

COMMISSION DELEGATED DECISION (EU) 2016/310**of 26 November 2015****on the equivalence of the solvency regime for insurance and reinsurance undertakings in force in Japan to the regime laid down in Directive 2009/138/EC of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 (Solvency II) ⁽¹⁾, and in particular Articles 172(4) and 227(5) thereof,

Whereas:

- (1) Directive 2009/138/EC establishes a risk-based solvency regime for insurance and reinsurance undertakings in the Union. Full application of Directive 2009/138/EC to insurers and reinsurers in the Union will commence on 1 January 2016.
- (2) In accordance with Article 311 of Directive 2009/138/EC the Commission may also adopt delegated acts provided for in that Directive prior to the date of its application.
- (3) Article 172 of Directive 2009/138/EC relates to equivalence of the solvency regime of a third country or jurisdiction applied to reinsurance activities of undertakings with their head office in that third country. A positive equivalence determination allows reinsurance contracts concluded with undertakings having their head office in that jurisdiction to be treated in the same manner as reinsurance contracts concluded with undertakings authorised in accordance with that Directive.
- (4) Paragraph 4 of Article 172 of Directive 2009/138/EC provides for a determination of fixed-duration temporary equivalence for third countries or jurisdictions whose reinsurance solvency regimes meet certain criteria. A determination of temporary equivalence is valid until 31 December 2020 with possibility of renewal for a maximum of one year, as laid down in Article 172(5).
- (5) Article 227 of Directive 2009/138/EC relates to equivalence for third-country insurers that are part of groups headquartered in the Union. A positive equivalence determination allows such groups, when deduction and aggregation is authorised as the consolidation method for their group reporting, to take into account the calculation of capital requirements and available capital (own funds) under the rules of the non-Union jurisdiction rather than calculating them on the basis of Directive 2009/138/EC, for the purposes of calculating the group solvency requirement and eligible own funds.
- (6) Paragraph 5 of Article 227 of Directive 2009/138/EC provides for a determination of fixed-duration provisional equivalence for third countries or jurisdictions whose insurance solvency regimes meet certain criteria. A determination of provisional equivalence is valid for a period of 10 years with possibility of renewal.
- (7) A number of criteria are to be considered to assess temporary equivalence under Article 172(4) of Directive 2009/138/EC and provisional equivalence under Article 227(5) of Directive 2009/138/EC. Those criteria include certain common requirements, particularly concerning the solvency regime in place and the powers resources and responsibilities of the supervisor. Other criteria are different for the two types of equivalence, in particular those concerning the convergence towards an entirely equivalent regime, the exchange of information with supervisory authorities, and professional secrecy.

⁽¹⁾ OJ L 335, 17.12.2009, p. 1.

- (8) The Japanese solvency regime is laid down in the Insurance Business Act and Insurance Business Ordinance, as last amended in 2010. A comprehensive licencing regime exists for authorisation of insurers. To carry out the business of reinsurance in Japan, a non-life insurance license is necessary. Governance, risk management and disclosure standards are partly laid down in Supervisory Guidelines of Japan Financial Services Agency (JFSA). Supervisory Guidelines do not have the force of law, but are closely monitored by the JFSA, which has the power to impose remedial actions if it deems them appropriate.
- (9) In March 2015, the European Insurance and Occupational Pensions Authority (EIOPA) delivered advice according to Article 33(2) of Regulation (EU) No 1094/2010 of the European Parliament and of the Council ⁽¹⁾ to the Commission on the regulatory and supervisory system for reinsurance and insurance undertakings in force in Japan. Subsequently, EIOPA has also assisted the Commission and provided further input with regard to the assessment of the Japanese insurance sector under Article 227(5) of Directive 2009/138/EC. The Commission has based its assessment on the information provided by EIOPA.
- (10) Japan has an independent insurance supervisor, the JFSA, with the necessary powers and resources to carry out its tasks. In 2013 the JFSA had about 100 staff dedicated full-time to insurance supervision, with others available from elsewhere in the organisation. Investigative powers include on-site inspections, and sanctions include administrative orders going as far as license withdrawal and individual sanctions. JFSA can also submit files to public prosecutors.
- (11) Insurers and reinsurers must submit extensive reporting material to the JFSA, and the JFSA has wide-ranging powers to restructure or wind-up insurers and reinsurers in difficulties, which were used effectively to deal with a number of life insurers in severe difficulties during the recent decades.
- (12) The JFSA has a number of cooperation arrangements in place with other supervisors around the world. Since 2011, it is a signatory to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding on exchange of information between insurance supervisors. It has a number of bilateral or multilateral cooperation agreements in place with other supervisors, including several supervisors in the Union.
- (13) JFSA staff are subject to stringent professional secrecy requirements. JFSA rules and practices adequately protect confidential information provided by foreign supervisors. All present or former JFSA staff are required to keep confidential any information which they receive in the course of their duties. Unauthorised disclosure can result in disciplinary sanctions, criminal investigations and punishment. Information received from foreign supervisors and indicated as confidential is treated accordingly, and will only be used for the purposes agreed with the foreign supervisor.
- (14) The valuation of assets for both life and non-life insurance companies is done in accordance with Japanese Generally Accepted Accounting Principles. Most but not all assets are valued at fair value. Under certain circumstances, some assets classes (such as bonds and loans) are valued at book value. When assets are valued at historical cost, most of the unrealised gains and losses are taken into account for determining the available own funds. Technical provisions of life and long term non-life are discounted. The discount rate that is to be used for discounting the technical provisions is periodically set by the JFSA. Starting from the contract date onwards, technical provisions can only be reassessed upwards (they are never valued below the value determined at contract date). So market and other developments that would result in a decrease in technical provisions (such as an increase in interest rates), are disregarded. Insurance undertakings are also required to carry out future cash flow analysis at every fiscal year from the perspective of the appropriateness of technical provisions and, where deemed necessary, to accumulate additional reserves.
- (15) For both life and non-life undertakings, supervisory intervention can be triggered by three different thresholds, defined as different 'Solvency Margin Ratios' (SRM), expressed as a ratio of double the own funds divided by a capital requirement named the 'Total Risk'. The 'Total Risk' metric covers underwriting risks, interest rate and market risks, operational risk and the catastrophe risk. Internal models are accepted for catastrophe and minimum guarantee risks. The JFSA has the power to impose certain remedial measures even if the highest threshold for supervisory intervention (SRM above 200 %) is not breached, for instance by requiring insurers to

⁽¹⁾ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

adopt measures in order to improve their profitability, credit risk, stability or liquidity risk. When the SRM is below 0 %, the JFSA may order the total or partial suspension of the business.

- (16) Via an enterprise risk management plan Japanese insurers are required to manage risks individually and comprehensively. Insurers are required to conduct appropriate risk management in a systematic and comprehensive manner. This includes looking at whether relevant risks are addressed, verifying the objectivity and appropriateness of the standards for quantification, and analysing future capital adequacy in the light of matters related to medium and long-term business strategies and the business environment. JFSA also requires insurers to carry out an Own Risk and Solvency Assessment and to report its results to the board of directors.
- (17) Japanese insurers are required by law to submit semi-annual and annual business reports to the JFSA. In addition each year an insurer is required to prepare some explanatory documents and keep them available to the public at its head office.
- (18) The Japanese solvency regime is evolving. Group-level solvency requirements were introduced in 2010. Since the start of the equivalence assessment of the Japanese supervisory system in relation to Article 172 of Directive 2009/138/EC in 2011 by EIOPA, Japan is engaged in reforms which will improve its solvency regime. Several reports and field tests have been carried out in 2011, 2012 and 2014 on a balance sheet based on economic valuations. Amendments under consideration give reasons to believe that future evolutions of the Japanese solvency regime will produce enhanced convergence with Directive 2009/138/EC.
- (19) Following this assessment, the insurance and reinsurance solvency regime of Japan should be considered to meet the criteria for temporary equivalence laid down in Article 172(4) of Directive 2009/138/EC, and for provisional equivalence laid down in Article 227(5) of Directive 2009/138/EC.
- (20) The period of the temporary equivalence determined by this Decision is to end on 31 December 2020, in accordance with Article 172(5) of Directive 2009/138/EC.
- (21) The period of the provisional equivalence determined by this Decision should be 10 years, in accordance with Article 227(6) of Directive 2009/138/EC,

HAS ADOPTED THIS DECISION:

Article 1

The solvency regime in force in Japan that applies to the reinsurance activities of undertakings with their head offices in Japan and regulated by the Insurance Business Act shall be considered as temporarily equivalent to the regime laid down in Title I of Directive 2009/138/EC.

The temporary equivalence referred to in the first paragraph shall end on 31 December 2020.

Article 2

The solvency regime in force in Japan that applies to the insurance activities of undertakings with their head offices in Japan and regulated by the Insurance Business Act shall be considered as provisionally equivalent to the regime laid down in Chapter VI of Title I of Directive 2009/138/EC.

The provisional equivalence referred to in the first paragraph shall be granted for a period of 10 years from 1 January 2016.

Article 3

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 26 November 2015.

For the Commission
The President
Jean-Claude JUNCKER
