

**CEIOPS' Advice for
Level 2 Implementing Measures on
Solvency II:
Own funds -
Supervisory approval of ancillary
own funds**

(former CP29)

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Table of content

- 1. Introduction 3
- 2. Extract from Level 1 text 3
- 3. Advice 5
 - 3.1 Explanatory text 5
 - 3.1.1 Key issues..... 5
 - 3.1.2 Options 8
 - 3.1.3 Data 10
 - 3.2 CEIOPS advice..... 11

1. Introduction

- 1.1 In its letter of 19 July 2007, the European Commission requested CEIOPS to provide final, fully consulted advice on Level 2 implementing measures by October 2009 and recommended CEIOPS to develop Level 3 guidance on certain areas to foster supervisory convergence. On 12 June 2009 the European Commission sent a letter with further guidance regarding the Solvency II project, including the list of implementing measures and timetable until implementation.¹
- 1.2 This paper aims at providing advice with regard to supervisory approval of ancillary own funds as requested in Article 92 of the Solvency II Level 1 text.²
- 1.3 The objective of the paper is to provide a framework that specifies the criteria for granting supervisory approval.

2. Extract from Level 1 text

Legal basis for implementing measure

Article 92 - Implementing measures

1. The Commission shall adopt implementing measures specifying the following:

(a) the criteria for granting supervisory approval in accordance with Article 90; [...]

Other relevant articles for providing background to the advice

Article 87 - Own funds

Own funds shall comprise the sum of basic own funds, referred to in Article 88 and ancillary own funds referred to in Article 89.

Article 88 - Basic own funds

Basic own funds shall consist of the following items:

(1) the excess of assets over liabilities, valued in accordance with Article 75 and Section 2;

(2) subordinated liabilities.

¹ See <http://www.ceiops.eu/content/view/5/5/>

² Latest version from 19 October 2009 available at <http://register.consilium.europa.eu/pdf/en/09/st03/st03643-re01.en09.pdf>

The excess amount referred to in point (1) shall be reduced by the amount of own shares held by the insurance or reinsurance undertaking.

Article 89 - Ancillary own funds

1. Ancillary own funds shall consist of items other than basic own funds which can be called up to absorb losses.

Ancillary own funds may comprise the following items to the extent that they are not basic own fund items:

(a) unpaid share capital or initial fund that has not been called up;

(b) letters of credit and guarantees;

(c) any other legally binding commitments received by insurance and reinsurance undertakings.

In the case of a mutual or mutual-type association with variable contributions, ancillary own funds may also comprise any future claims which that association may have against its members by way of a call for supplementary contribution, within the following 12 months.

2. Where an ancillary own fund item has been paid in or called up, it shall be treated as an asset and cease to form part of ancillary own fund items.

Article 90 - Supervisory approval of ancillary own funds

1. The amounts of ancillary own fund items to be taken into account when determining own funds shall be subject to prior supervisory approval.

2. The amount ascribed to each ancillary own fund item shall reflect the loss-absorbency of the item and shall be based upon prudent and realistic assumptions. Where an ancillary own fund item has a fixed nominal value, the amount of that item shall be equal to its nominal value, where it appropriately reflects its loss-absorbency.

3. Supervisory authorities shall approve either of the following:

(a) a monetary amount for each ancillary own fund item;

(b) a method by which to determine the amount of each ancillary own fund item, in which case supervisory approval of the amount determined in accordance with that method shall be granted for a specified period of time.

4. For each ancillary own fund item, supervisory authorities shall base their approval on an assessment of the following:

(a) the status of the counterparties concerned, in relation to their ability and willingness to pay;

(b) the recoverability of the funds, taking account of the legal form of the item, as well as any conditions which would prevent the item from being successfully paid in or called up;

(c) any information on the outcome of past calls which insurance and reinsurance undertakings have made for such ancillary own funds, to the extent that information can be reliably used to assess the expected outcome of future calls.

3. Advice

3.1 Explanatory text

3.1.1 Key issues

- 3.1 The Level 1 text allows ancillary own funds to cover part of the Solvency Capital Requirement. The Level 1 text does not allow ancillary own funds to cover the Minimum Capital Requirement.
- 3.2 Article 99 of the Level 1 text states that the Commission shall adopt implementing measures laying down quantitative limits for own funds. CEIOPS' Advice on classification and eligibility of own funds proposes that at least 50% of the SCR be covered by Tier 1.³ Consequently no more than 50% of the SCR could be met with ancillary own funds.
- 3.3 The Level 1 text requires the amounts of ancillary own fund items that can be taken into account when determining own funds to be subject to prior supervisory approval for inclusion in own funds. The amount ascribed to each ancillary own fund item must reflect the loss-absorbency of the item, and must be based on prudent and realistic assumptions.
- 3.4 For each ancillary own fund item, supervisors can approve either a monetary amount or a method to determine the amount that is included in own funds. In the latter case, the supervisor grants approval of both the method and of the initial amount determined using that method, setting the period of time for which the calculation is considered appropriate and the conditions for when it would need to be updated. The supervisor bases his approval on an assessment of the probability that the amounts are actually paid up, as and when the (re)insurance undertaking needs the basic own funds which the counterparty has committed to provide.
- 3.5 Ancillary own funds carry the inherent risk that the (re)insurance undertaking does not receive the amount of basic own funds that the counterparty has committed to provide. CEIOPS sees this recoverability as the main risk relating to ancillary own funds and holds the view that

³ CEIOPS-DOC-39/09 (October 2009), see <http://www.ceiops.eu/content/view/17/21/>.

the eligibility of ancillary own funds should consider all potential losses relating to this risk. Key considerations in assessing this risk are the legal enforceability of the commitment and the economic considerations relevant to the counterparty.

- 3.6 In this context, CEIOPS notes that the Level 1 text keeps ancillary own funds off the solvency balance sheet until they are paid in or called up. Once paid in or called up, the item ceases to be ancillary own funds. The asset now recognised on the balance sheet may then be subject to a capital requirement. The valuation of the asset recognised on the balance sheet and the associated capital requirement, which would be determined using the relevant Solvency Capital Requirement formula, is likely to be different from the adjustment to ancillary own funds that is made to reflect the likely recoverability.
- 3.7 Ancillary own funds can take many different (legal) forms, and, moreover, be subject to national specificities. Some ancillary own funds result from the legal form of the (re)insurance undertaking concerned, while other ancillary own funds may be relevant to a wider group of (re)insurance undertakings. For example, supplementary member calls, are unique to mutual or mutual-type (re)insurance undertakings.
- 3.8 Ancillary own funds are generally called up when a (re)insurance undertaking is in need of additional funds, frequently as a result of losses. This may also occur due to an increase of the risk exposure of the undertaking. In the case that ancillary own funds are called up as a result of losses, CEIOPS notes that the recoverability of ancillary own funds may be lower for a (re)insurance undertaking facing financial difficulties.
- 3.9 The (re)insurance undertaking is at all times responsible for managing its own funds, including the amount of ancillary own funds, maintaining adequate financial resources to operate as a going concern and being able to meet its obligations towards policyholders and beneficiaries in full in a winding-up. This will also form part of the ORSA process.
- 3.10 The supervisory authority approves an amount of ancillary own funds based on a request by the (re)insurance undertaking. The amount that the supervisory authority approves can be lower than the amount requested by the (re)insurance undertaking. The request for approval must be based on a robust assessment by the (re)insurance undertaking of the recoverability, accompanied by all information the supervisory authority needs in issuing approval. In this process, the supervisory authority can use information that it has obtained from sources other than the (re)insurance undertaking.
- 3.11 Given the issues surrounding the recoverability of ancillary own funds, the supervisor has the general power to refuse approval of the amount determined by the (re)insurance undertaking seeking approval. When refusing approval the supervisor will provide an explanation to the (re)insurance undertaking.

3.12 Supervisory approval is not restricted to one point in time and the supervisor may review and revise the amount of ancillary own funds approved at any time. CEIOPS considers this to be necessary since the ability and willingness of the counterparty to pay a called-up amount can change over time. For example, a counterparty's financial position could deteriorate. The counterparty may not be able to pay if it is experiencing a liquidity shortage. It is also possible that the counterparty is not able, or willing, to pay as a result of evolving economic circumstances. In other words, the value of an approved amount of ancillary own funds can alter. With this in mind, CEIOPS considers that there needs to be safeguards as to the approval of the amount of ancillary own funds. CEIOPS considers that the following safeguards should be established in the level 2 implementing measures:

1. The Board of the (re) insurance undertaking will be required to confirm to the supervisory authority annually at each mandatory calculation of the SCR that there have been no changes to the structure of the arrangement, contractual terms, status of the counterparties or other event that could affect the recoverability of the own funds should a call be made. In making this confirmation the (re) insurance undertaking will need to be certain that the amount of the ancillary own funds is still relevant and respects the assessment criteria used during the approval process.
2. Additionally, at all times, it is the (re)insurance undertaking's responsibility to inform the supervisory authority of any significant changes in the recoverability of ancillary own funds, and to provide the supervisory authority as soon as possible with the relevant documentation to support this.
3. At any point in time, supervisors should be empowered to carry out a supervisory review, both through on-site inspections or specific requests of information.

3.13 The (re)insurance undertaking's request for approval of an amount of ancillary own funds or a method to determine this amount requires adequate detailed information that can be supported by reliable evidence. Supervisory approval shall be subject to the following:

1. When approving an amount of ancillary own funds the supervisory authority may exercise its discretion to make its approval subject to conditions. For example, the supervisory authority may only approve the ancillary own fund item for a specified period of time.
2. In accordance with Article 89 (3)(b), where the supervisory authority is approving a method by which to determine the amount of ancillary own fund item, the approval shall also refer to both the method and the initial amount determined using that method, setting the period of time for which the calculation is considered appropriate and the conditions for when it would need to be updated.

- 3.14 In the event that, in either case, the time period for which approval is given exceeds 12 months the (re) insurance undertaking will be required to submit an annual confirmation in accordance with paragraph 3.12 above.
- 3.15 It is conceivable that some undertakings will prefer to develop tailor-made methodologies to determine the amount of ancillary own fund items, using internal and external data sources as input, which the supervisory authority may deem appropriate on a case by case basis. Other undertakings may prefer not to develop such methodologies. At a later stage, CEIOPS may consider investigating providing examples of a preferred simple methodology in Level 3 supervisory guidance, taking into account the proportionality principle.

3.1.2 Options

- 3.16 The issues surrounding the recoverability of ancillary own funds and the heterogeneity of ancillary own funds both raise the question of what general approach is most appropriate. A principles-based approach would entail setting outcome-focused, high-level criteria for assessing the amounts that can be included in own funds, while a rules-based approach would entail setting a detailed list of prescriptive criteria, with the possibility of applying quantitative parameters.
- 3.17 A principles-based approach that is not supported by examples of how the principles would be applied in practice carries the risk of divergent supervisory practices, which would not be congruent with the concept of a level playing field across the EEA, and could give rise to legal risk for the supervisory authority. A rules-based approach carries the risk of creating an arbitrary, inflexible and/or complex regime that is difficult to comply with and enforce.
- 3.18 Whether a principles-based or rules-based approach is taken, further options would be to set criteria for each ancillary own fund item separately, or for groups of ancillary own fund items, or for all ancillary own fund items.
- 3.19 Given the heterogeneity of ancillary own funds, and the potential for market innovation in the future, CEIOPS is of the opinion that a principles-based approach would be more appropriate than a rules-based approach, as it would provide more flexibility.
- 3.20 While different ancillary own fund items can have different forms and characteristics, there is commonality in that recoverability is the main risk that needs to be evaluated. Consequently, setting criteria for all ancillary own funds is deemed appropriate, avoiding the need for developing a potentially complex framework.
- 3.21 The assessment of the amount of an ancillary own fund item that can be included in own funds requires supervisory judgment. The inherent risk involved in ancillary own funds requires a flexible, risk-sensitive

approach, where judgment based on reliable up-to-date information is critical, as opposed to a mechanistic approach. Therefore, CEIOPS does not see an automatic ex-ante or ex-post approval of ancillary own fund items to be appropriate. Each ancillary own fund item needs to be assessed on the basis of its loss-absorbency in the supervisory approval process: when approval is granted, and when significant changes arise in recoverability.

3.22 Approval is highly dependent on the complexity of the commitment and of the assessment of the status of the counterparties involved. At this stage, CEIOPS considers that:

- It is not appropriate to prescribe a timeframe in which all supervisory authorities must grant their approval. This is because at the time Solvency 2 is implemented it is possible that there may be a high number of applications for approval of ancillary own funds.
- However, once Solvency 2 is fully implemented CEIOPS will revisit the issue of an appropriate timeframe, for example between 3 and 6 months.

In any event when a (re)insurance undertaking has made an application for approval, silence on the part of the supervisory authority cannot be taken as approval. Approval would only be effective when directly and explicitly confirmed to the (re)insurance undertaking by the supervisory authority.

3.23 With a view to consistent application across supervisory authorities, while taking a principles-based approach, general criteria could be elaborated with some level of detail in the Level 2 implementing measure as set forth in this advice.

3.24 In order to enhance the application of the principles-based approach, (re)insurers should be required to publicly disclose, as part of Pillar III⁴, detailed information on ancillary own funds, so that market discipline can play a role in converging supervisory practices. This could be, for example, an annual specification of the ancillary own fund items; the amount for each ancillary own fund item; the nature of the counterparty for each ancillary own fund item and the name of the counterparty where it belongs to the same group; the name of the supervisory authority that has approved the amount; and the period for which the approval has been granted. This is set out in the advice provided in CEIOPS' Advice on supervisory reporting and disclosure.⁵

3.25 Where divergent supervisory practices are nevertheless observed in practice, CEIOPS could issue Level 3 supervisory guidance. [review in light of secretariat advice on references to Level 3]

⁴ Article 51 (1) (e)

⁵ CEIOPS-DOC-50-09 (October 2009), see <http://www.ceiops.eu//content/view/17/21/> (former CP58)

- 3.26 CEIOPS does not see a consistent approach with the banking regime to be relevant, as, the banking regime in most Member States does not recognize ancillary own funds.

3.1.3 Data

- 3.27 In QIS4, only a few (re)insurance undertakings reported ancillary own funds in most Member States, reflecting the limited eligibility of ancillary own funds under the existing Directives. The percentage of ancillary own funds in relation to basic own funds was below 10% in all Member States.
- 3.28 Very limited quantitative and qualitative information was reported on recoverability and valuation of ancillary own funds due to market participants' lack of experience.
- 3.29 In relation to recoverability on supplementary member calls where most data were available, aspects reported were lack of/little experience of past calls in two Member States, significant variation in recoverability rates across undertakings and significant variation in the incidence of calls across undertakings in another Member State, resulting in difficulty in defining an average recoverability rate.
- 3.30 In relation to valuation, most Member States reported that ancillary own funds had been valued at nominal value. Some undertakings considered that for Solvency II, the valuation basis should reflect the amount that would be available in case of financial stress. In two Member States, Professional and Indemnity Associations stressed that amounts callable from members are unlimited. In another Member State, one undertaking indicated in relation to supplementary member calls that valuation was based on the total amount that the mutual is able to call within one year. One undertaking commented that uncalled shares should not be valued as part of the company's capital until it is paid in by the shareholders.
- 3.31 Most supervisors indicated that mutual member calls were valued based on the maximum amount that can be called according to the articles of association. In one Member State, 100% of this value was reported. Another undertaking in this Member State did not use the option to include callable amounts in own funds and another has removed the possibility to call for supplementary premiums from its articles of association. Another Member State used an amount corresponding to $\pm 70\%$ of written gross premiums.

3.2 CEIOPS advice

General principles

- 3.32 In accordance with Article 90 the purpose of the approval process for ancillary own funds is to ensure that the amount recognised reflects the loss absorbency of the item and that it has been determined on the basis of prudent and realistic assumptions.
- 3.33 An assessment of the loss absorbency of an ancillary own funds item does not depend on its formal description or its nominal value but on the economic substance that the features of the item possess. For this reason CEIOPS considers that the approval process should focus on the substance of the item and not the form in which it is presented or described.
- 3.34 In developing this advice CEIOPS has set out principles and criteria which would apply to all types of ancillary own funds items in order to provide a reliable basis of approval within a clear legal framework established by the Level 1 text and the implementing measures.
- 3.35 Applications from (re)insurance undertakings will therefore be reviewed by supervisory authorities against these criteria in order to ensure that the objectives of Article 90 are met. CEIOPS considers that this approach represents the best means of providing clarity both to (re)insurance undertakings through the specification of clear criteria and to supervisors. Adopting this principles-based approach should also allow supervisors to take account of market conditions and market innovation, provided always that the items proposed would constitute own funds under the Level 1 text.
- 3.36 The (re)insurer determines the amounts of ancillary own funds for which it seeks supervisory approval, is responsible for the methods to determine those amounts, and for providing the related documentation. The (re)insurance undertaking is at all times responsible for managing its own funds, including the amount of ancillary own funds, maintaining adequate financial resources to operate as a going concern and being able to meet its obligations towards policyholders and beneficiaries in full in a winding-up. This will also form part of the ORSA process.
- 3.37 The supervisory authority approves either the amounts or the methods to determine those amounts, on the basis of documentation and any other information it has which it deems appropriate for the assessment process.
- 3.38 The supervisory authority can always request further information from the (re)insurance undertaking. On the basis of the information available, the supervisory authority grants approval, refuses approval, or grants approval for part of the amount requested. Refusing approval

means either refusing inclusion of the ancillary own fund item(s) to cover the Solvency Capital Requirement (i.e. the eligible amount would be zero) or accepting a lower amount than requested by the (re)insurance undertaking. When refusing the approval, the supervisory authority will provide an explanation to the (re)insurance undertaking.

3.39 Supervisory approval is not restricted to one point in time. The supervisory authority has the power to review and revise either the amount, or the method to determine that amount, for which it has previously granted approval when it is informed, or observes, that the ability and willingness of the counterparty to pay has, or may have, altered significantly since approval was granted.

3.40 CEIOPS considers that there needs to be the following safeguards as to the approval of ancillary own funds:

1. The Board of the (re) insurance undertaking will be required to confirm to the supervisory authority annually at each mandatory calculation of the SCR that there have been no changes to the structure of the arrangement, contractual terms, status of the counterparties or other event that could affect the recoverability of the own funds should a call be made. In making this confirmation the (re) insurance undertaking will need to be that the amount of the ancillary own funds is still relevant and respects the assessment criteria used during approval process.
2. Additionally, at all times, it is the (re)insurance undertaking's responsibility to inform the supervisory authority of any significant changes in the recoverability of ancillary own funds, and to provide the supervisory authority as soon as possible with the relevant documentation to support this.
3. At any point in time, supervisors should be empowered to carry out a supervisory review, both through on-site inspections or specific requests of information.

3.41 The supervisory authority may make its approval subject to conditions:

1. Approval for the amount of ancillary own funds item may be for a specified period of time
2. In accordance with Article with Article 90 3(b) where the supervisory authority is approving a method by which to determine the amount of ancillary own fund item, the approval shall also refer to the initial amount determined using that method, the period of time for which the calculation is considered appropriate and the conditions for when it would need to be updated.

3.42 In the event that, in either case, the specified period of time exceeds 12 months the (re)insurance undertaking will be required to submit the annual confirmation as set out in paragraph 3.40.

3.43 Approval is highly dependent on the complexity of the commitment and of the assessment of the status of the counterparties involved. At this stage, CEIOPS considers that:

- It is not appropriate to prescribe a timeframe in which all supervisory authorities must grant their approval. This is because at the time Solvency 2 is implemented it is possible that there may be a high number of applications for approval of ancillary own funds.
- However, once Solvency 2 is fully implemented, CEIOPS will revisit the issue of an appropriate timeframe, for example between 3 and 6 months.

3.44 In any event when a (re)insurance undertaking has made an application for approval, silence on the part of the supervisory authority cannot be taken as approval. Approval would only be effective when directly and explicitly confirmed to the (re)insurance undertaking by the supervisory authority.

The approval process: How does the supervisory authority reach its decision?

3.45 A three step process should be followed when granting supervisory approval of the amount of an ancillary own fund item for inclusion in own funds.

3.46 **Step 1.** The supervisory authority reviews the amount of funds that the (re)insurance undertaking is legally able to call, and that is legally enforceable, under its articles of association, in the contracts that govern the commitment to provide funds and, where relevant, the national law.

3.47 **Step 2.** The supervisory authority assesses whether the amount proposed is realistic as compared to the amount that the (re)insurance undertaking is likely to recover as and when the (re)insurance undertaking needs the basic own funds which the counterparty has committed to provide.

3.48 **Step 3.** The supervisory authority assesses whether the amount is prudent, considering all potential losses and stress events, on the basis of information available.

3.49 CEIOPS considers that steps 2 and 3 are distinct. Step 3 may be needed to reduce the amount that can be included in ancillary own funds to reflect the fact that the amount that might be recoverable in a stress situation may be lower than a realistic amount determined under step 2.

3.50 In this three-step assessment process, the supervisory authority should consider the criteria set forth further below to determine whether there are any obstacles to recoverability, in which case the request for approval would not be granted, or the (re)insurance undertaking would only be granted approval to include a lower amount in own funds than the amount requested.

The approval process: Criteria

3.51 As part of the approval process, the following criteria should be considered and documented by the supervisory authority explicitly. This information would be provided by the (re)insurance undertaking to the supervisory authority, although the supervisory authority is not required to restrict itself to information provided by the (re)insurance undertaking only.

(A) The status of the counterparties concerned, in relation to their ability and willingness to pay

(a) Ability to pay

3.52 The assessment of the counterparty's ability to pay should consider both **default risk** and risk of delay in the transfer of funds. Default risk is the risk that the commitment to provide basic own funds is not honoured. Risk of delay in the transfer of funds is the risk that there is a delay in receiving basic own funds from the counterparty once the item has been called up.

(i) Default risk

3.53 The supervisory authority assesses the probability of default of the counterparty and the loss given default. One possible way of performing this assessment could be to use the SCR counterparty risk module in those cases where the counterparty is subject to a credit rating, assuming there is no other factor that could affect the default risk. The supervisory authority could use other approaches.

3.54 Where the counterparty is not subject to a credit rating or such a credit rating is not suitable for the supervisory assessment, the supervisory authority assesses default risk applying the following criteria:

- Whether there are any interests other than those of the (re)insurance undertaking, and what impact those other interests may have on the ability of the counterparty to transfer funds. For example, are there other parties who take precedence, is the commitment subordinated?
- Whether the transfer of funds to the (re)insurance undertaking might harm the reputation of the counterparty.
- Whether any regulatory requirements impact on the ability of the counterparty to transfer funds.
- Whether the legal structure of the counterparty prejudices the transfer of funds.
- Whether the contractual relationship of the counterparty and the (re)insurance undertaking prejudices the transfer of funds. For example, are there encumbrances, or rights of set-off?
- Whether recoverability is reinforced through the availability of collateral or counter-guarantees.

- Whether there are other exposures to the counterparty or it has provided other commitments that are ancillary own funds, so that the total exposure to that counterparty poses significant risk.

(ii) Risk of delay in transfer of funds

3.55 The supervisory authority assesses the liquidity position of the counterparty applying the following criteria:

- Whether the prompt transfer of funds to the (re)insurance undertaking might harm the reputation of the counterparty.
- Whether any regulatory requirements impact on the ability of the counterparty to transfer funds promptly.
- Whether the legal structure of the counterparty prejudices the prompt transfer of funds.
- Whether the contractual relationship of the counterparty and the (re)insurance undertaking prejudices the prompt transfer of funds. For example, are there encumbrances, or rights of set-off?
- In cases where the counterparty is a legal entity rather than an individual, whether there are assets in the counterparty available to be transferred or liquidated for the purposes of the transfer of funds.

(b) Willingness to pay

3.56 The supervisory authority assesses the economic situation of the (re)insurance undertaking and the reason for the call. For example, the amount recovered may be less than the amount called up if the (re) insurance undertaking is already, or is likely to become, insolvent. Similarly, if the call is the result of inadequate or inappropriate management on the part of the (re)insurance undertaking, the amount recovered may be less than the amount called up.

3.57 The supervisory authority assesses the existence of incentives and motivations for the counterparty to pay. In some jurisdictions, the non-payment of a call triggers losses to the counterparty. Incentives and motivations also include reputational and other adverse consequences of non-payment.

3.58 The supervisory authority assesses whether past and proposed flows of funds between the counterparty and the (re)insurance undertaking demonstrates the willingness to make prompt transfer of funds.

3.59 The supervisory authority assesses the nature of the counterparties and their involvement in the (re)insurance undertaking, in light of the (re)insurance undertaking's business model. In many cases, a distinction between corporate and non-corporate or individual counterparties would be considered.

(B) The recoverability of the funds, taking account of the legal form of the item, as well as any conditions which would prevent the item from being successfully paid in or called up

3.60 In addition to considering the legal enforceability, the supervisory authority assesses the systems, controls and processes the (re)insurance undertaking has in place to make and to enforce payment of the call.

(C) Any information on the outcome of past calls which (re)insurance undertakings have made for such ancillary own funds, to the extent that information can be reliably used to assess the expected outcome of future calls.

3.61 Where the (re)insurance undertaking has sufficient data to allow a statistical assessment, the supervisory authority will consider whether this information can reliably be used to assess the expected outcome of future calls. Data could include both market data (by country; for the entire market) and internal data.

3.62 The supervisory authority assesses the experience of the undertaking in recovering payments under similar commitments with the same or similar counterparty. The presence or otherwise of consecutive calls may be relevant to the amount of funds expected to be recovered in the future. This assessment should be made on a case-by-case basis.

3.63 The supervisory authority does not approve unlimited amounts. There are circumstances where the theoretical amount that could be called is not limited. This occurs, for example, in the case of some unbudgeted supplementary member calls of mutual (re)insurance undertakings, where the contract with the counterparty allows for an unlimited call, but which in practice are not unlimited.

On-going review

3.64 Supervisory approval of the amount of each ancillary own fund item for inclusion in own funds, of the method to determine the amount, and of the amount determined in accordance with that method for a specified period of time should be subject to on-going supervisory review where the supervisory authority is informed, or observes, that the ability and willingness of the counterparty to pay has, or may have, altered significantly since approval was granted. In other words, the supervisory authority has the power to revise the amount, or the method, for which it has previously granted approval.

3.65 The (re)insurance undertaking has the duty to report to the supervisory authority any change in circumstances that is relevant to the supervisory authority's assessment as soon as such information becomes apparent. The annual confirmation from the board of the (re)insurance undertaking set out in paragraph 3.41 also supports the process of on-going review.

Public disclosure under Pillar III

3.66 In order to enhance the application of the principles-based approach, (re)insurers should be required to publicly disclose, as part of Pillar III⁶, detailed information on ancillary own funds. This approach is set out in CEIOPS DOC 50/09. To allow this advice to be read in context the following details of the relevant disclosures are provided for information:

- an annual specification of the ancillary own fund items,
- the amount for each ancillary own fund item,
- the nature of the counterparty for each ancillary own fund item and if there are no legal or practical obstacles to disclosure, considering the form and nature of the instrument being called up, the name of the counterparty,
- the name of the counterparty and a statement that it belongs to the same group where this is the case,
- the name of the supervisory authority that has approved the amount, and
- the period for which the approval has been granted.

⁶ Article 51 (1) (e)