EQUIVALENCE UNDER SOLVENCY II

The Solvency II Directive provides a process for determining equivalence of third countries in 3 areas:

1. **Reinsurance**: Applies to a (re)insurer *located in a third country* that enters into a reinsurance arrangement with a (re)insurer in the European Economic Area (EEA) (Article 172).

2. **Group Capital**: Applies to a (re)insurer *headquartered within the European Union (EU)* with participations or subsidiaries located outside the EEA (Article 227).

3. **Group Supervision**: Applies to a (re)insurer *headquartered within a third country* with related undertakings located within the EU (Article 260).

For each of these three areas, equivalence can be granted either for:

- **An unlimited period**, if complete equivalence has been achieved (*sometimes referred to as “Full Equivalence”*). The criterion for full equivalence is found in the Commission Delegated Regulation 2015/35.

  - **Switzerland has full equivalence** for reinsurance (Art. 172), solvency (Art. 227) and group supervision (Article 260). This went into effect on September 7, 2015 with no objections from Council or Parliament.

  - Decisions on **Bermuda** for full equivalence on reinsurance (Art. 172) and group supervision (Article 260) and **Japan** for full equivalence on reinsurance (Article 172) are expected to be released in the next few weeks.

  or

- **A limited period** (where progress is being made towards full equivalence decision). There are two options:

  1. **Temporary Equivalence**, which must be requested by a third country and lasts 5 years (non-renewable) up to 2020, for reinsurance and/or third country group supervision (Articles 172 and 260).

     a. Although not published, several countries are thought to be under consideration for temporary equivalence for Articles 172 and 260. The original list included: Australia, Chile, Brazil, China, Hong Kong, Israel, Mexico, Singapore, Turkey and South Africa. It is our
understanding that the European Commission has indicated these countries are not going to be considered before the end of 2015. EIOPA has said that the EU-US Project could constitute a request by the U.S. for temporary equivalence.

2. **Provisional Equivalence** (Article 227) which lasts 10 years (renewable) and is only for EU groups that have operations in the applicable third country jurisdiction. It does not apply to companies headquartered in third-countries and does need not be requested (although the Commission did ask the European industry to identify the countries to be considered).

   a. Australia, Bermuda, Canada, Mexico and the U.S. have been designated for **provisional equivalence for solvency**. The Council has raised no objection to this and Parliament has indicated it will let it go into effect without further action on December 5, 2015.

“Equivalence” is not defined in the Solvency II Directive. The criteria for granting temporary and provisional equivalence are set forth in the Solvency II Directive. The benefits of equivalence as set forth in the Directive are:

- **Reinsurance** (Article 172). Where the solvency regime of a third country has been deemed equivalent to that set forth in the Directive, reinsurance contracts concluded with undertakings having their head office in that third country shall be treated in the same manner as reinsurance contracts concluded with undertakings authorized in accordance with the Directive.

- **Group Capital** (Article 227). For undertakings (subsidiaries and branches) of EU companies where the third country in which that undertaking has its head office makes it subject to authorization and imposes on it a solvency regime at least equivalent to that set forth in Solvency II, Member States may provide that the EU company’s calculation take into account, as regards that undertaking, the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as required by that third country.

- **Group Supervision** (Article 260). For groups based in third countries, Member States shall rely on the equivalent group supervision exercised by the third-country supervisory authorities.

**Legal Process:**

The European Commission must recommend equivalence based on consultation with EIOPA. The Insurance Unit must get approval from the Commissioner for Financial Stability and Services (FISMA), who must get approval from the entire Commission. Once this occurs, the recommendation is written in the form of a delegated act for Parliament.

The delegated act is then translated into the 22 official languages of the EU and sent to the Parliament and Council for review. These entities do not need to act, but have the
opportunity to reject the proposals. They cannot amend them. If they do reject them, the process must begin again. The Council and Parliament have up to 3 months to review the delegated act and may ask for an extension of another 3 months. Once the review period is complete, and assuming the delegated act is not rejected, they take effect as law.

**Member State Option**

There is also an option for individual Member State supervisors, in conjunction with the college of relevant supervisors, to grant equivalence to a third country (for Articles 227 and 260), either upon the request of a company or on their own initiative. This decision would only be relevant to that Member State. These decisions are to be reviewed periodically.

In 2014, EIOPA issued detailed guidance for this process to promote a consistent process. The process mirrors EIOPA’s own assessment process. However, Member States cannot act if the Commission has acted on equivalence for that country (either rejection or approval of equivalence). No Member State has used this option yet.