

**SUPERVISION MANUAL (PASSPORTING AND REINSURANCE) (AMENDMENT)  
INSTRUMENT 2009**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 59 (Approval for particular arrangements);
    - (b) section 138 (General rule-making power);
    - (c) section 156 (General supplementary powers); and
    - (d) section 157(1) (Guidance); and
  - (2) the other powers and related provisions listed in Schedule 4 to the General Provisions (Powers exercised) of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 6 March 2009.

**Amendments to the Handbook**

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Supervision Manual (Passporting and Reinsurance) (Amendment) Instrument 2009.

By order of the Board  
26 February 2009

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text.

Insert the following new definitions in the appropriate alphabetical position.

General Protocol                    the “General Protocol relating to the collaboration of the insurance supervisory authorities of the Member States of the European Union” issued by the Committee of European Insurance and Occupational Pensions Supervisors.

UK pure reinsurer                a pure reinsurer whose head office is in the United Kingdom.

Amend the following definitions as shown.

*EEA pure reinsurer*                a reinsurance undertaking (other than an ISPV) whose head office is in any EEA State except the United Kingdom and which has received (or is deemed to have received) authorisation under article 3 of the Reinsurance Directive from its Home State Regulator.

*Single Market Directives*        (a)    the Banking Consolidation Directive;  
    (b)    the Insurance Directives (within the meaning of paragraph 1 of Schedule 3 to the Act);  
    (ba)   the Reinsurance Directive;  
    (c)    MiFID;  
    (d)    the Insurance Mediation Directive; and  
    (e)    the UCITS Directive.

## Annex B

## Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

10.1.11 G But an *incoming EEA firm* (other than an EEA pure reinsurer), or *incoming Treaty firm*, will have had to consider the impact of the *Host State rules* with which it is required to comply when carrying on a *passport activity* or *Treaty activity* through a *branch* in the *United Kingdom*. An *incoming EEA firm* (other than an EEA pure reinsurer) will have been notified of those provisions under Part II of Schedule 3 to the *Act* in the course of satisfying the conditions for *authorisation* in the *United Kingdom*.

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10.1.13D R If an *incoming EEA firm* is an *EEA pure reinsurer* then SUP 10.1.13R does not apply.

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13.2.3 G In some circumstances, a *UK firm* that is carrying on business which is outside the scope of the *Single Market Directives* has a right under the *Treaty* to carry on that business. For example, for an insurer carrying on both direct insurance and ~~reinsurance~~ *reinsurance* business, the authorisation of *reinsurance* business is not covered by the *Insurance Directives* in respect of the ~~reinsurance~~ element. ~~It~~ The firm may, however, have rights under the *Treaty* in respect of its ~~reinsurance~~ *reinsurance* business. Such *UK firms* may wish to consult with the *FSA* on their particular circumstances (see SUP 13.12.2G).

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The conditions for establishing a branch

13.3.2 G A *UK firm* other than a *UK pure reinsurer* cannot establish a *branch* in another *EEA State* for the first time under an *EEA right* unless the conditions in paragraphs 19(2), (4) and (5) of Part III of Schedule 3 to the *Act* are satisfied. It is an offence for a *UK firm* which is not an *authorised person* to contravene this prohibition (paragraph 21 of Part III of Schedule 3 to the *Act*). These conditions are that:

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13.3.2E G Once authorised in the *United Kingdom*, a *UK pure reinsurer* has an automatic *EEA right* to carry on *reinsurance* business in another *EEA State* by establishing a *branch* in that state or providing *cross border services* into

that state. There are no additional requirements to be satisfied before the firm can commence business in that state.

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- 13.3.3A G (1) SUP 13.3.3G does not apply to UK pure reinsurers as they have automatic passport rights on the basis of their Home State authorisation under the Reinsurance Directive.
- (2) Under section 3 of Part III of the General Protocol, Home State regulators have agreed to inform Host State regulators if a pure reinsurer for which the Home State is responsible carries on business through a branch in the Host State. Therefore SUP 13.5.1AR requires a UK firm passporting under the Reinsurance Directive to notify the FSA of certain information relating to the branch.

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- 13.4.2 G A UK firm, other than a UK pure reinsurer, cannot start providing cross border services into another EEA State under an EEA right unless it satisfies the conditions in paragraph 20(1) of Part III of Schedule 3 to the Act and, if it derives its EEA right from the Insurance Directives, paragraph 20(4B) of Part III of Schedule 3 to the Act. It is an offence for a UK firm which is not an authorised person to breach this prohibition (paragraph 21 of Part III of Schedule 3 to the Act). The conditions are that:

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- 13.4.2E G SUP 13.4.2G does not apply to UK pure reinsurers as they have automatic passport rights on the basis of their Home State authorisation under the Reinsurance Directive. No notification is required from UK pure reinsurers in respect of the provision of cross border services.

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- 13.5.1 R A UK firm, other than a UK pure reinsurer, wishing to establish a branch in a particular EEA State for the first time under an EEA right must include in its notice of intention given to the FSA:

...

- 13.5.1A R A UK pure reinsurer establishing a branch in a particular EEA state for the first time under the Reinsurance Directive must notify the FSA. Whenever possible, this notification must be made as soon as the information specified in SUP 13 Annex 1R is known by the firm.

- 13.5.1B G SUP 13.5.1R does not apply to UK pure reinsurers as they have automatic passport rights on the basis of their Home State authorisation under the Reinsurance Directive.

...

13.5.2A G SUP 13.5.2R does not apply to UK pure reinsurers as they have automatic passport rights on the basis of their Home State authorisation under the Reinsurance Directive.

13.5.3 R (1) The notice of intention under SUP 13.5.1R and SUP 13.5.2R, and the notice required under SUP 13.5.1AR, must be:

...

(2) The notice of intention or notice required under SUP 13.5.1AR may be delivered by:

...

(3) The address for notices ~~of intention~~ referred to in (2) is: ...

...

...

13.5.4A G A UK pure reinsurer giving notice as required under SUP 13.5.1AR may wish to use the passporting notification form available on the FSA website ([http://www.fsa.gov.uk/pubs/forms/passporting/branch\\_eea.doc](http://www.fsa.gov.uk/pubs/forms/passporting/branch_eea.doc)), adapted as appropriate to reflect the information required by SUP 13 Annex 1R paragraph 4.

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13.5.6 G (1) A UK firm passporting under the *Banking Consolidation Directive*, ~~or the Insurance Directives~~ or the Reinsurance Directive may have to submit the *requisite details* or relevant details in the language of the *Host State* as well as in English. For a UK firm passporting under the *Insurance Directives* this translated document will not include the relevant UK details. Further information is available from the Passport Notifications Unit.

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13.6.1 G Where a UK firm is exercising an EEA right, other than under the *Insurance Mediation Directive* (see SUP 13.6.9AG) or the Reinsurance Directive (see SUP 13.6.9BR), and has established a *branch* in another EEA State, any changes to the details of the *branch* are governed by the *EEA Passport Rights Regulations*. ...

...

Firms passporting under the Reinsurance Directive

13.6.9B R A UK firm exercising its EEA right under the Reinsurance Directive to establish a branch in another EEA State must notify the FSA of any changes in the information specified in SUP 13 Annex 1R. Whenever possible, this notification must be made as soon as the change in information is known by the firm.

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13.6.11 G When the FSA receives a notice from a UK firm other than a MiFID investment firm (see SUP 13.6.5G(1) and SUP 13.6.7G(1)) or a pure reinsurer (see SUP 13.6.9BR) it is required by regulations 11(4) and 13(4) to either refuse, or consent to the change within a period of one month from the day on which it received the notice.

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Firms passporting under the Reinsurance Directive

13.7.12 G A UK firm providing cross border services under the Reinsurance Directive is not required to supply notification of, or a change to the details of, its cross border services.

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13.8.1 R (1) A notice of a change to a branch referred to in SUP 13.6.5G(1), SUP 13.6.5BG(1), SUP 13.6.7G(1), SUP 13.6.8G, SUP 13.6.9BR and SUP 13.6.10G(1) and a notice of a change to cross border services referred to in SUP 13.7.3G(1), SUP 13.7.3AG(1), SUP 13.7.5G(1) and SUP 13.7.6G must be:

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...

13 Annex 1R Requisite details: branches

	Type of firm	Requisite details (see notes 1 & 2)	
...	...	...	...
<u>4</u>	<u>Pure reinsurer</u>	(a)	<u>the address of the branch;</u>
		(b)	<u>the name of the firm's authorised agent (see note 3);</u>

		(c)	<u>whether the <i>firm</i> will be, or is, carrying on life or non-life reinsurance business, or both;</u>
		(d)	<u>confirmation that the <i>firm</i> fulfils the solvency requirements of the <i>Reinsurance Directive</i>.</u>
Notes			
Note 1: The <i>requisite details</i> or relevant details specified in this annex are those in the <i>EEA Passport Rights Regulations</i> ; that is, those in regulation 1 for <i>credit institutions</i> and <i>MiFID investment firms</i> , and those in regulation 14 for <i>insurance undertakings</i> . <u>The relevant details specified for <i>pure reinsurers</i> are those in the <i>General Protocol</i>, under which <i>Home State regulators</i> have agreed to inform <i>Host State regulators</i> if a <i>pure reinsurer</i> carries on business through a branch in the <i>Host State</i>.</u>			
...			

...

13A.1.1 G (1) ...

(2) This chapter also applies to:

- (a) a *Treaty firm* that wishes to exercise rights under the *Treaty* in respect of *regulated activities*, those rights not being covered by passporting rights provided by the *Single Market Directives*, and ~~qualify~~ qualifies for *authorisation* under Schedule 4 to the *Act* (*Treaty Rights*); and

...

...

...

13A.1.3 G (1) Under the *Gibraltar Order* made under section 409 of the *Act*, a Gibraltar firm is treated as an *EEA firm* under Schedule 3 to the *Act* if it is:

(a) ...

(aa) authorised in Gibraltar under the *Reinsurance Directive*; or

...

...

...

13A.1.5 G (1) *EEA firms* should note that this chapter only addresses the procedures which the *FSA* will follow under the *Act* ~~after it has received a consent notice or been notified of an *EEA firm's* intentions~~

~~by its Home State regulator.~~ So, an *EEA firm* should consider this *guidance* in conjunction with the requirements with which it will have to comply in its *Home State*.

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13A.2.1 G A person will only be an *EEA firm* or a *Treaty firm* if it has its head office in an *EEA State* other than the *United Kingdom*. *EEA firms* and *Treaty firms* are entitled to exercise both the right of establishment and the freedom to provide services under the *Treaty*. The difference, however, is that an *EEA firm* has a right to passport under a *Single Market Directive*, whereas a *Treaty firm* carries on activities for which the right to carry on those activities does ~~which do~~ not fall within the scope of a *Single Market Directive*. An *EEA firm* may also be a *Treaty firm* if it carries on such activities. A person may be a *Treaty firm*, where, for example, it carries on business that: includes regulated activities, the right to carry on which does not fall within the scope of the *Single Market Directive* under which it is entitled to exercise an *EEA right*, for example, *reinsurance* in the case of a direct insurer to which the *Insurance Directives* apply.

(1) ~~comprises regulated activities, such as reinsurance, which are not covered by any *Single Market Directive*; or~~

(2) ~~includes regulated activities which do not fall within the scope of the *Single Market Directive* under which it is entitled to exercise an *EEA right*.~~

...

13A.3.1 G Section 31 of the *Act* (Authorised persons) states that an *EEA firm* is *authorised* for the purposes of the *Act* if it qualifies for *authorisation* under Schedule 3 to the *Act* (*EEA Passport Rights*). Under paragraph 12 of Part II of that Schedule, an *EEA firm* that is an *EEA pure reinsurer* qualifies for *authorisation* without condition. An *EEA firm* that is not an *EEA pure reinsurer* qualifies for *authorisation* if:

...

...

13A.3.1B G A *pure reinsurer* with its head office in an *EEA State* that has not fully implemented the *Reinsurance Directive* may nevertheless be accepted as satisfying the conditions to be an *EEA pure reinsurer* if the firm provides satisfactory evidence that the prudential requirements of the *Reinsurance Directive* have been implemented by that *EEA State* and that they apply to the firm. The firm may then be deemed to be authorised under the *Reinsurance Directive* in that *EEA State*.

...

13A.3.11 G (1) An *EEA firm* that is carrying on both direct insurance and ~~reinsurance~~ *reinsurance* business will be entitled to passport under

Schedule 3 to the *Act* in relation to the direct *insurance business*. It will also have a *Treaty right* under Schedule 4 to the *Act* in relation to the *reinsurance business* if the *firm* has received *Home State authorisation* for the *regulated activity* of effecting and/or carrying out the relevant class of *insurance business* that includes *reinsurance business* for that class and the relevant provisions of the law of the *Home State* satisfy the conditions laid down by the *Insurance Directives* relating to the carrying on of that activity (see SUP App 3.10.13G). Such *EEA firms* are advised to discuss their particular circumstances with the Authorisation Department before sending in their notification under paragraph 5(2) of Schedule 4 to the *Act* (see SUP 13A.3.6 G).

- (1A) An insurance company with its head office in an *EEA State* other than the *United Kingdom* that is carrying on pure *reinsurance business* in that State, and which has received authorisation (or is deemed to be authorised) under the *Reinsurance Directive* from its *Home State* (an *EEA pure reinsurer*), has an automatic *EEA right to passport* into the *United Kingdom* by establishing a *branch* in the *United Kingdom* or by the provision of *cross border services*. Under the *General Protocol*, *Home State regulators* have agreed to inform *Host State regulators* if a *pure reinsurer* carries on business through a *branch* in the *Host State*.
- (2) An insurance company with its head office in an *EEA State* other than the *United Kingdom* that is carrying on pure ~~reinsurance~~ *reinsurance business* in that State, and which wishes to carry on such business in the *United Kingdom* and is authorised by its *Home State* but not yet under the *Reinsurance Directive*, is advised to discuss its particular requirements with the Authorisation Department. It may be entitled to exercise a *Treaty right* provided it satisfies the conditions in paragraph 3(1) of Schedule 4 to the *Act* (see SUP 13A.3.4G). Otherwise, it will have to seek a *Part IV permission* (see the FSA website: “How do I get authorised”): <http://www.fsa.gov.uk/Pages/Doing/how/index.shtml>).

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- 13A.4.1 G (1) Before an *EEA firm other than an EEA pure reinsurer* exercises an *EEA right* to establish a *branch* in the *United Kingdom* other than under the *Insurance Mediation Directive*, the *Act* requires it to satisfy the *establishment conditions*, as set out in paragraph 13(1) of Part II of Schedule 3 to the *Act*.

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- 13A.5.2 G An *EEA firm other than an EEA pure reinsurer* should note that the requirement under the *Single Market Directives* to give a notice of intention to provide *cross border services* applies whether or not:

...

- 13A.5.3 G (1) Before an *EEA firm* other than an *EEA pure reinsurer* exercises an *EEA right* to provide *cross border services* into the *United Kingdom*, the *Act* requires it to satisfy the *service conditions*, as set out in paragraph 14 of Part II of Schedule 3 to the *Act*.

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- 13A.6.2 G An *incoming EEA firm* (other than an *EEA pure reinsurer*) or *incoming Treaty firm* carrying on business in the *United Kingdom* must comply with the *applicable provisions* (see *SUP* 13A.4.4G and *SUP* 13A.5.4G) and other relevant *UK* legislation. For example where the business includes:

...

- 13A.6.3 G In particular, an *EEA firm* (other than an *EEA pure reinsurer*) or *Treaty firm* must comply with the *applicable provisions* in *SUP* 10 (*Approved persons*). An *EEA firm* or *Treaty firm* should also refer to *SUP* 10.1 (*Application*) which sets out the territorial provisions of the *approved persons* regime.

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#### 13A Annex 1G Application of the Handbook to Incoming EEA Firms

1. The table below summarises the application of the *Handbook* to an *incoming EEA firm*. Where the table indicates that a particular module of the *Handbook* may apply, its application in relation to any particular activity is dependent on the detailed application provisions in that module. The table does not apply to *incoming ECA providers*. These should refer to *COBS* 1 Annex 1 Part 3 section 7 for *guidance* on how *COBS* applies to them. The table does not apply to *EEA pure reinsurers* as these *firms* have automatic passport rights on the basis of their *Home State* authorisation.

...

...

- 14.1.1 G This chapter applies to an *incoming EEA firm* other than an *EEA pure reinsurer* which has established a *branch* in, or is providing *cross border services* into, the *United Kingdom* under one of the *Single Market Directives* and, therefore, qualifies for *authorisation* under Schedule 3 to the *Act*.

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## 15 Annex 1R Application of SUP 15 to incoming EEA firms and incoming Treaty firms

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2A.	<u>SUP 15 does not apply to an EEA pure reinsurer which does not have a top-up permission.</u>
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## SUP App 3 Guidance on passporting issues

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- 3.3.13 G The *Single Market Directives* require *credit institutions, insurance undertakings (other than reinsurance undertakings), ...*

...

Position of EEA ~~reinsurers~~ insurers carrying out both direct and reinsurance business

- 3.10.13 G The *Insurance Directives* do not apply to the authorisation to carry on ~~reinsurance~~ reinsurance. But, the *Insurance Directives* do not prevent *insurance undertakings* authorised under those Directives from carrying out ~~reinsurance~~ reinsurance as well as direct insurance business. Article 13(2) of the *First Non-Life Directive* and article 10(2) of the *Consolidated Life Directive* state that financial supervision of *insurance undertakings* “shall include verification, with respect to the ~~insurance undertaking’s~~ insurance undertaking’s entire business, of its state of solvency, of the establishment of technical provisions and of the assets covering them”. On that basis, an *insurance undertaking* authorised in another *EEA State* which carries on a mixed direct insurance and ~~reinsurance~~ reinsurance business, and is, therefore, subject to the requirements of the Directives, will generally be treated as ~~being subject to~~ “equivalent protection” satisfying the conditions laid down by a Community instrument relating to the carrying on of the regulated activity of effecting or carrying out contracts of insurance. This is for the purpose of paragraph 3 of Schedule 4 to the *Act* (Exercise of treaty rights). The *insurance undertaking* will, therefore, generally be able to qualify for *permission* as a *Treaty firm* for its ~~reinsurance~~ reinsurance business if it follows the procedure provided for by Schedule 4 (see *SUP 13A.3.4G* to *SUP 13A.3.11G* (Treaty Firms)). This will be in addition to the *insurance undertaking* being an *EEA firm* under Schedule 3 of the *Act* for its direct insurance business.

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## SUP Sch 2 Notification requirements

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Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>SUP 13.4.2G(1)</i>	...	...	...	...
<i>SUP 13.5.1AR</i>	<i><u>UK pure reinsurer establishing a branch in another EEA State</u></i>	<p><u>(a) the address of the branch</u></p> <p><u>(b) the name of the firm's authorised agent</u></p> <p><u>(c) whether the firm will be, or is, carrying on life or non-life reinsurance business, or both</u></p> <p><u>(d) confirmation that the firm fulfils the solvency requirements of the Reinsurance Directive</u></p>	<u>Decision to establish a branch in other EEA State</u>	<u>Whenever possible, as soon as the information specified in SUP 13 Annex 1R is known by the firm</u>
...				