

Policy Statement | PS13/20

Insurance special purpose vehicles: Updates to authorisation and supervision

May 2020



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY





BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY

Policy Statement | PS13/20

Insurance special purpose vehicles: Updates to authorisation and supervision

May 2020

Contents

1	Overview	1
2	Feedback to responses	3
	Appendices	5

1 Overview

1.1 This Prudential Regulation Authority (PRA) Policy Statement (PS) provides feedback to responses to Consultation Paper (CP) 19/19 'Insurance special purpose vehicles: Updates to authorisation and supervision'.¹ It also contains the PRA's final policy, as follows:

- amendments to the Insurance Special Purpose Vehicle Part of the PRA Rulebook (Appendix 1);
- an updated Supervisory Statement (SS) 8/17 'Authorisation and supervision of insurance special purpose vehicles' (Appendix 2); and
- an updated Multi-arrangement Insurance Special Purpose Vehicle (MISPV) New Risk Assumption Notification Form (Appendix 3).

1.2 This PS is relevant to parties who wish to apply for, or have obtained authorisation as, an insurance special purpose vehicle (ISPV). It is also relevant to insurers and reinsurers seeking to use UK ISPVs as risk mitigation in accordance with Solvency II.

Background

1.3 In CP19/19 the PRA proposed to amend:

- the 'documentation requirements' section of the SS to expand on the PRA's expectations: (i) regarding the documentation to be submitted at the point of application; (ii) where outstanding commercial terms may only be finalised post-approval; and (iii) regarding independent third-party opinions (in particular legal opinions);
- the 'funding arrangements' section of the SS to elaborate on the PRA's expectations where there may be changes to the risk and/or funding of the ISPV (in particular 'roll-over' mechanisms);
- the 'risk transfer requirements' section of the SS that sets out its expectations on risk transfer requirements (in particular where a 'similar arrangement' is being contemplated);
- other sections of the SS to provide further detail including how the Scope of Permission (SOP) may be used in practice; how the PRA will treat similar 'repeat' transactions; and reminder to firms that the PRA may require an assessment of the accounting consolidation if an ISPV is consolidated into a group; and
- the MISPV New Risk Assumption Notification Form to remove repetitive information that has already been captured at the initial application stage in the ISPV Application Form. This would also require an update to the Insurance Special Purpose Vehicle Part of the PRA Rulebook.

Summary of responses

1.4 The PRA received one response to the CP that raised a number of questions. The PRA's feedback is set out in Chapter 2.

¹ September 2019: <https://www.bankofengland.co.uk/prudential-regulation/publication/2019/ispv-updates-to-authorisation-and-supervision>.

1.5 The PRA has amended the wording of paragraph 3.4 in the SS to improve readability, and corrected references in paragraph 3.30. The PRA has also corrected typographical errors it identified in the draft policy.

1.6 The PRA does not consider these changes alter the policy intent, and would not have a significant impact on firms, or a differential impact on mutuals. Therefore, the PRA has not updated the cost benefit analysis that accompanied the CP.

Implementation and next steps

1.7 The policy in the SS will take effect on publication of this PS, and the amendments to the Insurance Special Purpose Vehicle Part of the PRA Rulebook and the Multi-arrangement (MISPV) New Risk Assumption Form will be effective from Tuesday 26 May 2020.

1.8 The policy set out in this PS has been designed in the context of the UK's withdrawal from the European Union and entry into the transition period, during which time the UK remains subject to European law. The PRA will keep the policy under review to assess whether any changes would be required due to changes in the UK regulatory framework at the end of the transition period, including those arising once any new arrangements with the European Union take effect.

1.9 The PRA has assessed that the policy would not need to be amended under the EU (Withdrawal) Act 2018 (EUWA). Please see PS5/19 'The Bank of England's amendments to financial services legislation under the European Union (Withdrawal) Act 2018' for further details.²

1.10 The final SS attached to this PS should be read in conjunction with SS1/19 'Non-binding PRA materials: The PRA's approach after the UK's withdrawal from the EU'.³

1.11 As these changes relate to forms they should be read in conjunction with SS2/19 'PRA approach to interpreting reporting and disclosure requirements and regulatory transactions forms after the UK's withdrawal from the EU'.⁴

² April 2019: <https://www.bankofengland.co.uk/paper/2019/the-boes-amendments-to-financial-services-legislation-under-the-eu-withdrawal-act-2018>.

³ 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>.

⁴ April 2019: <https://www.bankofengland.co.uk/prudential-regulation/publication/2019/pras-approach-to-interpreting-reporting-and-disclosure-reqs-and-reg-trans-forms-ss>.

2 Feedback to responses

2.1 Before making any proposed rules, the PRA is required by the Financial Services and Markets Act 2000 (FSMA) to have regard to any representations made to it, and to publish an account, in general terms, of those representations and its feedback to them.⁵

2.2 The PRA received one response to the CP covering several points. These, along with the PRA's feedback, are set out below in the order in which they appear in the CP, as follows:

- documentation requirements for outstanding commercial terms;
- documentation requirements for future arrangements;
- accounting consolidation assessment;
- 'clawback mechanisms'; and
- basis risk analysis.

Documentation requirements for outstanding commercial terms

2.3 The respondent suggested that the PRA provide a standard notification form for submission of the commercial terms that will be negotiated post-approval in order to streamline and maximise the efficiency of the process, allowing the PRA to make an informed decision in a timely manner.

2.4 As per paragraph 2.9B of the SS, 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.

2.5 The PRA expects the outstanding terms to be identified within the documentation submitted. The PRA will then assess the documentation, including whether the outstanding terms may affect any of the Solvency II requirements. If approval is granted, once the transaction documents are legally executed, the PRA expects the ISPV to submit the final documentation to the PRA as soon as possible. The PRA considers this is an efficient process, and as such a form is not required.

Documentation requirements for future arrangements

2.6 The respondent requested that the PRA provide more information on what should be submitted in connection with any future arrangements, in order for such arrangements to be included in the SOP.

2.7 As per paragraph 2.15 and 2.15A of the SS, the PRA expects the contractual wording/arrangements governing future arrangements to be submitted. Where an applicant desires a range of potential future arrangements, structures or mechanisms to be included in the SOP, the PRA will need sufficient information to assess the compliance of these prior to granting approval. The PRA encourages applicants to engage with the PRA on these matters as early as possible so that it can be agreed upfront what should be submitted in the application.

Accounting consolidation assessment

2.8 The respondent asked the PRA to reconsider the draft amendment in paragraph 3.11A of the SS, which says that, in accordance with the Annex I of Implementing Regulation, where an ISPV is

⁵ Sections 138J(3) and 138J(4) of FSMA.

consolidated into a group, the applicant must provide an assessment of the applicable accounting consolidation requirements of the ISPV into the group. The respondent suggested that such an assessment should not have a bearing on the PRA's decision to authorise the ISPV.

2.9 Article 5 of the Implementing Regulation sets out the documentation that an applicant shall submit as part of an application as being, at least, the items listed in Annex I. The PRA proposed amending paragraph 3.11A of the SS to remind applicants of the specific obligation in paragraph 11(c) of Annex I of the Implementing Regulation where an applicant is proposing the consolidation of the ISPV into the group. If the applicant considers this information to be not applicable then, as per the ISPV Application Form, they must explain why and the PRA will assess this on a case-by-case basis.

'Clawback' mechanism

2.10 The respondent asked that the PRA clarify its approach to the use of 'clawbacks'.

2.11 Given that this was not considered as part of the consultation this is out of scope of the proposed updates to the SS. However, the PRA strongly encourages applicants to engage early on with it to discuss potential proposals, including specific features such as this.

Basis risk analysis

2.12 The respondent queried what was required as part of the basis risk analysis requested by the PRA.

2.13 Given the bespoke nature of Insurance Linked Securities (ILS) transactions, the PRA will need to consider what is required as part of the basis risk analysis on a case-by-case basis.

Appendices

- 1 **PRA RULEBOOK: SOLVENCY II FIRMS: INSURANCE SPECIAL PURPOSE VEHICLES INSTRUMENT 2020**, available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2019/ispvs-updates-to-authorisation-and-supervision>

- 2 **SS8/17 'Authorisation and supervision of insurance special purpose vehicles'**, available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2017/authorisation-and-supervision-of-insurance-special-purpose-vehicles-ss>

- 3 **MISPV New Risk Assumption Notification Form**, available at: <https://www.bankofengland.co.uk/prudential-regulation/authorisations/insurance-special-purpose-vehicles>