

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) (recast) (Text with EEA relevance)

TITLE IV

REORGANISATION AND WINDING-UP OF INSURANCE UNDERTAKINGS

CHAPTER IV

Common provisions

Article 285

Effects on certain contracts and rights

By way of derogation from Articles 269 and 274, the effects of the opening of reorganisation measures or of winding-up proceedings shall be governed as follows:

- (a) in regard to employment contracts and employment relationships, exclusively by the law of the Member State applicable to the employment contract or employment relationship;
- (b) in regard to contracts conferring the right to make use of or acquire immovable property, exclusively by the law of the Member State where the immovable property is situated; and
- (c) in regard to rights of the insurance undertaking with respect to immovable property, a ship or an aircraft subject to registration in a public register, exclusively by the law of the Member State under the authority of which the register is kept.

Article 286

Rights in rem of third parties

1 The opening of reorganisation measures or winding-up proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, movable or immovable assets – both specific assets and collections of indefinite assets as a whole which change from time to time – which belong to the insurance undertaking and which are situated within the territory of another Member State at the time of the opening of such measures or proceedings.

- 2 The rights referred to in paragraph 1 shall include at least:
- a the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;
 - b the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
 - c the right to demand the assets from or to require restitution by anyone having possession or use of them contrary to the wishes of the party so entitled;

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

d a right to the beneficial use of assets.

3 The right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of paragraph 1 may be obtained, shall be considered to be a right in rem.

4 Paragraph 1 shall not preclude actions for nullity, voidability or unenforceability referred to in Article 274(2)(1).

Article 287

Reservation of title

1 The opening of reorganisation measures or winding-up proceedings against an insurance undertaking purchasing an asset shall not affect the rights of a seller which are based on a reservation of title where at the time of the opening of such measures or proceedings the asset is situated within the territory of a Member State other than that in which such measures or proceedings were opened.

2 The opening, after delivery of the asset, of reorganisation measures or winding-up proceedings against an insurance undertaking which is selling an asset shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of such measures or proceedings the asset sold is situated within the territory of a Member State other than that in which such measures or proceedings were opened.

3 Paragraphs 1 and 2 shall not preclude actions for nullity, voidability or unenforceability referred to in Article 274(2)(1).

Article 288

Set-off

1 The opening of reorganisation measures or winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the insurance undertaking, where such a set-off is permitted by the law applicable to the claim of the insurance undertaking.

2 Paragraph 1 shall not preclude actions for nullity, voidability or unenforceability referred to in Article 274(2)(1).

Article 289

Regulated markets

1 Without prejudice to Article 286 the effects of a reorganisation measure or the opening of winding-up proceedings on the rights and obligations of the parties to a regulated market shall be governed solely by the law applicable to that market.

2 Paragraph 1 shall not preclude actions for nullity, voidability, or unenforceability referred to in Article 274(2)(1) which may be taken to set aside payments or transactions under the law applicable to that market.

Article 290

Detrimental acts

Article 274(2)(1) shall not apply where a person who has benefited from a legal act which is detrimental to all the creditors provides proof of that act being subject to the law of a Member State other than the home Member State, and proof that that law does not allow any means of challenging that act in the relevant case.

Article 291

Protection of third-party purchasers

The following law shall be applicable where, by an act concluded after the adoption of a reorganisation measure or the opening of winding-up proceedings, an insurance undertaking disposes, for consideration, of any of the following:

- (a) in regard to immovable assets, the law of the Member State where the immovable property is situated;
- (b) in regard to ships or aircraft subject to registration in a public register, the law of the Member State under the authority of which the register is kept;
- (c) in regard to transferable or other securities, the existence or transfer of which presupposes entry in a register or account laid down by law or which are placed in a central deposit system governed by the law of a Member State, the law of the Member State under the authority of which the register, account or system is kept.

Article 292

Lawsuits pending

The effects of reorganisation measures or winding-up proceedings on a pending lawsuit concerning an asset or a right of which the insurance undertaking has been divested shall be governed solely by the law of the Member State in which the lawsuit is pending.

Article 293

Administrators and liquidators

1 The appointment of the administrator or the liquidator shall be evidenced by a certified copy of the original decision of appointment or by any other certificate issued by the competent authorities of the home Member State.

The Member State in which the administrator or liquidator wishes to act may require a translation into the official language or one of the official languages of that Member State. No formal authentication of that translation or other similar formality shall be required.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

2 Administrators and liquidators shall be entitled to exercise within the territory of all the Member States all the powers which they are entitled to exercise within the territory of the home Member State.

Persons to assist or represent administrators and liquidators may be appointed, in accordance with the law of the home Member State, in the course of the reorganisation measure or winding-up proceedings, in particular in host Member States and, specifically, in order to help overcome any difficulties encountered by creditors in that State.

3 In exercising their powers according to the law of the home Member State, administrators or liquidators shall comply with the law of the Member States within which they wish to take action, in particular with regard to procedures for the realisation of assets and the informing of employees.

Those powers shall not include the use of force or the right to rule on legal proceedings or disputes.

Article 294

Registration in a public register

1 The administrator, liquidator or any other authority or person duly empowered in the home Member State may request that a reorganisation measure or the decision to open winding-up proceedings be registered in any relevant public register kept in the other Member States.

However, where a Member State provides for mandatory registration, the authority or person referred to in the first subparagraph shall take all the measures necessary to ensure such registration.

2 The costs of registration shall be regarded as costs and expenses incurred in the proceedings.

Article 295

Professional secrecy

All persons required to receive or divulge information in connection with the procedures laid down in Articles 270, 273 and 296 shall be bound by the provisions on professional secrecy, as laid down in Articles 64 to 69, with the exception of any judicial authorities to which existing national provisions apply.

Article 296

Treatment of branches of third-country insurance undertakings

Where a third-country insurance undertaking has branches established in more than one Member State, each branch shall be treated independently with regard to the application of this Title.

The competent authorities and the supervisory authorities of those Member States shall endeavour to coordinate their actions.

Any administrators or liquidators shall likewise endeavour to coordinate their actions.