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CLIENT ALERT

The Insurance Recovery and Resolution Directive (IRRD) and a directive amending the Solvency II Directive were published in the Official Journal of the European Union

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On January 8, 2025, a directive establishing a framework for the recovery and resolution of insurance and reinsurance undertakings (referred to as the Insurance Recovery and Resolution Directive - "**IRRD**")[1] and a directive that introduces amendments to Solvency II ("**Amending Directive**")[2] were published in the Official Journal of the European Union. The directives will each enter into force on January 28, 2025, which completes the EU legislative

1 Directive (EU) 2025/1 of the European Parliament and of the Council of 27 November 2024 establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 and Regulations (EU) No 1094/2010, (EU) No 648/2012, (EU) No 806/2014 and (EU) 2017/1129.

2 Directive (EU) 2025/2 of the European Parliament and of the Council of 27 November 2024 amending Directive 2009/138/EC as regards proportionality, quality of supervision, reporting, long-term guarantee measures, macro-prudential tools, sustainability risks and group and cross-border supervision, and amending Directives 2002/87/EC and 2013/34/EU.

process (to be supplemented in coming years by EU-wide technical standards and guidelines). Member States will then have 24 months to implement the requirements of the directives into their own domestic legislation.

The IRRD and the Amending Directive originate from the European Commission's review of the Solvency II prudential framework for the EU insurance sector in 2020 and 2021 and the resulting proposals for amendments to such framework.

The Amending Directive introduces targeted amendments to Solvency II that particularly aim to reduce the regulatory burden for small and non-complex undertakings ("**SNUs**"), strengthen the risk management of insurers with respect to long-term and climate change risks, and enhance cross-border supervision.

In light of the systemic risks for the EU's financial system that result from a failure of large insurance undertakings or of the industry itself, the IRRD aims to create a harmonized framework for the recovery and resolution of insurance companies throughout all EU Member States.

IRRD introduces enhanced resolution tools and powers. These may become a factor in the negotiation of transactions which they may affect, particularly with regard to their potential to restrict the exercise of certain contractual rights (including rights of termination or enforcement) in certain circumstances. In some cases, we anticipate (re)insurers and their counterparties will consider contractual solutions to address such changes, and to reduce residual uncertainty as to how the IRRD will be implemented in coming years in Member States' domestic legislation.

Solvency II already contains certain supervisory tools that are available to national competent supervisory authorities of EU Member States ("**NCAs**") when either a (re)insurer identifies that it is suffering from deteriorating financial conditions, or it does not comply with either its Solvency Capital Requirement ("**SCR**") or its Minimum Capital Requirement ("**MCR**") (or there is a risk of non-compliance within three months). The Solvency II provisions setting out these supervisory tools are subject to limited updates in the Amending Directive.

The IRRD will supplement the Solvency II tools available to NCAs, by empowering them to require the submission of either group pre-emptive recovery plans by ultimate EU-established parent undertakings of certain NCA-supervised groups or entity-level pre-emptive recovery plans by (re)insurance undertakings.

For more information on these existing Solvency II tools (including how they have been updated by the Amending Directive), and the interaction between these two directives, please see 'Interaction between the IRRD and Solvency II' on page 7 below.

KEY ASPECTS OF THE IRRD

Under the IRRD's framework, (re)insurance undertakings, or their ultimate EU-established parent undertakings, are required to submit pre-emptive recovery plans to their NCA, and Member States are required to establish national resolution authorities ("**NRAs**") that may be identical to the NCAs, and which draw up resolution plans, exercise the

resolution powers and apply the resolution tools under the IRRD. These requirements are similar to the system established for banks under the bank resolution and recovery directive (Directive 2014/59/EU - "**BRRD**").

Scope of Application

The IRRD applies to all (re)insurance undertakings that fall within the scope of Solvency II, insurance holding companies, mixed financial holding companies and certain EU branches of (re)insurance undertakings established in third countries. In relation to EU subsidiaries or branches of third-country (re)insurance undertakings, the IRRD generally promotes cooperation between Member States and third countries (and their respective resolution authorities). However, in particular, such entities are supposed to stay subject to IRRD rules if they are not subject to third-country resolution proceedings that are recognised and applied by the relevant NRA. NRAs may refuse the recognition and application of such proceedings if (among other reasons) (i) they would have material fiscal implications for the Member State or endanger the financial stability of any Member State, (ii) independent resolution action by the NRA is necessary to achieve one or more resolution objectives, or (iii) EU policyholders would not receive equal treatment with third-country policyholders.

Pre-emptive Recovery Planning

As regards the submission of pre-emptive recovery plans, the IRRD envisages a group-level approach, with individual (re)insurance undertakings only required to submit a plan to their NCA if they are not adequately covered by the group recovery plan of an EU group (taking into account their size, business model, risk profile, interconnectedness and substitutability, economic importance, and cross-border activities). At least 60% of the Member State's life market (based upon gross technical provisions) and 60% of its non-life market (based upon gross written premiums – "**GWP**") must be subject to the pre-emptive recovery planning requirements (including any (re)insurance undertaking that is subject to resolution planning).

Pre-emptive recovery plans identify remedial actions to be taken by the ultimate parent undertaking and/or the individual undertaking to restore their financial position where that position has significantly deteriorated. To that end, the plans must include quantitative and qualitative indicators that determine the points at which such actions have to be taken (which must include, at minimum, taking appropriate action if their SCR is breached). The indicators in the recovery plans must be monitored by the entities and the plans must be updated every two years.

NCAs are required to review each recovery plan to assess whether it is reasonably likely that such plan (i) would restore financial viability within an appropriate time frame, (ii) can be implemented quickly and effectively under financial stress, and (iii) maximally avoids adverse effects on the financial system. The relevant undertaking is to revise the plan to address any material deficiencies or impediments identified by the NCA, and the NCA can then impose specific changes to the extent that the revisions are inadequate to address them, or require other measures it considers are necessary and proportionate to address any such deficiency or impediments to the extent that they cannot be addressed by changes to the recovery plan.

In line with the proportionality principle, SNUs benefit from an exemption from the pre-emptive recovery planning, except where an NCA considers that they represent a risk at a national or regional level.

Resolution Planning

Under the IRRD, NRAs are required to draw up resolution plans for (re)insurance undertakings or groups if (i) they perform a critical function, or (ii), when compared with other undertakings, it is more likely that a resolution action would be in the public interest. Similar to pre-emptive recovery plans, resolution planning applies at the level of the EU group and only applies to individual undertakings that are not adequately covered by such group resolution planning. In conducting that assessment, NRAs are to consider, at a minimum, their size, business model, risk profile, interconnectedness, substitutability and cross-border activity. Each NRA has to ensure that at least 40% of its Member State's life market (based upon gross technical provisions) and 40% of its non-life market (based upon gross written premiums) is subject to resolution planning.

Resolution plans are required to set out options for applying resolution tools and exercising resolution powers (without assuming the availability of any extraordinary public financial support). NRAs must review and update their plans every two years.

When drawing up or updating a resolution plan, NRAs must conduct a resolvability assessment of the respective (re)insurance undertaking or group to determine if it is credibly resolvable by ordinary insolvency proceedings or the application of resolution tools/powers without resorting to extraordinary public financial support. If the NRA finds substantive impediments to their resolvability, it notifies the undertaking or group. In case the NRA is not presented with measures that significantly reduce or remove the impediments within four months after such notification, the NRA can require the undertaking or group to take certain measures, e.g., to revise intra-group financing agreements, limit maximum exposures, divest specific assets, restructure liabilities, restrict existing activities and/or new business, change reinsurance strategies or to change its legal or operational structures in order to reduce complexity for the application of resolution tools.

Resolution Actions

Under the IRRD, NRAs may only take resolution actions, i.e., place an entity under resolution, apply resolution tools and exercise resolution powers in relation to insurance undertakings and groups if:

(a) an in-scope undertaking is failing or likely to fail;

(b) there is no reasonable prospect that any alternative private sector measures or supervisory actions would prevent the failure within a reasonable time frame; and

(c) the resolution action is necessary in the public interest.

A (re)insurance undertaking is considered to be “failing or likely to fail” if:

(a) it is in breach or likely to breach its MCR and there is no reasonable prospect of compliance being restored;

(b) it no longer fulfils conditions for its authorization, fails seriously in its legal or regulatory obligations, or there is objective evidence that it will do so in the future in a way that would justify withdrawing authorisation;

(c) the value of its assets is (or there is objective evidence that it will be) less than its liabilities;

(d) it is (or there is objective evidence that it will be) unable to pay its debts or other liabilities when they fall due; or

(e) extraordinary public financial support is required.

Resolution Tools

The IRRD provides NRAs with a set of resolution tools that are to some extent comparable to the resolution tools that are included in the BRRD. The resolution tools comprise of:

(a) the solvent run-off tool which allows NRAs to terminate the activities of that undertaking under resolution, and to prohibit the underwriting of new (re)insurance business as well as the payment of any dividends, variable remuneration or discretionary pension benefits in order to facilitate the orderly continuation of the undertaking's insurance activities in run-off until its liquidation (this tool is not available under the BRRD);

(b) the bridge undertaking tool that grants power to NRAs to transfer instruments of ownership issued by an insurance undertaking under resolution or any of its assets, rights or liabilities to a bridge undertaking which is either (i) an entity that is (partially) owned by public authorities or an insurance guarantee scheme, or (ii) an insurance guarantee scheme that is assigned as a bridge undertaking by a Member State, with a view to eventually achieving the sale of the undertaking as a going concern (and, in the case of a partial transfer, winding up the residual entity);

(c) the asset and liability separation tool pursuant to which the NRA can transfer assets, rights or liabilities of an undertaking under resolution or a bridge undertaking to one or more asset and liability management vehicles that will manage such portfolios in order to maximize their value through sales or an orderly wind-down;

(d) the sale of business tool that allows NRAs to sell instruments of ownership issued by an insurance undertaking under resolution or any of its assets, rights or liabilities, to a private purchaser (and, in the case of a partial sale, wind up the residual entity);

(e) the write-down or conversion tool ("**WDCT**") that constitutes a loss absorption mechanism under which NRAs can – in accordance with the priority of claims that apply under normal insolvency proceedings – write down or convert into Tier 1 instruments all capital instruments, debt instruments and other eligible liabilities that are not excluded from such tool. Such exclusions include secured liabilities, certain liabilities with a maturity of less than seven days (including to banks and (re)insurers outside the group), and certain

business-critical liabilities such as employees' salaries, IT, utilities and business premises costs. A similar tool known as the 'bail-in' exists under the BRRD and, similar to the BRRD, the IRRD requires in-scope undertakings to include contractual recognitions of the WDCT in any relevant contracts which they enter into and that are governed by third-country law. Notably, IRRD also allows the NRA, when applying the WDCT to insurance claims, to restructure the terms of the related insurance contracts to effectively achieve the resolution objectives.

IRRD also contains certain safeguards intended to protect counterparties of an undertaking under resolution against possible adverse impacts of the application of resolution tools.

Resolution Powers

The IRRD entails extensive resolution powers for NRAs. Such resolution powers comprise powers necessary to effectively apply the above-described resolution tools but also additional powers for purposes of an orderly resolution. Such additional powers notably include the power to suspend the exercise of termination and certain other rights in certain circumstances, as follows.

The IRRD includes the following so-called resolution stay powers, which temporarily apply between publication of a resolution notice and midnight of the business day following in order to achieve effective resolution:

a) the power to suspend termination rights, payment obligations and delivery obligations under contracts to which the undertaking under resolution is a party; and

b) the power to restrict secured creditors from enforcing security interests against assets of the undertaking that is under resolution.

The IRRD also includes the power to temporarily restrict or suspend policyholders' surrender rights in life insurance contracts written by the undertaking under resolution for as long as necessary to facilitate the application of resolution tools, provided that the undertaking continues to perform its substantive obligations.

In addition, the IRRD provides that NRAs may address and remove impediments to resolvability, take resolution actions and appoint persons or special managers exercising control over an undertaking under resolution, without such measures constituting enforcement events or insolvency proceedings under any contract entered into by (i) the concerned entity, (ii) subsidiaries of such entity, if the parent undertaking guarantees or otherwise supports the obligations under the contract, or (iii) another group entity, if such contract contains cross-default provisions, provided the undertaking continues to perform its substantive obligations (so-called exclusion of contractual terms). This would prevent the exercise of contractual rights to enforce or terminate in such contracts to the extent the trigger for such right is the mere exercise of such powers by the NRA.

Again, like the BRRD, the IRRD requires in-scope undertakings to include in any financial contract which they enter into and which is governed by third-country law, terms by which the parties recognize that (i) the contract may be

subject to the exercise of the resolution stay powers and (ii) they are bound by the described statutory exclusion of contractual terms.

Financing Arrangements

The IRRD requires each Member State to establish financing arrangements to ensure that its NRA has adequate funds, through the contributions of in-scope (re)insurance undertakings, to cover claims of shareholders, policyholders or other creditors to the extent they incur losses arising from the application of resolution tools that were greater than would have been the case of normal insolvency proceedings (i.e., the "no creditor worse off" principle). Member States are free to use such arrangements to finance other costs associated with the use of resolution tools under the IRRD. While each Member State has flexibility with regard to how it establishes such arrangements, contributions may only be imposed on (re)insurance undertakings authorized in such state and EU branches of third-country undertakings established in its territory. This requirement is likely to establish new financial burdens for undertakings in Member States that did not yet provide for such arrangements.

Interaction Between the IRRD and Solvency II

The IRRD is reflected in certain limited updates to Solvency II in the Amending Directive, which now explicitly refers to NCAs' ability under the IRRD to require (re)insurance undertakings to prepare and implement recovery plans designed to address financial deterioration.

More specifically, under existing Solvency II rules, where a (re)insurer identifies a deterioration in its financial condition (which may also include scenarios where the (re)insurer remains above its SCR), it must immediately notify its NCA. The Amending Directive now provides that, in such circumstances, NCAs are empowered to 'take the necessary measures' (subject to proportionality) to remedy such financial deterioration. Pursuant to the updated Solvency II text, such measures will include the NCA having the power to require a (re)insurer's board to:

a) if the (re)insurer has drawn up an entity-level pre-emptive recovery plan under the IRRD, update the recovery plan if the circumstances of the financial deterioration are different from the assumptions set out in the plan as currently drafted;

b) take measures set out in its entity-level recovery plan (including where updated pursuant to item a) above);

c) if the (re)insurer does not have an entity-level recovery plan in place, identify the causes of the non-compliance or likely non-compliance with regulatory requirements, identify suitable remedial measures and propose a time frame for the implementation of the measures to comply with those regulatory requirements; and

d) suspend or restrict variable remuneration and bonuses, distributions on own fund instruments or repayments or repurchases of own fund items.

However, the IRRD is otherwise complementary to, and does not alter other existing Solvency II provisions governing the supervision of (re)insurers in financial difficulty, which apply in circumstances where a (re)insurer fails, or is at risk of failing, to meet its SCR and/or its MCR. These Solvency II provisions are set out in the paragraphs below.

Under Solvency II, where a (re)insurer fails, or is at risk of failing, to meet its SCR, the (re)insurer is required to immediately inform its NCA (even where it has previously notified the NCA of a financial deterioration), and submit for the NCA's approval, a recovery plan designed to remedy this capital deficit within six months from when the failure was identified. This recovery plan may be different from the pre-emptive recovery plan required under the IRRD. A (re)insurer must also immediately notify its NCA if it fails, or is at risk of failing, to meet its MCR, and it must implement a finance plan to address the issue within 3 months from its observation of the MCR failure.

The IRRD rules also sit alongside the existing Solvency II 'ladder of intervention': a range of supervisory tools designed to address a (re)insurer's failure to meet its capital requirements. These tools include imposing restrictions on dividends and ultimately withdrawing authorization where a (re)insurer either fails to produce an adequate finance scheme to address its MCR deficit, or the (re)insurer fails to meet its MCR for a three-month period. Where an NCA considers that these tools are 'ineffective or insufficient to address the deterioration of the solvency position' of the (re)insurer, the NCA will have the power to 'take all measures which are necessary' (subject to proportionality) to safeguard the interests of policyholders, or the obligations of reinsurers under reinsurance treaties, in the event of deterioration of a (re)insurer's financial position.

NCAs may determine how best to address a scenario in which a (re)insurer experiences financial difficulty depending upon the factual context. However, the explicit reference in the Amending Directive to IRRD recovery plans when (re)insurers first experience financial detriment (which may not necessarily result in an SCR breach) suggests that NCAs may initially seek to address the issue through such IRRD recovery plans before reverting to their existing regulatory toolkit under Solvency II.

KEY ASPECTS OF THE AMENDING DIRECTIVE

As stated above, the Amending Directive makes several modifications to Solvency II, including introducing a new proportionality regime for SNUs, new rules regarding insurers' risk management systems (particularly for macroeconomic and sustainability risks) and updates to the capital requirements framework. These changes aim to improve the functioning of the regulatory framework for (re)insurers and achieve the objectives of Solvency II.

Proportionality Measures

The Amending Directive introduces new provisions to ensure that SNUs are supervised in a manner that corresponds with their lower risk profile. (Re)insurance undertakings can notify their NCA in order to be classified as an SNU if they meet certain criteria for two consecutive financial years occurring directly prior to such classification. The nature of such criteria depends on whether the undertaking pursues life activities, non-life activities or both, but include, in particular, the following requirements:

- no significant cross-border activity, i.e., GWP per year in other Member States is lower than both EUR 20 million and 10% of the total annual GWP;
- technical provisions are not higher than EUR 1 billion for life insurers;
- annual GWP is lower than EUR 100 million for non-life insurers;
- accepted reinsurance does not exceed 50% of total annual GWP; and
- compliance with the SCR ((re)insurers must calculate their SCR using the standard formula to fall within the definition of an 'SNU').

Captives that do not meet the general criteria for a classification as SNUs can also be classified as SNUs if they meet certain other captive-specific requirements.

NCAs may oppose the classification as an SNU within a period of two months from receiving a complete notification if the criteria for such classification are not met, or if an undertaking represents 5% or more of its home Member State's life or non-life insurance market. In the absence of such objection, notifying undertakings automatically classify as SNUs.

SNUs benefit from certain proportionality measures, which include: (i) simplified disclosures in the solvency and financial condition report; (ii) the ability for individuals who carry out the key functions of risk management, actuarial and compliance to also perform any other key function (other than internal audit), or be a member of the board (subject to certain conditions); (iii) a less frequently required review of written compliance policies relating to risk management, internal control, internal audit and outsourcing (at least every five years, rather than the default annual review requirement), (iv) a less frequent performance of the own risk and solvency assessment ("**ORSA**") (at least every two years, and following a change in risk profile) and reduced assessment obligations thereunder, (v) exemptions from the requirement to draw up a liquidity risk management plan, and (vi) simplifications regarding the calculation of the SCR.

(Re)insurance undertakings that are not classified as SNUs may be able to benefit from certain proportionality measures set out in Solvency II, subject to receiving prior approval from their NCAs.

Long-Term Equity Investments

The Amending Directive also addresses widespread industry commentary relating to the long-term equity investments ("**LTEI**") sub-module, which provides for a lighter capital charge (22%) for LTEI portfolios compared with standard capital charges for equity investments (either 39% or 49% depending upon the characteristics of the equities). The rationale for this more favorable capital treatment is to incentivize insurers' longer-term investment in European Economic Area ("**EEA**") equities, and to appropriately reflect insurers' exposure to the more stable risk of long-term equity underperformance rather than to short-term changes in the value of equity holdings (which may be volatile).

A number of industry stakeholders (including the European Insurance and Occupational Pensions Authority ("**EIOPA**"), the EU regulatory authority for the insurance sector) have recognized that the requirements with which insurers must comply to establish LTEI portfolios are prohibitively burdensome, which has impeded the effectiveness of the LTEI sub-module as a catalyst for insurers' longer-term investment in EEA equities. The EU legislative bodies have therefore sought to address this issue by introducing an updated set of LTEI criteria[3] in the Amending Directive, including that:

a) this sub-set of equity investment is clearly identified and separately managed;

b) a policy is set up for each LTEI portfolio that reflects the (re)insurer's commitment to hold the investments for more than five years;

c) the sub-set of equities consists only of equities listed in Member States of the EEA or the Organization for Economic Cooperation and Development, or of unlisted equities of entities having their head offices in such Member States;

d) the undertaking is able to avoid a forced selling of equity investments in the sub-set for at least five years;

e) the risk management, asset-liability management and investment policies reflect the holding period mentioned in item b) and the ability to meet the requirement set out in item d); and

f) the sub-set of equity investments is appropriately diversified and does not include 'participations'.[4]

The following criteria have therefore been removed from the LTEI regime:

a) the LTEI portfolio is at all times assigned to cover the best estimate of a clearly identifiable portfolio of (re)insurance obligations;

b) the average holding of the LTEI investments must exceed 5 years, and there can be no sale of any LTEI equities until this is achieved. Under the new requirements, the (re)insurer must instead demonstrate a *commitment* to hold LTEI investments for an average five-year period under the policy for long-term investment (i.e., new item b) above); and

c) the (re)insurer must be able to demonstrate, on an ongoing basis and under stressed conditions, that it is able to avoid forced sales of LTEI investments for at least 10 years (i.e., this period has been reduced to 5 years under new item d) above).

Consistent with the current rules, if the equities are held within European long-term investment funds (ELTIFs) or within certain collective investment undertakings, including alternative investment funds, identified in the delegated

[3] The current set of LTEI criteria is contained in article 171a of Commission Delegated Regulation (EU) 2015/35 rather than in Solvency II.

[4] "Participation" means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking.

acts to Solvency II as having a lower risk profile, the conditions set out above are to be assessed at the level of the funds rather than the underlying equities.

(Re)insurance undertakings that treat a sub-set of their equity investments as LTEIs cannot revert back to an approach not including LTEIs. If such undertaking no longer complies with the conditions for LTEIs it must inform its NCA and restore compliance within six months. If the undertaking fails to restore compliance within such period, it may not classify investments as LTEIs for a period for two and a half years or as long as compliance is not restored (whichever period is longer).

Pillar II Requirements: Governance, Risk Management and ORSA

The Amending Directive introduces new requirements to Pillar II of Solvency II, which governs the governance and risk management of (re)insurance undertakings and the ORSAs that they must produce. Under such new requirements, (re)insurers are, in particular, required to:

- implement a written policy on remuneration and a policy promoting gender diversity in their governance bodies;
- appoint separate persons to carry out the key functions of risk management, actuarial, compliance and internal audit (as above, exemptions apply to SNUs);
- adapt their risk management to
  - include cybersecurity risks;
  - take into account short-, medium- and long-term sustainability risks[5] and implement specific plans that include quantifiable targets and processes to monitor and address financial risks arising from sustainability factors; and
  - prepare and maintain an up-to-date liquidity risk management plan covering liquidity analysis in the short term, which may be extended to cover liquidity analysis over the medium- and long-term upon request from their NCA (exemptions apply to SNUs);
- assess as part of the ORSA the macroeconomic situation and possible macroeconomic and financial markets developments as well as its capacity to settle its financial obligations to policyholders, even under stressed conditions. This analysis could take into account the potential behavior of other market participants, credit cycle downturns or reduced market liquidity, and excessive concentrations at market level in certain asset types, counterparties or sectors; and

[5] "Sustainability risk" means an environmental, social or governance event or condition that, if it occurs, could cause an actual or potential negative impact on the value of the investment or on the value of the liability.

- assess as part of the ORSA whether they have any material exposure to climate change risks. If so, (re)insurers must specify at least two long-term climate change scenarios that must be reviewed every three years and cover global temperature increases of both less than, and more than, two degrees Celsius (exemptions apply to SNUs). Relatedly, given the likely increase in frequency and severity of climate-related disasters, EIOPA will be tasked with monitoring the latest climate science to avoid any discrepancies between how (re)insurers measure their exposure to natural catastrophe risk under Solvency II methodologies and how such risk may actually manifest in reality.

Costs of Capital

The Amending Directive revises the risk margin framework in order to decrease the costs of capital.

The risk margin will still be calculated by determining the cost of providing eligible own funds equal to the SCR necessary to support (re)insurance obligations over their lifetime (*i.e.*, the 'cost-of-capital' rate).

However, in order to account for the time dependency of risks and to reduce the amount of the risk margin for long-term liabilities, the time-adjustment of the SCR will now consist of an exponential and time-dependent element. The details of such element will be specified in delegated acts to the amended Solvency II framework. In addition, the Amending Directive lowers the cost-of-capital rate that is used to calculate the risk margin to 4.75% (down from the current rate of 6%). The cost-of-capital rate will be periodically reviewed by the European Commission starting five years after the application date of the Amending Directive.

Supervision

The Amending Directive provides for enhanced supervisory cooperation between the NCAs in the case of significant cross-border activities of (re)insurance undertakings, i.e., if the annual GWP in the host Member State exceeds EUR 15 million and the activities are, in such state, considered as being relevant to the market by the host NCA.

NCAs may also take measures to remedy a deterioration of a (re)insurance undertaking’s financial position. Such measures are aligned with the IRRD and encompass, e.g., the power to require the relevant undertakings to apply the measures set out in their pre-emptive recovery plans. In addition, if material liquidity risks are identified by an NCA, it may require the relevant (re)insurance undertakings to reinforce their liquidity positions. In case of material liquidity risks, NCAs have additional powers and may, e.g., temporarily suspend or restrict variable remuneration and bonuses or dividend distributions.

Macroeconomic Supervisory Tools

The Amending Directive also empowers NCAs with new supervisory tools to address certain macroeconomic considerations, which will sit alongside the microeconomic regulation contained in the current Solvency II text. These new macroeconomic provisions also provide that EIOPA will develop further guidelines and technical standards relating to such supervisory tools to ensure their consistent application across the bloc.

These supervisory tools primarily focus on liquidity risk management and include that:

a) as above, NCAs can ask (re)insurers to extend the scope of their liquidity risk management plans to cover liquidity analysis over the medium- and long-term;

b) NCAs will monitor the liquidity position of the (re)insurers that they supervise, and will have certain powers to require (re)insurers to reinforce their liquidity position when material liquidity risks or deficiencies are identified. In particular, NCAs will have the power to temporarily restrict or suspend dividend distributions, other payments to shareholders and subordinated creditors, share buy-backs and the payment of bonuses or other variable remuneration (e.g., to the board). In exceptional circumstances, NCAs may also suspend the redemption rights of life insurance policyholders; and

c) NCAs will have the power to take measures to preserve the financial position of individual (re)insurers during periods of exceptional sector-wide shocks that have the potential to threaten the financial position of the undertaking concerned or the wider stability of the financial system. These tools are similar to those set out in b) above.

NEXT STEPS

The IRRD and the Amending Directive will enter into force on January, 28, 2025. Member States are required to implement both acts into national law by January, 29, 2027.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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