



Strengthening of the supervision of the use of governance arrangements in third countries to perform insurance (including intermediary) functions or activities

On 3 February 2023, EIOPA released, following a consultation last year, a supervisory statement, addressed to competent authorities in charge of the supervision of insurance undertakings and intermediaries, on the use of certain governance arrangements in third countries to perform regulated activities (the **Statement**).

In its Statement, EIOPA calls for greater scrutiny of the supervisory authorities in relation to the adequacy of their corporate structure for governance arrangements where the insurance undertakings or intermediaries **use a branch in a third country (including the United Kingdom but not limited thereto) to conduct regulated activities.**

In particular, EIOPA reiterates the importance for all insurance undertakings and intermediaries to demonstrate a sufficient level of corporate substance commensurate to the nature, scale and complexity of their business, as follows:

- through the presence of a sufficient amount of administrative, management and supervisory board members, key function holders in the country of the head office (such as Luxembourg) and an appropriate contingent of staff members in the European Economic Area (**EEA**);
- through the avoidance of the use of third country branches with the sole objective of such branches supporting the insurance undertakings and the intermediaries (rather than serving the market in which it is established);
- third country branches must refrain from performing regulated activities in a manner leading to the insurance undertakings or intermediaries being disproportionately dependent on such arrangement in a third country for its activities in the EEA. The Statement gives examples of what is meant by “disproportionally dependent”.

With this in mind, EIOPA has addressed multiple recommendations to supervisory authorities on the way to conducting a more stringent ongoing supervision of such third country arrangements (e.g. through the need to ensure that the insurance undertakings and intermediaries are still taking full responsibility for effective decision making and risk management, requesting sufficient justification and rationale for the actors contemplating such arrangements, etc.).

This Statement may affect the supervision by the CAA over insurance undertakings and intermediaries which are set-up in Luxembourg and rely on third country governance arrangements, notably for those having transferred their head office from the UK to Luxembourg following Brexit. In this context, we anticipate that the CAA may take position as to the application of the Statement to the Luxembourg market.

Please contact our dedicated (re)insurance team should you have any questions.



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