Chapter 3

Cross-Border Services and Overseas Branches

Introduction

(Re)insurance is a global business. It is common for (re)insurance groups to operate in a range of jurisdictions via:

i. Locally incorporated and authorised subsidiaries.

ii. Local branches of third country subsidiaries.

iii. The cross-border provision of insurance, reinsurance or other insurance-related services.

In this chapter, we deal with items (ii) and (iii) in relation to both direct insurance as well as reinsurance, focussing on the regimes in place in the EEA and the UK for a range of participants/combinations as follows:

- **EEA (re)insurers doing business within the EEA.**
  - The cross-border provision of services[154] within the EEA by EEA (re)insurers (freedom of services passporting).
  - The establishment of branches within the EEA by EEA (re)insurers (freedom of establishment passporting).
  - The conduct and supervision of EEA (re)insurers exercising rights to freedom of services or of establishment passporting.
- **Third country (re)insurers doing business with (or in) the EEA.**
  - The cross-border provision of services into the EEA by non-EEA (re)insurers (third country (re)insurers).[155]
  - The establishment of branches in the EEA by third country (re)insurers (third country branches).
- **Non-UK (re)insurers doing business with (or in) the UK.**
  - The cross-border provision of services into the UK by non-UK (re)insurers.
  - The establishment or operation of branches in the UK by non-UK (re)insurers.

These permutations inevitably require an examination of:

- The Solvency II Directive, both in relation to the EU and its interactions with all third country (re)insurers (including, post-Brexit, the UK).
- The EU's attitude towards the UK following Brexit.
- The UK's attitude towards the EU, and indeed the rest of the world, following Brexit.
- Relatedly, the UK's efforts to establish bilateral arrangements with other key third countries — in particular, the United States and Switzerland — following Brexit.

Inevitably, there is a political component to consider, with, on one hand, the UK broadly attempting to make a success of Brexit by keeping access to its insurance markets open to international participants and, on the other hand, the EU seeking to maintain its integrity. We therefore also consider the respective publications of the EIOPA and the UK, including the PRA's proposals to further liberalise the UK position and implement certain reforms as set out in their recent consultation papers (PRA CPs).

[154] In this chapter, "services" may be taken to include all insurance-related services (including (re)insurance), unless the context requires otherwise.

[155] Following Brexit, the UK is a "third country" with respect to the EEA, and vice versa.

1. EEA (Re)insurers Doing Business Within the EEA

Solvency II requires that EEA member states subject the taking-up of insurance or reinsurance activities to prior authorisation.[156] Authorisation requirements are implemented as a matter of the local laws of an EEA member state, albeit subject to harmonisation.

A (re)insurer authorised under the laws of one EEA member state can provide (re)insurance services in another member state by providing services on a cross-border basis or setting up a branch (the set-up of which is not subject to full local authorisation requirements).[157]

Freedom of Services Passporting

Direct Insurers

Where an EEA-authorised direct insurer wishes to exercise passporting rights without setting up a branch, the direct insurer must notify the supervising authority of its home member state, indicating the insurer's proposed coverage of certain liabilities or risks.[158]

The supervisory authority of the direct insurer's home member state should, within one month of receiving the notification, inform the direct insurer of the contents of — and communicate to the supervising authority of the member state into which it intends to provide services — the following:

- A certificate attesting that the direct insurer covers its SCR and MCR.
- The classes of insurance that the direct insurer has been authorised to offer.
- The nature of the risks or commitments that the direct insurer proposes to cover in the host member state.

Direct insurers can begin offering cross-border services on the date that they are informed that the communication to the relevant authority of the non-home member state has been made. If the supervising authority in the home member state does not agree to communicate the required information, it must let the direct insurer know of its reasons for the refusal by the end of the one-month period referred to above. The direct insurer has the right to then apply to overturn the decision in a court in its home member state.[159]

Under Article 149 of the Solvency II Directive, if the direct insurer's situation changes and the contents of the initial communication become inaccurate, the direct insurer will need to adhere to the communication procedure referred to above once again.[160]

One of the Amendments (discussed previously in the chapters) amends Article 149 to clarify that an insurer must inform the supervisory authority of its home member state of any changes in business materially affecting its risk profile or materially influencing insurance activities in one or more member states.[161]

[156] Recital 8 of the Solvency II Directive.

[157] The EIOPA, formerly the Committee of European Insurance and Occupational Pensions Supervisors, in 2008 published the "General Protocol Relating to the Collaboration of the Insurance Supervisory Authorities of the Member States of the European Union" in relation to these arrangements. In 2000, the European Commission published an interpretative communication, "Freedom To Provide Services and the General Good in the Insurance Sector" (2000/C43/03) (the Interpretative Communication), containing guidance on the difference between a branch and the provision of services.

[158] Article 147, *ibid.*

[159] Article 148, *ibid.*

[160] Article 149, *ibid.*

[161] Article 1(63) 2021/0295 (COD).

Reinsurers

Though there are no notification requirements for the passporting of reinsurers, a reinsurer must adhere to the legal and regulatory requirements to which it would be subject to as a reinsurer in the host member state.[162] If a reinsurer does not comply with such provisions, the supervising authority in the host member state will require the reinsurer to rectify the problem and report these findings to the supervisory authority in the reinsurer's home member state.

If the reinsurer continues not to comply with local rules, then the supervisory authority in the host member state can take measures against the reinsurer, for example by barring it from entering into and honouring any new reinsurance contracts within the host member state.[163]

Freedom of Establishment Passporting

Freedom of establishment passporting under Solvency II allows insurance undertakings authorised in an EEA state to provide insurance in another EEA state by setting up a permanent establishment in that other EEA state, which does not separately require local authorisation.[164] Passports are available to both insurers and reinsurers, albeit with different rules applying to each entity type.

A "branch" is defined as "an agency or a branch of an insurance or reinsurance undertaking which is located in the territory of a member state other than the home member state".[165] This process entails notifying the supervising authority in its home member state, including informing it of the details of the scheme of operations.[166] The home state regulator will then notify the host state regulator.

Only activities carried on "within" the territory of an EEA state are subject to prior authorisation. This can capture services provided both on a cross-border basis and by a branch. The notion of "within" requires looking at the location of risks for a given insurance contract. Solvency II differentiates between the following types of risks:[167]

- For property insurance, the risk is where the property is situated.
- For vehicle insurance, the risk is where the vehicle is situated.
- For travel, the risk is where wherever the policyholder was situated when the policy was entered into.
- In all other cases, the risk is wherever the policyholder is situated, or for non-natural legal persons, the establishment of the policyholder, to which the contract of insurance relates.

Conditions for EEA (Re)insurers Establishing an EEA Branch

A (re)insurer must notify the supervising authority in its host member state of the following information:

- The member state within the territory of which it proposes to establish the branch.
- A scheme of operations setting out, at least, the types of business envisaged and the structural organisation of the branch.

[162] Article 158 of the Solvency II Directive.
[163] *Ibid.*
[164] Article 15(1), *ibid.*
[165] Article 13(11), *ibid.*
[166] Article 145(2), *ibid.*
[167] Article 13(13), *ibid.*

- The name of a person who possesses sufficient powers to bind, in relation to third parties, the insurance undertaking.
- The address in the host member state from which documents may be obtained and to which they may be delivered, including all communications to the authorised agent.[168]

The home state supervisory authority must, within three months of receiving the information referred to above, communicate that information to the supervisory authority in the host member state and confirm that the (re)insurer covers its SCR and MCR.[169] This is so that the supervisory authority of the host member state is confident in the adequacy of the system of governance, in the financial situation of the (re)insurer and that the proposed authorised agent has the requisite qualifications, experience and integrity.

If the home supervisory authority declines to relay this information to the host member state, it must explain its reasoning to the (re)insurer within the three-month period. If it fails to do so within this statutory period, its failure or delay can be questioned by the (re)insurer in the home member state's courts.

The supervisory authority of the host member state has two months from receiving the information referred to above to inform the supervisory authority of the (re)insurer's home member state of any conditions under which the branch's business should be pursued before the (re)insurer's branch can start business.

If any such conditions are imposed, the (re)insurer must be informed of these requirements, after which the branch may start pursuing its business. If there is no communication of any condition at the end of the two-month period, the branch can commence its business with the understanding that there are no applicable conditions.[170]

General Good

(Re)insurers carrying on business in another member state (whether through a branch or provision of services) must comply with conditions imposed by the host member state "in the interest of the general good", a somewhat vague principle that can be interpreted differently per member state.[171] There is no definition under Solvency II of "general good".

However, the European Commission has provided some general guiding principles, stating it must:

- Come from within a field that has not been harmonised at the EEA level.
- Pursue an objective of the general good.
- Be non-discriminatory.
- Be objectively necessary.
- Be proportionate to the objective pursued.
- Not duplicate rules to which the provider of services is already subject in its home state.[172]

[168] Article 145(2), *ibid.*

[169] Article 146(1), *ibid.*

[170] Article 146, *ibid.*

[171] Article 180, *ibid.*

[172] Official Journal of the European Communities, Commission Interpretative Communication — "Freedom To Provide Services and the General Good in the Insurance Sector" (2000/C 43/03).

Solvency II prohibits host member states from requiring the following of passporting (re)insurers:

- Systematic notification of general and special policy conditions, scales of premiums or, in the case of life insurance, the technical bases used in particular for calculating scales of premiums and technical provisions, or the forms and other documents that an insurance undertaking intends to use in its dealings with policyholders.
- Prior notification or to obtain the approval of proposed increases in premium rates, except as part of general price-control systems.[173]

These conditions are analysed in more detail in the Interpretative Communication and have also been the subject of cases heard in the European Court of Justice.

Conduct and Supervisory Responsibility

The home member state supervisory authority retains the responsibility for prudential supervision of the passporting (re)insurer, whereas the passporting (re)insurer must comply with the conduct rules of the host member state.

Where the host supervisory authority establishes that a (re)insurer is not complying with the applicable legal provisions, the host supervisory authority will notify and require remediation from the (re)insurer. Where such action is not taken, the supervising authority of the host member state must inform the supervising authority of the home member state, which must ensure the passporting entity's compliance.[174]

The host member state can take steps to penalise the behaviour of the passporting entity if necessary, including preventing that undertaking from engaging in new insurance contracts in the host member state.[175]

2. Third Country (Re)insurers Doing Business With (or in) the EEA

Cross-Border Services – Direct Insurance

A third country direct insurer (which, post-Brexit, includes the UK) may not write risks in the EEA without the requisite local authorisation. As the UK is no longer part of the EU, UK (re)insurers can no longer provide business to EU policyholder customers either on the basis of freedom of services passporting or freedom of establishment passporting. UK-incorporated (re)insurers have in response had to undertake significant Brexit transition steps in order to continue to service EEA policyholders.

Such transition steps have included:

- The identification of affected customers (see Section 1 above on what activities are considered to be "within" an EEA member state).
- The setting up and authorisation of new EEA-based (re)insurers.
- Transferring or otherwise migrating customers to locally authorised EEA entities.

Note that a third country branch authorised in an EEA member state is authorised to provide services in the home state of authorisation but cannot itself benefit from passporting. Only EEA-incorporated subsidiaries of (re)insurers are entitled to such passporting rights.

[173] Article 154 of the Solvency II Directive.

[174] Article 30(3), *ibid*.

[175] Articles 155 and 158, *ibid*.

Cross-Border Services – Reinsurance

There is more scope for a third country reinsurer to write reinsurance risk in the EEA. Solvency II is not prescriptive in this regard; it provides only that an EEA member state may not impose requirements on a third country reinsurer such that the requirements are more favourable than for EEA reinsurers.[176]

Member states must apply their own requirements for third country reinsurers, and there are a range of approaches — from a requirement for minimum rating, to a requirement for collateral or even outright prohibition — depending on the member state in question.

Note, however, the particular treatment of reinsurers subject to regulatory regimes deemed "equivalent" for these purposes — see Chapter 2: Reinsurance and Risk Transfer.

Third Country Branches – Direct Insurance

Conditions of Authorisation

An undertaking with its head office outside the EU must obtain authorisation to carry out direct insurance business in the EU. (This requirement is specific to undertakings carrying out direct insurance business.) The following requirements apply to the insurer in question:[177]

- It is entitled to pursue insurance business under its national law.
- It establishes a branch in the territory of the member state in which authorisation is sought.
- It undertakes to set up, at the branch's place of management, accounts specific to the business that it pursues there, and to keep there all the records relating to the business transacted.
- It designates a general representative, to be approved by the supervisory authorities.
- It possesses, in the member state in which authorisation is sought, assets of an amount equal to at least half of the absolute floor prescribed in Article 129(1)(d)[178] in respect of the MCR, that absolute floor being:

  i. €2.7 million for non-life insurance undertakings, unless certain risks set out in classes 10 to 15 of Part A of Annex 1 of Solvency II (together, these classes encompass all liability-related risk, such as motor vehicle, aircraft and ship liability; certain types of credit risk; and suretyship risk)[179] are covered, in which case the absolute floor would be €3.4 million;
  ii. €3.4 million for life insurance undertakings (including captive insurance undertakings);
  iii. €3.9 million for reinsurance undertakings, except in the case of captive reinsurance undertakings, in which case the MCR must be no less than €1.3 million; or
  iv. The sum of the relevant amounts set out at (i) and (ii) above for insurance undertakings that simultaneously pursue both life and non-life insurance activities as described in Article 73(5).[180]

[176] Article 174, *ibid.*
[177] Article 162(2), *ibid.*
[178] Article 129(1)(d), *ibid.*
[179] Annex I (Classes of Non-Life Insurance), *ibid.*
[180] Article 73(5), *ibid.*

- It deposits, in respect of the MCR, one-fourth of the relevant absolute floor described in the bullet above as security (with an EEA-authorised credit institution that has acknowledged that it does not have, or will not exercise, any rights of set-off of claims it may have against the undertaking if it chooses to, or is forced to, wind down).[181]
- It undertakes to cover the SCR and MCR in accordance with the requirements referred to in Articles 100[182] and 128.[183] Note that streamlined rules apply in the case of branching (re)insurers that are authorised in more than one member state, provided there is mutual agreement among all the relevant member states.[184]
- It communicates the name and address of the claims representative appointed in each member state other than the member state in which the authorisation is sought (where the risks to be covered are classified as "motor vehicle liability", other than carrier's liability).
- It submits a scheme of operations in accordance with the provisions in Article 163.[185]
- It fulfils the governance requirements of Solvency II.[186]

Third Country Branches – Reinsurance

Solvency II does not provide separately for third country branches that conduct only reinsurance business (as opposed to insurance or mixed insurance/reinsurance branches). Generally, the treatment of third country reinsurers is at the discretion of member states, provided that member states may not treat such reinsurers more favourably than EEA entities.[187] Member states may impose additional restrictions as a matter of national law and regulation. The requirements to treat third country branches "no more favourably" than EEA reinsurers applies also here.

3. Non-UK (Re)insurers Doing Business With (or in) the UK

Cross-Border Services – Direct Insurance

Any non-UK insurer newly doing direct business in the UK must now obtain UK authorisation. EEA (re)insurers may now only provide services to UK policyholders if authorised in the UK or by utilising the temporary permission and the Financial Services Contracts Regime (FSCR) until full UK authorisation is obtained (see further below). Accordingly, the Solvency II provisions on passporting are no longer of relevance, with the PRA's rules covering third country branches assuming greater significance.

[181] Guideline 19, Paragraph 1.45 of the EIOPA Guidelines on the supervision of branches of third country insurance undertakings (EIOPA-BoS-15/110).

[182] Article 100 of the Solvency II Directive.

[183] Article 128, *ibid.*

[184] Article 167(1), *ibid.*

[185] Article 163, *ibid.*

[186] Articles 41 to 50, *ibid.*

[187] Article 174, *ibid.*

Cross-Border Services – Reinsurance

There is more scope for a third country reinsurer to write UK reinsurance risk. The PRA does not apply specific requirements for a minimum rating or a requirement for collateral, although such features are likely to improve the credit that a UK cedant is able to take in respect of the reinsurance asset. We discussed this topic in Chapter 2: Reinsurance and Risk Transfer.

Third Country Branches

A (re)insurer with its head office outside the UK seeking to carry out direct or reinsurance business in the UK must obtain authorisation by the PRA under Section 19 of the FSMA. By March 2021, 30 international insurers had established branches in the UK.

The UK has largely retained Solvency II's specific principles and conditions for third country branches.[188] These requirements can be found in the Third Country Branches Part of the PRA Rulebook, which was amended post-Brexit to reflect certain necessary adjustments. Further, parts of Article 162 have already been adopted under UK law by virtue of the FSMA and the Variation of Threshold Conditions Order thereunder.[189]

The principal requirements that a third country (re)insurer carrying on (re)insurance business in the UK must meet are:

- The threshold conditions set out in Schedule 6 (Threshold Conditions) of the FSMA,[190] in relation to non-UK (re)insurers, which are:
  - It must have a representative who is resident in the UK and who has authority to bind it in its relations with third parties and to represent it in its relations with the PRA and the courts in the UK.
  - It must be a body corporate entitled under the law of the place where its head office is situated to effect and carry out contracts of insurance.
  - It must have in the UK assets of such value as may be specified (discussed further below).
  - Unless the regulated activity relates solely to reinsurance, it must have made a deposit of such amount and with such a person as may be specified (discussed further below).[191]
- It must maintain, at a place of business in the UK, all records relating to the activities carried on from the third country branch.[192]
- Unless a pure reinsurance branch, it must hold in the UK assets to cover the branch SCR and must deposit as security in the UK with a UK bank assets of an amount equal to at least one-quarter of the absolute floor of the MCR.[193]
- It must calculate a branch MCR and a branch SCR and cover each of the branch MCR and branch SCR with eligible own funds.[194]

[188] Article 162, *ibid.*
[189] Financial Services and Markets Act 2000 (Variation of Threshold Conditions) Order 2001 (SI 2001/2507).
[190] Schedule 6 (Threshold Conditions) of the FSMA.
[191] *Ibid.*
[192] Paragraph 2.1, Third Country Branches Part of the PRA Rulebook.
[193] Paragraphs 3.1 and 3.3, *ibid.*
[194] Paragraphs 4.1 and 4.2, *ibid.*

- It must establish adequate branch technical provisions.[195]
- It must comply with rules as to how branch assets and liabilities are valued and how branch own funds should be classified.[196]
- It must have a branch scheme of operations that adheres to the informational requirements set out in Article 163(1) and (2).[197]

The PRA's recent efforts to reform the UK Solvency II regime (discussed below) have resulted in reduced regulatory requirements for third country (re)insurers. The PRA's final policy takes effect on 31 December 2024 and is contained in PRA PS2/24, which amends the Third Country Branches Part of the PRA Rulebook in the following key respects:[198]

- Removes the requirement for third country (re)insurers to calculate a branch SCR and branch MCR and to cover these with eligible own funds.
- Removes the associated requirement to calculate branch own funds for the purposes of complying with the branch SCR and branch MCR.
- Removes the SCR localisation requirement *i.e.*, the requirement for third country (re)insurers to hold assets in the UK to cover the branch SCR.
- Replaces the requirement for third country (re)insurers (expect (re)insurers that have a third country pure (re)insurance branch) to deposit as security in the UK assets of an amount equal to at least one-quarter of the absolute floor of the MCR, with an amount equal to:
  - £600,000 for a third country insurance branch whose insurance business is limited to general insurance business.
  - £875,000 for a third country insurance branch whose insurance business is limited to long-term insurance business.
  - The sum of the amounts set out in (i) and (ii) for a third country insurance branch that is a composite third country branch.

Branch Own Funds and Financial Resources

The PRA provides further guidance on branch own funds in PRA SS44/15, stating the following:

- It expects third country (re)insurers to comply with the EIOPA Guidelines on the supervision of branches of third country insurance undertakings (EIOPA BoS-15/110) (Branch Guidelines) and to comply with the Third Country Branches Part of the PRA Rulebook in light of such guidelines.[199]
- It expects third country (re)insurers to maintain financial soundness at branch level, to ensure that branch policyholders enjoy the same level of protection as the policyholders of an insurer established in the UK.[200]
- Only those assets that are available to pay the claims of branch policyholders in the event of a winding-up should be included in the calculation of branch assets (either in priority to other creditors or exclusively).[201]

[195] Paragraph 6.1, *ibid.*

[196] Paragraphs 6.3 and 6.4, *ibid.*

[197] Paragraph 5.1, *ibid.*

[198] Annex K of Appendix 2 of the PRA PS2/24.

[199] Paragraph 2.1 of the PRA SS44/15.

[200] Paragraph 3.2, *ibid.*

[201] Paragraph 3.3, *ibid.*

- It expects to receive an analysis from the (re)insurers of the applicable winding-up regime analysing the priority given to branch policyholders and how the assets of the third country (re)insurer would be distributed to those policyholders.[202]

Third country (re)insurers with a UK branch are also required to maintain adequate worldwide financial resources.[203] The branch must also provide the PRA with enough information to make an informed assessment as to the adequacy of such financial resources.[204]

If the home regime of the (re)insurer is similar to the PRA regime, the branch may be able to rely on financial resources per its home state regime, subject to regulatory reporting of the same to the PRA.[205] However, if the home regime is significantly different to the PRA regime, the PRA will be required to assess the adequacy of its financial resources with the principles that apply to UK (re)insurers.[206]

Governance

Third country branches must comply with the governance requirements of Provisions 1, 2.2 to 2.6 and 3 to 7 of Conditions Governing Business, modified as set out in Provisions 7.2 and 7.3 of the Third Country Branches Part of the PRA Rulebook. These deal with:

- General governance requirements, including the need to have written policies in relation to risk management, internal control, internal audit and, where relevant, outsourcing, which should be subject to the prior approval of the governing body.
- Fitness and propriety requirements in respect of persons performing a key function.
- Risk management.
- The own risk and solvency assessment (ORSA).
- Actuarial function.[207]

The PRA provides further guidance on its expectations as to notifications, ORSA reporting, systems of governance, senior management functions and outsourcing/operational risk in Chapters 9 to 14 of the PRA SS44/15.[208]

PRA Approach to Third Country Branches

On 28 March 2018, the PRA published the PRA SS2/18 setting out its approach to branch authorisation and supervision.[209] This was published in the run-up to the UK's withdrawal from the EU, with the PRA contemplating the implications of the exit for EU (re)insurers who had previously operated on a freedom of establishment basis. PRA SS2/18 was subsequently replaced by a new PRA policy statement (PS) published in May 2024, which consolidates and clarifies the PRA's approach to authorising and supervising third country branches.[210]

[202] Paragraph 3.4, *ibid.*
[203] Paragraph 4.1, *ibid.*
[204] Paragraph 4.2, *ibid.*
[205] Paragraph 4.3, *ibid.*
[206] Paragraph 4.4, *ibid.*
[207] *See* Paragraphs 2 to 7 Conditions Governing Business Third Country Branches Part of the PRA Rulebook.
[208] PRA SS44/15.
[209] PRA SS2/18.
[210] PRA PS8/24.

The PRA states that, when considering applications from a (re)insurer for authorisation as a third country branch, it will consider regulatory equivalence and its ability to supervise the insuring entity.[211] The PRA must be satisfied that the below factors are cumulatively met:[212]

- The (re)insurer's ability to meet the applicable "threshold conditions" under the FSMA.
- The home jurisdiction's supervisory equivalence.
- The capability of the (re)insurer to be effectively supervised by the home supervisor.
- Sufficient supervisory cooperation between the PRA and the home supervisor.
- UK insurance policyholders of the (re)insurer 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 the UK branch activity covered by the Financial Services Compensation Scheme (FSCS).
- The nature, scale and complexity of the (re)insurer's proposed activity.
- The impact of the failure of a (re)insurer on the wider UK insurance market and financial system.
- The PRA's assessment of the outwards reinsurance arrangements of the third country branch and the (re)insurer.
- The third country branch's and (re)insurer's abilities to meet relevant PRA rules and expectations, including the Senior Managers and Certification Regime (SMCR).

The Statement of Policy goes on to explain in detail each of the factors listed above. The PRA emphasises that the overall "supervisability" of a (re)insurer operating through a branch, and the extent and quality of cooperation with the home supervisor, are key tenets in its assessment.[213] "Supervisability" is a holistic assessment, which will consider the governance arrangements of a branch and third country (re)insurer as a whole.

The PRA expects third country branches to have under £500 million in insurance liabilities covered by the FSCS.[214] Although this is not a hard threshold, the PRA is likely to require a third country (re)insurer to authorise a subsidiary when such a limit has been surpassed.[215] As a consequence, many larger branches are expected to end up subsidiarising, if they have not done so already.

However, the PRA will consider the branch's medium-term strategy, business plan and forecast in assessing the FSCS-protected liabilities threshold and then make an informed judgement of whether such liabilities are likely to fall above or below the limit.[216] Whether the third country (re)insurer operates as a branch or subsidiary does not have a consequent impact on the potential cost to the FSCS of a default, as eligible policyholders of authorised insurance entities in the UK fall within the ambit of the FSCS.[217]

The PRA therefore considers that the level of FSCS-protected liabilities is a strong indicator of the impact of a branch's failure on both policyholders and FSCS levy payers.[218]

[211] Paragraph 1.8, *ibid.*
[212] Paragraph 2.1, *ibid.*
[213] Paragraph 1.2, *ibid.*
[214] Paragraph 2.29, *ibid.*
[215] *Ibid.*
[216] Paragraph 2.31, *ibid.*
[217] Paragraph 2.27, *ibid.*
[218] Paragraph 2.28, *ibid.*

The PRA applies most of its third country branches rules to pure reinsurance branches, noting that (as stated above) pure reinsurance branches are exempt from some requirements in the UK.

Recent PRA Reforms

In 2023, the PRA published a number of PRA CPs on significant reforms for third country branches in the UK. These PRA CPs form part of the UK's "Edinburgh Reforms" announced in December 2022.

June 2023 Consultation Paper

Most significantly, the PRA proposed to remove the need to calculate and report third country branch capital requirements.[219]

This included proposals that non-UK (re)insurers no longer be required to account for a branch SCR and a branch MCR. Further, the PRA proposed to abolish the SCR localisation requirement for third country branches — that is, the requirement to hold assets in the UK to cover the branch SCR, and the requirement to establish and report branch risk margins on balance sheets.

Here, the PRA sought to capture the reality that a third country branch should not be viewed as an independent entity severable from its wider legal enterprise. This perhaps indicates that the PRA will exercise greater scrutiny over entities holistically (including over their home regimes). This also means that third country branches will not have to comply with both home state and UK rules, which will alleviate the burden for them of the doubling up of requirements, thereby making the UK more attractive as a jurisdiction to do business in.

The PRA continues its focus on protecting policyholders with these reforms. The PRA will still depend on home state authorities to check that these third country insurance undertakings are properly regulated and overseen. Moreover, the PRA will still require third country firms to show that they maintain "adequate worldwide financial resources". The date for the implementation of these reforms is 31 December 2024.

October 2023 Consultation Paper

In a further PRA CP,[220] the PRA set out its proposals to consolidate and formalise existing PRA policies. The three main proposals were as follows:

- Introduction of a new Statement of Policy that would replace PRA SS2/18 on branch authorisation and international (re)insurer supervision.
- Amendment of the PRA SS44/15 on third country insurance and pure reinsurance branches. The PRA proposed to make amendments to existing texts, updating the information it publishes on its expectations relating to notifications, ORSA reporting, systems of governance, Senior Management Functions and outsourcing/operational risk.
- Amendment of the PRA SS20/16 on reinsurance and counterparty credit risk to clarify that it is applicable to third country branch undertakings and amend the provision so that it is consistent with the language used in the PRA Rulebook.

These proposals took effect in May 2024 (see below).

219 PRA CP12/23.

220 PRA CP21/23.

PRA Final Policy and Implementation

Following expiration of the consultation period, the PRA published its final policy in PRA PS2/24.[221] The PRA indicated that the proposals set out in the June 2023 PRA CP received general support, particularly the proposal to remove the requirement to calculate branch capital requirements. These proposals will be implemented subject to minor amendments.[222] Once the reforms take effect on 31 December 2024, third country (re)insurers will no longer be required to account for a branch SCR and branch MCR. Consequently, the requirement to hold assets in the UK to cover the branch SCR and the requirement to establish and report branch risk margins on balance sheets will also be removed.

The PRA subsequently published PRA PS8/24 providing feedback to responses received from PRA CP21/23.[223] Respondents generally welcomed the PRA's proposals to consolidate and clarify its existing approach to insurance branches.[224] PRA PS8/24 introduced several key updates:

- A new PRA PS replaced PRA SS2/18 on branch authorisation and international (re)insurer supervision on 23 May 2024.[225] The substance of this PRA PS is discussed above. The PRA's approach under the new policy is largely in line with the approach set out in PRA SS2/18. The new PRA PS, however, covers the factors to be considered in assessing third country branch risks in much greater detail.
- Two new versions of the PRA SS44/15 on third country insurance and pure reinsurance branches:
  - The current version (which took effect on 23 May 2024) that incorporates amendments proposed by PRA CP21/23.[226]
  - A future version of the PRA SS44/15,[227] to take effect on 31 December 2024, that incorporates amendments confirmed in the PRA PS3/24 on reporting and disclosure.[228] Key amendments include updated disclosure requirements, removing references to the EIOPA and highlighting Branch Guidelines that will remain relevant following PRA PS3/24.
- An updated PRA SS20/16 (taking effect on 23 May 2024) implementing proposals from PRA CP21/23.[229]

4. Impact of Brexit on EEA (Re)insurers Operating in the UK

Contingency Arrangements Implemented by the UK Government

The UK's withdrawal from the EU meant that EEA (re)insurers with UK operations could no longer rely on passporting rights for continued market access. Accordingly, the UK government set in place two contingency arrangements:

- The Temporary Permissions Regime (TPR).
- The FSCR.

Please also see the discussion of reinsurance equivalence in Chapter 2: Reinsurance and Risk Transfer.

[221] PRA PS2/24.
[222] Paragraph 1.20, *ibid.*
[223] PRA PS8/24.
[224] Paragraph 1.9, *ibid.*
[225] PRA PS8/24.
[226] Paragraphs 9 to 14 of the PRA SS44/15.
[227] Future Version of the PRA SS44/15.
[228] PRA PS3/24.
[229] PRA SS20/16.

Temporary Permissions Regime

The TPR acted as a transition mechanism for EEA firms that operated in the UK on the basis of passporting rights to continue to do so whilst awaiting and applying for full UK authorisation — *i.e.*, to subsidiarise in the UK.

This scheme ended on 30 December 2023, and the FCA expected any firms remaining in the TPR that had not have, by this time, filed active applications for full permission under Part IV of the FSMA either to apply to cancel their temporary permission or indicate that they expected to enter the FSCR.

Financial Services Contracts Regime

The FSCR is an additional transition mechanism for EEA (re)insurers that did not wish to enter the TPR or seek UK authorisation.[230] It allows such EEA (re)insurers to run off their existing regulated business in the UK. But unlike the TPR, it does not allow for (re)insurers to write new businesses in the UK. Instead, it enables EEA (re)insurers that previously passported into the UK to wind down their UK business in an orderly fashion.

The FSCR itself also consists of two regimes: the Supervised Run-Off regime (SRO) and Contractual Run-Off regime (CRO), as follows:

- **The SRO** applies to firms with a UK branch (*i.e.*, which formerly operated under a freedom of establishment passport) that did not enter the TPR (meaning such (re)insurers did not intend to seek authorisation for the specific passporting entity), as well as (re)insurers that have exited the TPR.
- **The CRO** applies to firms without a UK branch (*i.e.*, which formerly operated under a freedom of services passport) that did not enter the TPR. These firms entered the CRO automatically by operation of law after the end of the Brexit transition period.

The FSCR allows firms to use the SRO or CRO for five years after entering into such arrangements, with an exception for insurance contracts that have a time limit of 15 years (*i.e.*, until end of 2035). These regimes will cease to apply to any firm whose home authorisation is cancelled, and such firms are required to notify such cancellations to the FCA or PRA.

5. Bilateral Arrangements Post-Brexit

EU-US

The EU-US Bilateral Agreement signed in 2017 addresses three principal areas:

- **Group supervision.** The agreement allows reinsurance groups operating in each other's market to be subject to worldwide prudential insurance group oversight only by the home supervisor. Essentially, this precludes EU insurance supervisors from applying Solvency II group-level solvency and capital standards to US insurance groups.
- **Reinsurance supervision.** The agreement prohibits a US state regulator from imposing on an EU assuming reinsurer either collateral or local presence requirements that it does not also impose on a local US assuming reinsurer as a condition to a reinsurance agreement, and vice versa, subject to certain financial and contractual conditions.

[230] The FSCR.

- **Exchange of information.** The agreement encourages both parties' supervisory authorities to cooperate in exchanging information in accordance with the practices set out in the memorandum of understanding that is annexed to the agreement.

UK-US

In 2018, the UK and the US entered into an arrangement very similar in effect to the EU-US Bilateral Agreement (UK-US Bilateral Agreement).[231]

UK-Switzerland

In 2023, the UK and Switzerland entered into what is known as the Berne Financial Services Agreement, which provides market access to financial services firms in both jurisdictions without the need for local authorisation.[232] This is particularly important as, from the start of 2024, Switzerland requires all non-Swiss firms to establish a base before providing services to Swiss customers. The UK is the only country that will be exempt from this requirement.

The agreement applies, *inter alia*, to select lines of non-life insurance business. It does not apply to life, accident, health and most liability insurance streams (including monopoly insurance and business interruption insurance). The agreement only applies to larger corporate clients and professional policyholders.[233]

UK-incorporated (re)insurers may, from the start of 2024 and subject to limited conditions, establish a base in Switzerland and provide services to Swiss consumers without having to set up a locally authorised branch or subsidiary, and vice versa. These arrangements are based on deference: Switzerland will defer to the domestic authorisation and prudential measures of the UK, and vice versa.

[231] Agreement Between the UK and the US on Prudential Measures Regarding Insurance and Reinsurance.

[232] Agreement Between the UK and the Swiss Confederation on Mutual Recognition in Financial Services.

[233] Defined as "enterprises" that meet two of these three criteria: (i) net turnover in excess of 40 million Swiss francs, (ii) balance sheet total in excess of 20 million Swiss francs, or (ii) employment of over 250 employees.