uk/prudential-regulation/publication/2016/solvency2-orsa](https://www.bankofengland.co.uk/prudential-regulation/publication/2016/solvency2-orsa)

- an overview of the branch business model and risks to that business model/strategy;
- any material risk for third-country branch operations;
- any risk of the third-country branch undertaking which may have an effect on branch operations; including a description of the arrangements, and risks thereof, between the third-country branch and third-country branch undertaking;
- identification of any material risks for third-country branch operations which are also material for the third-country branch undertaking. In this context, material risks include any risks which could significantly impact the viability of the business model; and
- a description of the third-country branch undertaking's system of governance, in accordance with Chapter 2 of the Conditions Governing Business Part of the PRA Rulebook.

9.4 Where a third-country branch chooses to submit a branch-specific ORSA, the PRA expects that it should also cover the factors outlined above.

9.5 The PRA expects that as part of its ORSA, the third-country branch undertaking assesses the permanent availability of the branch assets, as set out in paragraph 3.3 of this supervisory statement, and addresses in its assessment the risks to the effectiveness of arrangements to ensure that branch assets are paid only to branch insurance creditors and branch preferential creditors.

## **10 System of governance**

10.1 Third-country branches are required to have in place an effective system of governance which provides for sound and prudent management of the business. The detailed requirements on system of governance are listed in Chapter 7 of the Third Country Branches Part of the PRA Rulebook.

10.2 The PRA expects third-country branches to assess how their organisational structures support transparency, accountability, and the need for appropriate management of any conflicts of interest, including between the third-country branch and the third-country branch undertaking.

## **11 The Senior Managers & Certification Regime (SM&CR)**

11.1 All third-country branches are required to have a fit and proper individual appointed as the Senior Management Function (SMF) 19 – Head of Third Country Branch (and, where relevant, a With-Profits Actuary).<sup>14</sup> The FCA also requires there to be an individual performing the compliance oversight function (SMF16).<sup>15</sup> Individuals performing the SMF19 must have responsibility within the branch over the conduct of all activities subject to UK regulation.

11.2 It is not required to have individuals approved in advance to perform any of the other key functions, but a third-country branch undertaking will need to notify the PRA of the identity of the key function holders and provide relevant information about them. A small third-country branch may only require the minimum SMFs outlined in 11.1 above.

11.3 The PRA expects third-country branch undertakings to conduct their own analysis regarding which SMFs are required. The PRA will assess the appropriateness of these arrangements on a case-by-case basis. In addition to other factors, the size and complexity of the third-country branch should inform this analysis. Third-country branches should also consider the requirement set out in Insurance – Allocation of Responsibilities 2.3 to have all the prescribed responsibilities allocated to an approved person when considering which SMFs are required. Third-country branch undertakings should also refer to the wider expectations regarding the SM&CR that are set out in SS35/15 – Strengthening individual accountability in insurance.<sup>16</sup>

11.4 If a third-country branch undertaking has some individuals who are appointed to either the chief finance officer, chief risk officer, chief actuary, chief underwriting officer, or head of internal audit functions, and whose role is dedicated to the undertaking's operations in the UK, then the PRA expects third-country branches to apply for the approval of such individuals for the relevant functions.

11.5 Where a branch operates in the UK alongside a material subsidiary, the PRA expects there to be controls around the division of risks accepted through the subsidiary and the branch (for example, in the supply of key services between those entities). While there is

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<sup>14</sup> See Insurance – Senior Management Functions and Insurance – Fitness and Propriety Parts of the PRA Rulebook.

<sup>15</sup> See FCA Handbook: SUP 10C.6

<sup>16</sup> SS35/15 – Strengthening individual accountability in insurance: [www.bankofengland.co.uk/prudential-regulation/publication/2015/strengthening-individual-accountability-in-insurance-ss](https://www.bankofengland.co.uk/prudential-regulation/publication/2015/strengthening-individual-accountability-in-insurance-ss)

scope for key risk management function-holders to combine roles across the UK entities (subsidiary and branch), third-country branch undertakings are expected to ensure that any conflicts of interest that may arise for the function holder as a result are appropriately managed.

## **12 Whistleblowing**

12.1 Third-country branches are required to comply with Rule 2.4 in the Whistleblowing Part of the PRA Rulebook, in relation to a third-country branch undertaking's workers in the UK. Third-country branches should refer to the expectations in SS39/15 – 'Whistleblowing in deposit-takers, PRA-designated investment firms and insurers' for guidance on how to comply with the relevant whistleblowing requirements.<sup>17</sup>

## **13 Re-domiciliation of third-country insurers**

13.1 When the third-country branch undertaking that is authorised to operate a third-country branch in the UK redomiciles to another jurisdiction, the PRA expects a new application to be submitted for authorisation to write business as a third-country branch. This expectation applies irrespective of the country of re-domiciliation. When assessing the new authorisation application, the PRA will take a proportionate and streamlined approach depending on whether there are material differences in the third-country branch's new application. The PRA would therefore expect the new authorisation application to focus on any changes arising from re-domiciliation.

## **14 Operational risk and outsourcing**

14.1 Third-country branches should refer to the following for detailed rules and guidance when considering operational risk management:<sup>18</sup>

- PRA Rulebook – Fundamental Rules;
- PRA Rulebook Conditions Governing Business;<sup>19</sup>

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<sup>17</sup> Supervisory Statement 39/15 'Whistleblowing in deposit-takers, PRA-designated investment firms and insurers': [www.bankofengland.co.uk/prudential-regulation/publication/2015/whistleblowing-in-deposit-takers-pra-designated-investment-firms-and-insurers-ss](https://www.bankofengland.co.uk/prudential-regulation/publication/2015/whistleblowing-in-deposit-takers-pra-designated-investment-firms-and-insurers-ss).

<sup>18</sup> In addition to the list above, attention of third-country branches is drawn to Discussion Paper 3/22 'Operational resilience: Critical third parties to the UK financial sector' and any subsequent supervisory statement/s that may arise from this policy work.

<sup>19</sup> Other Conditions Governing Business rules not mentioned here remain applicable to third country branches – see Third Country Branches 7.1 of the PRA Rulebook.

- Rules 2.2 to 2.6 – General Governance Requirements;<sup>20</sup>
- Chapter 3 – Risk Management;
- Chapter 7 - Outsourcing;<sup>21</sup>
- Threshold Conditions: Prudent conduct of business, suitability and effective supervision;
- Supervisory Statement 2/21, ‘Outsourcing and third party risk management’;<sup>22</sup>  
and
- Supervisory Statement 35/15 ‘Strengthening individual accountability in insurance’ where the third-country branch has found it appropriate to appoint an SMF role holder with prescribed responsibilities in respect of operational risk management.<sup>23</sup>

14.2 This section does not consider the requirements and expectations of the Financial Conduct Authority (FCA). The FCA should be contacted directly to understand their requirements and expectations for operational risk.

<sup>20</sup> Specifically on risk management and outsourcing, continuity and regularity of its activities, contingency plans.

<sup>21</sup> To be read in conjunction with SS2/21.

<sup>22</sup> SS2/21 – Outsourcing and third party risk management: [www.bankofengland.co.uk/prudential-regulation/publication/2021/march/outsourcing-and-third-party-risk-management-ss](https://www.bankofengland.co.uk/prudential-regulation/publication/2021/march/outsourcing-and-third-party-risk-management-ss)

<sup>23</sup> SS35/15 – Strengthening individual accountability in insurance: [www.bankofengland.co.uk/prudential-regulation/publication/2015/strengthening-individual-accountability-in-insurance-ss](https://www.bankofengland.co.uk/prudential-regulation/publication/2015/strengthening-individual-accountability-in-insurance-ss)

**Appendix 1 - Remaining relevant Branch Guidelines**

<b>Guideline</b>	<b>Paragraph number</b>
Guideline 2 – Scheme of operations	1.18
Guideline 3 – Distribution of branch assets	1.19
Guideline 4 – Analysis concerning the distribution of branch assets	1.22
	1.23
Guideline 8 – Assessment of the branch financial position	1.29
Guideline 17 – Branch accounting	1.41
	1.42
Guideline 19 – Quality requirements for the security deposit	1.44
	1.45
Guideline 20 – Assessment of the quality of a security deposit	1.46
Guideline 26 – Assessment of available branch assets	1.52a
	1.52d
	1.52e
	1.52f
	1.52g
	1.52h
	1.52i
	1.52j
1.52k	
Guideline 34 – Material risks to be included in the ORSA	1.60
Guideline 35 – Assessment of branch assets in the ORSA	1.61a
Guideline 38 – ORSA Supervisory Report	1.66a
	1.66b
	1.67