



Consultation Paper | CP17/21

Solvency II: Definition of an insurance holding company

September 2021





BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY

Consultation Paper | CP17/21

Solvency II: Definition of an insurance holding company

September 2021

By responding to this consultation, you provide personal data to the Bank of England. This may include your name, contact details (including, if provided, details of the organisation you work for), and opinions or details offered in the response itself.

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.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure to other parties in accordance with access to information regimes including under the Freedom of Information Act 2000 or data protection legislation, or as otherwise required by law or in discharge of the Bank's functions.

Please indicate if you regard all, or some of, the information you provide as confidential. If the Bank of England receives a request for disclosure of this information, we will take your indication(s) into account, but cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system on emails will not, of itself, be regarded as binding on the Bank of England.

Responses are requested by Monday 6 December 2021.

In light of current measures to help prevent the spread of COVID-19, please address any comments or enquiries by email to: CP17_21@bankofengland.co.uk

Alternatively, please address any comments or enquiries to:

Neha Bora
Prudential Regulation Authority
20 Moorgate
London
EC2R 6DA

Contents

1	Overview	1
2	Proposals	3
3	The PRA's statutory obligations	5
Appendices		8

1 Overview

1.1 This Consultation Paper (CP) sets out the Prudential Regulation Authority's (PRA) proposed approach to interpreting and applying the definition of an insurance holding company for the purposes of the Group Supervision Part of the PRA Rulebook.

1.2 The proposals in this CP would result in changes to the Glossary Part of the PRA Rulebook (Appendix 1) and to Chapter 1 of Supervisory Statement (SS) 9/15, 'Solvency II: Group supervision' (Appendix 2).¹ The PRA also proposes to make changes throughout SS9/15 as a result of the UK's withdrawal from the European Union (EU) to amend or remove references to the EU or EU-derived law.

1.3 This CP is relevant to insurance firms within the scope of the Group Supervision Part of the PRA Rulebook and to the Society of Lloyd's.

1.4 The purpose of these proposals is to set out the PRA's approach to distinguishing an insurance holding company from a mixed-activity insurance holding company.

1.5 The PRA has considered the interaction between its primary and secondary objectives. The proposals in this CP are compatible with the PRA's statutory objective to promote the safety and soundness of PRA-authorized firms; with its secondary objective of facilitating effective competition; and in the insurance context, contributing to securing an appropriate degree of protection for those who are or may become policyholders. While developing these proposals, the PRA has followed statutory obligations applicable to the PRA's policy development process.

1.6 The PRA does not expect that firms will incur additional costs as a direct result of these proposals. In determining whether a holding company is an insurance holding company or a mixed-activity insurance holding company, the PRA anticipates that regulatory cost would be reduced for the firm and the PRA. The PRA considers that providing clarity would save time and resources for firms and the PRA. The proposals in this CP would only apply to future determinations of whether a holding company is an insurance holding company, or a mixed-activity insurance holding company. The PRA proposes that existing holding company classifications would not be revisited, unless a trigger event occurs (eg an acquisition, or a disposal), or if a firm asks the PRA to reconsider the classification of its holding company.

Background

1.7 Regulation 2(1) of the Solvency 2 Regulations 2015 ('the Regulations') sets out the definition of an insurance holding company, and is based on whether the main business of the holding company in question is to acquire and hold participations in subsidiary undertakings that are 'exclusively or mainly' insurance or reinsurance undertakings, or third country insurance or reinsurance undertakings (collectively referred to here as 'insurance or reinsurance subsidiaries').² The definition of insurance holding company in the Glossary Part of the PRA Rulebook uses the same formulation. The term 'mainly' is not currently defined for these purposes in the Regulations or the PRA Rulebook.

¹ April 2020: <https://www.bankofengland.co.uk/prudential-regulation/publication/2015/solvency2-group-supervision-ss>.

² <https://www.legislation.gov.uk/ukSI/2015/575/contents>.

1.8 Interpretation of the term ‘mainly’ is relevant when distinguishing an insurance holding company from a mixed-activity insurance holding company. This distinction impacts on the scope of group supervision.

Summary of proposals

1.9 The policy proposals included in this CP are to:

- a) amend the definition of insurance holding company in the Glossary Part of the PRA Rulebook; to interpret the term ‘mainly’ by reference to the proportion of a group’s assets, revenues or capital requirements that are derived from insurance or reinsurance subsidiaries, or ancillary insurance services undertakings (ancillary services undertakings that service the insurance part of the group); and
- b) clarify the PRA’s expectations on the information required from firms in order to distinguish an insurance holding company from a mixed-activity insurance holding company. The PRA proposes to provide this clarification as further guidance in SS9/15.

1.10 By providing further clarity on the definition of an insurance holding company and distinguishing such from a mixed-activity insurance holding company, the PRA considers that the engagement between firms and the PRA would be more efficient, and could reduce regulatory cost for the firm and the PRA. By including ancillary insurance services undertakings in the types of insurance or reinsurance subsidiaries that are referred to in the definition of an insurance holding company, the PRA seeks to uphold consistency in its supervisory treatment of comparable holding companies, regardless of how they are structured. The PRA considers that reduction of regulatory costs for firms, and consistency in the PRA’s supervisory treatment of comparable holding companies, would facilitate effective competition.

Implementation

1.11 The PRA proposes that the implementation date for the changes resulting from this CP would be Monday 28 February 2022.

Responses and next steps

1.12 This consultation closes on Monday 6 December 2021. The PRA invites feedback on the proposals set out in this consultation. Please address any comments or enquiries to CP17_21@bankofengland.co.uk.

1.13 References related to the UK’s membership of the EU in the SS covered by this CP have been updated as part of these proposals to reflect the UK’s withdrawal from the EU. Unless otherwise stated, any remaining references to EU or EU-derived legislation refer to the version of that legislation which forms part of retained EU law.³

³ For further information please see <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>.

2 Proposals

2.1 This chapter sets out the PRA's proposals on the interpretation and application of the definition of an insurance holding company for the purposes of the Group Supervision Part of the PRA Rulebook. Through these proposals, the PRA intends to clarify the distinction between an insurance holding company and a mixed-activity insurance holding company. The distinction impacts on the scope of group supervision for firms.

Proposed changes to the Glossary Part of the PRA Rulebook

2.2 The PRA proposes to amend the definition of insurance holding company, to interpret the term 'mainly' by reference to the proportion of a group's assets, revenues, or capital requirements that are derived from insurance or reinsurance subsidiaries, or from ancillary insurance services undertakings.

2.3 The PRA proposes that ancillary insurance services undertakings should be treated as part of the insurance business and included in the calculations of group's assets, revenues, or capital requirements. Otherwise, the PRA considers that a risk could arise whereby a holding company could be defined as a mixed-activity insurance holding company simply because of the manner in which it structures its operations. This could result in inconsistent supervisory treatment with other holding companies, which are otherwise comparable. The PRA therefore proposes to include ancillary insurance services undertakings in the types of entity which are referred to in the definition of an insurance holding company.

2.4 The PRA considers that the proportion of a group's assets derived from insurance or reinsurance subsidiaries, or ancillary insurance services undertakings, reflects the relative size of insurance business in the group. The PRA considers the proportion of a group's revenues derived from insurance or reinsurance subsidiaries, or ancillary insurance services undertakings, measures the group's reliance on cash flow from insurance activities. The PRA considers that the proportion of group capital requirements (as if calculated at the level of the parent) derived from insurance or reinsurance subsidiaries, or ancillary insurance services undertakings, represents quantifiable risks to the group arising from its insurance business.

2.5 The PRA further proposes that a holding company's subsidiaries would be considered as mainly insurance or reinsurance subsidiaries in cases where at least two of three measures (the group's assets, revenues, or capital requirements) exceed the 50% threshold. The PRA proposes to apply a 50% threshold when considering the proportion of a group's assets, revenues, or capital requirements derived from insurance or reinsurance subsidiaries, or from ancillary insurance services undertakings.

Proposed changes to SS9/15 'Solvency II: Group supervision'

2.6 This CP proposes to clarify the PRA's expectations of firms regarding the information to be provided in order for the PRA to consider whether a given holding company constitutes an insurance holding company, or a mixed-activity insurance company. The PRA proposes to add this clarification as further guidance for firms in SS9/15.

2.7 Where a firm wishes to demonstrate that a holding company is a mixed-activity insurance holding company, the PRA proposes that a firm provides information to demonstrate to the PRA that their proportion of assets, revenues, and capital requirements derived from insurance or reinsurance subsidiaries, or from ancillary insurance services undertakings, are each below the 50% threshold. The PRA proposes that these calculations should be demonstrated using the latest full

year reference period, or a three-year average of the past three years where there is material year-on-year volatility in the figures.

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. The PRA has a statutory duty to consult when changing rules (FSMA s138J).

3.2 The PRA fulfils its statutory obligations and public law duties by providing the following in relation to the proposed policy:

- (i) **a cost benefit analysis;**
- (ii) **compatibility with the PRA's objectives:** an explanation of the PRA's reasons for considering that making the proposed rules is compatible with the PRA's duty to act in a way that advances its general objective,⁴ insurance objective⁵ (if applicable), and secondary competition objective;⁶
- (iii) **FSMA regulatory principles:** an explanation of the ways in which having regard to the regulatory principles has affected the proposed rules;⁷
- (iv) **impact on mutuals:** a statement as to whether the impact of the proposed rules will be significantly different to mutuals than to other persons;⁸
- (v) **HM Treasury recommendation letter:** the PRC should have regard to aspects of the Government's economic policy as recommended by HM Treasury;⁹ and
- (vi) **equality and diversity:** the PRA is also required by the Equality Act 2010¹⁰ to have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out its policies, services, and functions.

Cost benefit analysis

3.3 The definition of an insurance holding company determines the scope of required group supervision. The PRA believes that further clarity on the definition of an insurance holding company will help firms better understand and comply with group supervision requirements. The PRA does not expect that firms will incur additional costs as a direct result of these proposals.

3.4 The proposals in this CP to amend SS9/15 seek to clarify the PRA's expectations of firms regarding the information to be provided for the PRA to consider whether a holding company is an insurance holding company, or a mixed-activity insurance holding company. To the extent of making the engagement between the firm and the PRA more efficient, the PRA considers that the regulatory cost could be reduced for both the firm and the PRA (eg during a change in control process).

Impact on mutuals

3.5 The PRA considers that the impact of the proposed rule changes on mutuals is expected to be no different from the impact on other firms, because the proposal relates to interpreting and applying

⁴ Section 2B of FSMA.

⁵ Section 2C of FSMA.

⁶ Section 2H(1) of FSMA.

⁷ Sections 2H(2) and 3B of FSMA.

⁸ Section 138K of FSMA.

⁹ Section 30B of the Bank of England Act 1998.

¹⁰ Section 149.

the definition of an insurance holding company for the purposes of the Group Supervision Part of the PRA Rulebook.

Equality and diversity

3.6 The PRA considers that the proposals do not give rise to equality and diversity implications because the proposal relates to making holding company determinations, while distinguishing an insurance holding company from a mixed-activity insurance holding company.

PRA objectives and ‘have regards’

3.7 Appendix 3 lists the statutory obligations applicable to the PRA’s policy development process. Where ‘have regards’ have not been explicitly considered in this chapter, it is because the PRA has considered them not to be relevant to the proposals.

3.8 The analysis in the rest of this chapter explains how the proposals have had regard to the most relevant matters listed in paragraph 3.2, including an explanation of the ways in which having regard to these matters has affected the proposals

Proposed implementation of the definition of insurance holding companies

3.9 The PRA proposes to:

- a) amend the definition of insurance holding company to interpret the term ‘mainly’ by reference to the proportion of a group’s assets, revenues, or capital requirements that are derived from insurance or reinsurance subsidiaries, or from ancillary insurance services undertakings; and
- b) clarify the PRA’s expectations of firms regarding the information to be provided in order for the PRA in order to assess whether a holding company is an insurance holding company, or a mixed-activity insurance company.

3.10 The PRA considers that its proposed interpretation and application of the definition of an insurance holding company would advance its primary objective, facilitate effective competition, and improve transparency. In the insurance context, the PRA considers that the proposals will contribute to securing an appropriate degree of protection for those who are, or may become, policyholders.

PRA objectives

3.11 The PRA considers that the proposals in this CP are compatible with its statutory objective to promote the safety and soundness of PRA-authorized firms, its competition objective, and in the context of insurance, to contribute to policyholder protection. The PRA considers that the proposals provide clarity on the scope of group supervision requirements by facilitating consistent understanding of whether a holding company is an insurance holding company, or a mixed-activity insurance holding company.

3.12 The proposals also intend to clarify the PRA’s expectations of firms regarding the evidence to be presented to the PRA for it to determine whether the holding company in question is a mixed-activity insurance holding company or an insurance holding company. The PRA considers that this will facilitate effective competition by reducing regulatory costs for firms (eg during a change in control process).

‘Have regards’

3.13 **The need to use the resources of the PRA in the most efficient and economical way:** The PRA has had regard to this principle by proposing to add further clarity to the definition of an insurance

holding company, and by clarifying the evidence that the PRA requires to distinguish a mixed-activity insurance holding company from an insurance holding company. This would result in a more efficient engagement with firms' supervisors and reduce the PRA's resource burden.

3.14 The desirability of the PRA exercising its functions in a way that recognises differences in the nature of businesses carried on by different persons (including different kinds of persons such as mutual societies and other kinds of business organisation) subject to requirements imposed by or under FSMA: The PRA has had regard to this principle by proposing to add further clarity to its differentiation of an insurance holding company from a mixed-activity insurance holding company. The PRA recognises that firms have different business models, and need to structure their holding companies differently, and that it is appropriate to apply different requirements to groups depending on the level of insurance business.

3.15 The principle that the PRA should exercise its functions transparently as possible: The PRA has had regard to this principle by proposing to add further clarity to its approach to interpreting and applying the definition of an insurance holding company for the purposes of the Group Supervision Part of the PRA Rulebook, and by adding further guidance that explains the PRA's approach to distinguishing between different holding companies, so that firms better understand what is expected of them.

3.16 Competition: The PRA has had regard to this principle by acknowledging differences in business models and holding company structures, with respect to insurance holding companies and mixed-activity insurance holding companies. By including ancillary insurance services undertakings in the types of insurance or reinsurance subsidiaries which are referred to in the definition of an insurance holding company, the PRA seeks to uphold consistency in the PRA's supervisory treatment of comparable holding companies, regardless of how they are structured. The PRA considers that reduction of regulatory cost for firms and consistency in the PRA's supervisory treatment of comparable holding companies would facilitate effective competition.

3.17 Diversity of firms: The PRA has had regard to this principle by acknowledging the diversity of business models and differences in nature and objectives of holding companies.

3.18 Innovation: The PRA has had regard to this principle by allowing innovation in the structuring of holding companies as insurance holding companies, or mixed-activity insurance holding companies, to suit a firm's specific circumstances.

3.19 Growth, trade and better outcomes for consumers: The PRA has had regard to this principle by facilitating competition, diversity of firms, and innovation, as listed above.

Appendices

1	Draft amendments to the Glossary Part of the PRA Rulebook	9
2	Draft amendments to Supervisory Statement 9/15 'Solvency II: group supervision'	11
3	PRA statutory obligations	21

1 Draft amendments to the Glossary Part of the PRA Rulebook

PRA RULEBOOK: GLOSSARY (SOLVENCY II) AMENDMENT INSTRUMENT [2022]

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);
 - (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 making¹¹

- 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: Glossary (Solvency II) Amendment Instrument [2022]

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

Commencement

- E. This instrument comes into force on [DATE].

Citation

- F. This instrument may be cited as the PRA Rulebook: Glossary (Solvency II) Amendment Instrument [2022].

By order of the Prudential Regulation Committee
[DATE]

¹¹ These conditions will be completed prior to the making of any final instrument.

Annex

Amendments to the Glossary

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

...

ancillary insurance services undertaking

- (1) (in the Financial Conglomerates Part of the PRA Rulebook) has the meaning given in Financial Conglomerates 1.4;
- (2) (in relation to the Group Supervision Part of the PRA Rulebook) means, in relation to any undertaking in a group, an undertaking complying with the following conditions:
 - (a) its principal activity consists of:
 - (i) owning or managing property;
 - (ii) managing data-processing services;
 - (iii) providing health and care services; or
 - (iv) any other similar activity;
 - (b) the activity in (a) is ancillary to the principal activity of one or more insurance undertakings; and
 - (c) those insurance undertakings are also members of that group.

...

insurance holding company

means a *parent undertaking*, other than a *UK Solvency II firm* and a *mixed financial holding company*, the main business of which is to acquire and hold *participations in subsidiary undertakings* and which fulfils the following conditions:

- (1) its subsidiary undertakings are either exclusively or mainly UK Solvency II firms, third country insurance undertakings ~~or~~, third country reinsurance undertakings or ancillary insurance services undertakings: the subsidiary undertakings of a parent undertaking are mainly UK Solvency II firms, third country insurance undertakings, third country reinsurance undertakings or ancillary insurance services undertakings where more than 50% of two or more of:
 - (a) the parent undertaking's consolidated assets;
 - (b) the parent undertaking's consolidated revenues;
 - (c) the group SCR (as if calculated at the level of the parent undertaking),
are derived from subsidiaries that are UK Solvency II firms, third country insurance undertakings, third country reinsurance undertakings or ancillary insurance services undertakings; and
- (2) at least one of those *subsidiary undertakings* is a *UK Solvency II firm*.

[Note: Art. 212(1)(f) of the Solvency II Directive]

2 Draft amendments to Supervisory Statement 9/15 ‘Solvency II: group supervision’

This appendix outlines proposed amendments to SS9/15 ‘Solvency II: group supervision’.

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

...

1 Introduction

1.1 This supervisory statement is addressed to all UK Solvency II firms and to the Society of Lloyd’s, which the PRA considers to be a mixed-activity insurance holding company. It sets out the Prudential Regulation Authority’s (PRA’s) expectations in respect of the Solvency II groups provisions.

1.2 Firms should note that if the group supervisor is a supervisory authority other than the PRA, the PRA still expects UK insurers to comply with PRA rules relating to group supervision (if they are part of a group). The PRA expects firms to behave in a way that contributes to effective group supervision irrespective of which supervisory authority is acting as group supervisor.

1.3 This supervisory statement should be read in conjunction with the relevant European legislation (as it forms part of retained EU law), the Group Supervision Part of the PRA Rulebook, the European Insurance and Occupational Pension Authority’s (EIOPA) Guidelines on group solvency (as at IP completion day)¹², The Solvency 2 Regulations 2015¹³ (‘the Regulations’), ~~and~~ the PRA’s insurance approach document¹⁴, and the relevant provisions of the Financial Services and Markets Act 2000 (FSMA).

1.4 This supervisory statement expands on the PRA’s general approach as set out in its insurance approach document. By clearly and consistently explaining its expectations of firms in relation to the particular areas addressed, the PRA seeks to advance its statutory objectives of ensuring the safety and soundness of the firms it regulates, and contributing to securing an appropriate degree of protection for policyholders. The PRA has considered matters to which it is required to have regard, and it considers that this statement is compatible with the Regulatory Principles and relevant provisions of the Legislative and Regulatory Reform Act 2006. This statement is not expected to have any direct or indirect discriminatory impact under existing UK law.

1.5 [Deleted]

1.6 Firms should also refer to:

¹² EIOPA Guidelines on Group Solvency: <https://www.bankofengland.co.uk/-/media/boe/files/paper/2020/december/gi-group-solvency.pdf>.

¹³ SI 2015/575 available at www.legislation.gov.uk/uksi/2015/575/contents/made, as amended by SI 2019/407 available at: <https://www.legislation.gov.uk/uksi/2019/407/contents>.

¹⁴ Available at www.bankofengland.co.uk/prudential-regulation/supervision.

- Bank of England and PRA Statement of Policy ‘Interpretation of EU Guidelines and Recommendations: Bank of England and PRA approach after the UK’s withdrawal from the EU’ (December 2020);¹⁵
- PRA Supervisory Statement SS1/19 ‘Non-binding materials: The PRA’s approach after the UK’s withdrawal from the EU’ (December 2020);¹⁶ and
- PRA Supervisory Statement SS2/19 ‘PRA approach to interpreting reporting and disclosure requirements and regulatory transactions forms after EU withdrawal’ (December 2020).¹⁷

1.7 Any reference to any provision of direct EU legislation is a reference to it as it forms part of retained EU law.

1A Insurance holding company assessment

1A.1 Where a group, for which the PRA is the group supervisor, wishes to demonstrate that a holding company is a mixed-activity insurance holding company, the group’s assets, revenue, and capital requirements should be ascertained by the firm as follows:

- Assets: Gross assets would be considered by the PRA in the first instance. In cases where gross figures are below the 50% threshold whereas net figures are above the 50% threshold or vice versa, firms should calculate the proportion of group assets on both gross and net basis and refer each to the 50% threshold. The PRA would consider the more prudent measure between gross or net assets in such cases. A Solvency II basis of valuation would be considered most appropriate. An IFRS basis of valuation may be acceptable as an alternative.
- Revenues: Gross revenues would be considered by the PRA in the first instance. In cases where gross figures are below the 50% threshold whereas net figures are above the 50% threshold or vice versa, firms should calculate the proportion of group revenues on both gross and net basis and refer each to the 50% threshold. The PRA would consider the more prudent measure between gross or net revenues in such cases. Revenues should be based on the consolidated financial statements. If none are available, the statutory accounts under IFRS/UK GAAP may be acceptable provided that there is a consistent basis of measurement.
- Capital requirements: Solvency capital requirements (SCR) should be based on the contribution to the consolidated group SCR as defined in Article 330(6) of the Delegated Regulation¹⁸ or based on local solvency capital requirements if a Method 2 waiver has been granted.

¹⁵ April 2019: <https://www.bankofengland.co.uk/paper/2019/interpretation-of-eu-guidelines-and-recommendations-boe-and-pra-approach-sop>.

¹⁶ April 2019: <https://www.bankofengland.co.uk/prudential-regulation/publication/2019/non-binding-pra-materials-the-pras-approach-after-the-uks-withdrawal-from-the-eu-ss>.

¹⁷ April 2019: <https://www.bankofengland.co.uk/prudential-regulation/publication/2019/pras-approach-to-interpreting-reporting-and-disclosure-reqs-and-reg-trans-forms-ss>.

¹⁸ Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) Text with EEA relevance.

- Where there are material intra-group transactions, firms should calculate assets and revenue both gross and net of intra-group transactions and refer each to the 50% threshold.

1A.2 The calculations above should be demonstrated using the latest full year reference period, or a three-year average of the past three years where there is material year-on-year volatility in the figures.

1A.3 The PRA expects firms to provide any relevant information where requested to carry out this assessment.

2 Entities excluded from the scope of group supervision

2.1 Where a group, for which the PRA is the group supervisor, wishes to exclude entities from the scope of group supervision, it will be expected to make a formal application to the PRA. Where that application is approved, the exclusion will be given effect by the PRA issuing a direction under section 138A of the Financial Services and Markets Act 2000 (FSMA), taking into account the criteria in ~~in Article 214(2) of the Solvency II Directive¹⁹ ('the Directive')~~Group Supervision 2.3. The PRA expects such applications to articulate the way in which the firm believes that the conditions set out in ~~Article 214(2) of the Directive~~ Group Supervision 2.3 are met.

2.2 The PRA will assess applications to exclude entities from the scope of group supervision under ~~Article 214(2) of the Directive~~ Group Supervision 2.3 on a case-by-case basis ~~and will consult with other concerned supervisory authorities in the circumstances required by Regulation 12 of the Regulations.~~

¹⁹ 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) Text with EEA relevance.

3 Choice of calculation method

3.1 Where the PRA is the group supervisor the PRA may decide, after consulting other concerned supervisory authorities where relevant and the group (as required by Regulation 16 of the Regulations), to apply to the group either method 2 (deduction and aggregation method) or a combination of methods 1 and 2, where the exclusive application of method 1 (accounting consolidation-based method) would not be appropriate,²⁰ having considered the provisions of Article 328(1) of the ~~Commission~~ Delegated Regulation.²¹

3.2 Where a group for which the PRA is the group supervisor wishes to use method 2 or a combination of methods 1 and 2, the PRA expects it to make a formal application to the PRA for a direction under section 138A of FSMA.

3.3 The PRA expects this application to articulate the way in which the firm believes that the elements in Article 328(1) of the ~~Commission~~ Delegated Regulation should be considered in the context of the firm's application.

4 Group capital add-on

4.1 Where the PRA is the group supervisor, in considering whether the consolidated group Solvency Capital Requirement (SCR) appropriately reflects the risk profile of the group, ~~if the PRA~~ the PRA may consider a capital add-on for a group in the circumstances referred to in ~~in Article 37(1)(a) to (d) of the Directive~~ paragraph 3.2 of Supervisory Statement 4/15 'Solvency II: the solvency and minimum capital requirements'.

4.2 In particular, the PRA will consider imposing a capital add-on under ~~Article 232 of the Directive~~ Group Supervision 13 where a:

- (a) specific risk at group level is not sufficiently covered by the standard formula or an internal model; or
- (b) capital add-on is imposed on a Solvency II undertaking in the insurance group because its risk profile deviates significantly from the assumptions underlying the group's internal model.

5 Centralised risk management [deleted]

5A Availability of group own funds

5A.1 Group Supervision 9.4 and Article 330 of the ~~Commission~~ Delegated Regulation place limits on the own funds which can be included in the group solvency calculation, depending on their availability to absorb losses anywhere in the group.

5A.2 Groups are required to set out their own assessment of any items which might be deducted from own funds due to any significant restriction affecting the availability, fungibility

²⁰ Group Supervision 7 in the PRA Rulebook.

²¹ Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) Text with EEA relevance.

or transferability of own funds within the undertaking. Unless a formal determination is made by the PRA in respect of a particular own funds item, firms should report own funds items as available (notwithstanding their own assessment) except where the treatment of that own fund item is specifically referenced under ~~Article 222 of the Directive~~ Group Supervision 9.1-9.6 and Article 330 of the Delegated Regulation.²² The PRA expects firms to provide the appropriate level of detail in these assessments, either in the solvency and financial condition report (SFCR) or in the regular supervisory report (RSR) depending on the confidentiality of the information. These assessments would subsequently be updated by the firm if there are material changes in the group or as agreed with the supervisor. Firms are expected to comply with the EIOPA Group Solvency Guideline 13 when making its own assessment of availability of own funds at group level of related undertakings that are not subsidiaries.

5A.2A The PRA assesses availability of own funds to cover the group solvency capital requirement (SCR) on the same basis for different types of groups. In particular, the PRA notes that the scope of the assessment, elements of availability and assumptions as to the availability of different types of own funds under Article 330 of the Delegated Regulation do not differ depending on structure of the group or the type of entity at its head. Furthermore, where a firm faces legal or other restrictions from issuing other types of own funds as a result of being a mutual or company limited by guarantee, it may place greater reliance on own funds issued by other group undertakings. The PRA considers that it is important that such groups demonstrate that these own funds are not restricted in meeting all types of losses arising anywhere in the group.

5A.2AA Since the current UK group solvency regime indicates that the group SCR is intended to represent a diversified risk standard, the PRA makes the assumption that diversification benefits are intended to be preserved when the valuation basis and quality of capital used to meet that standard correspond with UK group solvency principles. The consequence of this is that where standards that are not built on the same principles as, and are not similar in outcome to, those applicable under the UK group solvency regime are applied to the valuation basis and quality of capital, then the PRA will not assume that diversification benefits are intended to be preserved.

5A.2B Therefore, in principle, firms should not consider the solo SCR as restricting the availability of own fund items or assets at the level of the group, in the meaning of Article 330 of ~~Commission the~~ Delegated Regulation (EU) 2015/35. However this does not prevent the PRA from challenging the availability and transferability of own funds as assessed by groups. In the case where the PRA deems that own fund items are unavailable, under Article 330 of the ~~Commission~~ Delegated Regulation the PRA may require the group to make a deduction from group own funds. Groups should engage from an early stage with their group supervisor should there be any doubt as to the availability and transferability of group own fund items.

5A.2C The assumption made concerning the solo SCR as a restriction for the purposes of calculating the group SCR does not alter the operation of the solo SCR as a requirement for solo own funds.

5A.2D Firms should note that solo regulatory requirements applied under regimes which are not built on the same principles as, or not similar in outcome to, the UK solvency regime do not necessarily apply the same basis for valuing assets and liabilities, and therefore the availability of capital contributed to the group solvency position and the transferability of assets from those regimes may be different. In these cases the PRA will presume that solo regulatory requirements do restrict the availability of capital or assets at the level of the group

²² https://eur-lex.europa.eu/eli/reg_del/2015/35/oj.

and so the PRA expects firms to provide details how such own funds would be made available considering the elements set out at Article 330 of the ~~Commission~~ Delegated Regulation.

5A.2E Not only could the different valuation bases and quality of capital permitted for the purpose of local regulatory requirements affect the availability of capital which represents the difference between the contribution to the group SCR and the solo SCR, but also the availability of any surplus capital in excess of the local solo regulatory requirement. The PRA expects firms to take this into account when providing it with information on which the PRA will base its judgements as to the point at which other regulators would intervene to restrict flows of capital out of their jurisdiction.

5A.2F Firms will also need to classify separately own funds at group level in accordance with Articles 331 to 334 of the ~~Solvency II~~ Delegated Regulation including those own funds contributed by third country insurance or reinsurance undertakings. The quality of capital will be one of the factors taken into account by the PRA when determining when and at which level supervisors from jurisdictions that do not have a solvency framework similar to that applicable in UK may raise regulatory barriers to reduce own funds availability at group level.

5A.3 When firms are providing details of how own funds could be made available to the group, the PRA notes that these may include actions to transfer own funds around the group, for instance through paying dividends, or selling the assets of an undertaking or insurance holding company to recapitalise group companies in difficulty. The PRA will consider these actions when reviewing a group's assessment of transferability. In respect of parts of the group subject to requirements which are not similar in outcome to those applicable under the UK group solvency regime, the PRA expects groups to provide robust and credible evidence that the apparent availability of own funds at the group level is not compromised or effectively undermined by any legal or regulatory restrictions on transferability, and that the suggested action resulting in the transfer of the own funds does not jeopardise an orderly resolution of the group. In particular, the PRA expects the evidence to cover, as a minimum, the likely scenarios under which the actions could be taken, and the time that would be required to execute the actions. For the own funds considered available at group level, the PRA expects groups to evidence that these own funds can be made available to the group within a maximum of nine months.²³

5A.4 Under the current group solvency framework, the PRA may decide to apply to a group the deduction and aggregation method (method 2) for calculation of its solvency requirements, which would allow a firm to use local solvency rules when determining the requirements placed on (equivalent) third-country related undertakings. However, the assessment of the availability at a group level of an own funds item of such a related undertaking needs to be carried out by reference to the UK groups provisions, not only local rules.

5A.5 To illustrate this point further, the assessment of availability should demonstrate that both the solo undertaking third-country rules and the UK group rules have been considered. For example, this might mean that for an own funds item to be considered available at the level of the group, the firm should be able to defer coupon payments both in the event of non-compliance with the solo undertaking's third-country capital requirement and the UK group SCR.

²³ Article 330 of the Commission Delegated Regulation (EU) 2015/35 of 10 October supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) Text with EEA relevance.

5B Regulatory determination on the availability of group own funds

5B.1 Article 330 in the Delegated Regulation sets out how own fund items of: a related insurance or reinsurance undertaking; insurance holding company; or mixed financial holding company should be assessed when considering their availability at the group level. The Article identifies and describes the treatment of specific own fund items where those own fund items are either:

- (i) presumed to be unavailable unless the firm can demonstrate to the group supervisor that this assumption is inappropriate; or
- (ii) not considered to be available in any case.

5B.1A Subordinated liabilities and preference shares are among own fund items treated as in 5B.1 (i). These instruments create legal obligations on the issuing entity to their holders. At the same time, the issuing entity would not ordinarily have legal obligations in relation to losses arising in another group undertaking. This restricts the ability of these instruments to absorb losses in other group undertakings.

5B.1B Where the PRA is the group supervisor, for a firm to satisfy the PRA that the own fund items are available to cover the group SCR, the firm needs to demonstrate that these own fund items are available to absorb losses anywhere in the group. The PRA considers that a firm may demonstrate this as follows:

- Each insurance and reinsurance undertaking in the Solvency II group has the right to claim against the issuing entity if that insurance or reinsurance undertaking is wound up and there is a shortfall for its policyholders and beneficiaries. This includes any insurance and reinsurance undertakings acquired by the group after the issuance of the subordinated liabilities or preference shares. Furthermore, the right of the group insurance and reinsurance undertakings to claim on the issuing entity does not significantly increase group risks, including the level of complexity when winding up and contagion risk for issuing entities that are insurance or reinsurance undertakings.
- The legal obligations of the issuing entity to the holders of the instruments, including coupon payments, are subordinated to any claims made by group insurance and reinsurance undertakings that are being wound up.

5B.1C The PRA considers that intra-group guarantees used for this purpose increase certain risks in a group. The PRA would assess the level and volume of risks and the possible risks of contagion in the group due to the intra-group guarantees. The PRA would expect a firm to demonstrate that the intra-group guarantees do not significantly increase the level of complexity when winding up the group. The PRA would also expect a firm to demonstrate that the intra-group guarantees do not significantly increase contagion risk for issuing entities that are insurance or reinsurance undertakings by exposing the solvency of the issuing entity to losses in the other insurance and reinsurance undertakings in the group.

5B.1D The PRA considers that features that increase the impact of intra-group guarantees on these risks include, but are not limited to, the following:

- (i) the issuing entity is an insurance or reinsurance undertaking;
- (ii) there are multiple insurance and reinsurance undertakings in the group;

(iii) the issuing entity is a subsidiary of an entity that either has related insurance or reinsurance undertakings, or is an insurance or reinsurance undertaking; and

(iv) there are significant intra-group transactions, both in terms of volume and value.

5B.1E As these features are present in most groups, the PRA expects that for most groups it will not be appropriate to use intra-group guarantees to make subordinated liabilities and preference shares effectively available to absorb losses anywhere in the group. Furthermore, the PRA would expect a firm to consider any other relevant group-specific factors that increase group complexity. The PRA is receptive to other approaches that firms may wish to propose when seeking to demonstrate availability of subordinated liabilities and preference shares but these must address the legal restrictions derived from with such instruments. The PRA will assess such proposals on a case-by-case basis.

5B.1F Where own fund items are not specifically identified in Article 330 of the Delegated Regulation, the firm should assume that these own fund items are available to cover the group SCR. The PRA may require the firm to provide an assessment of availability of the own fund items which the PRA will consider to determine whether the PRA agrees with the analysis.

5B.2 The PRA will communicate clearly to the firm the PRA's determination as to whether an own fund item should be considered available or unavailable. This communication may be considered to be a determination in the context of Supervisory Statement 11/16²⁴ and as set out in the Financial Reporting Council's (FRC) guidance, Practice Note 20.²⁵

5B.3 Where the firm has not appropriately assessed any own fund items as being not available to meet the group SCR, and the PRA has not assessed any items as not available, then the PRA considers that no determination has been made.

5B.4 If the PRA has not provided a determination on the availability of an own fund item ~~where one is required by the Directive~~ and a firm has nevertheless assessed an item as unavailable, the PRA recommends that the firm discusses this with the PRA, in order to obtain a formal determination of the PRA's position.

6 Single own risk and solvency assessment report

6.1 A group, for which the PRA is the group supervisor, may apply to produce a single document covering its own risk and solvency assessments (ORSAs) at the level of the group and at the level of any subsidiary in the group at the same time (Group Supervision 17.2(3)). ~~The PRA will assess applications to produce a single ORSA document in consultation with the college of supervisors.~~

6.2 In addition to the ORSA conducted at group level, the PRA expects the group ORSA document to include sufficient details on the solo firms included within the scope of the group ORSA such that Conditions Governing Business 3.8 (solo ORSA) is satisfied in respect of each of those firms.

7 Single solvency and financial condition report (SFCR)

²⁴ PRA Supervisory Statement 11/16 'Solvency II: external audit of the public disclosure requirement', September 2016: www.bankofengland.co.uk/prudential-regulation/publication/2016/solvency2-external-audit-of-the-public-disclosure-requirement-ss.

²⁵ FRC Practice Note 20 (Revised). The audit of Insurers in the United Kingdom: www.frc.org.uk/news/february-2017/frc-publishes-revised-practice-note-20.

7.1 A group, for which the PRA is the group supervisor, may apply to produce a single report on its SFCR at the level of the group, and at the level of any subsidiary in the group which must be individually identifiable (Group Supervision 18.1(2)). ~~The PRA will assess applications to produce a single SFCR in consultation with the college of supervisors.~~

7.2 The PRA expects the single document produced to cover the same level of detail on the solo subsidiary firms as is required in the solo SFCR.

8 Responsibilities of the relevant insurance group undertaking²⁶

8.1 [Deleted]

8.2 For a group, for which the PRA is the group supervisor, it is sufficient for one relevant insurance group undertaking within an insurance group to undertake the following activities on behalf of the group to:

- (a) submit the relevant data for and the results of the group eligible own funds and the group SCR to the PRA, as referred to in Group Supervision 5.2;
- (b) ensure ongoing compliance with the conditions for the prudent management of subsidiaries, where the PRA has agreed to the use of a single document, the production of the single document covering all relevant ORSAs and the production of the single SFCR, as referred to in Group Supervision 15.4(2);
- (c) inform the PRA in an event of non-compliance with the group SCR within the appropriate timeframes, as referred to in Group Supervision 4.4; and
- (d) submit a realistic recovery plan and take measures to ensure compliance with the group SCR in an event of non-compliance with the group SCR within the appropriate timeframes, as referred to in Group Supervision 4.4.
- (e) [Deleted]
- (f) [Deleted]

9 Supervision in the absence of third-country equivalence

9.1 In the absence of equivalent group supervision, in accordance with Group Supervision 20, the relevant ~~Solvency II~~ PRA requirements will apply to the worldwide group, unless the PRA has specified 'other methods' to achieve the objectives of group supervision. In the absence of a decision by the PRA to specify 'other methods' for the group, then firms in that group are required to apply the relevant ~~Solvency II~~ PRA requirements to the worldwide group.

9.2 Firms will be expected to make a formal application to the PRA, where they wish the PRA to specify 'other methods' for the purposes of Group Supervision 20.1(2). Any such specification will be given effect by the PRA issuing a direction under FSMA section 138A. In its application, the PRA expects a firm to propose other methods for the PRA to consider. Firms wishing to apply for a direction may do so using the usual waiver and modification process.

²⁶ Group Supervision 1 in the PRA Rulebook.

The PRA will assess such applications on a case-by-case basis, taking into account the objectives of group supervision ~~as specified by the Directive.~~

9.3 If firms wish to submit an application before a relevant equivalence decision is made, they may do so stating the assumptions made with regard to equivalence. Where appropriate, the PRA may refrain from making a decision until an equivalence decision has been finalised.

3 PRA statutory obligations

The statutory obligations applicable to the PRA's policy development process are set out below. This CP explains the policy assessment of relevant considerations.

- Purpose of the policy proposals (FSMA s138J(2)(b)).
- Cost benefit analysis (FSMA s138J(2)(a) and (7)(a)); and an estimate of those costs and benefits (if reasonable) (FSMA s138J(8)).
- Analysis of whether the impact on mutuals is significantly different to the impact on other authorised firms (FSMA s138J(2)(c) and 138K).
- Compatibility with the PRA's primary objectives (FSMA s138J(2)(d)(i), 2B and 2C).
- Compatibility with the PRA's secondary competition objective (FSMA s138J(2)(d)(ii) and 2H(1)).
- Compatibility with the regulatory principles (FSMA s138J(2)(d)(ii), 2H(2) and 3B).
- Have regard to the HMT recommendation letter (BoE Act s30B).
- Have due regard to the public sector equality duty (Equality Act s149).
- Have regard, subject to any other requirement affecting the exercise of the regulatory function, to the principles of good regulation and when determining general policy or principles to the Regulators Code (Legislative and Regulatory Reform Act 2006 s21 & 22)
- Consultation with the FCA (FSMA s138J(1)(a)).
- Consultation with the Information Commissioner's Office (article 36(4) General Data Protection Regulation).