



EIOPA-CP-14/048

27 November 2014

Consultation Paper
on
the draft proposal for
Guidelines
on the supervision of branches of third-
country insurance undertakings

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Responding to this paper

EIOPA welcomes comments on the draft proposal for Guidelines on the supervision of branches of third country insurance undertakings.

Comments are most helpful if they:

- contain a clear rationale; and
- describe any alternatives EIOPA should consider.

Please send your comments to EIOPA in the provided Template for Comments, by email Consultation_Set2@eiopa.europa.eu, by 2 March 2015.

Contributions not provided in the template for comments, or sent to a different email address, or after the deadline will not be processed.

Publication of responses

Contributions received will be published on EIOPA's public website unless you request otherwise in the respective field in the template for comments. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.

Please note that EIOPA is subject to Regulation (EC) No 1049/2001 regarding public access to documents and EIOPA's rules on public access to documents¹.

Contributions will be made available at the end of the public consultation period.

Data protection

Please note that personal contact details (such as name of individuals, email addresses and phone numbers) will not be published. They will only be used to request clarifications if necessary on the information supplied.

EIOPA, as a European Authority, will process any personal data in line with Regulation (EC) No 45/2001 on the protection of the individuals with regards to the processing of personal data by the Community institutions and bodies and on the free movement of such data. More information on data protection can be found at <https://eiopa.europa.eu/> under the heading 'Legal notice'.

¹ [https://eiopa.europa.eu/fileadmin/tx_dam/files/aboutceiops/Public-Access-\(EIOPA-MB-11-051\).pdf](https://eiopa.europa.eu/fileadmin/tx_dam/files/aboutceiops/Public-Access-(EIOPA-MB-11-051).pdf)

Consultation Paper Overview & Next Steps

EIOPA carries out consultations in the case of Guidelines and Recommendations in accordance to Article 16 (2) of the EIOPA Regulation.

This Consultation Paper presents the draft Guidelines, explanatory text and four Technical Annexes:

- Technical Annex I: Information to be contained within the regular supervisory report
- Technical Annex II: Specific templates for branches of third-country insurance undertakings
- Technical Annex III: List and description of quantitative reporting data items
- Technical Annex IV – Specific templates for branches of third-country insurance undertakings

The analysis of the expected impact from the proposed policy is covered under Annex I (Impact Assessment).

Next steps

EIOPA will consider the feedback received and expects to publish a Final Report on the consultation and to submit the Consultation Paper for adoption by the Board of Supervisors.

1. Guidelines on the supervision of branches of third-country insurance undertakings

Introduction

- 1.1 According to Article 16 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority ("EIOPA Regulation")² EIOPA is drafting Guidelines on the supervision of branches of third-country insurance undertakings. These Guidelines relate to Article 162 to 171 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Directive 2009/138/EC)³.
- 1.2 The purpose of these Guidelines is to ensure a consistent, efficient and effective protection of policyholders within the EU. The Guidelines aim at ensuring that policyholders dealing with a branch of third-country insurance undertakings enjoy at least the same level of protection that they would, had they been dealing with an insurance undertaking situated in the EU, where both the financial soundness, the risk management and the governance arrangements of the branch would be subject to the standards of Solvency II Directive.
- 1.3 These Guidelines allow alternative methods to protect policyholders of the branch in order to ensure a proportionate approach to supervision, especially in what regards certain aspects of Solvency II, such as valuation, own funds and submission of information.
- 1.4 These Guidelines do not apply to undertakings carrying on only reinsurance business through an EU branch since Article 162 of the Solvency II Directive only applies an authorisation requirement to branches of those undertakings specified in the first subparagraph of Article 2(1) which are those carrying out insurance, rather than reinsurance, business.
- 1.5 These Guidelines are addressed to supervisory authorities under Solvency II.
- 1.6 These Guidelines apply with respect to branches of third-country insurance undertakings where the branch operations consist of insurance business or a mix of insurance and reinsurance business. They apply to the same extent and in the same manner to third-country insurance undertakings from jurisdictions deemed to be equivalent under relevant articles of Directive 2009/138/EC and to third-country insurance undertakings from jurisdictions not deemed to be equivalent. Notwithstanding this, supervisory authorities may have regard to equivalence decisions which have been made where they are relevant to assessing the solvency of the whole third-country undertaking. The Guidelines do not apply to third-country undertakings

² OJ L 331, 15.12.2010, p. 48–83.

³ OJ L 335, 17.12.2009, p. 1-155.

taking on, or authorised to taking on, only reinsurance business through an EU branch even if the third-country undertaking carries on direct insurance business through its head-office or branches outside of the EU.

- 1.7 These Guidelines define the reporting requirements in relation to branches of third-country insurance undertakings making use of the templates and log files developed under the proposed Implementing Technical Standards on the templates for the submission of information to the supervisory authorities (hereinafter the 'draft implementing technical standards on reporting')⁴.
- 1.8 Where the templates for reporting on branches of third-country insurance undertakings are different, either due to specific information being required by these Guidelines or due to a specific request of information not being applicable, a specific template and respective log file are referred to in these Guidelines and included in Technical Annexes III and IV. Where the template for reporting on branches of third-country insurance undertakings is the same as for the draft implementing technical standards on reporting, these Guidelines refer to both the template and log file therein.
- 1.9 For clarification reasons, a spreadsheet with the complete package of the templates applicable to branch operations by third-country insurance undertakings will be made available on the EIOPA website.
- 1.10 EIOPA Guidelines on reporting and disclosure⁵ are also applicable with respect to branches of third-country insurance undertakings as indicated in such Guidelines.
- 1.11 For the purpose of these Guidelines the following definitions apply:
 - a) "branch operations" means operations effected by a branch of a third-country insurance undertaking pursuant to its authorisation obtained under Directive 2009/138/EC.
 - b) "branch assets" means assets of the third-country insurance undertaking which are attributable to branch operations, excluding any notional book amount owing from the undertaking's non-branch operations to the undertaking's branch operations and which are available upon the winding up of the undertaking to pay the insurance liabilities of branch policyholders in accordance with Guideline 26.
 - c) "branch liabilities" means the branch insurance claims, branch preferential claims and claims secured on branch assets.
 - d) "branch own funds" means the sum of branch basic own funds and branch ancillary own funds.
 - e) "branch basic own funds" means the excess of branch assets over branch liabilities.

⁴ Currently under Public Consultation here:

<https://eiopa.europa.eu/consultations/consultation-papers/index.html>

⁵ Currently under Public Consultation here:

<https://eiopa.europa.eu/consultations/consultation-papers/index.html>

- f) "branch ancillary own funds" means items, which can be called up within winding-up proceedings with regard to the third-country insurance undertaking to pay the insurance liabilities vis-a-vis branch policyholders in accordance with Guideline 26 and which meet the requirements of Article 89 and 90 of Directive 2009/138/EC.
- g) "branch balance sheet" means a balance sheet showing branch assets and branch liabilities complying with the recognition and valuation principles under Article 75 of Directive 2009/138/EC.
- h) "branch *SCR*" means the Solvency Capital Requirement (*SCR*) based on the branch balance sheet and the volume measures as specified in Directive 2009/138/EC which relate to the branch balance sheet.
- i) "branch *MCR*" means the Minimum Capital Requirement (*MCR*) which is based on the branch balance sheet and the volume measures as specified in Directive 2009/138/EC which relate to the branch balance sheet.
- j) "branch policyholder" means policyholder whose policy is effected by the branch. This definition includes, but is not limited to, policyholders and beneficiaries who have branch insurance claims.
- k) "insurance claim" means claims of branch policyholders in meaning given by Article 268 (g) of the Directive 2009/138/EC.
- l) "location of the insurance 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).
- m) "branch insurance claim" means insurance claim relating to branch policyholders.
- n) "branch preferential claims" means any claims which upon a winding-up of the third-country insurance undertaking rank in priority to branch insurance claims which are:
 - (1) claims of employees of branch operations arising from employment contracts and employment relations, claims by public bodies on taxes owed with respect to branch operations,
 - (2) claims by social security systems with regard to branch operations,
or
 - (3) claims on branch assets subject to rights in rem.
- o) "host supervisory authority" means the supervisory authority of the Member State where the third-country insurance undertaking has established a branch and where the branch operations occur.
- p) "home supervisory authority" means the supervisory authority where the third-country insurance undertaking has its head office and which has authorised the undertaking to take on insurance business;

q) "Solvency II reporting currency" is the currency of the country of the supervisory authority receiving the reporting information, unless otherwise allowed by this supervisory authority;

1.12 If not defined in these Guidelines, the terms have the meaning defined in the legal acts referred to in the introduction.

These Guidelines apply from 1 January 2016.

Authorisation of branch of a third-country insurance undertaking

Guideline 1 - Conditions for authorisation

1.13 When authorising or continuing authorisation of a branch of third-country insurance undertaking, host supervisory authorities should be satisfied that the third-country insurance undertaking has an adequate solvency margin and agrees to provide any information which the host supervisory authority may need for supervision purposes and which demonstrates that the undertaking as a whole has an adequate solvency margin under the home jurisdiction rules and that the home supervisory authority confirms that those home jurisdiction rules are met.

1.14 Host supervisory authority should assess the adequacy of the solvency margin of the undertaking as a whole on the basis of the prudential requirements of the home supervisory authority, including seeking additional information where needed.

Guideline 2 – Scheme of operations and solvency margin

1.15 The third-country undertaking should include in the scheme of operations of its branch an analysis of the differences between the home country solvency rules and the rules of Directive 2009/138/EC, including an explanation on the reasons that justify such differences.

Guideline 3 –Distribution of branch assets

1.16 When determining whether the third-country insurance undertaking has an adequate solvency margin, the host supervisory authority should consider:

- a) the branch assets remaining after paying the insurance claims of branch policyholders which would be distributed to other claims of branch policyholders; and
- b) the aggregate amount of claims which would rank in priority to, or equal with, claims of branch policyholders.

Guideline 4 – Legal opinion concerning the distribution of branch assets

1.17 The third-country undertaking should provide the host supervisory authority with a legal opinion concerning the distribution of branch assets describing how the assets of this undertaking would be distributed upon winding-up and reflecting the order of priorities of claims which would apply to the

distribution of branch assets where there are other arrangements in place that affect the distribution of assets upon winding-up.

- 1.18 The third-country insurance undertaking should ensure that the legal opinion is prepared on the basis that the branch would be subject to a single winding-up proceeding governed by the laws of the country where it has its head-office and that the person providing the opinion is qualified to advise in respect of those laws.

Guideline 5 – Additional legal opinion

- 1.19 Where the host supervisory authority does not consider that the legal opinion is provided by an individual sufficiently qualified or that the analysis provided is not sufficient, the undertaking should provide an additional legal opinion from another sufficiently qualified person approved by the host supervisory authority.

Guideline 6 - Determination of branch liabilities

- 1.20 The branch insurance claims included in branch liabilities should comprise technical provisions, as described in Article 77 of Directive 138/2009/EC, associated with only those branch insurance claims.

Guideline 7 – Determination of branch assets

- 1.21 The third-country insurance undertaking should ensure that only the assets that are available according to the criteria below are included in the branch balance sheet:
- a) assets are distributed in accordance with article 275(1)(a) or (b) of Directive 2009/138/EC and do not differentiate between claims according to the location of the claim;
 - b) assets are distributed to pay branch preferential claims and insurance claims of branch policyholders in priority to all other claims.
- 1.22 In submitting information concerning the branch balance sheet, branch own funds and the branch SCR, the undertaking should include only assets which are available for distribution upon winding-up of the undertaking to pay the insurance claims of branch policyholders.
- 1.23 In submitting the information on the branch balance sheet, the undertaking should show the available assets gross of branch preferential claims and any prior security interests. The net amount of available branch assets and the deduction of branch preferential claims and prior security interests should be shown on the template "Additional branch balance sheet information" (S.02.03.p) under the draft implementing technical standards on reporting.

Supervisory powers and communication with other supervisory authorities

Guideline 8 – General supervisory powers

1.24 Host supervisory authorities should use, where appropriate, the supervisory powers contained in Directive 2009/138/EC where relevant, including those contained in Articles 34, 35, 36, 37, 84, 85, 110, 118 and 119, for the supervision of branch operations to the same extent that they make use of such powers for the supervision of undertakings with their head office located within the Union.

Guideline 9 – Assessment of branch financial position as part of the supervisory review process

1.25 When assessing the adequacy of the branch financial position as part of the supervisory review process, the host supervisory authorities should consider the risk that branch policyholders' claims may be diluted by non-branch claims.

Guideline 10 – Granting advantages, including joint decisions under Article 167(3) of Directive 2009/138/EC

1.26 Where a third-country insurance undertaking authorised in more than one Member State has applied for the advantages set out in Article 167 of Directive 2009/138/EC, the host supervisory authorities concerned should discuss whether the conditions in Guideline 1 have been met before reaching a decision to grant such advantages to the insurance undertaking.

Guideline 11 – Notifying EIOPA of joint decisions in relation to Article 167 of Directive 2009/138/EC

1.27 Where a third-country insurance undertaking authorised in more than one Member State applies for any of the advantages of Article 167 of Directive 2009/138/EC, the relevant supervisory authority should notify EIOPA of the decision under Article 167 and whether it considers the conditions in Guideline 1 are met.

Guideline 12 – Notification of the host supervisory authorities of branch locations

1.28 The third-country insurance undertaking should inform on a continuous basis host supervisory authorities of the location of the branches which the undertaking has established or intends to establish in any Member State.

Guideline 13 – Single balance sheet under Article 167 of Directive 2009/138/EC

1.29 Where any of the advantages set out in Article 167(1) of Directive 138/2009/EC are granted, the host supervisory authority who is to supervise all branches established within the Union should ensure that a single branch balance sheet is drawn up by the third-country insurance undertaking in

relation to all branch operations pursued within the Union and which may, at the undertaking's discretion, eliminate any intra-branch transactions.

Guideline 14 – Withdrawal of advantages

1.30 Host supervisory authorities which withdraw the advantages granted under Article 167(1) of Directive 138/2009/EC should promptly inform of the withdrawal the supervisory authorities of the other Member States in which the third-country insurance undertaking operates.

Guideline 15 - Supervisory review process

1.31 Host supervisory authorities should ensure that third-country insurance undertaking's branch operations are subject to review and evaluation as part of the supervisory review process described by Article 36 of Directive 138/2009/EC.

Guideline 16 – Cooperation and communication between supervisory authorities under the supervisory review process

1.32 Where host supervisory authorities have granted the advantages under Article 167(1) of Directive 138/2009/EC, those supervisory authorities should establish a communication process in line with the one described in the Guidelines on Supervisory Review Process.

1.33 Where the third-country insurance undertaking has branches authorised in more than one Member State but has not applied for any of the advantages of Article 167(1), of Directive 138/2009/EC, those supervisory authorities should agree how to cooperate and exchange information in line with the Guidelines on Supervisory Review Process.

Guideline 17 - Communication with other supervisory authorities

1.34 Where a host supervisory authority becomes aware of any information that may undermine the position of branch insurance creditors or undermine the availability of the branch own funds, it should communicate that information to any other host supervisory authority where the third-country insurance undertaking has received authorisation to establish a branch and to EIOPA.

1.35 Host supervisory authorities should consider if there are other relevant supervisory authorities with whom they should communicate, such as supervisory authorities of related insurance undertakings or branches of other members of the group to which the third-country insurance undertaking belongs.

Financial soundness of the branch

Guideline 18 - Branch accounting

1.36 A third-country insurance undertaking should establish, maintain and document the administrative and accounting procedures related to the

operations of its branches in the Member State in which the corresponding branch operates.

1.37 The third-country insurance undertaking should keep the records that identify the location of all branch assets as well as sufficient information to enable any person charged with winding-up the undertaking to take control of those assets.

1.38 The third-country insurance undertaking should produce and keep management accounts relating to the whole balance sheet of the branch – including available and non-available assets and all liabilities relating to branch operations.

Guideline 19 - Location of branch assets

1.39 The third-country insurance undertaking should continuously monitor that sufficient assets covering the branch MCR are located within the Member State where the activities are pursued, and that the assets covering the branch SCR, in excess of the branch MCR, are located in the Union, and inform the host supervisory authority immediately if this condition is no longer complied with.

Guideline 20 – Quality requirements on deposit lodged

1.40 The third-country insurance undertaking should ensure that the deposit lodged in accordance with Article 162 (2) (e) of the Directive 2009/138/EC is of low volatility under all market conditions to ensure it is appropriate to be lodged as security.

1.41 The third-country insurance undertaking should only lodge the deposit with a credit institution authorised in the Union which has acknowledged that it has not, or will not exercise, any rights of set-off of any claims it may have against the undertaking against the deposit should the insurance undertaking fail or be subject to winding-up proceedings.

Guideline 21 – Assessment of quality of deposit lodged

1.42 The third-country insurance undertaking should provide sufficient information to the supervisory authorities so that they are able to assess the quality of the assets and, for the purpose of assessing compliance with Article 162(2)(e) of Directive 2009/138/EC, determine if the undertaking should make changes to the deposit to ensure its ongoing appropriateness as security.

Guideline 22 - Valuation rules

1.43 The third-country insurance undertaking should calculate its branch assets, its branch liabilities, its branch MCR and its branch SCR according to the valuation rules set out in Chapter VI of Title 1 of Directive 2009/138/EC.

Guideline 23 – Calculation of capital requirements for the branch

1.44 The branch SCR and branch MCR should be calculated based on the branch balance sheet as if the branch operations constituted a separate insurance undertaking.

Guideline 24 - Solvency capital requirement

1.45 The third-country insurance undertaking should ensure that the branch own funds are at least equal to the branch SCR.

Guideline 25 – Minimum capital requirement

1.46 The third-country insurance undertaking should ensure that the branch basic own funds are at least equal to the branch MCR.

Guideline 26 - Branch own funds

1.47 The third-country insurance undertaking should calculate branch own funds taking into account only assets which are available for distribution upon a winding-up of the undertaking to pay the insurance claims of branch policyholders. Such assets should only be treated as available if they would be distributed:

- a) in accordance with the provisions of Article 275(1)(a) or (b) of Directive 2009/138/EC, and do not differentiate between claims according to the location of the claim; or
- b) if they would be distributed to pay branch preferential claims and the insurance claims of branch policyholders in priority to all other claims.

Guideline 27 – Assessment of available branch assets

1.48 The third-country insurance undertaking should provide sufficient information to the host supervisory authority so that they are able to assess:

- a) the steps which would have to be taken by a person appointed to take control of and collect in the branch assets as part of a winding-up process and whether such steps would be effective where competing claims may exist to those assets exercised by other creditors or a person responsible for any other winding-up proceeding commenced in respect of the undertaking;
- b) the speed and simplicity with which branch assets could be transferred outside of the jurisdiction of the host supervisory authority and the European Union prior to winding-up proceedings commencing;
- c) the degree to which the host supervisory authority could effectively prevent branch assets being transferred outside of the European Union prior to winding-up proceedings commencing;
- d) the degree to which branch assets could be used to settle liabilities other than branch insurance claims prior to or in the event of the third-country insurance undertaking's winding-up;

- e) the manner in which the third-country insurance undertaking exercises control over branch operations and whether this control is exerted by those persons responsible for the branch operations as distinct from persons responsible for the other operations of the undertaking;
- f) the risk that branch liabilities are not related to the claims of policyholders within the EU such that they function as a mechanism for improperly or otherwise transferring branch assets to any other creditor of the undertaking, any member of the same group, or any third-party to the detriment of policyholders within the EU;
- g) whether the contractual relationships between the third-country insurance undertaking and third parties enable the use of branch assets for purposes other than satisfying branch liabilities;
- h) the existence of any relevant law which may require or support the use of branch assets for purposes other than satisfying branch liabilities;
- i) whether the failing to use branch assets for purposes other than the satisfaction of branch liabilities might harm the third-country insurance undertaking's reputation;
- j) whether there are any tax disadvantages or advantages for the third-country insurance undertaking that would arise upon the use of branch assets for purposes other than the satisfaction of branch liabilities; and
- k) whether there are any exchange controls that may have an impact on the use of branch assets for purposes other than the satisfaction of branch liabilities.

Governance and risk management

Guideline 28 - General governance requirements

1.49 The third-country insurance undertaking should ensure that it complies with the system of governance requirements under Articles 41 to 50 of Directive 2009/138/EC, including with the prudent person principle with regard to branch operations.

Guideline 29 – Application of prudent person principle to branch assets

1.50 The third-country insurance undertaking should assess the suitability of those branch assets in order to ensure they comply with the prudent person principle set out in Article 132 of Directive 2009/138/EC in relation to the branch.

Guideline 30 – Language and reporting of governance policies

1.51 The third-country insurance undertaking should have written policies covering the governance arrangements to comply with Guideline 28, available in a language agreed by the host supervisory authority, and include information in their regular supervisory reporting regarding how it satisfies those governance requirements.

Guideline 31 - Key functions

1.52 The third-country insurance undertaking should ensure that the risk management function, the compliance function, the internal audit function and the actuarial function, are in place with regard to branch operations regardless of whether those functions are dedicated exclusively to the branch operations or whether they are functions exercised from the undertaking's head-office and applied to the branch operations.

Guideline 32 – Notification of fit and proper persons

1.53 A third-country insurance undertaking should notify the host supervisory authority of the identity of, and any changes to:

- a) the general representative of the branch;
- b) any persons who effectively run or who may influence branch operations; and
- c) the persons who are responsible for key functions with regard to branch operations.

Guideline 33 – Fit and proper requirements

1.54 The third-country insurance undertaking should provide the host supervisory authority with all information needed to assess the fitness and propriety of the persons mentioned in Guideline 32.

Guideline 34 - Own risk and solvency assessment (ORSA)

1.55 The third-country insurance undertaking should perform, at least annually, an ORSA complying with Article 45 of Directive 2009/138/EC with regard to branch operations.

Guideline 35 – Material risks to be included in ORSA

1.56 The third-country insurance undertaking should ensure that all material risks with regards to branch operations and any risks with regards to the third-country insurance undertaking's other operations which may have a material impact on branch operations are taken into account appropriately in the ORSA referred to in Guideline 34.

Guideline 36 – Assessment of branch assets in ORSA

1.57 The third-country insurance undertaking should, as part of the ORSA referred to in Guideline 34, assess the permanent availability of the branch assets. The assessment should include the risks to the effectiveness of arrangements to ensure that branch assets are paid only to branch insurance creditors and branch preferential creditors as well as the risks to the adequacy of those assets to cover those claims by at least the amount of the branch SCR if subparagraph (a) of Guideline 26 is not met by the undertaking.

Disclosure

Guideline 37 - Public disclosure requirements in relation to branches of third-country insurance undertakings

1.58 Third-country insurance undertakings should ensure that branch policyholders' can obtain all information which is publicly disclosed concerning the solvency and financial condition of the whole undertaking, if the laws and regulations of the third-country prescribe such disclosure.

Structure and form of the supervisory reporting

Guideline 38 – Elements of the regular supervisory reporting

1.59 Third-country insurance undertakings should submit to the host supervisory authorities in respect of branch operations the following information at predefined periods, in accordance with Article 35(2)(a)(i) of Directive 2009/138/EC:

- a) a regular supervisory report comprising the information required under Article 35 and these Guidelines, in relation to branch operations, in narrative form and including quantitative data, where appropriate;
- b) the own-risk and solvency assessment supervisory report ('ORSA supervisory report') in respect of branch operations comprising the results of each regular own risk and solvency assessment performed by the undertaking in accordance with Article 45(6) of Directive 2009/138/EC and these guidelines, whenever an ORSA is performed regularly, and without any delay following any significant change in their risk profile, in accordance with Article 45(5) of Directive 2009/138/EC ;
- c) completed annual and quarterly quantitative templates in respect of branch operations specifying in greater detail and supplementing, where appropriate, the information presented in the regular supervisory report. The quantitative templates in relation to branches of third-country undertakings are set out in Guidelines 45, 46 and Guideline 47 respectively;
- d) a copy of the supervisory reporting documentation of the whole undertaking;
- e) a summary of any significant concerns which the home supervisory authority has raised with the third-country insurance undertaking, in the official language of the country where the branch is located.

1.60 The requirements set out in the first paragraph of this Guideline are without prejudice to the power of host supervisory authorities to require third-country insurance undertakings to communicate on a regular basis any other information prepared under the responsibility of, or at the request of, the administrative, management or supervisory body of these undertakings, in relation to branch operations.

1.61 The regular supervisory report should follow the structure set out in Annex XX of the Implementing Measures and should present in a coherent and informative manner the information described in Technical Annex I to these Guidelines.

Guideline 39 – Own Solvency and Risk Assessment Supervisory Report

1.62 The ORSA supervisory report, in respect of branch operations, should present in a coherent and informative manner the following:

- a) the qualitative and quantitative results of the own risk and solvency assessment and the conclusions drawn by the third-country insurance undertakings from those results;
- b) the methods and main assumptions used in the own risk and solvency assessment;
- c) information on the branch's overall solvency needs and a comparison between those solvency needs, the regulatory capital requirements and the branch's own funds;
- d) qualitative information on the extent to which quantifiable risks of the branch are not reflected in the calculation of the branch SCR;
- e) where significant deviations have been identified, the quantifiable risks of the branch not reflected in the branch SCR should also be quantified.

1.63 The ORSA supervisory report in respect of branch operations should also have cover any risks with regard to the third-country insurance undertaking's other operations which may have a material impact on the branch operations.

Guideline 40 – Currency

1.64 Data points with the data type 'Monetary' should be reported in the Solvency II reporting currency, which requires converting of other currencies into the Solvency II reporting currency.

1.65 The value of any asset or the amount of any liability denominated in a currency other than the Solvency II reporting currency should be expressed in the Solvency II reporting currency as if conversion had taken place at the closing rate on the last day for which the appropriate rate is available in the reporting period to which the asset or liability relates.

1.66 The amount of any income or expense should be expressed in the Solvency II reporting currency using such basis of conversion as used in accounting basis.

1.67 The conversion into the Solvency II reporting currency should be calculated by applying the exchange rate reported by the European Central Bank or the relevant National Central Bank.

Guideline 41 – Materiality of information

1.68 The information submitted to host supervisory authorities should be considered as material if its omission or misstatement could influence the decision-making or judgement of the supervisory authorities.

Means of communication

Guideline 42 – Means of reporting

1.69 Third-country insurance undertakings should submit to the host supervisory authorities the regular supervisory report in respect of branch operations, the ORSA supervisory report in respect of branch operations and the relevant quantitative templates in electronic form.

Guideline 43 - Supervisory reporting formats

1.70 Third-country insurance undertakings should submit the information referred to in these Guidelines in the data exchange formats and representations determined by national supervisory authorities or group supervisor and respecting the following specifications:

- a) data points with the data type 'Monetary' should be expressed in units with at least two decimals;
- b) data points with the data type 'Percentage' should be expressed as per unit with at least four decimals;
- c) data points with the data type 'Integer' should be expressed in units with no decimals.

Guideline 44 – Updates to reports

1.71 Where there is any significant development that affects the information submitted to supervisors, an updated version of this information should be provided as soon as possible following the event. This can take the form of amendments to the initial report.

1.72 Significant changes made to the winding-up regime applicable to the branch should be considered as a significant development.

Quantitative reporting requirements for third-country insurance undertakings

Guideline 45 – Annual quantitative templates for third-country insurance undertakings

1.73 Third-country insurance undertakings should, unless otherwise decided by the national supervisory authority in accordance with Guideline 48, annually submit to the host supervisory authorities, in respect of branch operations, structured information based on the following where applicable:

- a) S.01.01.p – Content of the submission detailing the information submitted at each submission date, as specified in template S.01.01.p of Annex III, according to the Instructions in S.01.01.p of Annex IV;
- b) Basic information on:
 - i. the branch of the third-country insurance undertaking and the content of the reporting in general, as specified in template S.01.02.p of Annex III, according to the Instructions in S.01.02.p of Annex IV;
 - ii. Basic information detailing information on the ring fenced funds and matching portfolios (as specified in S.01.03.b of Reporting ITS)
- c) S.02.01.p – Balance sheet information using both the valuation in accordance with article 75 of the Solvency II Directive and the valuation according to branch management accounts value for branch operations, as specified in template S.02.01.p of Annex III;
- d) S.02.02.p – Assets and liabilities by currency (as specified in S.02.02.b of Reporting ITS);
- e) S.02.03.p – Additional branch balance sheet information, as specified in template S.02.03.p of Annex III, according to the Instructions in S.02.03.p of Annex IV;
- f) S.03.01.p – General information on off-balance sheet items (as specified in S.03.01.b of Reporting ITS);
- g) S.03.02.p - List of off-balance sheet unlimited guarantees received (as specified in S.03.02.b of Reporting ITS);
- h) S.03.03.p - List of off-balance sheet unlimited guarantees provided (as specified in S.03.03.b of Reporting ITS);
- i) S.05.01.p – Information on premiums, claims, expenses, applying the valuation and recognition principles used in branch management accounts value for branch operations, regarding each line of business as defined in Annex I of the Implementing Measures (as specified in S.05.01.b of Reporting ITS);
- j) S.05.02.p - Information on premiums, claims and expenses by country, applying the valuation and recognition principles used in branch management accounts value for branch operations (as specified in S.05.02.b of Reporting ITS);
- k) S.06.02.p – Item-by-item list of assets, as specified in template S.06.02.p of Annex III, according to the Instructions in S.06.02.p of Annex IV;
- l) S.06.03.p - Information on the look-through of all collective investments undertakings held (as specified in S.06.03.b of Reporting ITS);
- m) S.07.01.p - Item-by-item structured products when the amount of structured products, measured as the ratio between assets classified as asset categories 5 (Structured notes) and 6 (Collateralised securities) as defined in Annex V – Definitions of the CIC table of this Regulation and

- the sum of cell C0010/R0070 and C0010/RC0220 of S.02.01, is higher than 5% (as specified in S.07.01.b of Reporting ITS);
- n) S.08.01.p – Item-by-item list of open derivatives (as specified in S.08.01.b of Reporting ITS);
 - o) S.08.02.p - Item-by-item list of historical derivatives trades of derivatives (as specified in S.08.02.b of Reporting ITS);
 - p) S.09.01.p - Information on income/gains and losses in the period (as specified in S.09.01.b of Reporting ITS);
 - q) S.10.01.p - Item-by-item loans of securities and repos (as specified in S.10.01.b of Reporting ITS);
 - r) S.11.01.p - Item-by-item Assets held as collateral consisting of all types of off-balance sheet asset categories held as collateral (as specified in S.11.01.b of Reporting ITS);
 - s) S.12.01.p – Information on Life and Health Similar to Life Techniques Technical Provisions, by lines of business as defined in Annex x of Implementing Measures (as specified in S.12.01.b of Reporting ITS);
 - t) S.12.02.p - Information on Life and Health SLT Technical Provisions by country, considering the following specifications (as specified in S.12.02.b of Reporting ITS);
 - u) S.12.03.p - Information on the best estimate by country and currency (as specified in S.12.03.b of Reporting ITS);
 - v) S.13.01.p - Projection of best estimate future cash flows of life business (as specified in S.13.01.b of Reporting ITS);
 - w) S.14.01.p - Life obligations analysis, including life insurance contracts and annuities stemming from non-life contracts, by product and by homogeneous risk group issued by the third country branch (as specified in S.14.01.b of Reporting ITS);
 - x) S.15.01.p - Information on description of the guarantees of variable annuities by product issued by the third country branch under direct business (as specified in S.15.01.b of Reporting ITS);
 - y) S.15.02.p - Information on the hedging of guarantees of variable Annuities, by product issued by the third country branch under direct business (as specified in S.15.02.b of Reporting ITS);
 - z) S.16.01.p - Information on annuities stemming from Non-Life insurance obligations issued by the third country branch under direct business, regarding all lines of business originating annuities as defined in Annex I of the Implementing Measures and by currency (as specified in S.16.01.b of Reporting ITS);
 - aa) S.17.01.p - Information on Non-Life Technical Provisions by lines of business as defined in Annex I of Implementing Measures (as specified in S.17.01.b of Reporting ITS);

- bb) S.17.02.p - Information on Non-Life Technical Provisions referred to direct business by country (as specified in S.17.02.b of Reporting ITS);
- cc) S.17.03.p - Information on the best estimate by country and currency (as specified in S.17.03.b of Reporting ITS);
- dd) S.18.01.p - Projection of future cash flows based on best estimate of non-life business (as specified in S.18.01.b of Reporting ITS);
- ee) S.19.01.p - Information on non-life insurance claims in the format of development triangles, regarding the total of each non-life line of business as defined in Annex I of Implementing Measures and by currency, (as specified in S.19.01.b of Reporting ITS) considering the following specifications:
 - i. Information on inflation rates when applicable;
 - ii. Information in the format of triangles for:
 - (1) gross claims paid;
 - (2) gross undiscounted best estimate claims provisions;
 - (3) gross reported but not yet settled claims;
 - (4) reinsurance recoverables received;
 - (5) undiscounted best estimate claims provisions - reinsurance recoverables;
 - (6) reinsurance claims reported but not yet settled;
 - (7) net claims paid;
 - (8) net undiscounted best estimate claims provisions; net reported but not yet settled claims.
- ff) S.20.01.p - Information on the development of the distribution of the claims incurred at the end of the financial year regarding each line of business as defined in Annex I of the Implementing Measures, (as specified in S.20.01.b of Reporting ITS)
- gg) S.21.01.p - Information on loss distribution risk profile of non-life business regarding each line of business as defined in Annex I of the Implementing Measures (as specified in S.21.01.b of Reporting ITS);
- hh) S.21.02.p - Information on the non-life underwriting risks (as specified in S.21.02.b of Reporting ITS);
- ii) S.21.03.p - Information on non-life underwriting risk portfolio, by line of business as defined in Annex I of the Implementing Measures (as specified in S.21.03.b of Reporting ITS);
- jj) S.22.01.p - Information on the impact of the long term guarantees and transitional measures (as specified in S.22.01.b of Reporting ITS);
- kk) S.22.04.p - Information on the interest rate transitional (as specified in S.22.04.b of Reporting ITS);

- ll) S.22.05.p - Information on the transitional on technical provisions (as specified in S.22.05.b of Reporting ITS);
- mm) S.23.01.p - Information on own funds, as specified in template S.23.01.p of Annex III;
- nn) S.23.03.p - Information on annual movements on own funds as specified in template S.23.03.p of Annex III
- oo) S.24.01.p - Information on participations held by the branch of the third-country insurance undertaking and an overview of the calculation for the deduction from own funds related to participations in financial and credit institutions (as specified in S.24.01.b of Reporting ITS);
- pp) Information on solvency capital requirement calculated using:
 - i. only the standard formula (as specified in S.25.01.b of Reporting ITS);
 - ii. the standard formula and partial internal model (as specified in S.25.02.b of Reporting ITS);
 - iii. a full internal model (as specified in S.25.03.b of Reporting ITS);
- qq) Information on the solvency capital requirement, considering the specifications described in paragraphs rr., ss. and tt., on:
 - i. on market risk (as specified in S.26.01.b of Reporting ITS);
 - ii. on counterparty default (as specified in S.26.02.b of Reporting ITS);
 - iii. on life underwriting (as specified in S.26.03.b of Reporting ITS);
 - iv. on health underwriting risk (as specified in S.26.04.b of Reporting ITS);
 - v. on non-life underwriting risk (as specified in S.26.05.b of Reporting ITS);
 - vi. on operational risk (as specified in S.26.06.b of Reporting ITS);
 - vii. on the simplifications used in the calculation of the solvency capital requirement, (as specified in S.26.07.b of Reporting ITS);
 - viii. on non-life catastrophe risk (as specified in S.27.01.b of Reporting ITS);
- rr) In case of existence of ring fenced funds or matching portfolios this template should not be reported for the entity as a whole;
- ss) When a partial internal model is used in relation to the non-life catastrophe risk this template should only be reported in relation to the standard formula unless otherwise decided on the basis of Guideline 48.
- tt) When a full internal model is used this template should not be reported.
- uu) Information on the minimum capital requirement in relation to branches of third-country insurance undertakings that pursue:

- i. only life or only non-life activity Minimum Capital Requirement – Non-composite undertakings (as specified in S.28.01.b of Reporting ITS);
 - ii. both life and non-life insurance activity (as specified in S.28.02.b of Reporting ITS);
- vv) S.29.01.p – Information on the excess of assets over liabilities during the reporting year providing a summary of main sources of this variation, as specified in template S.29.01.p of Annex III;
- ww) Information on the part of variation of the excess of assets over liabilities during the reporting year explained by:
- i. investments and financial liabilities (as specified in S.29.02.b of Reporting ITS);
 - ii. technical provisions (as specified in S.29.03.b and S.29.04 of Reporting ITS);
- xx) S.30.01.p – Information on facultative covers for non-life and life business basic data, for each line of business as defined in Annex I of the Implementing Measures (as specified in S.30.01.b of Reporting ITS);
- yy) S.30.02.p – Information on facultative covers for non-life and life business shares data, for each line of business as defined in Annex I of the Implementing Measures (as specified in S.30.02.b of Reporting ITS);
- zz) S.30.03.p – Outgoing Reinsurance Program in the next reporting year basic data (as specified in S.30.03.b of Reporting ITS);
- aaa) S.30.04.p – Outgoing Reinsurance Program in the next reporting year shares data (as specified in S.30.04.b of Reporting ITS);
- bbb) S.31.01.p – Share of reinsurers data (as specified in S.31.01.b of Reporting ITS);
- ccc) S.31.02.p – Information on special purpose vehicles from the perspective of the branch of the third-country insurance undertaking transferring risk(s) to the Special Purpose Vehicles (as specified in S.31.02.b of Reporting ITS).

1.74 Third-country insurance undertakings should, when submitting the information referred in the previous paragraph in respect of branch operations, unless the specific paragraph refer to branch specific annexes of this Guideline, apply mutatis mutandis the templates and instructions as defined in the Technical Standard on the templates for the submission of information to the supervisory authorities.

Guideline 46 – Quarterly templates for third-country insurance undertakings

1.75 Third-country insurance undertakings should, unless otherwise decided by the host supervisory authority in accordance with Guideline 48, quarterly submit to the host supervisory authorities, in respect of branch operations, the following information where applicable:

- a) S.01.01.o – Content of the submission detailing the information submitted at each submission date (as specified in S.01.01.a of Reporting ITS);
- b) S.01.02.o – Basic information detailing information on the undertaking and the content of the reporting in general, as specified in template S.01.02.o of Annex III, according to the Instructions in S.01.02.o of Annex IV;
- c) S.02.01.o – Balance sheet information using both the valuation in accordance with Article 75 of Directive 2009/138/EC , as specified in template S.02.01.o of Annex III;
- d) S.05.01.o – Information on premiums, claims, expenses, applying the valuation and recognition principles used in branch management accounts value for branch operations, regarding each line of business as defined in Annex I of the Implementing Measures (as specified in S.05.01.a of Reporting ITS);
- e) S.05.02.o - Information on premiums, claims and expenses by country, applying the valuation and recognition principles used in branch management accounts value for branch operations (as specified in S.05.02.a of Reporting ITS);
- f) S.06.02.o – Item-by-item list of assets, as specified in template S.06.02.o of Annex III, according to the Instructions in S.06.02.o of Annex IV;
- g) S.06.03.o - Information on the look-through of all collective investments undertakings held only when the ratio of collective investments undertakings held by the branch of the third-country insurance undertaking to total investments, measured as the ratio between item C0010/R0180 of S.02.01 plus collective investments undertakings included in cell C0010/R0220 of S.02.01 and the sum of cell C0010/R0070 and C0010/RC0220 of S.02.01, is higher than 30% (as specified in S.06.03.a of Reporting ITS);
- h) S.08.01.o – Item-by-item list of open derivatives(as specified in S.08.01.a of Reporting ITS);
- i) S.08.02.o - Item-by-item list of historical derivatives trades of derivatives (as specified in S.08.02.a of Reporting ITS);
- j) S.12.01.o – Information on Life and Health Similar to Life Techniques Technical Provisions, by lines of business as defined in Annex x of Implementing Measures (as specified in S.12.01.a of Reporting ITS);
- k) S.17.01.o - Information on Non-Life Technical Provisions by lines of business as defined in Annex I of Implementing Measures (as specified in S.17.01.a of Reporting ITS);
- l) S.23.01.o – Information on own funds, as specified in template S.23.01.o of Annex III;
- m) S.28.01.o – Information on the minimum capital requirement for branches of third-country insurance undertakings that pursuit:

- i. only life or only non-life activity Minimum Capital Requirement – Non-composite undertakings (as specified in S.28.01.a of Reporting ITS);
- ii. both life and non-life insurance activity (as specified in S.28.02.a of Reporting ITS).

1.76 Third-country insurance undertakings should, when submitting the information referred in the previous paragraph in respect of branch operations, unless the specific paragraph refer to branch specific annexes of this Guideline, apply mutatis mutandis the templates and instructions as defined in the Technical Standard on the templates for the submission of information to the supervisory authorities.

Guideline 47 – Annual quantitative templates for third-country insurance undertakings - ring-fenced funds

1.77 Third-country insurance undertakings should, unless otherwise decided by the host supervisory authority in accordance with Guideline 48, annually submit to the host supervisory authorities, in respect of branch operations, the following information in relation to material ring fenced funds, material matching portfolios and remaining part the following information, where applicable:

- a) S.01.01.r - Content of the submission detailing the information submitted (as specified in S.01.01.l of Reporting ITS);
- b) S.12.01.r - Information on Life and Health SLT Technical Provisions, regarding each line of business as defined in Annex 1 of the Implementing Measures (as specified in S.12.01.l of Reporting ITS);
- c) S.17.01.r - Information on Non-Life Technical Provisions, regarding each line of business as defined in Annex 1 of the Implementing Measures (as specified in S.17.01.l of Reporting ITS);
- d) Information on solvency capital requirement calculated using:
 - i. only the standard formula (as specified in S.25.01.l of Reporting ITS);
 - ii. the standard formula and partial internal model(as specified in S.25.02.l of Reporting ITS);
 - iii. a full internal model(as specified in S.25.03.l of Reporting ITS);
- e) Information on the solvency capital requirement, considering the specifications described in paragraphs f. and g., on:
 - i. market risk(as specified in S.26.01.l of Reporting ITS);
 - ii. counterparty default (as specified in S.26.02.l of Reporting ITS);
 - iii. life underwriting (as specified in S.26.03.l of Reporting ITS);
 - iv. health underwriting risk (as specified in S.26.04.l of Reporting ITS);
 - v. non-life underwriting risk (as specified in S.26.05.l of Reporting ITS);
 - vi. operational risk (as specified in S.26.06.l of Reporting ITS);

- vii. the simplifications used in the calculation of the solvency capital requirement (as specified in S.26.07.l of Reporting ITS);
 - viii. non-life catastrophe risk (as specified in S.27.01.l of Reporting ITS);
 - f) When a partial internal model is used in relation to the non-life catastrophe risk this template should only be reported in relation to the standard formula unless otherwise decided on the basis of Guideline 48.
 - g) When a full internal model is used this template should not be reported.
- 1.78 Third-country insurance undertakings should, unless otherwise decided by the national supervisory authority in accordance with Guideline 48, annually submit to the host national supervisory authorities, in respect of branch operations, the following information in relation to material ring fenced funds and remaining part the following information, where applicable:
- a) S.02.01.r - Balance-Sheet information using both the valuation in accordance with article 75 of Directive 2009/138/EC and the valuation according to undertaking's statutory accounts (as specified in S.02.01.l of Reporting ITS)
- 1.79 Third-country insurance undertakings should, unless otherwise decided by the host supervisory authority in accordance with Guideline 48, annually submit to the host supervisory authority, in respect of branch operations, the following information in relation to material matching portfolios the following information, where applicable:
- a) S.22.02.r - Information on the projection of future cash flows for the best estimate calculation by matching portfolio (as specified in S.22.02.l of Reporting ITS);
 - b) S.22.03.r - Information on the matching portfolios by matching portfolio (as specified in S.22.03.l of Reporting ITS).

Guideline 48 – Proportionality reporting

- 1.80 The host supervisory authority should consider limit or exempt a third-country insurance undertaking of any regular supervisory reporting requirement set out in Guideline 45, 46, or 47 where the submission of that information would be unduly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the branch.

Guideline 49 – Internal model

- 1.81 When the third-country undertaking is using an internal model for the calculation of Solvency Capital Requirement in respect of a branch operations, the notional SCR for each material Ring Fenced Fund, material matching portfolio and the remaining part, should be taken into account, when submitting the relevant information identified in S.25.02.p – Solvency Capital Requirement - Partial Internal Models, S.25.03.p – Solvency Capital Requirement - Full Internal Models, according to specific templates agreed with the respective national competent authority.

Guideline 50 – Data checks

1.82 Third country insurance undertakings should ensure that the information and data in relation to its branch operations, submitted to the national supervisory authorities complies with the data checks identified in Annex 1 of the “Guidelines on Reporting and Disclosure”.

Frequency and Deadlines

Guideline 51 – Deadlines for submission of regular supervisory report

1.83 Third-country insurance undertakings should submit the regular supervisory report in respect of branch operations referred to in Guideline 38 for the first time in relation to their financial year ending on or after 30 June 2016 but before 1 January 2017 no later than 14 weeks after the relevant undertaking’s financial year end and at least every 3 years thereafter.

Guideline 52 - Supervisory authority’s request for submission of regular supervisory report

1.84 Host supervisory authorities should consider requiring a third-country insurance undertaking to submit its regular supervisory report in respect of branch operations at the end of any financial year of the undertaking not already covered by Guideline 51.

Guideline 53 - A summary regular supervisory report

1.85 Where host supervisory authority does not require, in accordance with Guideline 51, a regular supervisory report in respect of branch operations to be submitted in relation to a financial year, third-country insurance undertakings should nevertheless submit to the host supervisory authority a summary regular supervisory report which sets out any material changes that have occurred regarding business and performance, system of governance, risk profile, valuation for solvency purposes and capital management in respect of branch operations over the reporting period, and provide a concise explanation about the causes and effects of such changes. That report should be submitted in relation to the financial years and within the periods under Guideline 51.

Guideline 54 – Deadlines for submission of ORSA supervisory report

1.86 Third-country insurance undertakings should submit to the host supervisory authority the ORSA supervisory report in respect of branch operations within 2 weeks after concluding the assessment.

Guideline 55 – Deadlines for submission of annual quantitative templates

1.87 Third-country insurance undertakings should submit to the host supervisory authority the relevant annual quantitative templates referred to in Guidelines 45 and 47 no later than 14 weeks after the relevant undertaking’s financial year end.

Guideline 56 – Deadlines for submission of quarterly quantitative templates

1.88 Third-country insurance undertakings should submit to the host supervisory authority the relevant quarterly quantitative templates referred to in Guideline 46 no later than 5 weeks after the relevant quarter end.

Transitional arrangements

Guideline 57 – Transitional arrangements on comparative information

1.89 Where a comparison of information with that reported on the previous reporting period is required in accordance with these guidelines, third-country insurance undertakings should comply with such a requirement only where the previous reporting period covers a period after the start of application Directive 2009/138/EC.

Guideline 58 – Transitional information requirements

1.90 In relation to the first year of application Directive 2009/138/EC, third-country insurance undertakings should submit to the host supervisory authority the following information, the reference date for which should be the first day of the insurance undertaking's financial year starting on or after 1 January 2016 but before 1 July 2016:

- a) S.01.01.u – Content of the submission detailing the information submitted at each submission date, (as specified in S.01.01.s of Reporting ITS);
- b) S.01.02.u – Basic information detailing information on the undertaking and the content of the reporting in general, as specified in template S.01.02.u of Annex III;
- c) S.01.03.u - Basic information detailing information on the ring fenced funds and matching portfolios (as specified in S.01.03.s of Reporting ITS);
- d) S.02.01.u – Balance sheet information using both the valuation in accordance with article 75 of Directive 138/2009/EC and the valuation according to branch management accounts value for branch operations, as specified in template S.02.01.u of Annex III;
- e) S.23.01.u – Information on own funds, as specified in template S.23.01.u of Annex III;
- f) Information on solvency capital requirement calculated using:
 - i. only the standard formula (as specified in S.25.01.s of Reporting ITS);
 - ii. the standard formula and partial internal model (as specified in S.25.02.s of Reporting ITS);
 - iii. a full internal model (as specified in S.25.03.s of Reporting ITS);
- g) Information on the minimum capital requirement for branches of third-country insurance undertakings that pursuit:

- i. only life or only non-life activity Minimum Capital Requirement – Non-composite undertakings (as specified in S.28.01.s of Reporting ITS);
- ii. both life and non-life insurance activity (as specified in S.28.02.s of Reporting ITS).

1.91 In relation to the first year of application of Directive 2009/138/EC, third-country insurance undertakings should also submit to the host supervisory authority, separately for each material class of branch assets and branch liabilities, a qualitative explanation of the main differences between the figures reported in the opening valuation and those calculated according to the solvency regime previously in place.

Guideline 59 – Deadline for submission of transitional information requirements

1.92 Third-country insurance undertakings should submit to the host supervisory authority the information under Guideline 58 no later than 20 weeks following the reference date referred to in the Guideline.

Guideline 60 – Transitional deadline for submission of regular supervisory report

1.93 In relation to the first three years of application of Directive 2009/138/EC, where host supervisory authorities require, in accordance with Guideline 51, a regular supervisory report in respect of branch operations to be submitted in relation to an undertaking's financial year, third-country insurance undertakings should submit that report within the following period:

- a) regarding the regular supervisory report in respect of branch operations related to the financial year ending on or after 1 January 2016 but before 1 January 2017: no later than 20 weeks after the undertaking's financial year end;
- b) regarding the regular supervisory report in respect of branch operations related to the financial year ending on or after 1 January 2017 but before 1 January 2018: no later than 18 weeks after the undertaking's financial year end;
- c) regarding the regular supervisory report in respect of branch operations related to financial years ending on or after 1 January 2017 but before 1 January 2018: no later than 16 weeks after the undertaking's financial year end.

Guideline 61 – Transitional deadline for of annual quantitative templates

1.94 In relation to the first three years of application of Directive 2009/138/EC, third-country insurance undertakings should submit to the host supervisory authority the relevant annual quantitative templates referred to in Guidelines 45 and 47 within the following period:

- a) regarding the annual quantitative templates related to the financial year of the undertaking ending on or after 1 January 2016 but before 1

- January 2017: no later than 20 weeks after the undertaking's financial year end;
- b) regarding the annual quantitative templates related to the financial year of the undertaking ending on or after 1 January 2017 but before 1 January 2018: no later than 18 weeks after the undertaking's financial year end;
 - c) regarding the annual quantitative templates related to financial year of the undertaking ending on or after 1 January 2018 but before 1 January 2019: no later than 16 weeks after the undertaking's financial year end.

Guideline 62 – Deadlines for submission of quarterly quantitative templates

- 1.95 In relation to the first three years of application of Directive 2009/138/EC, third-country insurance undertakings should submit to the host supervisory authority the relevant quarterly quantitative templates referred to in Guideline 46 within the following period:
- a) regarding the quarterly quantitative templates related to any quarter ending on or after 1 September 2016 but before 1 January 2017: no later than 8 weeks after the quarter end;
 - b) regarding the quarterly quantitative templates related to any quarter ending on or after 1 January 2017 but before 1 January 2018: no later than 7 weeks after the quarter end;
 - c) regarding the quarterly quantitative templates related to any quarter ending on or after 1 January 2018 but before 1 January 2019: no later than 6 weeks after the quarter end.

Compliance and reporting rules

- 1.96 This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, Competent Authorities and financial institutions shall make every effort to comply with guidelines and recommendations.
- 1.97 Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.
- 1.98 Competent authorities should notify EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions of these Guidelines.
- 1.99 In the absence of a response by this deadline, competent authorities will be considered as non-compliant to the reporting and reported as such.

Final provision on reviews

- 1.100 The present Guidelines should be subject to a review by EIOPA.

Technical Annex I – Information to be contained within the regular supervisory report

Summary

- (1) The regular supervisory report should include a summary which should in particular highlight any material changes that have occurred in the branch's business and performance, system of governance, risk profile, valuation for solvency purposes and capital management over the reporting period, and provide a concise explanation about the causes and effects of such changes. The summary should include the information on the own risk and solvency assessment for the purpose of Article 45(6) of Directive 2009/138/EC.

Legal opinion

- (2) Third country insurance undertakings should provide a numeric illustration of how the available branch assets would be distributed in a winding-up of the undertaking supported by a legal opinion and description of the applicable laws relating to winding-up in the relevant jurisdictions. The illustration 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 accord certain policyholders or creditors security, protection or priority. The illustration should be in a format similar to that in Technical Annex II.
- (3) The qualifications of the person providing the legal opinion to be able to advise in respect of those laws should be stated.

Business and Performance

Business

- (4) The following information should be reported by third country insurance undertakings:
 - (a) the main trends and factors that contribute to the development, performance and position of the (whole) undertaking over its business planning time horizon including the undertaking's competitive position and any significant legal or regulatory issues. That information should highlight both matters which are relevant to branch operations and issues which could affect the solvency of the undertaking as a whole;
 - (b) a description of the business objectives of the undertaking in relation to branch operations, including the relevant strategies and time frames;
 - (c) the management accounts for the branch as described in Guideline 18.
- (5) Third country insurance undertakings should also report, with regards to branch operations:
 - (a) the name of the branch;
 - (b) the name and location of the parent and of the ultimate parent entity;
 - (c) the name and contact details of the home supervisory authority responsible for financial supervision of the undertaking;
 - (d) a list of subsidiaries and branches of the parent undertaking;
 - (e) a simplified group structure;

- (f) whether the undertaking has applied for the advantages in Article 167(1) of Directive 2009/138/EC and if so the location of branches which have been established in any Member State;
- (g) the name and contact details of the external auditor of the branch, where applicable;
- (h) number of full time equivalent employees;
- (i) information on internal structures;
- (j) the branch's material lines of business and material geographical areas where it writes business;
- (k) any significant business or other events that have occurred over the reporting period that have had a material impact on the branch operations.

Underwriting Performance

- (6) Third country insurance undertakings should report the following in relation to their branch underwriting performance:
 - (a) qualitative and quantitative information on their branch underwriting performance, at an aggregate level and by material line of business and material geographical areas where it writes business over the reporting period, together with a comparison of the information with that reported on the previous reporting period as shown in the branch's specific accounts;
 - (b) information on the branch's underwriting performance by line of business during the reporting period against projections, and significant factors affecting deviations from these projections;
 - (c) projections of the branch's underwriting performance, with information on significant factors that might affect such underwriting performance, over its business planning time horizon;
 - (d) information on any material risk mitigation techniques purchased or entered into during the reporting period in respect of branch operations. This should include information on the effectiveness of these techniques and the impact on the performance of branch underwriting activities.

Investment performance

- (7) The following information should be reported by third country insurance undertakings regarding the performance of their branch investments;
 - (a) information on the performance of their branch investments over the reporting period together with a comparison of the information with that reported on the previous reporting period and reasons for any material change.
 - (b) an analysis of the branch's overall investment performance during the reporting period and also by relevant asset class;
 - (c) information about any gains or losses;
 - (d) projections of the branch's expected investment performance, with information on significant factors that might affect such investment performance, over its business planning time period;

- (e) the key assumptions which the branch makes in its investment decisions with respect to the movement of interest rates, exchange rates, and other relevant market parameters, over its business planning time period as shown in that branch's specific accounts.;
- (f) information about any branch investments in tradable securities or other financial instruments based on repackaged loans, and the undertaking's risk management procedures in respect of such securities or instruments in respect of branch operations.

Performance of other activities

- (8) Third country insurance undertakings should describe their other material income and expenses in respect of branch operations incurred over the reporting period together with a comparison of the information with that reported on the previous reporting period.
- (9) Third country insurance undertakings should report information of any material income and expenses in respect of branch operations, other than underwriting or investment income and expenses, over the undertaking's business planning time period.

Any other information

- (10) Third country insurance undertakings should report in a separate section any other material information regarding their branch business and performance.

System of Governance

General information on the system of governance

- (11) The following information should be reported by third country insurance undertakings regarding the general governance requirement in respect of branch operations:
 - (a) information allowing the supervisory authority to gain a good understanding of the system of governance with regard to branch operations and to assess its appropriateness to the branch's business strategy and operations;
 - (b) information on the structure of the administrative, management or supervisory bodies of the third-country undertaking, providing a description of their main roles and responsibilities and a brief description in relation to the branch operations of the segregation of responsibilities within these bodies, in particular whether relevant committees exist within them, as well as a description of the main roles and responsibilities of the general representative of the branch, any person who effectively run or who may influence branch operations and persons responsible for key functions with regard to branch operations;
 - (c) information on the remuneration policy and practices in relation to the branch, including:
 - the main principles of the policy
 - how the undertaking's remuneration policies and practices in respect of branch operations are consistent with and promote sound and effective risk management and do not encourage excessive risk taking.

- (12) Third-country insurance undertakings should report information on how risk management, internal audit, compliance and actuarial function are in place for the branch and whether these functions are dedicated exclusively to branch operations or whether they are exercised by the undertaking's head office and applied to branch operations.
- (13) The information referred to in the previous paragraph includes an explanation of how the functions have the necessary authority, resources, professional qualifications, knowledge, experience and operational independence or, in the case of the internal audit function, full independence, to carry out their tasks and how they report to and advise the administrative, management or supervisory body of the branch and how they are integrated into the decision making process for branch operations.
- (14) Third-country insurance undertakings should provide information on the administrative and accounting procedures related to branch operations.
- (15) Third-country insurance undertakings should provide information on the records it maintains in order to identify the location of all branch assets and information to enable any person charged with the winding-up the undertaking to take control of those assets.

Fit and proper requirements

- (16) The following information should be reported by third country insurance undertakings regarding their compliance with the fit and proper requirements in respect of branch operations:
 - (a) the identity of the general representative of the branch;
 - (b) the identity of any persons who effectively run or who may influence branch operations;
 - (c) the identity of the persons in the undertaking, or external to the undertaking in the case that the undertaking has outsourced key functions that are responsible for key functions within the branch;
 - (d) information on the policies and processes established by the undertaking to ensure that those persons are fit and proper.
- (17) Third-country insurance undertakings should also provide:
 - (a) a description of the specific requirements concerning skills, knowledge and expertise applicable to the persons who effectively run the branch operations, the general representative of the branch and any other persons that have key functions relating to the branch; and
 - (b) a description of the undertaking's process for assessing the fitness and the propriety of the persons branch operations, the general representative of the branch and any other persons that have key functions relating to the branch

Risk management system including the own risk and solvency assessment

- (18) The following information should be reported by third-country insurance undertakings regarding their risk management system of branch operations:
 - (a) information on the undertaking's risk management strategies, objectives, processes and reporting procedures in respect of branch operations for each category of risk;

- (b) information on how it is able to effectively identify, measure, monitor, manage and report, on a continuous basis, the risks on an individual and aggregated level, to which the branch is or could be exposed;
 - (c) information on how the undertaking fulfils its obligation to invest all its assets in accordance with the 'prudent person principle' set out in Article 132 of Directive 2009/138/EC;
 - (d) information on how the undertaking verifies the appropriateness of credit assessments from external credit assessments institutions including how and the extent to which credit assessments from external credit assessments institutions are used;
 - (e) results of the assessments regarding the extrapolation of the risk-free rate, the matching adjustment and the volatility adjustment, as referred to in Article 44(2a) of Directive 2009/138/EC.
 - (f) a description of how the risk management system including the risk management function are implemented and integrated into the organisational structure and decision-making processes of in respect of branch operations.
 - (g) information on significant risks that the branch is exposed to over the life-time of its insurance and reinsurance obligations, and how these have been captured in its overall solvency needs;
 - (h) information on any material risks that the undertaking has identified and that are not fully included in the calculation of the branch Solvency Capital Requirement as set out in Article 101(4) of Directive 2009/138/EC;
- (19) The following information should be reported by third country insurance undertakings regarding their own risk and solvency assessments in respect of branch operations which were performed over the reporting period:
- (a) a description of how the own risk and solvency assessment in respect of branch operations is performed, internally documented and reviewed, and how it is integrated into the management process and into the decision-making process of the branch;
 - (b) in particular, information on assessment of permanent availability of branch assets, adequacy of those assets to cover SCR
 - (c) a statement explaining how the undertaking has determined its branch solvency needs given its branch risk profile and how its branch capital management activities and its branch risk management system interact with each other.

Internal control system

- (20) The following information should be reported by third country insurance undertakings regarding their internal control system in respect of branch operations:
- (a) a description of the undertaking's internal control system for branch operations;
 - (b) information on the key procedures that the internal control system, in respect of branch operations, includes;
 - (c) a description of how the compliance function with regard to the branch operations is implemented, including information on the activities

performed in accordance with Article 46(2) of Directive 2009/138/EC in respect of branch operations during the reporting period;

- (d) information on the undertaking's compliance policy for branch operations;
- (e) the process for reviewing this compliance policy, the frequency of review and any significant changes to policy during the reporting period.

Internal audit function

(21) The following information should be reported by third country insurance undertakings regarding their internal audit function in respect of branch operations

- (a) a description of how the undertaking's internal audit function for the branch is implemented;
- (b) a description of internal audits for the branch performed during the reporting period, with a summary of the material findings and recommendations reported to the undertaking's administrative, management or supervisory body, and any action taken with respect to these findings and recommendations;
- (c) a description of the undertaking's internal audit policy in respect of branch operations, the process for reviewing that policy, the frequency of review and any significant changes to that policy during the reporting period;
- (d) a description of the undertaking's audit plan in respect of branch operations, including future internal audits and the rationale for these future audits.

Actuarial function

(22) Third-country insurance undertakings should disclose a description of how their actuarial function in respect of branch operations is implemented.

(23) With regard to the actuarial function in respect of branch operations third-country insurance undertakings report an overview of the activities undertaken by the actuarial function in respect of branch operations in each of its areas of responsibility during the reporting period, describing how the actuarial function contributes to the effective implementation of the risk management system of branch operations.

Outsourcing

(24) The following information should be reported by third-country insurance undertakings regarding outsourcing in respect of branch operations:

- (a) a description of their outsourcing policy in respect of branch operations, the outsourcing of any critical or important operational functions or activities in respect of branch operations and the jurisdiction in which the service providers of such functions or activities are located;
- (b) where the undertaking outsources any critical or important operational functions or activities of the branch, the rationale for the outsourcing and evidence that appropriate oversight and safeguards are in place;
- (c) a list of the persons responsible for the outsourced key functions in the service provider.

Any other information

- (25) Third-country insurance undertakings should report any other material information regarding their system of governance in relation to branch operations

Risk profile

- (26) Third country insurance undertakings should report qualitative and quantitative information regarding the branch risk profile, in accordance with paragraphs 27 to 31, separately for the following categories of risk:
- (a) underwriting risk;
 - (b) market risk;
 - (c) credit risk;
 - (d) liquidity risk;
 - (e) operational risk;
 - (f) other material risks.
- (27) The following information should be reported by third country insurance undertakings regarding the risk exposure of the branch, including the exposure arising from off-balance sheet positions and the transfer of risk in a securitisation using a legal entity including special purpose vehicles:
- (a) a description of the measures used to assess these risks within the branch, including any material changes over the reporting period;
 - (b) a description of the material risks that the branch is exposed to, including any material changes over the reporting period.
 - (c) an overview of any material risk exposures anticipated over the business planning time period given the undertaking's business strategy for the branch, and how these risk exposures will be managed;
 - (d) where the undertaking has entered into securities lending agreements or securities repurchase agreements in respect of branch operations, information on its characteristics;
 - (e) where the undertaking sells variable annuities through the branch, information on guarantee riders and hedging of the guarantees;
 - (f) a complete list of branch assets and how those assets have been invested in accordance with the 'prudent person principle' set out in Article 132 of Directive 2009/138/EC so risks are properly managed;
- (28) With respect to risk concentration third country insurance undertakings should report information on the material risk concentrations to which the branch is exposed to and an overview of any future risk concentrations anticipated over the business planning time horizon given the undertaking's business strategy for the branch, and how these risk concentrations will be managed.
- (29) The following information should be reported by third country insurance undertakings regarding their risk-mitigation techniques in respect of branch operations:
- (a) a description of the techniques used for mitigating risks in relation to branch operations, and the processes for monitoring the continued effectiveness of these risk-mitigation techniques;

- (b) a description of any material risk-mitigation techniques in respect of branch operations that the undertaking is considering purchasing or entering over the business planning time horizon given the undertaking's business strategy for the branch, and the rationale for and effect of such risk mitigation techniques;
 - (c) With regard to their liquidity risk, third country insurance undertakings should report the expected profit included in future premiums in respect of branch operations as calculated in accordance with Article 260(2) of Implementing Measures for each line of business, the result of the qualitative assessment referred to in Article 260(1)(d)(ii) of Regulation 2014/XXX and a description of the methods and main assumptions used to calculate the expected profit included in future premiums;
- (30) The following information should be reported by third country insurance undertakings regarding their risk sensitivity in respect of branch operations:
- (a) a description of the relevant stress tests and scenario analysis referred to in Article 259 (3) of Regulation 2014/XXX carried out by the undertaking in relation to branch operations including their outcome;
 - (b) a description of the methods used and the main assumptions underlying those stress tests and scenario analysis.
- (31) Within the information reported with regards to branch risk exposure, third country insurance undertakings should explain how they ensure that derivatives contribute to the reduction of risks or facilitate efficient portfolio management in respect of branch operations.
- (32) Third country insurance undertakings should report quantitative data which is necessary for determining dependencies between the risks covered by the risk modules and sub-modules of the branch Basic Solvency Capital Requirement.
- (33) In relation to the use of Special Purpose Vehicles (SPV) in respect of branch operations, third-country insurance undertakings should reported at least information on whether the SPV is authorized under Article 211 of Directive 2009/138/EC, what risks are transferred to the SPV and how the fully funded principle is implemented.

Any other information

- (34) Third-country insurance undertakings should report any other material information regarding the risk profile of the branch.

Valuation for Solvency Purposes

Assets

- (35) Third country insurance undertakings should report, separately for each material class of assets, the value of the assets, as well as a description of the bases, methods and main assumptions used for valuation for solvency purposes.
- (36) Separately for each material class of assets, a quantitative and qualitative explanation of any material differences between the bases, methods and main assumptions used by that undertaking for the valuation for solvency purposes and those used for its valuation in the branch's specific accounts.

Technical provisions

- (37) The following information should be reported by third-country insurance undertakings regarding the valuation of the technical provisions in respect of branch operations for branch solvency purposes:
- (a) separately for each material line of business the value of technical provisions, including the amount of the best estimate and the risk margin, as well as a description of the bases, methods and main assumptions used for their valuation for solvency purposes;
 - (b) separately for each material line of business, a quantitative and qualitative explanation of any material differences between the bases, methods and main assumptions used by that undertaking for the valuation for solvency purposes and those used for their valuation in the branch's specific accounts;
 - (c) a description of the level of uncertainty associated with the amount of technical provisions in respect of branch operations;
 - (d) where the matching adjustment referred to in Article 77b of Directive 2009/138/EC is applied, a description of the matching adjustment and of the portfolio of obligations and assigned assets to which the matching adjustment is applied, as well as a quantification of the impact of a change to zero of the matching adjustment on that undertaking's financial position related to branch operations, including on the amount of technical provisions, the Solvency Capital Requirement, the Minimum Capital Requirement, the basic own funds and the amounts of own funds eligible to cover the Minimum Capital Requirement and the Solvency Capital Requirement;
 - (e) a statement on whether the volatility adjustment referred to in Article 77d of Directive 2009/138/EC is used by the undertaking and quantification of the impact of a change to zero of the volatility adjustment on that undertaking's financial position related to branch operations, including on the amount of technical provisions, the Solvency Capital Requirement, the Minimum Capital Requirement, the basic own funds and the amounts of own funds eligible to cover the Minimum Capital Requirement and the Solvency Capital Requirement;
 - (f) a statement on whether the transitional risk-free interest rate-term structure referred to Article 308c of Directive 2009/138/EC is applied and a quantification of the impact of not applying the transitional measure on the undertaking's financial position related to branch operations, including on the amount of technical provisions, the Solvency Capital Requirement, the Minimum Capital Requirement, the basic own funds and the amounts of own funds eligible to cover the Minimum Capital Requirement and the Solvency Capital Requirement;
 - (g) a statement on whether the transitional deduction referred to in Article 308d of Directive 2009/138/EC is applied and a quantification of the impact of not applying the deduction measure on the undertaking's financial position related to branch operations, including on the amount of technical provisions, the Solvency Capital Requirement, the Minimum Capital Requirement, the basic own funds and the amounts of own funds eligible to cover the Minimum Capital Requirement and the Solvency Capital Requirement.
- (a) a description of the following:

- (i) the recoverables from reinsurance contracts and special purpose vehicles in relation to branch operations,
- (ii) any material changes in the relevant assumptions made in the calculation of technical provisions in relation to branch operations compared to the previous reporting period.

Valuation of the other liabilities (than technical provisions)

- (38) The following information should be reported by third country insurance undertakings regarding the valuation of the other assets and the other liabilities in respect of branch operations for branch solvency purposes:
- (a) separately for each material class of other liabilities the value of other liabilities as well as a description of the bases, methods and main assumptions used for their valuation for solvency purposes;
 - (b) separately for each material class of other liabilities, a quantitative and qualitative explanation of any material differences with the valuation bases, methods and main assumptions used by the undertaking in relation to the branch operations for the valuation for solvency purposes and those used for their valuation in the branch's specific accounts.

Alternative methods for valuation

- (39) Where an alternative method for valuation is used, third country insurance undertakings should report information on:
- (a) the branch assets and branch liabilities to which that valuation approach applies;
 - (b) a justification of the use of that valuation approach for the assets and liabilities referred to in point (a);
 - (c) the assumptions underlying that valuation approach;
 - (d) an assessment of the valuation uncertainty of the assets and liabilities referred to in point (a);
 - (e) a comparison of the adequacy of the valuation of the assets and liabilities referred to in point (a) against experience.

Any other information

- (40) Third-country insurance undertakings should report, in respect of branch operations, a description of:
- (a) the relevant assumptions about future management actions;
 - (b) the relevant assumptions about policy holder behaviour.
- (41) Third-country insurance undertakings should report in a separate section any other material information regarding the valuation of branch assets and branch liabilities for branch solvency purposes.

Capital management

Own funds

- (42) Third-country insurance undertakings should report to the supervisory authority the following information in respect of branch own funds:

- (a) information on the objectives, policies and processes employed by the undertaking for managing branch own funds, including information on the time horizon used for business planning and on any material changes over the reporting period;
 - (b) the expected developments of the branch own funds over its business planning time period given the undertaking's business strategy, and appropriately stressed capital plans
 - (c) the eligible amount of own funds to cover the branch Solvency Capital Requirement;
 - (d) the eligible amount of basic own funds to cover the branch Minimum Capital Requirement;
 - (e) an explanation addressing the key elements of the reconciliation reserve.
 - (f) for each material item of ancillary own funds, a description of the item, the amount of the ancillary own fund item, where a method by which to determine the amount of the ancillary own fund item has been approved, that method as well as the nature and the names of the counterparty or group of counterparties for the items referred to in points (b) to (c) of Article 89(1) of Directive 2009/138/EC.
 - (g) a description of any item deducted from own funds and a brief description of any significant restriction affecting the availability and transferability of own funds within undertaking and branch.
 - (h) the undertaking's plans on how to replace basic own-fund items that are subject to the transitional arrangements referred to in Article 308b(9) and (10) of Directive 2009/138/EC over the timeframe referred to in that Article.
- (43) Third-country insurance undertakings should confirm in their regular supervisory reporting that the assets covering the branch MCR are located within the Member State where the activities are pursued and that the assets covering the branch SCR in excess of the branch MCR are located within the community.
- (44) Third-country insurance undertakings should provide information on the assets lodged as the deposit in accordance with Article 162 (2)(e) to allow the supervisory authority to assess the appropriateness of the deposit, including;
- (a) The name and location of the credit institution that the deposit is lodged with;
 - (b) Confirmation that that credit institution has, or will exercise, no right of set off of any claims it may have against the undertaking against the deposits should the undertaking fail or be subject to winding-up proceedings.
 - (c) Details of the quality of the assets lodged as part of the deposit, including details of the volatility of the asset over time, in order to demonstrate that the asset is of sufficient quality and stable value to fulfil the role of the deposit.
- (45) Third-country insurance undertakings should report to the supervisory authority the following information regarding their solvency position calculated in accordance with home jurisdiction rules on branch own funds:
- (i) the eligible amount of own funds to cover the branch Solvency Capital Requirement;

- (j) the eligible amount of basic own funds to cover the branch Minimum Capital Requirement;

Solvency Capital Requirement and Minimum Capital Requirement

- (46) The following information should be reported by third country insurance undertakings regarding the branch Solvency Capital Requirement and the branch Minimum Capital Requirement:
 - (a) the amounts of the branch's Solvency Capital Requirement and the branch Minimum Capital Requirement at the end of the reporting period, accompanied, where applicable, by an indication that the final amount of the branch Solvency Capital Requirement is still subject to supervisory assessment;
 - (b) quantitative information on the branch's Solvency Capital Requirement split by risk modules where the undertaking applies the standard formula, and by risk categories where the undertaking applies an internal model;
 - (c) the expected developments of the undertaking's anticipated branch Solvency Capital Requirement and branch Minimum Capital Requirement over its business planning time period given the undertaking's business strategy for the branch;
 - (d) information on whether and for which risk modules and sub-modules of the standard formula the undertaking is using simplified calculations in respect of branch operations;
 - (e) information on whether and for which parameters of the standard formula the undertaking is using undertaking-specific parameters pursuant to Article 104(7) of Directive 2009/138/EC in respect of branch operations;
 - (f) the impact of any undertaking-specific parameters the undertaking is required to use in accordance with Article 110 of Directive 2009/138/EC and the amount of any capital add-on applied to the branch Solvency Capital Requirement;
 - (g) information on the inputs used by the undertaking to calculate the branch Minimum Capital Requirement;
 - (h) any material change to the branch Solvency Capital Requirement and to the branch Minimum Capital Requirement over the reporting period, and the reasons for any such change.
- (47) Third-country insurance undertakings should report the amount of their solvency requirement for the whole undertaking, calculated in accordance with home jurisdiction rules, which is equivalent to the Solvency Capital Requirement and Minimum Capital Requirement.
- (48) Where simplifications have been used for the calculation of branch Solvency Capital Requirement, the third country insurance undertakings should provide information on the justification that these simplifications are proportionate to the nature, scale and complexity of the risk in respect of branch operations.
- (49) Within the information reported with regards to branch SCR, third country insurance undertakings should include details of any allowance for reinsurance and financial mitigation techniques and future management actions in respect of branch operations used in the branch SCR calculation and how these have met the criteria for recognition.

- (50) Where an internal model is used to calculate the branch Solvency Capital Requirement, the following information should also be reported by third country insurance undertakings:
- (a) a description of the various purposes for which the undertaking is using its internal model for branch operations;
 - (b) a description of the scope of the internal model covering branch operations in terms of business units and risk categories;
 - (c) where a partial internal model covering branch operations is used, a description of the technique which has been used to integrate any partial internal model into the standard formula including, where relevant, a description of alternative techniques used;
 - (d) a description of the methods used in the internal model covering branch operations for the calculation of the probability distribution forecast and the branch Solvency Capital Requirement;
 - (e) the results of the review of the causes and sources of profits and losses, required by Article 123 of Directive 2009/138/EC, for each major business unit and how the categorisation of risk chosen in the internal model explains those causes and sources of profits and losses;
 - (f) an explanation, by risk module, of the main differences in the methodologies and underlying assumptions used in the standard formula and in the internal model covering branch operations;
 - (g) information on whether, and if so to what extent, the risk profile of the branch deviates from the assumptions underlying the branch's internal model;
 - (h) the risk measure and time period used in the internal model, and where they are not the same as those set out in Article 101(3) of Directive 2009/138/EC, an explanation of why the branch Solvency Capital Requirement calculated using the internal model covering branch operations provides branch policy holders and beneficiaries with a level of protection equivalent to that set out in Article 101 of Directive 2009/138/EC;
 - (i) information about future management actions used in the calculation of the branch Solvency Capital Requirement.
- (51) Where undertaking-specific parameters are used to calculate the Solvency Capital Requirement, or a matching adjustment is applied to the relevant risk-free interest term structure, the regular supervisory report shall include information regarding whether there have been changes to the information included in the application for approval of the undertaking-specific parameters or matching adjustment that are relevant for the supervisory assessment of the application.
- (52) Third country insurance undertakings should at least report a high level description of the operational performance of the internal model in respect of branch operations, in particular security, contingency planning and recovery plans, as well as computational capabilities and efficiency of the model.
- (53) Third country insurance undertakings should provide a description of the nature and appropriateness of the key data used in the internal model in respect of branch operations and a description of the process in place for checking data quality

- (54) Third country insurance undertakings should provide an estimate of the branch Solvency Capital Requirement determined in accordance with the standard formula, where the undertaking is using an internal model to calculate its branch Solvency Capital Requirement and where the supervisory authority requires the undertaking to provide that estimate pursuant to Article 112(7) of Directive 2009/138/EC.

Use of the duration-based equity risk sub-module in the calculation of the Solvency Capital Requirement

- (55) The following information should be reported by third country insurance undertakings regarding the option set out in Article 304 of Directive 2009/138/EC in respect of branch operations:
- (a) an indication that the undertaking is using the duration-based equity risk sub-module set out in that Article for the calculation of the branch Solvency Capital Requirement, after approval from its supervisory authority;
 - (b) the amount of the branch capital requirement for the duration-based equity risk sub-module resulting from such use.

Differences between the standard formula and any internal model used

- (56) Third-country insurance undertakings should consider, when reporting the main differences in methodologies and underlying assumptions used in the standard formula and in the internal model in respect of branch operations, at least the following:
- (a) Structure of the model,
 - (b) Risk categories concerned and not concerned by internal models,
 - (c) Aggregation methodologies and diversification effects,
 - (d) Risk not covered in the standard formula but covered by the internal model.

Non-compliance with the Minimum Capital Requirement and non-compliance with the Solvency Capital Requirement

- (57) Third-country insurance undertakings should report information on any reasonably foreseeable risk of non-compliance with the branch Minimum Capital Requirement or branch Solvency Capital Requirement, and the undertaking's plans for ensuring that compliance with each is maintained
- (58) Regarding any non-compliance with the branch's Minimum Capital Requirement third country insurance undertakings should report:
- (a) the period and maximum amount of each non-compliance during the reporting period;
 - (b) an explanation of its origin and consequences;
 - (c) any remedial measures taken and an explanation of the effects of such remedial measures;
 - (d) where non-compliance with the branch's Minimum Capital Requirement has not been subsequently resolved: the amount of the non-compliance at the reporting date;

- (59) Regarding any significant non-compliance with the branch's Solvency Capital Requirement) third country insurance undertakings should report:
- (a) the period and maximum amount of each significant non-compliance and, in addition to the explanation of its origin and consequences as well as any remedial measures taken and an explanation of the effects of such remedial measures;
 - (b) where a significant non-compliance with the branch's Solvency Capital Requirement has not been subsequently resolved: the amount of the non-compliance at the reporting date.

Any other information

- (60) Third-country insurance undertakings should report any other material information regarding their capital management in respect of branch operations.

Technical Annex II – Format of statement illustrating availability of assets

	Currency	Currency
<i>Branch assets</i> subject to rights in rem	a	
Non-branch creditors' secured claims	(b)	
	_____	c = a-b
Surplus secured assets available to pay <i>branch insurance claims</i>		
<i>Branch assets</i> subject to rights in rem	d	
Branch creditors' secured claims	(e)	
	_____	f = d-e
Surplus secured assets available to pay <i>branch insurance claims</i>		
Assets <i>branch assets</i> subject to trust/security/collateral arrangements in favour of creditors with <i>branch insurance claims</i>	g	
<i>branch preferential claims</i> (if such claims have preference according to the applicable winding-up regime):		
employee claims	(h)	
tax claims	(i)	
social security claims	(j)	
	_____	(k)=h+i+j
Net <i>branch assets</i>		l = <u>c+f+g-k</u>
<i>Branch insurance claims</i>		(m)
<i>Branch own funds</i>		n = <u>l-m</u> (note 1)
Other <i>branch policyholders</i> (eg branch reinsurance creditors)	(o)	
Other branch creditors (ranking equally with <i>branch policyholders</i>)	(p)	
Non- <i>branch policyholders</i> (ranking equally with <i>branch policyholders</i>)	(q)	
Non-branch creditors (ranking equally with <i>branch policyholders</i>)	(r)	
	_____	(s) = o+p+q+r
Total claims sharing in surplus <i>branch assets</i>		
Surplus or (deficit)		t = <u>n-s</u> (note 2)
		=====

Notes

1. This amount must be more than the *branch SCR*.
2. Any deficit represents the extent to which *branch policyholders* who do not have *branch insurance claims* are dependent upon the non-*branch assets* of the undertaking to pay their claims.

Technical Annexes

Technical Annex III – Specific templates for branches of third-country insurance undertakings

The technical annex is provided in the accompanying Excel file ("GL_3CB_Annex III_Specific Templates.xlsx")

Technical Annex IV – Instructions for specific information to be submitted by branches of third-country insurance undertakings

The technical annexes are provided in an accompanying ZIP file.

2. Explanatory text

Introduction

- 2.1 Directive 2009/138/EC allows some discretion in how to interpret the applicable provisions in the case of such undertakings and the desired outcomes of the Directive 2009/138/EC, the protection of policyholders in the EU, will be more consistent, efficient and effective if national competent authorities exercise their powers of supervision according to these guidelines.
- 2.2 For clarification, the definition of "insurance claim" provided in the introduction of the Guidelines, includes obligations arising under direct insurance contracts but not reinsurance.
- 2.3 Any policyholders of a branch with a reinsurance policy do not benefit from priority given to branch assets which are available to meet the claims of branch policyholders whose policy is a direct contract of insurance and claims of branch preferential creditors. Rather, they must rely on any surplus of assets available to non-branch creditors and rank alongside all claims to those surplus assets and non-branch assets according to the priorities given to such claims under the winding-up regime of the undertaking's home jurisdiction.
- 2.4 In limiting branch liabilities to (amongst other things) insurance claims, the intention is that the branch balance sheet includes estimates of the liabilities which arise from policies under which insurance claims may arise. These estimates include both the best estimate of such insurance liabilities and a risk margin.

Authorisation of a branch

Guideline 1 - Conditions for authorisation

When authorising or continuing authorisation of a branch of third-country insurance undertaking, host supervisory authorities should be satisfied that the third-country insurance undertaking has an adequate solvency margin and agrees to provide any information which the host supervisory authority may need for supervision purposes and which demonstrates that the undertaking as a whole has an adequate solvency margin under the home jurisdiction rules and that the home supervisory authority confirms that those home jurisdiction rules are met

Host supervisory authority should assess the adequacy of the solvency margin of the undertaking as a whole on the basis of the prudential requirements of the home supervisory authority, including seeking additional information where needed.

- 2.5 Since Article 162 of Directive 2009/138/EC provides a minimum set of conditions to be met before a national supervisory authority authorises a branch, these Guidelines can be supplemented by additional requirements applied by each Member State or national supervisory authority provided

they do not conflict European law which applies directly such as any relevant Implementing Technical Standards.

Guideline 2 – Scheme of operations and solvency margin

The third-country undertaking should include in the scheme of operations of its branch an analysis of the differences between the home country solvency rules and the rules of Directive 2009/138/EC, including an explanation on the reasons that justify such differences.

- 2.6 This guideline facilitates the host supervisory authority's assessment of the adequacy of the third-country undertaking's solvency margin under the prudential requirements of the home supervisory authority, including an assessment of the appropriateness of the home jurisdiction rules for the branch operations.
- 2.7 It is possible that the nature of insurance business written in a non-EEA country is different from the nature of insurance business written in the EEA. The home supervisory rules which are used to calculate a solvency margin for the whole undertaking may therefore not be sufficiently risk sensitive to capture all the risks arising from the branch operations.
- 2.8 It is also possible that the home supervisory authority's rules are designed to achieve a different standard of solvency compared with that demanded by Directive 2009/138/EC. The solvency margin demanded by the home supervisory authority may therefore be inadequate to protect branch policyholders to the standard required by Directive 138/2009/EC.
- 2.9 The third-country insurance undertaking could, for example, explain whether the differences between the two regimes are due to the nature of the insurance products in the home and host jurisdictions or for other reasons.

Guideline 3 – Distribution of branch assets

When determining whether the third-country insurance undertaking has an adequate solvency margin, the host supervisory authority should consider:

- a) the branch assets remaining after paying the insurance claims of branch policyholders which would be distributed to other claims of branch policyholders; and
- b) the aggregate amount of claims which would rank in priority to, or equal with, claims of branch policyholders.

- 2.10 The third-country insurance undertaking may have little or no ability to alter the priorities of creditors (which would apply if the undertaking were wound up under the home state regime) in order to ensure similar winding-up conditions as under the Directive 2009/138/EC.
- 2.11 If the winding-up proceedings which would apply to the whole undertaking (which are likely to also apply to the branch since it is difficult to sustain separate winding-up proceedings for the realisation and distribution of the

branch assets) are not in accordance with Article 275 (1) (a) or (b) of the Directive 2009/138/EC – in particular that insurance claims are not afforded the degree of priority required in the Union or if non-branch policyholders have priority over branch policyholders – then it is necessary to ensure that the branch assets are hypothecated in some manner to meet the claims of branch policyholders in a way which is effective and does not dilute branch policyholders' claims.

- 2.12 In particular, branch policyholders' claims include claims of reinsurance creditors of the undertaking whose claims arise from branch operations. These reinsurance creditors may need to rely, in whole or in part, on the assets of the undertaking not hypothecated to pay the direct insurance claims of branch policyholders. Their claims may compete with other non-preferential and non-insurance claims against the undertaking and therefore upon a winding-up, the assets available to meet their claims may be diluted by other creditors.
- 2.13 These amounts should be reported as part of the regular supervisory report, possibly as part of the numeric illustration of how the available branch assets would be distributed in a winding-up of the undertaking, as well as in the reporting templates set out in these guidelines (see paragraph (2) of Technical Annex II).
- 2.14 There is no provision in Directive 2009/138/EC which permits Article 227 or Article 260 determinations to be used to determine solo capital requirements or own funds: these articles relate only to the calculation of group solvency requirements or the exercise of group supervision.
- 2.15 The criteria for equivalence determinations under Art 227 of Directive 2009/138/EC concern whether the third-country imposes on the undertaking a solvency regime at least equivalent to that laid down in Title 1, Chapter VI of Directive 2009/138/EC (rules relating to the valuation of assets and liabilities, technical provisions, own funds, solvency capital requirement, minimum capital requirement and investment rules), not Title IV of Directive 2009/138/EC (reorganisation and winding-up of insurance undertakings). Protection of branch policyholders requires consideration of the equivalence of winding-up regimes.
- 2.16 However, when assessing the adequacy of the solvency margin of the undertaking, the supervisor may consider relevant equivalence determinations or advice made pursuant to Article 227 of Directive 2009/138/EC to be this to be useful information.

Guideline 4 –Legal opinion concerning the distribution of branch assets

The third-country undertaking should provide the host supervisory authority with a legal opinion concerning the distribution of branch assets describing how the assets of this undertaking would be distributed upon winding-up and reflecting the order of priorities of claims which would apply to the distribution of branch assets where there are other arrangements in place that affect the distribution of assets upon winding-up.

The third-country insurance undertaking should ensure that the legal opinion is prepared on the basis that the branch would be subject to a single winding-up proceeding governed by the laws of the country where it has its head-office and that the person providing the opinion is qualified to advise in respect of those laws.

Explanation of the need to obtain legal advice in respect of the winding-up regime of the home jurisdiction

- 2.17 The winding-up of a branch is particularly complicated since it is possible that different persons will be appointed to take control of the assets under the control of the branch or located in the country where the branch is situated and assets of the undertaking located in other jurisdictions.
- 2.18 The question of which jurisdiction's winding-up proceedings will dominate or how they will be coordinated is intrinsically uncertain since there are few examples of how these questions would be decided and it is likely to be a question that is determined by court proceedings in the respective jurisdictions.
- 2.19 Whilst it is possible that the branch assets would be distributed according to the priorities required under Article 275 of Directive 2009/138/EC since Member States will have transposed this into their national law, that does not ensure that the branch assets would not be remitted (with the consent of the courts of the relevant member state) to the control of the foreign winding-up proceeding. Neither does it ensure that foreign creditors would rank equally with branch creditors in that foreign proceeding.
- 2.20 The only prudent basis therefore on which to assess the availability of assets to meet branch liabilities is to assume that the foreign proceedings will dominate. An understanding of how such proceedings would operate is therefore necessary for which advice from those experts in their operation is necessary.
- 2.21 Supervisory authorities are expected to apply a proportionate approach by allowing third-country insurance undertakings with relatively simple branch operations to demonstrate compliance by providing less information than that which would be required for third-country insurance undertakings with more complex branch operations.

Guideline 6 - Determination of branch liabilities

The branch insurance claims included in branch liabilities should comprise technical provisions, as described in Article 77 of Directive 138/2009/EC, associated with only those branch insurance claims.

- 2.22 Branch insurance claims comprise only those liabilities which have priority upon winding-up, whether that be by virtue of the priority accorded to policyholders' insurance claims in the creditor hierarchy or to other types of preferential claims (such as employee claims) or because the liability is

secured on certain assets. The winding-up rules applicable may prescribe certain methods for valuing claims to be paid from assets available in a winding-up proceeding. They may prescribe certain valuation principles and they may prescribe certain treatments for setting off amounts owing to the undertaking against amounts owed by the undertaking to the creditor proving in the winding-up proceeding. This guideline seeks to ensure that for the purposes of this guideline the value attributed to branch insurance claims is calculated net of all the inward and outward cashflows used to estimate technical provisions, including the best estimate and risk margins. The items included in this calculation may therefore differ from the items which would be admissible to claim (or off-set) in a winding-up. Guideline 22 deals with the valuation methodology for branch insurance claims, such as the principle that liabilities need to be valued at the amount for which they could be transferred or settled between knowledgeable willing parties in an arms-length transaction. This may also be a different valuation basis compared to the basis used under applicable winding-up regimes.

Supervisory powers and communication with other supervisory authorities

Guideline 8 – General Supervisory Powers

Host supervisory authorities should use, where appropriate, the supervisory powers contained in Directive 2009/138/EC where relevant, including those contained in Articles 34, 35, 36, 37, 84, 85, 110, 118 and 119, for the supervision of branch operations to the same extent that they make use of such powers for the supervision of undertakings with their head office located within the Union.

Explanation of the authority for supervisory powers over the branch operations

2.23 Article 168 of the Directive 2009/138/EC applies Article 34 of Directive 2009/138/EC to supervisory authorities supervising *third-country insurance undertakings* with *branch operations* occurring in the Union. Article 34 of Directive 2009/138/EC confers upon supervisory authorities general supervisory powers and accordingly all supervisory powers available to supervisory authorities pursuant to Directive 2009/138/EC are available for the supervision of *branch operations*.

Guideline 9 – Assessment of branch financial position as part of the supervisory review process

When assessing the adequacy of the branch financial position as part of the supervisory review process, the host supervisory authorities should consider the risk that branch policyholders' claims may be diluted by non-branch claims.

2.24 Where appropriate, the *host supervisory authority* needs to consider imposing a capital add-on which would have the effect of increasing the protection of *branch policyholders* relative to non-branch creditors.

Guideline 11 – Notifying EIOPA of joint decisions in relation to Article 167 of Directive 2009/138/EC

Where a third-country insurance undertaking authorised in more than one Member State applies for any of the advantages of Article 167 of Directive 2009/138/EC, the relevant supervisory authority should notify EIOPA of the decision under Article 167 and whether it considers the conditions in Guideline 1 are met.

- 2.25 The notification referred to in the guideline is made in order to enable EIOPA to facilitate an exchange of information between all the host supervisory authorities who may have authorised the opening of a branch of the same undertaking and their views on whether Guideline 1 is met.

Guideline 16 – Cooperation and communication between supervisory authorities under the supervisory review process

Where host supervisory authorities have granted the advantages under Article 167(1) of Directive 138/2009/EC, those supervisory authorities should establish a communication process in line with the one described in the Guidelines on Supervisory Review Process.

Where the third-country insurance undertaking has branches authorised in more than one Member State but has not applied for any of the advantages of Article 167(1), of Directive 138/2009/EC, those supervisory authorities should agree how to cooperate and exchange information in line with the Guidelines on Supervisory Review Process.

Explanation of how supervisory review processes in respect of the undertaking with a branch may be coordinated

- 2.26 If a *third-country insurance undertaking* requests or obtains from two or more host supervisory authorities authorisation to obtain the advantages described in Article 167(1) of Directive 2009/138/EC, the host supervisory authorities concerned could consider cooperating in the exchange of information and otherwise assisting each other with their respective supervision of the third-country insurance undertaking.
- 2.27 Host supervisory authorities will only cooperate at their discretion.
- 2.28 Supervisory authorities may cooperate by exchanging of information in situations where there are supervisory issues which could have implications for the supervision of branches or related insurance undertakings of the same third-country undertaking in other EEA member states. For example, concerns about governance, fitness and propriety of management, portfolio transfers of the third-country insurance undertaking, or where they believe the third-country insurance undertaking is entering financial difficulties.

Financial Soundness of the branch

Guideline 18 - Branch accounting

A third-country insurance undertaking should establish, maintain and document the administrative and accounting procedures related to the operations of its branches in the Member State in which the corresponding branch operates.

The third-country insurance undertaking should keep the records that identify the location of all branch assets as well as sufficient information to enable any person charged with winding-up the undertaking to take control of those assets.

The third-country insurance undertaking should produce and keep management accounts relating to the whole balance sheet of the branch – including available and non-available assets and all liabilities relating to branch operations.

- 2.29 The procedures need to include the basis on which the *third-country insurance undertaking* determines which income, expenses, assets and liabilities arise out of operations effected by the branch and are allocated to the *branch operations* as opposed to the other activities of the *third-country insurance undertaking*.
- 2.30 Information which would be relevant to taking control of branch assets could include details of:
- a) custodians appointed;
 - b) the location of assets;
 - c) in the case of stocks and shares, the exchanges and registries involved in dealing in those assets;
 - d) the contractual arrangements under which assets are held; and
 - e) in the case of recoveries under reinsurance contracts, the extent to which those contracts protect branch policyholders as opposed to non-branch policyholders.
- 2.31 Since a branch is an integral part of the legal entity which is the insurance or reinsurance undertaking, the soundness of the branch depends upon the soundness of the whole undertaking. Directive 2009/138/EC requires that supervisory authorities take a proportionate approach and therefore they must strike a balance between inquiring into the business operations of the whole undertaking, which would provide greater protection for policyholders, and inquiring into only the *branch operations*, which would be less burdensome, but which may be less effective.
- 2.32 One of the aspects of the financial soundness of the branch which are necessary for the effective protection of policyholders of the branch is the manner in which available assets are distributed to policyholders should the undertaking fail. The way to ensure the same protection for policyholders of the branch is to ensure that the manner in which assets available in a winding-up are distributed to policyholders includes giving priority to

insurance claims over non-insurance claims, as provided for by Title IV (Article 267-296) of Directive 2009/138/EC.

Guideline 19 - Location of branch assets

The third-country insurance undertaking should continuously monitor that sufficient assets covering the branch MCR are located within the Member State where the activities are pursued, and that the assets covering the branch SCR, in excess of the branch MCR, are located in the Union, and inform the host supervisory authority immediately if this condition is no longer complied with.

- 2.33 The amount of assets to be located within the Union or the relevant Member State is based on the branch SCR and branch MCR, rather than capital requirements of the third-country insurance undertaking as a whole.
- 2.34 The amount of the deposit lodged as security is based on the *branch MCR* rather than capital requirements of the third-country insurance undertaking as a whole.

Guideline 20 – Quality requirements on deposit lodged

The third-country insurance undertaking should ensure that the deposit lodged is of low volatility under all market conditions to ensure it is appropriate to be lodged as security.

The third-country insurance undertaking should only lodge the deposit with a credit institution authorised in the Union which has acknowledged that it has, or will not exercise, any rights of set-off of any claims it may have against the undertaking against the deposit should the insurance undertaking fail or be subject to winding-up proceedings.

- 2.35 An example of an asset of sufficiently high quality to be lodged as security would be cash or cash equivalents.

Guideline 23 – Calculation of capital requirements for the branch

The branch SCR and branch MCR should be calculated based on the branch balance sheet as if the branch operations constituted a separate insurance undertaking.

- 2.36 The requirement that the branch SCR and branch MCR have to be calculated using the branch balance sheet as if the branch operations were a separate insurance undertaking means that there will be no allowance made for any diversification effects between the head-office and any branch of the undertaking. It also means that there will be no capital charge in the SCR or MCR for notional credit exposures between the head-office and any branch.

Guideline 24 - Solvency capital requirement

The third-country insurance undertaking should ensure that the branch own funds are at least equal to the branch SCR.

- 2.37 One of the aspects of the financial soundness of the branch which are necessary for the effective protection of policyholders of the branch is the solvency of the third-country insurance undertaking as a whole. The way to ensure the same protection for policyholders of the branch is to ensure that the whole third-country insurance undertaking is held to a solvency standard which is at least as effective as that provided for by Directive 2009/138/EC for undertakings situated in the EU.
- 2.38 If, when reporting the branch balance sheet and branch SCR, the report shows that the branch basic own funds are less than the branch SCR, then the undertaking should inform the host supervisory authority immediately and provide an explanation.

Guideline 26 - Branch own funds

The third-country insurance undertaking should calculate branch own funds taking into account only assets which are available for distribution upon a winding-up of the undertaking to pay the insurance claims of branch policyholders. Such assets should only be treated as available if they would be distributed:

- a) in accordance with the provisions of Article 275(1)(a) or (b) of Directive 2009/138/EC, and do not differentiate between claims according to the location of the claim; or
- b) if they would be distributed to pay branch preferential claims and the insurance claims of branch policyholders in priority to all other claims.

- 2.39 Any allocation of an undertaking's common equity, or debt issued to finance the undertaking's activities to a branch for accounting or regulatory purposes is arbitrary and of no practical effect when considering the protection afforded to policyholders. Article 166(1) of Directive 2009/138/EC requires that branch own funds fall within the amounts of eligible own funds consisting of the items referred to in Article 98(3) of Directive 2009/138/EC, namely the aggregate of tier 1, 2, and 3 own funds subject to various limits. The only item which is of practical meaning for a branch's own funds is therefore that which comprises the reconciliation reserve component of tier 1 own funds. So the own funds of a branch are only the excess of branch assets over branch liabilities.
- 2.40 In particular, it is necessary that all own funds for a branch comply with the characteristics set out in Article 93 (1) (a) and (b) of Directive 2009/138/EC: that the item is available to absorb losses on both a going concern basis as well as in the case of winding-up; and in the case of winding-up, that the item is subordinated to the claims of policyholders and beneficiaries of insurance and reinsurance contracts. Branch own funds should therefore

exclude amounts representing assets which are not available as set out in Guideline 27 since for a branch, its own funds comprise only the difference between branch assets and branch liabilities, being the reconciliation reserve for the branch. Whilst the calculation of the excess of assets over liabilities for the branch is done with availability of assets considered on a gone concern basis, the branch reconciliation reserve should be classified as tier 1 and should be assumed to absorb losses on a going concern basis, as is the case for the reconciliation reserve for undertakings under Directive 2009/138/EC. Undertakings should still consider whether the branch reconciliation reserve is free from encumbrances.

- 2.41 Supervisory authorities cannot require that the insolvency regime in the third country that would apply to the undertaking (and consequently, the branch) contains the same creditor priorities required of Member States under the Solvency II Directive. However, as an alternative, when assessing the permanent availability of the branch own funds, supervisory authorities should take into account situations where creditor priorities do not provide sufficient policyholder protection, for example if:
- a) non-branch insurance creditors had priority over branch insurance creditors with respect to any of the assets of the undertaking available to branch insurance creditors; or
 - b) arrangements under which branch insurance creditors ranked equally with non-branch insurance creditors if neither had priority over other ordinary creditors.
- 2.42 Where the home regime does not provide adequate protection the undertaking will have to ensure that branch assets are available to pay branch liabilities. However, to be an effective alternative, the supervisory authority must be satisfied that it can identify in advance which assets would be available, which creditors would have a claim on those assets and that some margin of such assets over such liabilities was likely to be maintained, and lastly, that in the event that the undertaking were wound up, those assets would be distributed to creditors under a system where insurance creditors had priority over non-insurance creditors with respect to those assets. These assets are the only assets that can meet the definition of available branch assets.

Examples of possible ways in which assets could meet the definition of branch assets

- 2.43 Where the undertaking cannot procure changes to the winding-up regime which would apply in the home jurisdiction of the undertaking, it is necessary that sufficient assets are hypothecated to pay branch insurance claims.
- 2.44 The following methods may be considered by undertakings and host supervisory authorities:

The provision of collateral

2.45 Where the assets of an undertaking which has a branch in the EEA are secured by collateral or a letter of credit provided by a third party (for instance a reinsurance undertaking or credit institution) then that collateral may be hypothecated for the benefit of policyholders of the branch. This could make assets available for the branch policyholders without directly encumbering the assets of the undertaking.

Contractual agreement which is recognised in foreign proceedings

2.46 The third-country insurance undertaking might enter into legally enforceable arrangements that have the effect of legally segregating the branch portfolio from the third-country insurance undertaking's other assets and liabilities and granting title or other preferential interest over branch assets to the policyholders of branch operations, a relevant compensation scheme, or other suitable party.

2.47 To be effective the arrangements would need to be capable of being recognised in winding-up proceedings in the jurisdiction where the branch is based, and where the undertaking has its head office, and where the assets in question are located.

2.48 Possible ways in which this could be done (which may not be available in all jurisdictions) would be:

2.49 Establishing a trust comprising the branch assets to be available to pay branch insurance claims where the trustees had legal ownership of the assets and the beneficiaries of the trust were the persons with branch insurance claims. The undertaking would need to put in place acceptable arrangements which allowed those assets to be dealt with in the normal course of business and ensure that the tax status and accounting status of the assets was clear. Supervisory authorities would need to decide whether to allow the assets and associated claims to be reported as part of the insurance business of the undertaking.

2.50 Granting a security interest over the branch assets where the branch insurance creditors were the beneficiaries of such a security interest. This may be done by way of a fixed or floating charge over the assets. Such a charge may need to be registered or other formalities completed in order to be valid.

2.51 Subjecting branch assets to any national legislation which in respect of certain designated assets grants a priority for branch insurance claims over the insurance claims arising from non-branch operations.

2.52 Some methods designed to protect branch policyholders which are likely to not be sufficiently effective to meet the requirements of these guidelines without further safeguards are:

Contractual agreement has the effect of ensuring branch policyholders rank equally with non-branch policyholders

2.53 Some jurisdictions operate winding-up regimes where the claims of national creditors rank before the claims of foreign creditors. It is possible in some circumstances that a branch could include contractual terms in its dealings with branch policyholders which have the effect of treating branch policyholders as if they were creditors of the home jurisdiction. This would have the effect of ensuring that branch policyholders were treated no less favourably than policyholders of the home jurisdiction. However, it would not ensure that policyholders, and in particular policyholders with insurance claims, were treated with the priority required by Directive 2009/138/EC.

Notification at point of sale

2.54 Whilst it may be helpful to notify persons dealing with the branch that their claims may be subject to resolution under a foreign winding-up proceeding with different priorities from those required by Directive 2009/138/EC for insurance undertakings, this does not provide any actual protection. Neither is it the purpose of prudential regulation such as Directive 2009/138/EC to introduce requirements concerning conduct of business standards.

Reliance on national compensation schemes

2.55 Whilst arrangements which compensate policyholders for some or all of the loss they might suffer upon the failure of an insurance undertaking are helpful, they are not of the nature of protection which Directive 2009/138/EC envisages and therefore should not be taken into account in any assessment of the adequacy of arrangements made to protect branch policyholders. Essentially the costs fall on those who fund such compensation schemes whereas the protections required under Directive 2009/138/EC for would protect those compensation schemes and their funders from loss also.

Segregation of and restrictions on dealing with branch assets

2.56 Arrangement can be envisaged whereby branch assets are segregated from other assets of the undertaking (such as being held in separately designated bank or custodian account) and restrictions are imposed on the undertaking dealing with such segregated assets (for example being unable to transfer those assets for the benefit or under the control of a third party without consent from the host supervisory authority). Such arrangements do not provide an adequate degree of protection for branch policyholders since ultimately the beneficial interest in those assets remains with the undertaking and any custodian and any host supervisory authority would have to succumb to court orders requiring the control of those assets to be transferred to a person properly appointed to deal with the winding-up of the undertaking. Any arrangement which is to provide effective protection for branch policyholders must include the transfer of beneficial (and possibly also legal) interests in the branch assets in favour of branch policyholders.

Governance and risk management

Guideline 28 - General governance requirements

The third-country insurance undertaking should ensure that it complies with the system of governance requirements under Articles 41 to 50 of Directive 2009/138/EC, including with the prudent person principle with regards to branch operations.

- 2.57 Generally all requirements concerning the system of governance apply to the branch of the third-country insurance undertaking which in many respects is treated like a separate undertaking. However, the fact that from the point of view of the third-country undertaking the branch operations are part of the undertaking's operations and not treated as if the branch were a separate entity, has to be taken into account.
- 2.58 The third-country insurance undertaking has to provide an effective system of governance for the branch operations which ensures the sound and prudent management of the branch operations and is proportionate to its nature, scale and complexity. It has to comply with all requirements concerning organisational structure, allocation and separation of responsibilities, written policies, continuity plans, remuneration requirements and all specific governance requirements as set out in Articles 42 and 44 to 49 of Directive 2009/138/EC and the Implementing Measures concerning these articles.
- 2.59 These guidelines avoid undue costs being imposed on branches by permitting governance and key functions to be exercised from the head office or from the branch. If exercised from the head office then those functions will be subject to the home supervisory authority's rules and where those rules comply with international standards similar results will be achieved without any material additional cost. Only if the home jurisdiction is not equivalent or does not adopt internationally agreed standards will additional costs be incurred.

Guideline 30 – Language and reporting of governance policies

The third-country insurance undertaking should have written policies covering the governance arrangements to comply with Guideline 28 available in a language agreed by the host supervisory authority and include information in their regular supervisory reporting regarding how it satisfies those governance requirements.

- 2.60 Generally, the requirements only apply with regard to *branch operations*. The third-country insurance undertaking can however demonstrate compliance with requirements also by meeting those requirements at the level of the undertaking, e. g. by establishing key functions for the undertaking including the branch or implementing a risk management or internal control system for the undertaking which covers the branch operations.
- 2.61 In case of non-compliance with the governance requirements where the third-country undertaking does not apply requirements to the branch

operations specifically, the supervisory authority can only demand that the necessary corrective actions are taken with regard to the branch operations. E.g. where a key function holder who also performs those key functions for the branch but is not only employed at the branch is found not to be fit and proper, the supervisory authority cannot demand that this person no longer performs the key function for the third-country undertaking but only that a fully qualified key function holder is appointed for the branch. Or if the risk managements system of the third-country undertaking is not up to the standards required by the Directive, the supervisory authority can only require that corrective actions are taken to ensure that the risk management system works properly with regard to branch operations.

- 2.62 A third-country insurance undertaking needs to evidence the degree to which interests of policyholders and beneficiaries within the EU might be prejudiced by its activities which are not part of branch operations, and to manage potential diverting interests appropriately in order to ensure non-discrimination of policyholders and beneficiaries within the EU.
- 2.63 The third-country undertaking would be expected to have a branch specific business strategy and branch internal reporting procedures where this proportionate to the nature, scale and complexity of the branch operations.
- 2.64 Written policies do not necessarily have to be branch-specific – unless this is appropriate on account of specificities of the branch business - but could be written policies at the level of the third- country undertaking covering *branch operations*. But it is important that they are accessible by the supervisory authority responsible for supervising the branch.
- 2.65 In general, information concerning the *branch operations* has to be provided in the language(s) of the *host supervisory authority* or any other language that the supervisory authority agrees to. The third-country undertaking is expected to make available information the supervisory authority is likely to want to see, such as written policies, even before there is a specific request to provide this information.
- 2.66 Continuity requirements, including contingency plans, applies at the level of the branch specifically, so as to ensure that not only the third-country undertaking as a whole but the branch in particular can perform its operations adequately and continuously without major interruptions.
- 2.67 Remuneration requirements apply to the persons who are risk-takers within branch operations regardless of whether they are employed in the branch specifically or in the third-country undertaking. A remuneration committee may be appropriate at the level of the branch if there is no such committee in the third-country undertaking which also covers *branch operations*.

Guideline 31 - Key functions

The third-country insurance undertaking should ensure that the risk management function, the compliance function, the internal audit function and the actuarial function, are in place with regard to branch operations regardless of whether those functions are dedicated exclusively to the branch operations or whether they are functions exercised from the undertaking's head-office and applied to the branch operations.

- 2.68 The system of governance may be exercised by the undertaking's head office or devolved to the branch. Whether governance is exercised along geographical lines or whether it is exercised along business lines as well as geographical lines (i.e. a matrix-management approach) is a choice for the undertaking. What is required for effective supervision of the branch activities is that it is evident to the supervisory authority for the branch that the risk profile of the branch's activities is being monitored and controlled. The governance structure should therefore be transparent and if exercised by the undertaking's head office then the supervisory authority for the branch should have adequate access to those exercising that function.
- 2.69 There are four areas for which it is important that the branch supervisory authority is able to assess: the investment strategy followed for assets which are available to meet branch insurance claims should conform to the prudent person principle separately from the assets of the whole undertaking; the full extent of insurance liabilities incurred by the undertaking which may be attributed by policyholders to the branch (ie booking and fronting practices) is known and adequate records exist in the branch; and the information which a liquidator would require to take control of branch assets is available at short notice in the branch's records.
- 2.70 The risk management function, compliance function, actuarial function and internal audit function do not necessarily need be performed at the level of the branch unless this is proportionate in view of the nature, scale and complexity of the *branch operations*. However, it has to be considered that the performance of the compliance function and the actuarial function for the *branch operations* requires specific knowledge of the laws, regulations and administrative provisions adopted pursuant to Directive 2009/138/EC and the requirements on technical provisions set out in Directive 2009/138/EC respectively and specified in the Implementing Measures and Guidelines.
- 2.71 The investment activities for the branch are subject to the prudent person principle. Specific requirements of the principle, e.g. with regard to risk concentration or diversification have to be complied with for the assets of the branch not for the undertaking as a whole.
- 2.72 The requirement to have an internal control system does not imply that there should be an internal control system that would be independent from that established in the undertaking but can be covered by the control system of

the third-country undertaking. The same applies to the requirement on the requirement of the risk management system.

2.73 The performance of functions and activities for the branch at the level of the third-country undertaking does not constitute outsourcing, since branch operations are not really separate from the rest of the third-country undertakings business.

2.74 Where any branch activities or functions are outsourced, the outsourcing requirements of Article 38 of Directive 2009/138/EC and – where critical or important activities or functions are concerned – Article 49 of Directive 2009/138/EC and the relevant Implementing Measures apply. Hence, the third-country undertaking may be subject to notification requirements with regard to outsourcing arrangements which are not limited to branch activities and functions but also cover activities or functions of the third-country undertaking as a whole. As a consequence the outsourcing arrangements have to comply with the requirements set out in the Implementing Measures (or exclude branch activities and functions). If however, the service provider does not satisfy Solvency II requirements, the supervisory authority can only demand that the service provider selected does not perform any activities or functions with regard to *branch operations*.

Guideline 32 – Notification of fit and proper persons

A third-country insurance undertaking should notify the host supervisory authority of the identity of, and any changes to:

- a) the general representative of the branch,
- b) any persons who effectively run or who may influence branch operations, and
- c) the persons who are responsible for key functions with regard to branch operations.

2.75 Fit and proper requirements apply to all persons who effectively run the branch or have other key functions with regard to the *branch operations* irrespective of whether the person concerned is employed at the level of the third-country undertaking or only at the level of the branch. For the notification requirements it makes no difference whether the persons concerned are employed in the third-country undertaking or in the branch in particular as long as they are key function holders with regard to *branch operations*. Equivalence of the third-country supervisory regime may be a consideration where the person subject to notification requirements has already been subject to a fit and proper assessment by the supervisory authority of the third-country undertaking.

Guideline 34 - Own risk and solvency assessment (ORSA)

The third-country insurance undertaking should perform, at least annually, an ORSA complying with Article 45 of Directive 2009/138/EC with regard to branch operations.

- 2.76 A third-country insurance undertaking may fulfil its obligations under Article 45 of Directive 2009/138/EC by performing an assessment substantially equivalent to an ORSA in respect of the entirety of its operations, prepared in accordance with the requirements of a jurisdiction deemed to be equivalent for purposes of Directive 2009/138/EC. If the third-country insurance undertaking performs such an ORSA equivalent assessment, the third-country insurance undertaking should ensure that any risks with regards to the third-country insurance undertaking's non-branch activities which may have an impact on branch operations are taken into account appropriately. The third-country insurance undertaking also should prepare, if relevant, a translation of the part of the ORSA equivalent assessment concerning branch operations in a language agreed by the host supervisory authority.

Structure and form of the supervisory reporting

Guideline 38 – Elements of the regular supervisory reporting

Third-country insurance undertakings should submit to the host supervisory authorities in respect of branch operations the following information at predefined periods, in accordance with Article 35(2)(a)(i) of Directive 2009/138/EC:

- a) a regular supervisory report comprising the information required under Article 35 and these Guidelines, in relation to branch operations, in narrative form and including quantitative data, where appropriate;
- b) the own-risk and solvency assessment supervisory report ('ORSA supervisory report') in respect of branch operations comprising the results of each regular own risk and solvency assessment performed by the undertaking in accordance with Article 45(6) of Directive 2009/138/EC and these guidelines, whenever an ORSA is performed regularly, and without any delay following any significant change in their risk profile, in accordance with Article 45(5) of Directive 2009/138/EC ;
- c) completed annual and quarterly quantitative templates in respect of branch operations specifying in greater detail and supplementing, where appropriate, the information presented in the regular supervisory report. The quantitative templates in relation to branches of third-country undertakings are set out in Guidelines 45, 46 and Guideline 47 respectively;
- d) a copy of the supervisory reporting documentation of the whole undertaking;
- e) a summary of any significant concerns which the home supervisory authority has raised with the third-country insurance undertaking, in the official language of the country where the branch is located.

The requirements set out in the first paragraph of this Guideline are without prejudice

to the power of host supervisory authorities to require third- country insurance undertakings to communicate on a regular basis any other information prepared under the responsibility of, or at the request of, the administrative, management or supervisory body of these undertakings, in relation to branch operations.

The regular supervisory report should follow the structure set out in Annex XX of the Implementing Measures and should present in a coherent and informative manner the information described in Technical Annex I to these Guidelines.

- 2.77 In submitting information in quantitative reporting templates which contributes to the calculation of the branch SCR, MCR or own funds the third-country insurance undertakings should include only assets which are available for distribution upon winding-up of the undertaking to pay the insurance claims of branch policyholders (in accordance with Guidelines 3, 7, 8 and 27).
- 2.78 In submitting information concerning the branch balance sheet, branch own funds and the branch SCR, the third-country insurance undertakings should include only:
 - 2.79 assets which are available for distribution upon winding-up of the undertaking to pay the insurance claims of branch policyholders (in accordance with Guidelines 3, 7, 8 and 27), and
 - 2.80 Liabilities which comprise the insurance claims of branch policyholders or branch preferential claims.
 - 2.81 Branch available assets should be shown net of branch preferential claims and any prior security interests and the gross amount of available branch assets and the deduction of branch preferential claims and prior security interests from that amount should be shown on form S.02.03.p – Additional branch balance sheet information.

3. Annex I: Impact assessment

Procedure, issues and consultation of interested parties

- 3.1 According to Article 16 of the EIOPA Regulation, EIOPA conducts analysis of costs and benefits in the policy development process. The analysis of costs and benefits is undertaken according to an Impact Assessment methodology.
- 3.2 This impact assessment includes information provided during an informal consultation process conducted in the summer of 2014 in which 12 bodies representing consumers or insurers within or outside of the European Union were invited to participate.

Problem definition

- 3.3 On 11 August 2011, the European Commission Services invited EIOPA to prepare guidelines to clarify how Directive 2009/138/EC should be applied to branches since the text of the Directive was unclear and no provision was made for any Implementing Measures.
- 3.4 Directive 2009/138/EC provides a minimum set of criteria to be met before national supervisory authorities (NSAs) authorise a non-EEA insurance undertaking to open a branch in a Member State, but the way in which additional requirements are applied could vary considerably between Member States and NSAs. Guidelines are therefore an appropriate way to seek to ensure that a degree of consistency is applied towards the treatment non-EEA undertakings wishing to operate insurance branches in the EEA.
- 3.5 The Commission Services expressed the view that Directive 2009/138/EC was not intended to be applied extraterritorially but that policyholders of the branch should nonetheless expect the same standard of protection as they would if they were dealing with an EEA insurance undertaking. The Commission Services' intention was not to subject non-EEA undertakings to the full weight of Solvency II if adequate protection could be achieved by subjecting only the branch operations to Solvency II requirements.
- 3.6 EIOPA considers it essential that branches only operate if the whole undertaking is solvent and if assets would be distributed to branch policyholders in a fair way consistent with the creditor hierarchy required under Directive 2009/138/EC. It is therefore necessary to consider guidelines which meet both these objectives in a way which achieves efficient and consistent supervision.

Objective pursued

- 3.7 The objectives pursued in developing these guidelines are provided for in the EIOPA Regulation within the constraints of Solvency II Directive's objectives:
 - The main objective of insurance and reinsurance regulation and supervision, which is the adequate protection of policyholders and beneficiaries;

- Establishing consistent, efficient and effective supervisory practices, especially to provide a common approach amongst NSAs when deciding whether to authorise or continue to authorise non-EEA insurance undertaking's operating in their Member State.

3.8 That approach is intended to be proportionate, avoiding duplication of supervisory effort and expense for undertakings, where they are subject to both EEA and non-EEA prudential regimes, and yet to achieve the main objective of Directive 2009/138/EC namely the adequate protection of policyholders and beneficiaries.

Policy options

3.9 EIOPA has identified four main policy issues which were considered and debated during the development of these Guidelines, with the respective policy options:

Policy Issue 1: Risk of failure through inadequate own funds

Option 1: *Each NSA relies on the prudential regime and supervisory practices of the authority where the undertaking has its head office.*

Option 2: *Each NSA makes enquiries into the solvency position of the whole undertaking.*

Option 3: *Solvency II solvency standards are applied by each NSA to the whole undertaking's business.*

Policy Issue 2: Consequences of failure through the way assets are distributed

Option 1: *Assets of a branch must always be segregated and subject to contractual or legislative arrangements which ensure that they are distributed according to Solvency II requirements.*

Option 2: *Only branches which are subject to Solvency II-compliant winding-up regimes in the jurisdiction where their head office is located are authorised to open branches in the EEA.*

Option 3: *An assessment is made of the compliance with Solvency II winding-up requirements by relevant NSA's and only branches which are not subject to a Solvency II-compliant winding-up regime are required to ensure that their assets are subject to contractual or legislative arrangements which ensure that they are distributed according to Solvency II requirements.*

Policy Issue 3: Risk of failure through poor governance and controls

Option 1: *Each NSA relies on the home supervisory authority wherever the management and control functions are located.*

Option 2: *The undertaking is required to establish management and control systems for the branch exclusively in the branch which each NSA monitors.*

Option 3: *The undertaking can establish management and control functions either in the branch or head office, but the NSA and home supervisory authority both exercise a degree of monitoring of those functions.*

Policy Issue 4: Regular reporting requirements that are effective yet proportionate

Option 1: *NSAs to exercise their own judgement as to the extent of the regular reporting requirements necessary for each third-country insurance undertaking according to its circumstances.*

Option 2: *The regular reporting requirements for third country insurance undertakings should follow criteria equivalent to those set out in Articles 35 (6) and (7) of Directive 2009/138/EC for insurance and reinsurance undertakings.*

Analysis of Impacts

3.10 This chapter describes the analysis of impact conducted by EIOPA in order to identify the best options. For each policy issue and policy option, the impact on policyholders, the industry (comprising both regulated insurance undertakings and non-EEA insurers with EEA branches), and NSAs are described.

Policy Issue 1: Risk of failure through inadequate own funds

3.11 In general it is not possible to wind up a branch in isolation from the legal entity of which it forms part. A branch therefore fails if the whole undertaking fails. To mitigate this risk most regimes impose a minimum solvency margin on insurance undertakings which they authorise. Before authorising a branch a NSA should consider whether that solvency margin is adequate and respected.

3.12 A different degree of comfort as to the solvency of the whole undertaking can be taken from the home regime depending upon whether it is assessed as equivalent under Article 227 of Directive 2009/138/EC , provisionally equivalent, or no assessment has been made.

Option 1: Each NSA relies on the prudential regime and supervisory practices of the authority where the undertaking has its head office.

3.13 Policyholders: There is a risk that the home regime is not well adapted to the particular risks of the branch business. This decreases the level of protection for policyholders.

3.14 Industry: None

3.15 Supervisor: There is a risk that the home regime is not well adapted to the particular risks of the branch business. In such a case reliance on prudential

regime and supervisory practices of third country would make it more difficult to adequately protect branch policyholders, one of the objectives of Directive 2009/138/EC.

Option 2: Each NSA makes enquiries into the solvency position of the whole undertaking.

- 3.16 Policyholders: The level of protection of policyholder would be higher, since NSAs would be more aware of the financial situation of the third-country insurance undertaking on which its branch operations are dependent.
- 3.17 Industry: The NSA may require more own funds to be held by the undertaking than the home regulatory authority requires.
- 3.18 Supervisor: More resources are required to understand the results of the home supervisory authority's standards as applied to the undertaking and branch. The NSA is in a better position to protect branch policyholders, since it could react on the basis of information regarding the solvency position of the third-country undertaking.

Option 3: Solvency II solvency standards are applied by each NSA to the whole undertaking's business.

- 3.19 Policyholders: None
- 3.20 Industry: Considerable computational effort is required to apply Directive 2009/138/EC to the whole undertaking in addition to complying with the home authority's requirements.
- 3.21 Supervisor: None.

Policy Issue 2: Consequences of failure through the way assets are distributed

- 3.22 When an insurance undertaking fails, its assets are distributed to creditors in accordance with the applicable winding-up regime (generally the regime in the jurisdiction where the undertaking has its head office). Directive 2009/138/EC prescribes certain ways in which policyholders should be protected to ensure that they get a fair share of the available assets. In particular insurance claims should have priority over other claims. In addition, in the context of a branch, it would be consistent with the objective of Directive 2009/138/EC for policyholders of the branch not to be treated less fairly than policyholders of the rest of the undertaking.

- 3.23 Equivalence assessments under Article 227 of Directive 2009/138/EC are not relevant to this issue.

Option 1: *Assets of a branch must always be segregated and subject to contractual or legislative arrangements which ensure that they are distributed according to Solvency II requirements.*

- 3.24 Policyholders: The level of protection for branch policyholders should the undertaking fail is more likely to meet the level required by Solvency II.

- 3.25 Industry: All branches would need to organise their business such that appropriate segregation and ownership of branch assets was achieved. Alternatively, Member States would need to alter winding-up legislation such that a branch could be wound up separately to an insolvency proceeding in the jurisdiction where the undertaking has its head office.
- 3.26 Supervisor: Monitoring of the arrangements put in place would be required for all branches.
- Option 2:** *Only branches which are subject to Solvency II-compliant winding-up regimes in the jurisdiction where their head office is located are authorised to open branches in the EEA.*
- 3.27 Policyholders: A reduction in competition and choice.
- 3.28 Industry: Undertakings in certain jurisdictions would only be able to operate in the EEA through subsidiaries.
- 3.29 Supervisor: None.
- Option 3:** *An assessment is made of the compliance with Solvency II winding-up requirements by relevant NSA's and only branches which are not subject to a Solvency II-compliant winding-up regime are required to ensure that their assets are subject to contractual or legislative arrangements which ensure that they are distributed according to Solvency II requirements.*
- 3.30 Policyholders: None
- 3.31 Industry: Only certain branches would need to organise their business such that appropriate segregation and ownership of branch assets was achieved.
- 3.32 Supervisor: Monitoring of the arrangements put in place would be required for only certain branches.

Policy Issue 3: Risk of failure through poor governance and controls

- 3.33 A branch may contribute to the failure of the undertaking of which it is part if its business is not appropriately managed. That management may be exercised by people based in the branch or based in the head office and controlled through systems which are based either in the branch or head office. In either case, those people and systems should be subject to some sort of regulatory regime if the undertaking is authorised by its home country to undertake insurance business. Additional supervision by the EEA NSA may therefore be duplicative.
- Option 1:** *Each NSA relies on the home supervisory authority wherever the management and control functions are located.*
- 3.34 Policyholders: The level of protection for policyholders would be decreased if the third-country requirements related to governance do not meet Solvency II standards.
- 3.35 Industry: None
- 3.36 Supervisor: Full reliance on the governance requirements of a third country would have a negative impact on the ability of the NSA to make sure that the

branch is managed according to Solvency II standards, for instance if the third-country legal system is not well adapted to the particular risks of the branch business.

Option 2: *The undertaking is required to establish management and control systems for the branch exclusively in the branch which each NSA monitors.*

3.37 Policyholders: None

3.38 Industry: Increased costs of compliance and limitations to the freedom to structure business in a competitive way.

3.39 Supervisor: None

Option 3: *The undertaking can establish management and control functions either in the branch or head office, but the NSA and home supervisory authority both exercise a degree of monitoring of those functions.*

3.40 Policyholders: The protection of policyholders is effective, since the NSA is able to monitor performance of management and control functions and can react accordingly in case of events which can have a negative impact on the branch and eventually on its policyholders.

3.41 Industry: None

3.42 Supervisor: NSA is able to carry out effective supervision over a branch's performance. It has access to relevant information on branch's governance and is able to take necessary actions on the basis of the above-mentioned information. The approach does not impose excessive costs on the undertaking and so maximises cross-border trade and competition in the industry.

Policy Issue 4: Regular reporting requirements that are effective yet proportionate

3.43 In order to meet the objectives set out in the previous three issues, NSAs need to receive regular information to monitor the financial position of the branch and the whole undertaking. However, the information necessary will vary according to the nature, size and complexity of the branch's business. This variation can be achieved either by allowing NSAs a general discretion to exempt third country insurance undertakings from certain reporting requirements or to specify which reporting requirements could be limited or exempted provided certain objective criteria were met (for instance criteria based on market share).

Option 1: *NSAs to exercise their own judgement as to the extent of the regular reporting requirements necessary for each third-country insurance undertaking according to its circumstances*

3.44 Policyholders: None, since under both options any reduced reporting requirement would only apply if the nature, size and complexity of the risk of the branch operations warranted it.

3.45 Industry: Proportionality is taken into account for all regular reporting. This is particularly important for the scope of annual reporting for branches of

third-country insurance undertakings that would be exempted from Directive 2009/138/EC through Article 4 if they were EEA undertakings.

- 3.46 Supervisor: Each NSA can have more refined judgements as to proportional reporting which will be more risk-based, effective and overall less costly.

Option 2: *The regular reporting requirements for third-country insurance undertakings should be more standardised and follow criteria equivalent to those set out in Articles 35 (6) and (7) of Directive 2009/138/EC for insurance and reinsurance undertakings .*

- 3.47 Policyholders: Less flexible reporting requirements could impose higher than necessary costs of compliance on small or low risk undertakings which would be passed on to policyholders.

- 3.48 Industry: The costs of compliance may be higher. branches of third-country insurance undertakings

- 3.49 Supervisor: Supervisors may have more information available to monitor branches, but some of this may be unnecessary and therefore absorb additional time and costs. branches of third-country insurance undertakings

Comparing the Options

Policy Issue 1: Risk of failure through inadequate own funds

- 3.50 These Guidelines adopt the approach described in **Option 2**, this being the most proportionate approach which achieves the objective for these guidelines and the corresponding objectives of Directive 2009/138/EC. Option 1 would make it more difficult for NSAs to safeguard branch policyholders, whereas applying of option 3 may damage cross-border insurance business and competition.

Policy Issue 2: Consequences of failure through the way assets are distributed

- 3.51 These guidelines adopt the approach described in **Option 3**, this being the most proportionate approach which achieves the objectives set out in Solvency II Directive.

The ways in which appropriate segregation and distribution of assets upon winding-up can be achieved will vary according to the circumstances of the undertaking, the costs and burden involved the laws applicable in the jurisdiction where the branch operates or holds assets, and the degree of risk which the *host supervisory authority* perceives to the objective of protecting policyholders. For this reason we have chosen not to include in the Guidelines specific means of meeting this definition but rather to set out some possible methods in the Explanatory Text.

Policy Issue 3: Risk of failure through poor governance and controls

3.52 These guidelines adopt the approach described in **Option 3**, this being the most proportionate approach which achieves the objectives set out in Directive 2009/138/EC.

Policy Issue 4: to provide some proportionality in the reporting package for branches of third-country insurance undertakings

3.53 The guidelines adopt the approach described in **Option 1**, this being the most proportionate approach which achieves the objectives of Directive 2009/138/EC. Supervisors would be able to apply a risk-based approach to supervision and an appropriate degree of consistency of approach across the European Union can be achieved with informal dialogue facilitated by EIOPA rather than guidelines.