



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY

Consultation Paper | CP19/19

Insurance special purpose vehicles: Updates to authorisation and supervision

September 2019



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The response will be assessed to inform our work as a regulator and central bank, both in the public interest and in the exercise of our official authority. We may use your details to contact you to clarify any aspects of your response.

The consultation paper will explain if responses will be shared with other organisations (for example, the Financial Conduct Authority). If this is the case, the other organisation will also review the responses and may also contact you to clarify aspects of your response. We will retain all responses for the period that is relevant to supporting ongoing regulatory policy developments and reviews. However, all personal data will be redacted from the responses within five years of receipt. To find out more about how we deal with your personal data, your rights or to get in touch please visit bankofengland.co.uk/legal/privacy.

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Responses are requested by Tuesday 3 December 2019.

Please address any comments or enquiries to:

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1 Overview

1.1 In this Consultation Paper (CP), the Prudential Regulation Authority (PRA) sets out some proposed updates to its approach and expectations in relation to the authorisation and supervision of insurance special purpose vehicles (ISPVs). The proposals would make amendments to the Insurance Special Purpose Vehicles Part of the PRA Rulebook (Appendix 1), including Supervisory Statement (SS) 8/17 'Authorisation and supervision of insurance special purpose vehicles' (Appendix 2) and the Multi-arrangement insurance special purpose vehicle (MISPV) New Risk Assumption Notification Form (Appendix 3).

1.2 The CP is relevant to parties who wish to apply for, or have obtained authorisation as, an ISPV. It is also relevant to insurers or reinsurers seeking to enter into arrangements with UK ISPVs as a form of risk mitigation.

Background

1.3 The prudential standards which currently apply to ISPVs in the UK are set out in the Solvency II Directive, associated Delegated Regulation and Implementing Regulation.¹

1.4 In November 2017, the PRA published a number of documents in relation to its approach to the authorisation and supervision of ISPVs,² including expectations of firms set out in SS8/17, amendments to the Insurance Special Purpose Vehicles Part of the PRA Rulebook, and a number of application and notification forms.

1.5 In December 2017, HM Treasury's Risk Transformation Regulations 2017 (RTR) were made, and with this the UK Insurance Linked Securities (ILS) regime commenced.

1.6 In the event that the UK withdraws from the European Union without a deal, the Solvency II prudential standards that currently apply to UK ISPVs shall continue to apply.³

1.7 Since the launch of the regime, additional experience has been gained by both the PRA and the users of the UK ILS regime. Further, in line with the PRA Business Plan 2019/20,⁴ and as part of the PRA's continued delivery of its secondary competition objective, the PRA committed to further refine the framework to facilitate the issuance of ILS through ISPVs in the UK to take account of experience of operating the new supervisory regime since the end of 2017. This CP is a part of a number of pieces of work which aim to deliver on this commitment.⁵

¹ See the ISPV webpage available at: www.bankofengland.co.uk/prudential-regulation/authorisations/insurance-special-purpose-vehicles.

² See Policy Statement 26/17 'Authorisation and supervision of insurance special purpose vehicles': www.bankofengland.co.uk/prudential-regulation/publication/2016/authorisation-and-supervision-of-insurance-special-purpose-vehicles.

³ See Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019 at www.legislation.gov.uk/ukxi/2019/407/contents/made, and also www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards and www.bankofengland.co.uk/paper/2019/the-boes-amendments-to-financial-services-legislation-under-the-eu-withdrawal-act-2018 for more information.

⁴ See page 14 of the PRA Business Plan 2019/20: www.bankofengland.co.uk/prudential-regulation/publication/2019/pru-business-plan-2019-20.

⁵ See the ISPV webpage (footnote 1) for recently published FAQs and updated application forms, and accompanying guidance notes.

1.8 In accordance with Article 2 of the Implementing Regulation,⁶ an ISPV that takes on more than one contract for risk transfer from one or more cedants⁷ is referred to as an MISPV. All references made to ISPVs in this CP are equally applicable to MISPVs, unless otherwise specified.

Purpose

1.9 The proposals in this CP aim to provide further clarity and elaborate on certain additional aspects of the PRA's approach and expectations in relation to the authorisation and supervision of ISPVs. The Solvency II requirements in relation to ISPVs have not changed during this period but the PRA and applicants have gained experience of operating the regime in practice. The PRA considers that it would be helpful to update SS8/17 to reflect the experience gained over this period.

Implementation

1.10 Pending consideration of the responses to the consultation, the PRA proposes that the draft changes take effect from the date of publication of the final policy.

Responses and next steps

1.11 This consultation closes on Tuesday 3 December 2019. The PRA invites feedback on the proposals set out in this consultation, and on whether there are any other areas where further clarification on the PRA's approach to the authorisation or supervision of ISPVs would be useful. Please address any comments or enquiries to CP19_19@bankofengland.co.uk.

1.12 The PRA notes that there is some potential cross over in text between the proposed updates to SS8/17 and the ISPV – FAQs,⁸ however, the main focus of this consultation is the updates to SS8/17, not the FAQs, and so we are not inviting responses on the FAQs in and of themselves. We recognise, however, that consultation responses relating to the SS may also be relevant to the FAQs. Therefore the FAQs may change in light of/in line with the updates to SS8/17, once we have considered the consultation responses.

2 Proposals

2.1 This chapter sets out the PRA's proposed updates to its approach and expectations for the authorisation and supervision of ISPVs, consistent with Solvency II requirements. The proposals would provide further guidance to parties wishing to establish themselves as ISPVs in the UK, and are informed by the PRA's experience of previous ISPV applications.

Documentation requirements

2.2 The PRA proposes to add additional detail to the 'documentation requirements' subsection of SS8/17, to expand on its expectations on three points.

- (i) The PRA recognises that the complete suite of final documentation will not always be available at the point an applicant wishes to apply. The PRA proposes a proportionate approach whereby firms engage with it where this may be the case, and agree what information is likely to be available and how this may affect the application.

⁶ Commission Implementing Regulation (EU) 2015/462.

⁷ References to 'cedant' in this SS mean the undertaking that transfers risk to the ISPV.

⁸ See footnote 5.

- (ii) The PRA understands that, in the case of a 'live' transaction, the underlying transaction documents may not be legally executed prior to authorisation, and some specific commercial terms may remain outstanding until final execution. The PRA proposes a proportionate approach whereby applicants may submit the final documentation post-authorisation, once executed.
- (iii) The PRA also proposes to clarify its expectations on the use of independent third-party opinions (in particular legal opinions) to support an application. This includes:
 - that the PRA would not generally expect to request such opinions in all cases;
 - the circumstances in which the PRA believes it may be helpful for applicants to use such opinions to support an application; and
 - more specific details on the circumstances under which the PRA would expect applicants to provide such opinions as part of an application, as well as elaborating on their scope.

Funding arrangements

2.3 The PRA proposes to add additional detail in the 'funding arrangements' section of SS8/17 to provide examples of where there may be changes to the risk transferred and/or funding of the ISPV.

2.4 The PRA is aware that some ILS market participants are keen to understand the circumstances in which techniques such as the 'roll-over' of funding may be used in a manner which complies with the Solvency II requirement for ISPVs to remain fully funded at all times (Article 319 of the Solvency II Delegated Regulation). The Solvency II requirements on fully funded have not changed since the original policy statement was published prior to the commencement of the UK regime in 2017.⁹ However the PRA considers it should be possible for market participants to structure mechanisms under the UK ILS regime which include provisions to 'roll-over' funding, while meeting the fully funded requirement.

Risk transfer requirements

2.5 The PRA proposes to include a section in Chapter 3 of SS8/17 to set out its expectations on risk transfer requirements. Those expectations would cover the number and type of risk transfer arrangements an ISPV may assume, the specific requirements with which these must comply, and the information an applicant must submit to satisfy these requirements.

2.6 The proposed changes should enable applicants to better understand how they may demonstrate compliance against the Solvency II risk transfer requirements, in particular where a 'similar arrangement' is being contemplated.

⁹ See paragraphs 2.22-2.28 of Policy Statement 26/17 'Authorisation and supervision of insurance special purpose vehicles' (November 2017), available at: www.bankofengland.co.uk/prudential-regulation/publication/2016/authorisation-and-supervision-of-insurance-special-purpose-vehicles.

MISPV New Risk Assumption Notification Form

2.7 The PRA proposes to amend the MISPV New Risk Assumption Notification Form to remove unnecessary and/or repetitive information which has already been captured at the initial application stage in the ISPV Application Form.

2.8 The PRA also proposes to re-order the list of terms listed on page 1. This has not been shown in the draft set out in Appendix 3.

2.9 The proposed changes should reduce the volume of information required to be submitted by an MISPV when new risks are assumed, and enable MISPVs and the PRA to focus more on the key transaction documents submitted at the notification stage, alongside the MISPV New Risk Assumption Notification Form.

2.10 The proposed changes to the form would result in consequential amendments to the Insurance Special Purpose Vehicles Part and to SS8/17 to reflect how the form interacts with the Scope of Permission (SOP).

Other amendments

2.11 The PRA also proposes to update SS8/17 with additional guidance and provide clarity on its expectations and approach as follows:

- provide additional information on how the SOP may be used in practice, including where no 'live' deal is in place at the application stage (paragraphs 2.15 and 2.15A of Appendix 2);
- clarify the PRA's approach to applications where they are sufficiently similar to previous transactions that the PRA has authorised, with the aim to leverage (to the extent appropriate) any work done in the previous application, to minimise duplication. (paragraph 2.19A of Appendix 2);
- remind firms of their obligations under the Implementing Regulation where the ISPV is consolidated into a group to provide an assessment of the applicable accounting consolidation requirements (paragraph 3.11A of Appendix 2); and
- correct typographical errors and update references to other relevant material.

3 The PRA's statutory obligations

3.1 In carrying out its policy making functions, the PRA is required to comply with several legal obligations.

3.2 Before making any rules, the Financial Services and Markets Act 2000 (FSMA)¹⁰ requires the PRA to publish a draft of the proposed rules accompanied by:

- a cost benefit analysis;

¹⁰ Section 138J of FSMA.

- an explanation of the PRA's reasons for believing that making the proposed rules is compatible with the PRA's duty to act in a way that advances its general objective,¹¹ insurance objective¹² (if applicable), and secondary competition objective;¹³
- an explanation of the PRA's reasons for believing that making the proposed rules are compatible with its duty to have regard to the regulatory principles;¹⁴ and
- a statement as to whether the impact of the proposed rules will be significantly different to mutuals than to other persons.¹⁵

3.3 The Prudential Regulation Committee (PRC) should have regard to aspects of the Government's economic policy as recommended by HM Treasury.¹⁶

Cost benefit analysis

3.4 The PRA's proposals provide clarity and elaborate on its approach and expectations in relation to the supervision and authorisation of ISPVs, consistent with the Solvency II requirements for ISPVs. They also update the notification form an MISPV must submit upon assuming a new risk. The updates include removal of duplication so that MISPVs may not need to re-submit all the same information which will already have been submitted at the initial authorisation stage, and instead provide summary information on the specific transaction to which the notification relates. The MISPV will still be required to submit the underlying transaction documentation related to the new assumption of risk which will be listed in the MISPV's SOP, and the summary table will remain unchanged.

Costs

3.5 The proposed updates do not create any additional requirements, and hence the PRA does not anticipate any additional costs of meeting the proposals. We have provided further clarity in many areas to make it clearer and more transparent about what we expect, for example, we have clarified the circumstances under which we will expect legal opinions, and the scope of these legal opinions, and we believe that by making this clearer, this is helpful for potential applicants.

Benefits

3.6 The PRA anticipates the proposals will assist parties to better understand the PRA's approach and expectations in relation to the authorisation and supervision of ISPVs, consistent with Solvency II requirements. The additional information should help applicants and prospective applicants when using, or contemplating using the UK ILS regime. By providing more clarity on the PRA's approach and elaborating on its expectations of ISPVs the proposals aim to help ensure that the quality of applications is satisfactory, and therefore help to make the ISPV authorisation and supervision process more efficient for all parties.

3.7 The proposed refinement to the Insurance Special Purpose Vehicles Part that updates the notification form MISPVs must submit upon assuming a new risk, strips out duplication and repetition already captured at the application stage. This should reduce costs and processing time

¹¹ Section 2B of FSMA.

¹² Section 2C of FSMA.

¹³ Section 2H(1) of FSMA.

¹⁴ Sections 2H(2) and 3B of FSMA.

¹⁵ Section 138K of FSMA.

¹⁶ Section 30B of the Bank of England Act 1998.

for firms when completing these forms while still enabling the PRA to ensure that MISPVs continue to comply with the applicable Solvency II requirements.

Compatibility with the PRA's objectives

General objective

3.8 In discharging its general functions (which includes all forms of policy making)¹⁷ the PRA must, so far as is reasonably possible, act in a way which advances its general objective to promote the safety and soundness of PRA-authorised persons (note: the insurance objective does not apply to ISPVs).¹⁸

3.9 The general objective is to be advanced primarily by seeking to:

- (a) ensure that the business of PRA-authorised persons is carried on in a way which avoids any adverse effect on the stability of the UK financial system; and
- (b) minimise the adverse effect that the failure of a PRA-authorised person could be expected to have on the stability of the UK financial system.¹⁹

3.10 The proposals are intended to provide clarity and elaborate on the PRA's approach and expectations in relation to the authorisation and supervision of ISPVs. By providing this information, the PRA is seeking to support the use of prudent risk-mitigation techniques, good governance, systems, and processes which will promote the safety and soundness of firms.

Secondary competition objective

3.11 When making general policy, the PRA must also, so far as is reasonably possible, act in a way which facilitates effective competition when discharging its general functions in a way that advances its primary objectives.²⁰ The PRA has assessed whether the proposals facilitate effective competition. The proposals help foster a better understanding of the PRA's approach and expectations in relation to the authorisation and supervision of ISPVs, consistent with Solvency II requirements. This aids the healthy development of the UK ILS market, and promotes effective competition as participants can more readily understand the requirements/standards relevant to UK ISPVs.

Regulatory principles

3.12 In developing the proposals, the PRA has had regard to the regulatory principles. The principles most relevant are those of proportionality, using the PRA's resources in the most efficient and economical way, and transparency.

3.13 Proportionality: removing repetition, and duplication of information already submitted at the application stage, from the MISPV New Risk Assumption Notification Form would reduce the burden on MISPVs when completing the form. Also, taking a proportionate approach where the complete suite of final documentation is not available at the point of application, or where the documentation is not legally executed until after the authorisation.

¹⁷ This includes making rules, preparing and issuing codes, and determining general policy and principles; see FSMA, s2J(1).

¹⁸ FSMA, s2B(1) and (2).

¹⁹ FSMA, s2B(3).

²⁰ FSMA, s2H(1).

3.14 Efficient use of PRA resources: the PRA leveraging any work done in a previous application of a sufficiently similar transaction, would allow it to approach its review in a way that minimises duplication to the extent it considers appropriate.

3.15 Transparency: improving clarity and providing further guidance in SS8/17 would ensure firms are aware of the PRA's approach and expectations.

Impact on mutuals

3.16 The PRA has considered the impact of the proposals on mutual firms. In the PRA's opinion, the impact of the proposed rule change on mutual is expected to be no different from the impact on other firms.

HM Treasury recommendation letter

3.17 HM Treasury has made recommendations to the PRC about aspects of the Government's economic policy to which the PRC should have regard when considering how to advance the PRA's objectives and apply the regulatory principles.²¹

3.18 The aspects of the Government's economic policy most relevant to the proposals in this CP are:

- (i) **Competitiveness:** The PRA is mindful of the international nature of financial services. In developing the proposals the PRA has given consideration to the commercial considerations necessary for the establishment of ISPVs in the UK. The proposals provide clarity and transparency which will aid applicants to better understand the requirements which must be met in order to be authorised as a UK ISPV. This promotes better quality applications and hence a more efficient and effective review which should ultimately result in greater chance of a successful approval.
- (ii) **Growth:** The PRA acknowledges the importance of the financial services sector contributing to sustainable economic growth. Having regard to competitiveness of the UK ISPV regime should encourage trade in the type of financial services ISPVs provides and growth in the sector.

Equality and diversity

3.19 The PRA considers that the proposals do not give rise to equality and diversity implications.

21 Information about the PRC and the recommendations from HM Treasury are available on the Bank's website at: www.bankofengland.co.uk/about/people/prudential-regulation-committee.

Appendices

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Appendix 1: Draft amendment to PRA RULEBOOK: SOLVENCY II FIRMS: NON SOLVENCY II FIRMS: TRANSFORMER VEHICLES INSTRUMENT 2017 FINAL

PRA RULEBOOK: SOLVENCY II FIRMS: INSURANCE SPECIAL PURPOSE VEHICLES INSTRUMENT 2019

Powers exercised

- A. The Prudential Regulation Authority ("PRA") makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
- (1) section 137G (The PRA's general rules); and
 - (2) section 137T (General supplementary powers).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

Pre-conditions to making

- C. In accordance with section 138J of the Act (consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of the proposed rules and had regard to representations made.

PRA RULEBOOK: SOLVENCY II FIRMS: INSURANCE SPECIAL PURPOSE VEHICLES INSTRUMENT 2019

- D. The PRA makes the rules in the Annex to this instrument.

Commencement

- E. This instrument comes into force on [dd/mm/yy].

Citation

- F. This instrument may be cited as the PRA Rulebook: Solvency II Firms: Insurance Special Purpose Vehicles Instrument 2019.

By order of the Prudential Regulation Committee
[DATE]

Annex

Amendments to the Insurance Special Purpose Vehicles Part

In this Annex new text is underlined and deleted text is struck through.

...

6 FORMS

6.1 The *MISPV new risk assumption notification form* can be found [here](#).

Appendix 2: Draft amendments to Supervisory Statement 8/17 ‘Authorisation and supervision of insurance special purpose vehicle

1 Introduction

...

1.3 In accordance with Article 2 of the Implementing Regulation,ⁿ an ISPV that takes on more than one contract for risk transfer from one or more ‘cedants’ⁿ is referred to as a multi-arrangement insurance special purpose vehicle (MISPV).ⁿ All references made to ISPVs in this SS are equally applicable to MISPVs, unless otherwise specified.

1.4 Chapters 2, 3 and 4 should be read in conjunction with the:

- Risk Transformation Regulations 2017 (SI 2017/1212) (RTR);
- Financial Services and Markets Act 2000 (FSMA) as modified by the RTR;
- Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) (the RAO) as modified by the RTR;
- Directive 2009/138/EC (Solvency II Directive);
- Commission Delegated Regulation (EU) 2015/35 (Delegated Regulation);
- Commission Implementing Regulation (EU) 2015/462 (Implementing Regulation);
- Insurance Special Purpose Vehicles ~~Part~~, Insurance – Fitness and Propriety ~~Part~~, Insurance - Senior Insurance Management Functions ~~Part~~, Insurance - Senior Insurance Managers Regime – Applications and Notifications ~~Part~~, and the Key Function Holder – Notifications Parts of the PRA Rulebook; ~~and~~
- Financial Conduct Authority (FCA) Policy Statement 17/24 – authorising and supervising insurance special purpose vehicles;ⁿ and
- FCA Statement – authorising and supervising insurance special purpose vehicles.ⁿ

1.4A Attention is also drawn to information on the PRA’s website regarding ISPVs.ⁿ

...

ⁿ Commission Implementing Regulation (EU) 2015/462.

ⁿ References to ‘cedant’ in this SS mean the undertaking that transfers risk to the ISPV.

ⁿ See also paragraph 3.29.

ⁿ Available at: www.fca.org.uk/publications/policy-statements/ps17-24-handbook-changes-insurance-linked-securities.

ⁿ See footnote n [footnote number to be confirmed at time of final publication].

ⁿ Available at: www.bankofengland.co.uk/prudential-regulation/authorisations/insurance-special-purpose-vehicles.

2 Authorisation of insurance special purpose vehicles

...

Pre-application discussions

...

2.6 In particular, the pre-application process can be beneficial for both the regulators and the applicant as it provides a forum for constructive discussion on matters such as the scope and structure of the intended ISPV, the type and effectiveness of the risk transfer, the shareholder structure of the vehicle, the proposed investment strategy, and how the requirement to be fully funded is met. The pre-application process will also allow applicants to share details of individuals identified for controlled functions as part of (the Senior Insurance Managers and Certification Regime (SIM&CRR) for the PRA, and the Approved Persons Regime for the FCA). This should help applicants to submit a complete application.

Applications for authorisation of an ISPV

2.7 Applications for ISPV approval should ~~to~~ be made through submission of:

- an ISPV application formⁿ for the authorisation of the ISPV; and
- application forms for individuals (SIMR, ~~Key Function Notification (where applicable)~~ and FCA Controlled Functions (where applicable)) in line with paragraphs 3.1 to 3.5.

...

Documentation requirements

2.9 The PRA expects final documentation to be submitted with applications where possible. In the case where final transaction documentation is not available at the point of application, draft transaction documentation will be accepted ~~provided that only minor amendments are expected prior to the finalisation of the transaction.~~ The PRA does not expect changes to be made during the submission phase where this could impact how the relevant requirements are proposed to be met. If such changes are made, the PRA expects the applicant to submit an analysis of the changes and their impact on the relevant requirements at the first opportunity. Substantive changes following submission of the application are likely to extend the assessment period.

2.9A Where the applicant considers that the complete set of documentation is not be available at the point of application, the PRA expects applicants to discuss this with the PRA to explain at what is likely to be available and how this might affect the timing of the application.

2.9B Where the application is for a 'live' transaction, the PRA understands that the transaction documents may not be legally executed until after approval, and therefore some specific commercial terms may remain outstanding until the transaction is executed. However, the PRA expects the applicant to identify where this will be the case in the documentation prior to approval being granted. If approval is granted before the transaction documents are legally executed, the PRA expects the ISPV to submit the final documents to the PRA as soon as possible once they are legally executed.

ⁿ Available at: www.bankofengland.co.uk/pru/Documents/authorisations/ispvs/ispvsapp.pdf
[https://www.bankofengland.co.uk/prudential-regulation/authorisations/insurance-special-purpose-vehicles.](https://www.bankofengland.co.uk/prudential-regulation/authorisations/insurance-special-purpose-vehicles)

...

2.11 For an MISPV, the applicant should include sufficient detail in relation to all known transactions, including future planned transactions. Where an application includes information given in relation to potential future transactions, the PRA expects the applicant to demonstrate how these arrangements will satisfy the applicable requirements upon being entered into. Further details are included in paragraph 2.15A below.

2.12 ~~The PRA considers that, although not required, does not generally expect to request applicants to submit independent third party opinions (eg legal, accountant, or actuarial) in every case (eg straightforward applications), although the PRA may request applicants to provide the PRA with third party opinions where necessary, for example where the PRA considers it would otherwise be difficult to make an assessment against the conditions for authorisation. The PRA considers that such opinions may be useful to support demonstration of compliance with the Solvency II requirements, in particular Articles 319, 320 and 321 of the Delegated Regulation, where the transaction contains complex or novel features, for example, including but not limited to:~~

- ~~• a legal opinion on the effectiveness of the arrangements, including the effective sub-ordination of the repayment rights of investors (in accordance with Article 321 of the Delegated Regulation); where a transaction includes complex connected transactions, eg complex trust or security arrangements, or any inter-cell arrangements; and/or~~
- ~~• an opinion on the recognition and valuation of the ISPVs assets in accordance with Article 75 of the Solvency II Directive, where the ISPV invests in assets which are considered non-standard in nature.~~

2.12A Where contractual arrangements are material to the conditions for authorisation - in particular where contractual provisions are relied upon to meet Articles 319, 320 and 321 of the Delegated Regulation - and those arrangements are subject to foreign law, the PRA will expect a legal opinion on the effectiveness and enforceability of those arrangements under the relevant foreign law. In such circumstances the PRA would also expect an English law opinion confirming that the operation of English law would not undermine the effect of the transaction and/or arrangements under the applicable foreign law.

Scope of Permission (SOP)

...

2.15 ~~The PRA expects~~An applicant should provide sufficient information on each of the potential arrangements, structures, and/or mechanisms it wishes to form part of the SOP, in order that the PRA can assess their compliance with the Solvency II requirements. Where an ISPV contemplates a range of potential arrangements, structures or mechanisms (particularly in the case of MISPVs that intend to create different options for future cells) applicants should include sufficient information on each of these options in their application. The PRA expects the applicant to submit the contractual wording/arrangements which would govern these future arrangements, if it wishes these future arrangements to be included in the ISPV's initial SOP. This will enable the PRA to assess all of the potential options upfront and, where appropriate, to include each of these options in the initial SOP. Alternatively the applicant may choose to submit a narrower range of arrangements as part of the initial approval, and seek a variation of permission for a wider SOP at a later stage.

2.15A Where an application is submitted with no proposed 'live transaction', consistent with the approach above, the PRA will expect applicants to submit sufficient information in the application to

enable the PRA to judge whether future arrangements will be compliant with applicable requirements. The PRA expects applicants to submit template contractual arrangements which would be used in these future arrangements. In the case of an MISPV, whether or not the applicant intends for the MISPV to enter into future arrangements with the same cedant or multiple cedants should not impact the authorisation. Upon the MISPV executing a live transaction, and assuming a new risk, it must follow the notification process in accordance with Insurance Special Purpose Vehicles 4.3 and outlined further in paragraph 2.27.

...

Timelines for review of applications ~~and~~ (including Variations of Permission applications)

...

2.19A Where an applicant proposes arrangements that are sufficiently similar to arrangements that have previously been assessed by the PRA in respect of the same applicant, such as a previous transaction with the same cedant and substantially the same transaction documentation, the PRA will consider all relevant factors but will aim to leverage (to the extent appropriate) any work done in the previous application, to minimise duplication. In such circumstances, the PRA expects applicants to discuss with the PRA the level of changes they envisage so that the review can be focused as much as possible on the key changes.

...

MISPV notification process

2.27 Once authorised, an MISPV must notify the PRA within five working days of assuming a new risk (pursuant to Regulation 60 of the RTR). In accordance with Insurance Special Purpose Vehicles 4.3 this post-transaction notification must be submitted using the MISPV New Risk Assumption Notification Form. The form requires MISPVs to provide details and documentation on the specific risk transfer arrangement to which it relates (including the documentation specified in the SOP), confirmation that it is in line with the MISPV's SOP, and a signed declaration by two directors that all information in the form is accurate. Additionally, the form requires the MISPV to provide summary details of all the current risk transfer arrangements, including the AMRE of each of the individual arrangements as well as the aggregate AMRE of the MISPV.

3 Requirements of ISPVs

PRA Senior ~~Insurance~~ Managers and Certification Regime (SIM&CR) requirements

3.1 All individuals who are 'effectively running' the ISPV must satisfy the fit and proper criteria set out in the Insurance – Fitness and Propriety Part of the PRA Rulebook. Effectively running is described in paragraph 2.32 of SS35/15 'Strengthening individual accountability in insurance'ⁿ and in Solvency II EIOPA guidelines.ⁿ It is ~~normally~~ expected to include all the members of the governing body, as well as the senior management of the ISPV (or any related insurance group) who are responsible for key decision making and for implementing the strategies and policies approved by

ⁿ May 2017: <https://www.bankofengland.co.uk/prudential-regulation/publication/2015/strengthening-individual-accountability-in-insurance-ss>.

ⁿ EIOPA Guidelines of system of governance (EIOPA-BoS-14/253 EN), paragraph 1.21.

the governing body. These individuals can be both Senior Insurance Management Function (SIMF) roles and non-SIMF roles.

3.2 The PRA requires applicants to nominate fit and proper individuals for approval by the PRA to occupy the following SIMF roles for each ISPV.ⁿ

- Chief Executive (SIMF1);
- Chief Finance (SIMF2); and
- Chair of the Board (SIMF9).

3.3 The PRA considers that each of these roles is important for the ongoing safety and soundness of the ISPV but, depending on its assessment of the particular case, an individual with the relevant skills and experience may be able to perform more than one of these roles. It is also acknowledged that provided there are no conflicts of interest, a SIMF role or individual deemed to be effectively running the ISPV could be held by a suitably senior employee or director of a third party such as an outsourced service provider.

3.4 The ISPV must complete the relevant application form (see Insurance – Senior Insurance Managers Regime – Applications and Notifications Part) for each of the individuals nominated for PRA approval to perform for a SIMF role at the ISPV. ~~Similarly, the ISPV must complete a Form M (see Key Function Holder – Notifications Part) for all the individuals who are effectively running the ISPV and are not also SIMF holders. The ISPV must, following their appointment, submit Form M (see Key Function Holder – Notifications Part) for each individual who is appointed a key function holderⁿ and who is not also an SMF holder.~~

3.5 The individuals who are effectively running the ISPV are expected to be responsible for providing oversight of the activities and key functions of the ISPV, including outsourced service providers, and for ensuring that the ISPV meets its regulatory requirements.

Fit and proper requirements for shareholders or members with a qualifying holding

...

3.11A Where the ISPV is consolidated into a group the applicant must provide an assessment of the applicable accounting consolidation requirements of the ISPV into the group, in accordance with Annex I of the Implementing Regulation. The PRA will assess the specific circumstances for consolidation against the relevant requirements.

...

The requirement for ISPVs to be fully funded

...

3.18 While the AMRE should be fully funded at all times, the AMRE can change over the life of the arrangement. At the outset, the AMRE might consist only of initial expense costs. At the point risk is

ⁿ Pursuant to Insurance – Senior Insurance Management Functions 2, and Insurance – Fitness and Propriety 2.

ⁿ Individuals who perform key functions pursuant to the Key Function Holder – Notifications part of the PRA Rulebook.

transferred to the ISPV the AMRE will increase in parallel to the amount of the risk transfer. Any claims paid may result in the AMRE decreasing in parallel to the amount paid out, and thereafter the AMRE will reflect any remaining risk exposure. Where the contractual arrangements envisage changes to the risk transferred and/or to the funding of the ISPV, (for example, reinstatements, ~~or~~ stepped increases or decreases to the risk transfer, deferral of premium payments, funding top-ups, delayed risk period inception, or mechanisms that allow the 'roll-over' of funding between two consecutive risk transfer arrangements) the PRA expects an ISPV to ensure that the contractual provisions clearly set out how and when the risk transfer and funding under the contract, and consequently the AMRE, may change.

3.19 Given that Solvency II does not envisage a gap between risks being transferred to and funding being received by the ISPV, the PRA expects an ISPV to ensure that the contractual provisions should be such that any increase in the AMRE during the life of the arrangement is only effective if and when the corresponding funds are paid-in. The PRA expects ISPVs to ensure that this is made clear in the contractual provisions. Where arrangements contain contractual features that could result in the AMRE decreasing, the conditions governing return of capital to investors should be such that the fully funded requirement is maintained. In general, the PRA expects that, unless clearly provided for in the terms of the contract with the cedant, injections or repayments of funds to match these kinds of contractual changes in the AMRE (as described above and in paragraph 3.16) should not take credit for increases in the value of assets already invested.

3.19A In light of paragraphs 3.18 and 3.19, where parties may wish to 'roll-over' funding from one risk transfer arrangement to the other, the same funds should not be used to meet the AMRE of two consecutive risk transfer arrangements at the same time. This means that the funds being held to meet the AMRE of an existing risk transfer arrangement should not, simultaneously, be counted to meet the AMRE of a new risk transfer arrangement. However, once the AMRE of the existing risk transfer is reduced and the funds equal to the value of such reduction are released, some or all of such funds can then be re-invested in the new risk transfer arrangement and be counted to meet the AMRE of the new risk transfer arrangement.

...

Risk transfer requirements

3.29 A stand-alone ISPV may only take on a single contract for risk transfer from a single cedant. This follows from Article 2 of the Implementing Regulations which defines an MISPV. It may not take on a contract for risk transfer from multiple cedants, nor can it take on more than one contract for risk transfer from one cedant. Similarly, in line with Regulation 43(5) of the RTR, a single cell of a PCC may only take on a single contract for risk transfer from a single cedant.

3.30 The PRA recognises that ISPVs may assume risks through reinsurance contracts or assume insurance risks through 'similar arrangements' consistent with Article 318(a) of the Delegated Regulation. Regardless of the form of the risk transfer, the PRA expects applicants to demonstrate that they comply with both Regulation 5 of the RTR (that some or all of the underlying risk of the cedant is transferred to the ISPV), and Article 320 of the Delegated Regulation (that the risk is effectively transferred from the cedant to the ISPV and from the ISPV to the providers of debt or other financing mechanism).

3.31 The PRA expects an applicant to describe clearly, in its application form, the details of the proposed risk transfer and demonstrate how the risk transfer complies with these requirements.

3.32 In the case of risk transfers which include non-indemnity triggers, the PRA expects applicants to include specific details of the structure of the trigger, eg any pay-out factors, geographic weightings, exposures vectors, relative experience ratios, or regular portfolio resets. In line with Annex 1 of the Implementing Regulation, where basis risk exists, applicants must submit a basis risk analysis as part of their application.



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY

Appendix 3: Draft amendments to the MISPV New Risk Assumption Notification Form

Multi-arrangement Insurance Special Purpose Vehicle (MISPV) New Risk Assumption Notification Form

Full name of MISPV/PCC	
PCC registered number	
Arrangement code for this risk/cell	

Important information to be read before completing this form

Keep a copy of the forms you complete and the supporting documents that you include with this notification pack for your future reference.

The FCA and Bank of England process personal data in line with the requirements of The General Data Protection Regulation (EU) 2016/679 and the Data Protection Act 2018. For further information about the way we use the personal data collected in this form, please read our privacy notices available on our websites:

- FCA : www.fca.org.uk/privacy
- Bank of England: <https://www.bankofengland.co.uk/prudential-regulation/authorisations>

Consistent with Part 4A of FSMA, the MISPV may not act outside its Scope of Permission (SOP). This means that in the case of an MISPV, future arrangements must fall within the scope of the SOP. As such this arrangement as described in this notification form must be consistent with the SOP.

Terms in this form

In this form we use the following terms:

- 'AMRE' refers to Aggregate Maximum Risk Exposure as defined in Article 1(44) of the Commission Delegated Regulation (EU) 2015/35;
- 'applicant firm' refers to the firm applying for authorisation, except where an applicant is applying to become a PCC, in which case the term "applicant firm" refers to the proposed PCC and/or the applicant on behalf of the proposed PCC (as applicable);
- 'arrangement code' is the MISPVs identifier (allocated by the MISPV) to the risk transfer arrangement assumed by the associated cell;
- 'cedant' refers to the insurance or reinsurance undertaking which the ISPV assumes risk from;
- 'cell' can refer to an individual cell or group of cells of the MISPV, where risk is being transferred to a group of cells;
- 'Delegated Regulation' refers to Commission Delegated Regulation (EU) 2015/35;
- 'FCA' refers to the Financial Conduct Authority;
- 'FSMA' refers to the Financial Services and Markets Act 2000;
- 'Implementing Regulation' refers to Commission Implementing Regulation (EU) 2015/462;
- 'MISPV' refers to a UK multi-arrangement ISPV, as per the meaning given in the Insurance Special Purpose Vehicles Part of the PRA Rulebook;
- 'PCC' refers to a Protected Cell Company;
- 'PRA' refers to the Prudential Regulation Authority;
- 'RTR' refers to the Risk Transformation Regulations 2017;

- 'Solvency II Directive' refers to Directive 2009/138/EC;
- 'SOP' refers to Scope of Permission;
- 'VOP' refers to Variation of Permission;
- 'we', 'us' or 'our' refers to the appropriate regulator; and
- 'you' refers to the person(s) signing the form on behalf of the ~~applicant firm~~-MISPV.

Purpose of this form

Pursuant to Regulation 60 of the RTR, an MISPV must notify the PRA within 5 working days of assuming a new risk, and pursuant to Rule 4.3 of the Insurance Special Purpose Vehicles Part of the PRA Rulebook, this form is to be sent to the PRA when an MISPV assumes a new risk is the form which must be submitted as part of this notification.

Filling in the form

1. Please fill in the requested information in the text boxes provided. Alternatively, provide a supporting document and indicate in this form where the requested information for each part can be found in your supporting documentation (i.e. the sections and page numbers in your supporting documentation that address each specific information request). Provide in Section 3.1 or in a separate supporting document, an index of all supporting documentation submitted. Please fill in the requested information where reference and text boxes are provided, and submit supporting information and documentation with a table of contents that includes any PRA/FCA forms that are attached. Where text boxes are not large enough, provide the information in your supporting documentation, and include a reference to this information. Please indicate in the reference boxes at the end of questions where the requested information for each part can be found in your supporting documentation (i.e. the sections or page numbers in your supporting documentation that address that information request). Also, clearly mark supporting documentation with the relevant question numbers from the application form.
2. If you think an information request is not relevant to you ~~part of this form does not apply to you~~, write 'N/A' in the relevant ~~text~~reference box and explain in your supporting documentation why you consider it not applicable.
3. If you leave an information request blank, please explain why before submitting the form. ~~do not sign the declaration or do not attach the required supporting information without telling us why, it may lead us to challenge the legitimacy of the assumption of risk.~~
4. If you are completing the form by computer, print out the completed form and sign the declaration using your computer to complete the form print out all the parts of the form you have completed.
5. If you are filling in the form by hand:
 - use black ink;
 - write clearly; and
 - sign the declaration.
6. Submit an electronic copy of the notification pack to the PRA at the following mailbox: [this notification to ISPVMailbox@bankofengland.co.uk](mailto:ISPVMailbox@bankofengland.co.uk) and send two copies in hard copy consisting of. The submission should consist of:
 - this MISPV New Risk Assumption Form (including the declaration form in Section 4) ~~the standard form;~~ and
 - the specific transaction documents related to this transaction, and those documents listed in the SOP. ~~supporting documents to the PRA at:~~

Authorisations, The Prudential Regulation Authority
20 Moorgate
London
EC2R 6DA

1 Details of the transaction

~~All MISPVs must meet the applicable requirements concerning the transfer of risk and funding of the vehicle.~~

This notification should describe the specific details of the new assumption of risk, and confirms that it accords with the MISPV's Scope of Permission (SOP).

Summary

[1.1 is replaced with the following:]

- 1.1 Please provide a summary of the following details in relation to this transaction, and, where applicable, include reference to where in the SOP these are permitted (where the SOP includes flexibility please make clear which option(s) this transaction relates to):**
- a) the cedant, and the providers of debt or other financing mechanism (e.g. debtholders, shareholders, etc.);
 - b) the outsourced service providers, including the insurance manager, custodian, trustee, where applicable
 - c) the risk being transferred from the cedant to the applicable cell (e.g. form, location, type of cover, class of business, peril, risk period, etc.);
 - d) any relevant loss event triggers or mechanisms relied upon under the contract (e.g. parametric, index-linked triggers, etc.);
 - e) the risk being transferred from the applicable cell to the providers of debt or other financing mechanism;
 - f) an assessment of any basis risk to the cedant arising from the transaction;
 - g) the AMRE of the core, and the applicable cell, and how these will continue to remain fully funded on an ongoing basis;
 - h) the funding and collateral arrangement(s) (e.g. the ISPV's funding arrangements, collateral structure, collateral investment strategy, collateral release triggers);
 - i) any connected transaction that may undermine the fully funded or effectiveness of the risk transfer requirements; and
 - j) any other relevant features of the transaction, including tranching, reinstatements, stepped increases or decreases to the risk transfer, deferral of premium payments, funding top-ups, delayed risk period inception, mechanisms that allow the "roll-over" of funding between two consecutive risk transfer arrangements, or inter-cell arrangements, where applicable.

Note: all of the above information should be consistent with the MISPV's SOP. If the proposed risk is outside the firm's SOP, the MISPV will need to apply for a Variation of Permission (VOP) under Part 4A FSMA.

[1.2 to 2.16 are deleted]

[Sections 1.7 to 1.10 are renumbered 1.2 to 1.5]

Communication with the supervisory authority of the cedant

- 1.2 Where possible, if the cedant of the applicable cell is domiciled in the EEA, provide details of the relevant contact at the supervisory authority responsible for the cedant, and a copy of any correspondence that notifies the supervisory authority of the cedant concerning the intention to transfer risk to ~~a~~ the applicable cell.

<u>TitleReference</u>	
<u>First name(s)</u>	
<u>Surname</u>	
<u>Job title</u>	
<u>Business address</u>	
<u>Contact number</u>	
<u>E-mail address</u>	

...

Conflicts of interest

- 1.3 Are there any associations that exist between a director or a member or shareholder with a qualifying holding in the MISPV and any person that has undertaken a this contractual arrangement related to this assumption of risk?

No

Yes ▶ Please provide details clarifying the relationship below.

Consistent with Scope of Permission

- 1.4 The MISPV's SOP is a key component of its authorisation, as it defines the boundaries within which the MISPV may carry on the regulated activity of insurance risk transformation. Please confirm that this transaction is in line with the SOP and that all other aspects of the running of the MISPV remain in line with the SOP.

Yes

No ▶ Please provide details below.

1.5 Please outline if there are any other changes which have occurred following the original application that the regulators should be aware of.

No

Yes ▶ Please provide details below.

...

3 Documents submitted with this notification

Please attach the documents related to this transaction which includes those specifically listed in the SOP. ~~You must list which documents you have attached.~~

Supporting documents you are sending with this form

- 3.1 Please list below all the documents you are sending with this notification form. These should include the specific transaction documents related to this transaction, and those documents listed in the SOP.

...

4 Declaration

Declaration

It is a criminal offence to – knowingly or recklessly – submit information that is false, misleading or deceptive.

You must notify us immediately of any significant change to the information provided.

...

D4 I confirm that the information in this application form is accurate and complete to the best of my knowledge and belief.

...

Who must sign the declaration?

This declaration must be signed by the people who are responsible for making this application on behalf of the applicant firm MISPV.

...